

6 June 2022

Via Electronic Mail to FinDevCanadaIAM@edc.ca

RE: Comments on Draft FinDev Canada Independent Accountability Mechanism Policy

Introduction

Thank you for the opportunity to provide feedback on FinDev Canada’s draft Independent Accountability Mechanism (IAM) policy. Accountability Counsel is a legal non-profit organization that works alongside communities seeking redress for human rights and environmental harm through accountability mechanisms. Based on this case experience, Accountability Counsel has advised all of the existing IAMs on their policies and procedures with the objective of making the mechanisms effective recourse and remedy tools for the communities who need to use them. In December 2021, we and several civil society partners released the [Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms](#), which offers model existing provisions from IAM policies based on a review of all IAM policies. Further, all complaints to all accountability mechanisms and a tool that benchmarks IAM policies can be accessed in the [Accountability Console](#).

Section 1: Positive Aspects of the Proposed Policy

First, we commend the draft policy’s inclusion of good practices that will help make the IAM effective for communities who may seek its services. We highlight the following in particular:

1. **Accountability and remedy:** by setting an expectation that FinDev Canada Management, Staff, and Clients cooperate and participate in the IAM complaint process, and allowing the IAM to recommend remedial actions, monitor the implementation of remedy until completion, and provide institutional advice to prevent harm in other instances;¹
2. **Impartiality and independence:** by mandating a reporting line to the Board, requiring recusal in cases of conflicts of interest, granting the IAM sole authority over Compliance

¹ Draft Policy, sections 1.2.2 (“Purpose and Objectives”), 1.4.1 (“Functions”), 3.2.1 (the purpose of Compliance Review), 3.1.10 (advice throughout the Dispute Resolution process), 3.2.9 (advice throughout the Compliance Review process), 3.2.4(e) (features of Compliance Review Reports), sections 3.3.1 - 3.3.3 (“Monitoring Dispute Resolution and Compliance Review Implementation”), 4.2.4 (“FinDev Canada CEO and Management”), 5.1.4 (“Access to Information”).

Review assessments, and allowing the IAM to initiate and guide reviews of its own policies and procedures;²

3. **Accessibility:** by setting simple admissibility requirements that allow consideration of complaints regarding actual or potential harm, including harm not known until after project closure, accepting complaints in various formats and/or languages, and requiring public outreach to raise awareness about the IAM;³
4. **Predictability:** by establishing clear timelines and detailed descriptions of the Compliance Review and Dispute Resolution functions, which complaints may select as preferred;⁴
5. **Transparency:** by maintaining a comprehensive online complaints register, and keeping Complainants regularly updated on the status of their complaints;⁵
6. **Safety:** by committing to prevent and address instances of retaliation and reprisal, maintaining the confidentiality of Complainants if requested, and authorizing the Chief IAM Officer to recommend suspension of funds at any time in consideration of the risks of serious and irreparable harm caused by a particular activity;⁶
7. **Fairness:** by allowing all parties to comment equally on draft Compliance Review reports, requiring consultation with all parties on Management Action Plans (MAPs) to address instances of non-compliance, committing to conduct Dispute Resolution fairly, equitably, and in a manner acceptable to all parties, and requiring consultation with all parties to monitor the implementation of MAPs and Dispute Resolution agreements;⁷
8. **Continuous learning:** by allowing the IAM to provide advice based on Compliance Review and Dispute Resolution experiences;⁸ and
9. **Engagement and dialogue:** by requiring regular review of the IAM policy in consultation with community stakeholders.⁹

Section 2: Recommended Changes

² Draft Policy, section 1.3.1 (“*Impartiality and Independence*”), 3.2.2 (“*Compliance Review*”), 4.2.2 (“*Chief IAM Officer*”), 5.1.7 (“*Review of the IAM Policy and Procedures*”).

³ Draft Policy, section 2.2.1 (“*Submitting a Complaint*”), 2.4.1 (“*Eligibility*”), 2.5.1 (“*Exclusions*”), 5.1.6 (“*Outreach*”).

⁴ Draft Policy, sections 1.4.1 (“*Functions*”), 2.3.1 (“*Preliminary Review*”), Annex II (“*Timelines*”).

⁵ Draft Policy, sections 5.1.2 (“*Online Register*”), 2.3.1 (Acknowledging receipt of Complaints and ascertaining Complainant preference for Dispute Resolution or Compliance Review), 2.3.3 (communicating eligibility determinations), 3.2.6 (sharing draft Compliance Review Reports), 3.2.8 (sharing finalized Compliance Review Reports), 3.3.2 (sharing Monitoring Reports).

⁶ Draft Policy, sections 2.7.1 (interim recommendations to suspend projects), 2.8 (“*Retaliation and Confidentiality*”).

⁷ Draft Policy, sections 3.1.2 (conducting Dispute Resolution processes fairly and equitably), 3.2.6 (allowing comment on draft Compliance Review Reports), 3.2.7 (consultation on MAPs), 3.3.2 (sharing Dispute Resolution Monitoring Reports), 3.3.3 (consulting on the implementation of MAPs).

⁸ Draft Policy, sections 1.4.1 (“*Functions*”), 3.1.10 (advice throughout Dispute Resolution), 3.2.9 (advice throughout Compliance Review).

⁹ Draft Policy, section 5.1.7 (“*Review of the IAM Policy and Procedures*”).

Nonetheless, we found several ways that the draft policy can improve to better align with good practice and to ensure effective processes and outcomes for communities. Our recommendations for edits to the draft policy are below.

1. IMPARTIALITY AND INDEPENDENCE

Selection of Leadership and Staffing

Section 4.2.2 of the draft policy states that “the Chief IAM Officer . . . [is] expected to act impartially and independently.” A key way to ensure that the Chief IAM Officer is independent is to embed independence into the hiring process by including external stakeholders’ input. Peer accountability offices like that of the International Finance Corporation¹⁰ expressly allow stakeholder participation in the selection of candidates in order to build trust in the independence of the office and ensure the integrity of the leadership selected. Similarly, civil society advisors provide input into the selection process for the head of the Inter-American Development Bank’s accountability mechanisms. A head of an IAM selected through a process that includes external stakeholders, including civil society organizations, will help set up the new Chief IAM Officer to succeed in their role.

Pre- and Post-Employment Restrictions

To ensure the IAM’s impartiality and independence, the policy should expressly prevent a revolving door between FinDev Canada and the IAM. Without such provisions, there is a risk that IAM leadership and staff may mismanage complaints to protect career prospects. This is why the policies of peer accountability offices like those of the International Finance Corporation (IFC)¹¹ and African Development Bank (AfDB)¹² have included pre- and post- employment limitations for leadership in their respective policies. Many also impose similar restrictions on non-administrative staff.

¹⁰ IFC CAO Policy, para. 15 (“To maintain the independence of the CAO [Director General], a selection committee will be established to conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities. CAO, IFC, and MIGA will solicit nominations for the selection committee from stakeholders and forward them . . . for . . . consideration. The CODE Chair and Vice-Chair will appoint six people to form the selection committee, including two Executive Directors, two senior representatives from the global business community, and two senior representatives from the civil society community, and appoint one of these Executive Directors as chair of the selection committee”).

¹¹ IFC CAO Policy, para. 18 (“Upon conclusion of the appointment, the CAO [Director General] is restricted for life from obtaining employment with the World Bank Group”); para. 22 (“Contracts for CAO staff restrict staff at the level of specialist and above from obtaining employment with IFC or MIGA for two years after the end of their engagement with CAO . . .”).

¹² AfDB IRM Operating Rules and Procedures, para. 84 (“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 their appointment . . .”).

Removal of Leadership

The draft policy should also address the potential issue of having to remove and replace the Chief IAM Officer. To protect the Chief IAM Officer's independence, removal decisions should be decided by the Board alone, and only for cause. Doing otherwise compromises the IAM's ability to perform its mandate free of institutional politics. Removal-for-cause provisions are standard features of IAM policies, as exemplified by the World Bank's most recent resolution for its accountability office.¹³

In consideration of the above recommendations, we suggest the following language inserted under section 4.2.2 of the policy:

4.2.2. *Chief IAM Officer*

The Chief IAM Officer reports to the Board of Directors and is accountable and responsible for the effective and efficient operations of the IAM. They are responsible for: establishing administrative Procedures and guidelines necessary for the proper functioning of the IAM; undertaking preliminary reviews of Complaints and deciding on registration; sending out notices of registered Complaints to all interested persons; and noting the progress of each Complaint on the Register. They are also responsible for ensuring administrative and technical support to IAM staff and consultants. The Chief IAM Officer may seek external legal advice on IAM matters and consult the General Counsel as necessary.

The Chief IAM Officer will be appointed by the Board following a transparent and participatory selection process that involves input from civil society, business communities, and stakeholders from the regions and in the sectors that FinDev Canada invests. FinDev Canada will assemble a selection committee of stakeholders from diverse regional, sectoral, and cultural backgrounds to agree on and present qualified candidates for Board consideration and approval. The Chief IAM Officer shall not have worked for FinDev Canada in any capacity whatsoever for a period of at least five (5) years prior to their appointment, and shall not obtain employment with FinDev Canada after the conclusion of their appointed term.

¹³ World Bank 2020 Inspection Panel Resolution, para. 9 (“Members of the Panel may be removed from office only by decision of the Executive Directors, for cause”).

The Board may remove the Chief IAM Officer during their term only for cause.

The Chief IAM Officer, the staff within the IAM team, and subject matter experts engaged by the IAM team are expected to act impartially and independently. If an actual or potential conflict of interest in respect of a Complaint arises with staff or a subject matter expert, they will be required to inform the Chief IAM Officer and immediately withdraw from the Complaint. If the Chief IAM Officer has a conflict of interest in relation to a Complaint, they will immediately inform the Chair of the Board of Directors, withdraw from the Complaint, and assign another IAM staff to perform their duties in relation to that Complaint.

4.2.3. IAM Team

The IAM team is made up of a Director, Advisor, Coordinator and a roster of subject matter experts. They support the Chief IAM Officer in executing their responsibilities as per the IAM Policy and Procedures. Non-administrative IAM staff are restricted from having been employed by FinDev Canada for two (2) years prior to joining the IAM, and they may not work for FinDev Canada until at least two (2) years after concluding employment with the IAM.

2. ACCESSIBILITY

Eligibility Burdens

Section 2.2.2(e) states that Complaints must include “A detailed description of the alleged Harm, whether actual or potential, caused to the Complainant(s) and how, in their opinion, FinDev Canada *is responsible* for that Harm.” The “is responsible” language is problematic because it could be interpreted to impose a burden on complainants to preliminarily show proximate cause. While such information could be helpful to the IAM, it should not be a requirement for eligibility. It should be the responsibility of the IAM, and not Complainants, to investigate actions or inactions that may have led to harm; requiring otherwise risks stifling consideration of complaints raising legitimate concerns with FinDev Canada projects. We therefore recommend the following edits:

2.2.2. Complaints at a minimum should include the following information:

- (a) *The Complainant's name(s), address(s), and other contact information;*
- (b) *If a Representative is acting on behalf of a Complainant(s), they should identify on whose behalf the Complaint is made. The Representative should also present evidence that they have been requested and authorized to present the Complaint on behalf of the Complainant(s);*
- (c) *Whether the Complainant(s) requests that the IAM keep their identity or any information communicated as part of the Complaint confidential;*
- (d) *The identity and nature of the Transaction;*
- (e) *A detailed description of the alleged Harm, whether actual or potential, caused to the Complainant(s) ~~and how, in their opinion, FinDev Canada is responsible for that Harm;~~ and*
- (f) *A description of either:*
 - i) *Any good faith efforts the Complainant(s) has made with Management and/or the Client(s) to address the issues raised in the Complaint and a description of the results of those efforts; or*
 - ii) *An explanation why such efforts were not undertaken.*

2.2.3. *A Complainant(s) may also include the following information in their Complaint, if available:*

- (a) *A description of the outcomes that they are looking to achieve through the use of the IAM process; ~~and~~*
- (b) *A description of how, in the Complainant's opinion, FinDev Canada is responsible for or may have contributed to the alleged Harm; and*
- ~~(b)~~(c) *Whether the Complainant(s) has an interest in exploring dispute resolution (described in section 3.1), compliance review (described in section 3.2), or both functions, to address the issues raised in the Complaint.*

Client Disclosure of the IAM

Section 1.2.4 of the draft policy states that FinDev Canada will disseminate information about the IAM by, among other things, “[p]ublicly communicating the existence of the IAM in order to maximize its accessibility.” With respect to this commitment, we trust that a link to the IAM’s webpage will be easily found from the homepage of the FinDev Canada website. Section 1.2.4 also states that FinDev Canada will disseminate information by “[e]ncouraging FinDev Canada Clients (including financial intermediaries) to disclose the existence of the IAM to Transaction-affected people or entities.” In keeping with [emerging best practice at peer development finance institutions](#), FinDev Canada Clients and sub-clients should be contractually required, and not merely “encouraged,” to disclose the existence of the IAM during project consultation processes and through other appropriate means. The failure of clients to disclose the availability of the IAM compromises communities’ ability to relay legitimate concerns to FinDev Canada. We recommend aligning with the policy of accountability offices at peer institutions like the U.S. Development Finance Corporation¹⁴ and Asian Development Bank¹⁵ by applying the following edit:

1.2.4. FinDev Canada will disseminate information about the IAM and the Complaints process to FinDev Canada staff and Management, the Board of Directors, civil society organizations and Clients. This may be achieved through the following means:

(d) ~~Encouraging~~ Requiring and helping FinDev Canada Clients (including financial intermediaries) to disclose the existence of the IAM to Transaction-affected people or entities.

Accommodating Language

Section 1.3.1 identifies the principle of “Accessibility” to guide the IAM. The language describing the principle and steps that the IAM should take to promote accessibility is strong; however, there is no express commitment to reducing communication barriers by offering the IAM’s policy and other guidance in multiple languages. We urge publishing the IAM policy in multiple languages to benefit awareness and accessibility in the region where FinDev Canada

¹⁴ DFC Board Resolution on the IAM, para. 5 (“The Corporation will assist the IAM in carrying out its outreach efforts, including requiring clients and subclients [for financial intermediary projects] to disclose the existence of the IAM to project affected communities in a culturally appropriate, gender sensitive, and accessible manner. The existence of the IAM and how to contact it will be included in appropriate project documents”).

¹⁵ ADB AM Policy, para. 211 (“Staff, working with the borrower, will disseminate information early in the project cycle about the Accountability Mechanism and its availability as a recourse in case other mechanisms for dealing with harmful project effects are not successful. The intensity and format of this activity will vary with the nature of the project. Operations departments will focus on projects with a high degree of safeguard risks, such as projects with heavy resettlement. Pamphlets in national or official languages, community notice boards, audiovisual materials, or other appropriate and effective means will be used to inform people”).

and its clients operate. We recommend drawing from the following language modeled on the policy of the IFC’s Compliance Advisor Ombudsman:¹⁶

Accessibility

Being known, accessible, and available to stakeholders; mitigating barriers of access and promoting safe access by implementing confidentiality and Retaliation risk provisions; providing a process that reflects gender sensitivity and differences in physical ability; and communicating effectively with stakeholders to enhance their understanding of the IAM and its operation. While the working languages of the IAM are English and French, it seeks to make reports and communication materials available in relevant local languages to promote accessibility. The IAM issues public information materials in additional languages where deemed necessary.

We commend section 2.2.1 for allowing complaints to be submitted in any language, and we urge express provisions that key documents offered to Complainants likewise be translated to their preferred languages. Consultation steps throughout the complaint process would prove ineffective without appropriate translation services to assist the communication. We therefore recommend the following additional language:

2.2.1. A Complaint may be submitted in any language the Complainant(s) uses. All Complaints will be translated into English and French if not submitted in those languages. *The IAM’s correspondence and engagement with the Complainant and its representatives will be in both the preferred language of the complainants and English. . . .*

Cost Concerns

Concerns about the cost of engaging in a complaints process can also stifle accessibility. While section 1.3.1 recognizes the principle of “Cost Effectiveness” and providing “cost-effective and expeditious” complaints processing, the policy does not expressly state that Complainants’ costs of participation will be covered. We urge assuaging potential apprehensions about the cost of filing a complaint by incorporating the following language used by peer accountability offices:¹⁷

¹⁶ See IFC CAO Policy, para. 163-164.

¹⁷ See AfDB IRM Policy, para. 101; GCF IRM Procedures, para. 91; International Climate Initiative Complaint Mechanism Policy, para. 3.1.

Cost Effectiveness

Seeking to be cost-effective and expeditious in processing of Complaints, while bearing the costs of ensuring the meaningful participation of complainants, witnesses and stakeholders in problem solving, compliance review and monitoring.

Self-Initiated Compliance Review

Per section 1.4.1, the IAM may perform compliance review in response only to submitted complaints. The IAM stands to be a more effective office if it is allowed to initiate compliance reviews whenever it becomes aware of legitimate issues, and not only issues raised formally by a complaint.

Self-initiated compliance reviews are tools used by peer accountability offices like the Green Climate Fund’s Independent Redress Mechanism (IRM),¹⁸ which most recently concluded a self-initiated preliminary inquiry into a project intended to protect the resiliency of wetlands in Peru after ascertaining potential concerns with the project’s environmental and social risk categorization and missteps in attaining the free, prior, informed consent (FPIC) of Indigenous Peoples that might face barriers in accessing the IRM.¹⁹ After the IRM concluded that there was *prima facie* evidence to initiate a compliance review of the project, including that project-affected people seemed fearful to raise a complaint on their own, the GCF Secretariat proposed remedial actions to address the concerns without having to undergo a formal review, allowing the IRM to monitor the implementation of remedy.

The IAM should equally embrace self-initiated compliance review as a way to proactively encourage Management response when legitimate concerns are being circulated. The tool would be especially helpful in situations that complainants may fear reprisal for raising a formal complaint. We recommend the following language under section 1.4.1:

Compliance Review

¹⁸ GCF IRM Terms of Reference, para. 12 (“If the IRM receives information from a credible source that a project or programme funded by the GCF has adversely impacted or may impact a community or person or a group of two or more persons, and where such information, if true, would pose a significant reputational risk to the GCF, the IRM may initiate proceedings under this modality only if the person[s] adversely impacted [is] or [are] unable to access the IRM. For the purposes of these terms of reference, this information will be considered a “grievance or complaint”). See also UNDP’S SECU Investigation Guidelines para. 24 (“Investigations may also be triggered on SECU’s own initiative by the Lead Compliance Officer, or at the request of the UNDP Administrator. When this occurs, disclosure of documents will occur in a manner similar to disclosure pursuant to complaint processes triggered by community complaints.”)

¹⁹ See IRM Initiated Proceedings: C-0002-Peru (8 May 2019), available at <https://irm.greenclimate.fund/sites/default/files/case/irm-initiated-proceedings-c-0002-peru.pdf>.

This function is designed to investigate allegations made by Complainants that FinDev Canada has failed to comply with its obligations under its Policies. Investigations may also be triggered on the IAM’s own initiative by the Chief IAM Officer, or at the request of FinDev’s Chief Executive Officer or any Board Director. If the allegations are substantiated, Management will propose an Action Plan to remediate these impacts, which will be approved by the Board of Directors and reviewed and monitored by the IAM. The IAM may also provide advice to Management and the Board of Directors resulting from its experience with compliance review activities.

3. COMPLAINANT INTERACTIONS

Site Visits

Sections 3.2.4 and 3.3.3 of the draft policy allow the IAM to perform “site” or “field” visits as part of a compliance investigation and to monitor the implementation of Management Action Plans to address issues of non-compliance; however, the policy fails to expressly envision the possibility of site visits both with respect to preliminary review as well as monitoring the implementation of dispute resolution agreements.

It is important that the IAM be able to conduct a site visit during the admissibility phase of a complaint so that it can explain the complaint process to Complainants and better understand pertinent issues and contexts.²⁰ In this regard, site visits would help make the IAM more accessible and “real” to communities and give the mechanism further insight into the complainants’ experiences. It is equally important to allow site visits to monitor the implementation of dispute resolution agreements and actions to remediate findings of non-compliance. In our experience, reports on the implementation of dispute resolution agreements can vary from the perspectives of Management and aggrieved communities,²¹ so it is

²⁰ See GCF IRM Procedures, para. 36 (“Where a grievance or complaint has been found eligible, the IRM will within sixty [60] calendar days engage with the complainant, including but not limited to meetings at the place the complainant or the project or programme is located, to: (a) understand the issues in the complaint; (b) provide further information regarding problem solving and compliance review; (c) ascertain whether the complainant would like to pursue problem solving and/or compliance review; and (d) ensure that the complainant is able to make an informed decision”).

²¹ See, e.g., *From Paper To Progress: Tracking Agreements Between Nomadic Herders And Mongolia’s Largest Copper Mine*, Accountability Counsel (2019) (Documenting several years of advocacy to achieve full implementation of two negotiated agreements intended to address harm to the land and water resources of Mongolian herding communities caused by an IFC-financed mining operation in the South Gobi desert), available at <https://www.accountabilitycounsel.org/wp-content/uploads/2019/02/from-paper-to-progress.pdf>; see also *Haitian Farmers Begin Receiving Compensation, Demanding Swift Progress*, Megumi TsuTsui, Accountability Counsel (28 January 2022) (documenting three years of effort to achieve full implementation of a dispute resolution

important to ground-truth reports to ensure the delivery of remedy. Further, IAMs need to have the power to verify whether or not banks and clients remediate issues of non-compliance by conducting site visits.²²

We recommend the following edits:

2.3.1. The acknowledgement of receipt of a Complaint by the IAM Officer will trigger a preliminary review to determine whether the Complaint is eligible for further processing. As part of the preliminary review, the IAM Officer shall:

(a) Develop a clear understanding of the issues raised in a Complaint which may include interviews, site visits, and documentation review;

3.3.2. Dispute resolution agreements will be considered implemented if they fulfil the following criteria:

(a) The commitments made by the Parties in such agreements are being effectively carried out; and
(b) Implementation timetables are being met.

Monitoring reports will be submitted to the Board of Directors and be made available to the Complainant(s), Management, and the Client(s), and subject to privacy and confidentiality requirements, be published in the Register. Monitored cases will be closed once the IAM determines through document review, consultation, and/or site visits that full implementation of the relevant dispute resolution agreement has been achieved.

agreement intended to address the disruption of Haitian farming communities caused by the taking of land for an industrial park financed in part by the Inter-American Development Bank), available at <https://www.accountabilitycounsel.org/2022/01/haitian-farmers-begin-receiving-compensation-demanding-swift-progress/>;

²² See, e.g., January 2019 Monitoring Report from the Compliance Advisor Ombudsperson regarding non-compliance on tea plantations in Assam, India, available at <https://www.accountabilitycounsel.org/client-case/india-assam-tea-plantations/#timeline>.

3.3.3. *For compliance reviews, the IAM will review implementation reports and provide an annual assessment of the progress achieved based on a desk review of relevant documents, consultations with the Complainant(s), Management, and Client(s), and/or findings of ~~a~~ field site visits. The IAM will share the findings with Management and the Complainant(s) for clarification of issues before submitting its report to the Board of Directors for consideration. Annual monitoring will continue until the Management Action Plan is completed. The final monitoring report will conclude the compliance review process*

Representatives and Advisors

Sections 2.1.1 and 2.2.2 of the draft policy provide that “duly authorized” representatives may submit a complaint on behalf of a Complainant, so long as they identify on whose behalf the complaint is made. Strictly interpreted, the two provisions envision the help of representatives only for the purpose of complaint filing. In our experience, however, Complainants may seek the help of representatives and advisors throughout a complaint process, and not just at the complaint filing stage, to navigate dispute resolution processes, understand information relayed during MAP consultations, and to advocate for their concerns during monitoring, among other things.

In our case experience, we have seen banks take an overly narrow interpretation of the role of advisors, which infringes on complainants’ right to counsel. With respect to one complaint before the World Bank’s Inspection Panel, whose operating procedures share similar language with the draft IAM policy,²³ Bank Management interpreted the Panel’s procedures to not extend to MAP consultations. In a case concerning the taking of sacred Indigenous lands for a World Bank-financed water supply and sanitation project without adequate consultation,²⁴ the communities have a right to representation and to access advisors; the irony of the bank’s attempt to limit the participation of community-chosen representatives and advisors in a MAP consultation process seeking to address earlier failures in project consultation should not be lost. To respect the agency of Complainants, the IAM policy should expressly declare the right of Complainants to include or exclude their selected representatives and advisors in meetings as they wish, as well as their right to change representatives and advisors during the complaint process. Stifling Complainant agency risks weakening both trust in the IAM as well as the ability

²³ 2014 World Bank Inspection Panel Operative Procedures, para. 10(b) (“A Request for Inspection may be submitted to the Panel by . . . a duly appointed local representative acting on behalf of affected people”).

²⁴ See *Opinion: Come hell or piped water*, Anirudha Nagar, Devex (2 July 2020), available at <https://www.devex.com/news/opinion-come-hell-or-piped-water-97582>.

of some Complainants to effectively advocate for their interests. We recommend the additional language below:

2.1.1. The FinDev Canada IAM may accept Complaints for review from Complainant(s) directly, or a Complaint may be submitted on behalf of a Complainant(s) by a Representative, duly authorized by the Complainant(s) to act in that capacity. Complainants have the right to cancel or change their representation, and to have their chosen representatives and advisors participate throughout the complaints process.

4. BANK AND CLIENT ENGAGEMENT AND PARTICIPATION

Assessing Willingness to Engage

Section 2.3.1 of the draft policy requires that IAM Officers “[a]ssess the Parties’ willingness to engage in either [dispute resolution or compliance review], as well as their preferences in connection thereto.” This requirement is helpful insofar as Complainants are provided agency as to which function they prefer, but it also could be misinterpreted to read that the Bank and its Clients (as “Parties”) may decline Compliance Review. The sentence could be clarified in the following way:

2.3.1. . . . As part of the preliminary review, the IAM Officer shall:

. . .

(b) Discuss the dispute resolution and compliance review options, . . . and possible outcomes with the Complainants; and

(c) Assess the ~~Parties’~~ Complainants’ willingness to engage in either option, as well as their preferences in connection thereto. If the Complainant’s preference is Dispute Resolution, then the IAM shall assess whether all Parties are willing to engage in the voluntary process.

Board Response to IAM Findings

Section 3.2.8 of the draft policy describes the Board’s decision-making role after the IAM completes a Compliance Review Report. To better describe the Board’s role, ensure it is given routine access to relevant documents, and to enshrine transparency and promote rights-based remedy, we recommend the following language:

3.2.8. Without undue delay, ~~The~~ Board of Directors shall consider ~~both~~ the final Compliance Review Report, the IAM’s recommendations

for remedial actions, ~~and~~ the Management Action Plan, including input provided by Complainants during consultation for the Management Action Plan and may take such decision as it deems appropriate, based on findings and any recommendations made. The Board's role is not to initiate a de novo review of the facts, but it may seek clarification from the IAM. If Board decisions regarding IAM complaints are reached during a closed session, the Board shall prepare a summary of the reasons given by Board members for such disagreement.

Within twenty (20) business days from the day the Board of Directors takes a decision, a copy of the final Compliance Review Report and Management Action Plan shall be made available to the Complainant(s) and Client(s), and, subject to any privacy and/or confidentiality requirements, be published in the Register. FinDev Canada shall implement the Management Action Plan and take reasonable steps to require that the Client(s) implement relevant actions specified within the Management Action Plan that are within its control.

Access to Information

Section 5.1.4 of the draft policy states that the IAM shall have full access to “FinDev Canada staff and files, including electronic files, cabinets and other storage facilities,” and that FinDev Canada personnel must fully cooperate with the IAM. To effectively perform its compliance investigation role, the IAM should also have access to relevant client information. Noting that section 3.2.3 of the draft policy affirms that “the IAM will gather information, as appropriate, from all stakeholders concerned, including . . . the Client(s),” we recommend carrying that expectation over to section 5.1.4.

Further, section 5.1.4. states that the IAM “shall have full access to *relevant* FinDev Canada staff and files.” The word “relevant” risks being interpreted as a qualifier that can compromise the IAM’s independent discretion as to what information it may access. We suggest the following edits for clarification:

5.1.4. Access to Information

*When conducting any IAM function (dispute resolution, compliance review and learning and advisory services), the IAM Director, staff and experts shall have full access to ~~relevant~~ FinDev Canada staff and files *that it deems relevant*, including electronic*

files, cabinets and other storage facilities, and FinDev Canada staff and consultants shall be required to cooperate fully with the IAM. The IAM Director, staff and experts shall also have access to Client information that it deems relevant for the purposes of Compliance Review.

5. TRANSPARENCY

Consistency in the Disclosure of Monitoring Reports

Section 3.3.2 of the draft policy states that Dispute Resolution monitoring reports “will be submitted to the Board of Directors and be made available to the Complainant(s), Management, and the Client(s), and subject to privacy and confidentiality requirements, *be published in the Register.*” Section 3.3.3, however, does not affirmatively state that MAP monitoring reports likewise will be published in the Register, but merely that “[t]he IAM will share the findings with Management and the Complainant(s) for clarification of issues before submitting its report to the Board of Directors for consideration.” In the interests of maintaining a fully transparent complaints register, the IAM policy should clarify that MAP monitoring reports will be published. This can be accomplished with the following edit:

*3.3.3. For compliance reviews, the IAM will review implementation reports and **provide publish on its Registry** an annual assessment of the progress achieved based on a desk review of relevant documents, consultations with the Complainant(s), Management, and Client(s), and/or findings of a field visit. The IAM will share the findings with Management and the Complainant(s) for clarification of issues before submitting its report to the Board of Directors for consideration. Annual monitoring will continue until the Management Action Plan is completed. The final monitoring report will conclude the compliance review process.*

6. CONTINUOUS IMPROVEMENT

Joining the Independent Accountability Mechanisms Network

Section 5.1.9 of the draft policy describes that the IAM may cooperate with other IAMs when a complaint implicates multiple financial institutions. Beyond cooperation on a case-by-case basis, the IAM should commit to joining the Independent Accountability Mechanisms Network (IAM

Network).²⁵ Participation in the IAM Network allows for the exchange of best practices, the strengthening of relationships with civil society organizations, and collaboration on co-financed projects. We recommend including a commitment to join the IAM Network with the following language:

5.1.9. Cooperation with Other IAMs

If the IAM receives a Complaint that has also been submitted to another IAM, effort will be made to cooperate with such other IAM, while respecting the scope and mandate of each IAM, including with respect to requirements of confidentiality and disclosure of information. These cooperation principles will be included in a memorandum of understanding to be signed by each IAM. If a Complaint is submitted to an IAM of another financial institution but it relates to a Client and the IAM is made aware of such Complaint, the IAM will brief Management and the Board of Directors as publicly available information on such cases becomes available. In the spirit of cooperation and strengthening accountability practices, the IAM commits to joining the Independent Accountability Mechanisms Network of international financial institutions.

Policy Review

Section 5.1.7 states that the Chief IAM Officer “shall initiate and guide the review” of the IAM Policy every five years. The ability of the IAM to independently draft and update its policies and procedures without undue intervention from FinDev Canada leadership and staff ensures the actual and perceived integrity of an accountability framework, especially by avoiding the perception that FinDev Canada is unwilling to be held accountable. We therefore recommend the following edits:

5.1.7. Review of the IAM Policy and Procedures

The IAM Policy and Procedures shall be reviewed no later than five years from its approval date. The Chief IAM Officer shall initiate and guide the review, and independently draft policy revisions for Board approval. The review shall take into account the views gathered from stakeholder consultations.

²⁵ *The Independent Accountability Mechanisms Network: Criteria for Participation and Principles for Cooperation* (August 2017), available at <https://www.accountabilitycounsel.org/wp-content/uploads/iamnet-2017-criteria-and-principles-for-cooperation.pdf>; For a list of current IAM Network participants, see <https://www.iadb.org/en/mici/independent-accountability-mechanisms-network>.

Stakeholder Advisory Group

Beyond periodic engagement with IAM Network and stakeholder engagement every five years during the IAM policy review, the IAM has an opportunity to engage with stakeholder advisors to help guide practice as it starts off as a new office. The policies of other accountability offices embrace stakeholder advisory groups as part of an outreach strategy and to demonstrate receptivity to input from the communities who may seek their services.²⁶ Stakeholder advisors can be of particular use to the IAM by providing insight on ways to bring Parties to the table and to facilitate remedy. We recommend the following language:

5.1.6. *Outreach*

The IAM shall increase awareness of the IAM Policy and Procedures with Clients and other stakeholders by sharing information regarding the IAM on its website. It shall assemble an external stakeholder advisory group, drawing from the expertise of civil society, the private sector, academia and/or international organizations, to provide strategic guidance, advice and feedback to ensure the effectiveness of the mechanism and its ability to facilitate remedy. The IAM shall also collaborate with IAMs of other development finance and international financial institutions to capture and share lessons learned.

Conclusion

We commend FinDev Canada for creating an accountability mechanism and for enshrining many aspects of good practice in its policy. At the same time, we urge the adoption of the above proposed edits and amendments so that the new IAM meets good policy and practice in line with the accountability offices of peer institutions.

Thank you for your consideration. If you would like to discuss any of the recommendations further, please contact Accountability Counsel's Policy Director, Margaux Day, at margaux@accountabilitycounsel.org.

Sincerely,



²⁶ See, e.g., AFDB IRM Operating Rules and Procedures, para. 105 (“The IRM shall have an external stakeholder advisory group comprised of stakeholders from for example civil society organizations, the private sector, academia and/or international organizations to regularly provide strategic guidance, advice and feedback to ensure the effectiveness of the mechanism”).