IRM
Independent Review Mechanism





The Independent Review Mechanism

ANNUAL REPORT 2007









Compliance Review
and Mediation Unit
African Development
Bank Group

The Independent Review Mechanism

ANNUAL REPORT 2007

Compliance Review and Mediation Unit
African Development Bank Group

A mechanism for people who are or likely to be adversely affected by a project financed by the Bank Group as a result of non-compliance with its own policies and procedureS

The Independent Review Mechanism

Table of Contents

3 Introduction

4 Background of the Independent Review Mechanism (IRM)

5 Setting up of the IRM

6 The IRM Procedures for Processing Requests

8 Compliance Review

9 Outreach Activities

10 External outreach

12 Internal outreach

13 Outreach Events in 2008

14 Challenges for 2008

15 Roster of Experts

17 The CRMU staff

17 IRM Budget and Costs

6 Box 1
Flow chart - Registration of Requests

7 Box 2
Flow chart - Processing of Registered Requests

19 ANNEX
IRM Operating Rules and Procedures

Introduction

The Independent Review Mechanism (IRM) was established for the African Development Bank Group by the Boards of Directors' Enabling Resolution of 30 June 2004. By that Resolution the Boards followed other Multilateral Development Banks by creating an accountability mechanism with a mandate to respond to claims from people adversely affected by projects financed by the Bank Group, and thereby giving an additional voice to the people living in the areas where it operates. The IRM Operating Rules and Procedures were approved by the Boards of Directors on 27 July 2006. In accordance with paragraph 33 of the Resolution, the mechanism became effective upon the appointment of its director by the President of the Bank Group after consultations with the Boards of Directors. The three members of the Roster of Experts were subsequently appointed by the Boards of Directors on 18 April 2007 upon the recommendation of the President. As an exception, the first three experts will serve different terms of three, four and five years while future members will serve for five years.

Background of the Independent Review Mechanism

The purpose of the IRM is to provide people who are or likely to be adversely affected by a project financed by the Bank Group as a result of violation of the Bank Group's own policies and procedures with the possibility to lodge a complaint to the Bank. However, it only intervenes when adversely affected people submit a compliant to CRMU. The main functions of the IRM are compliance review and problem-solving (mediation). The members of the Roster of Experts will be called upon to undertake compliance reviews.

The IRM consists of the Compliance Review and Mediation Unit (CRMU) headed by the director, and the Roster of Experts. The CRMU manages the IRM. Its duties include the receipt and determination of the eligibility of complaints, problem-solving (mediation), and the administration of the Roster of Experts.

The IRM is one of the accountability instruments established within the Bank Group to ensure compliance with the Bank Group's policies and procedures. It operates under a set of transparent procedures - especially those governing public disclosure of all proceedings and decisions resulting from the mediation exercises or compliance reviews. The mechanism shall be the last resort for adversely affected people to get their complaints handled and responded to by the Bank Group in case their efforts to resolve their problems with the Bank Group's Management and staff were unsuccessful.

Another important feature of the IRM is the ability of its Compliance Review Panels to make recommendations to the Bank Group's Boards of Directors and Management with regard to the projects under review. Such recommendations can include remedies for specific project problems and/or propositions to improve the Bank Group's policies and procedures. Furthermore, the CRMU director in consultations with the members of the Roster of Experts can provide recommendations in the IRM Annual Report on policies and procedural issues based on experiences gained from problem solving (mediation) exercises and compliance reviews.

Setting-up the IRM

The CRMU's accomplishments in 2007 included the appointment of the members of the Roster of Experts, the recruitment of additional CRMU staff, and the internal organization of the IRM system of work.

The appointment of the members of the Roster of Experts was made through a competitive selection process. The process started with the advertisement in international media during September 2006, followed by interviews of short-listed candidates on 20 – 21 November 2006. The selected three candidates were recommended by the President of the Bank Group to the Boards of Directors on 30 January 2006. They were appointed to the IRM Roster of Experts by the Boards of Directors on 18 April 2007. The experts are: Dr. Madiodio Niasse (Chairperson of the Roster), Dr. Maartje van Putten (Member) and Prof. Daniel D. Bradlow (Member). Contracts with the aforementioned experts were signed on 1 June 2007 for three, four and five year terms respectively.

Following their appointment, the experts visited the Bank Group's offices at the Temporary Relocation Agency in Tunis, where they met with President Donald Kaberuka, several Executive Directors and Senior Management, and learnt about the Bank Group's operations. As part of their familiarization program, the experts also studied the Bank Groups' policies in order to have the necessary background for future compliance reviews.

Until the middle of 2007, the CRMU only had two permanent staff members, the director and the secretary. On 11 June 2007 a principal compliance officer joined the CRMU, and from 1 October 2007 a young professional was assigned to the Unit. In addition, a short-term assistant is supporting the CRMU.

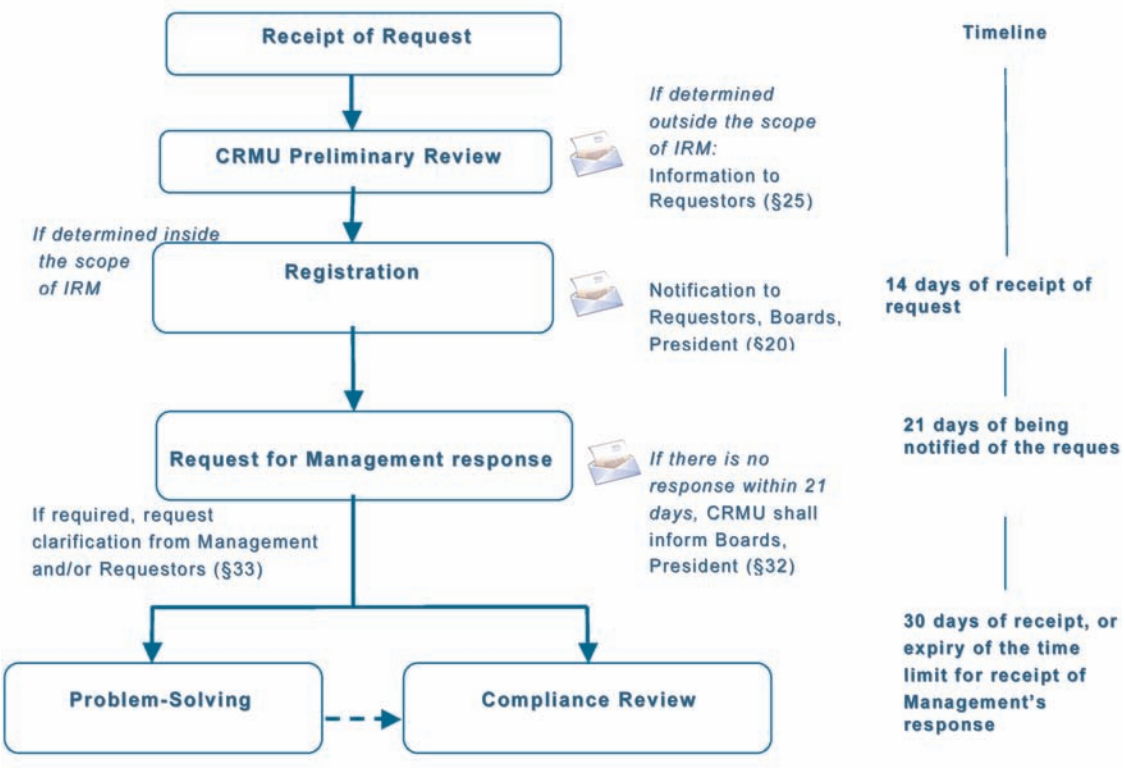
The CRMU staff is located in four offices within the Bank Group's EPI building. The offices are spread out on different floors and the working environment is not optimal from an efficiency point of view. The Unit, in cooperation with the General Services Department, is looking for an office suite which can accommodate all the CRMU staff in adjacent offices. This will facilitate communication among staff, as well as protecting confidentiality when undertaking investigations and safekeeping of documents. During 2007, the CRMU procured audio equipment for the recording of interviews during investigations and filing cabinets for classified compliance review documents.

The Unit further developed its Internet website (www.afdb.org/irm) with frequently updated information about IRM activities. The site also includes a Register of Requests to inform the public about the handling of complaints in accordance with the IRM Enabling resolution, and a link to the most relevant Bank Group policies. The IRM brochure has been revised and printed in four languages: English, French, Portuguese and Arabic. The brochure in Kiswahili will be ready during the first quarter of 2008.

The IRM Procedures for Processing Requests

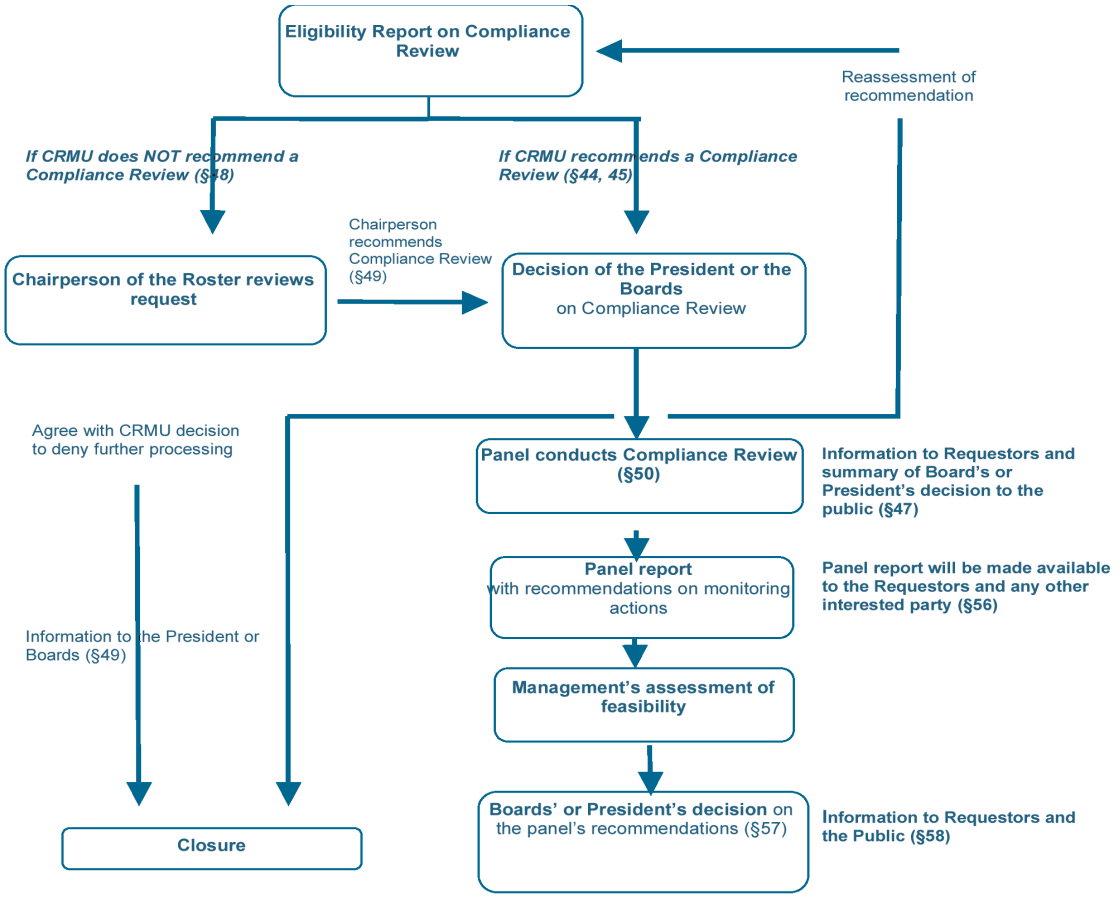
The IRM Operating Rules and Procedures contain instructions to potential complainants on how to prepare and submit requests for mediation or compliance review. Furthermore, it presents rules on how the CRMU handles and processes requests and how Review Panels reports their findings and recommendations to the President and the Boards of Directors. For more details on the IRM Operating Rules and Procedures, refer to Annex1.

The diagram below (Box 1) illustrates the various steps and timeline for the processing of requests. Within 14 days of receipt of a request, the CRMU director shall conduct a preliminary review to determine whether the request falls within the mandate of the IRM and whether it contains *bona fide* allegation of harm arising from a Bank Group financed operation. If that is the case, the CRMU shall register the request and inform the requestors, the President and the Boards of Directors accordingly. Within 21 days of the notification of the request, Management shall provide the CRMU with evidence that it has complied or intends to comply with the Bank Group's relevant policies and procedures.



Within 30 days of receipt of the Management response, the CRMU shall start a mediation exercise, recommend a compliance review or conclude the matter. The purpose of the mediation exercise is to restore an effective dialogue between the requestors and any interested party with the view to resolving the issue or issues underlying the request. The CRMU shall submit a problem-solving report to the interested parties, the President and the Boards of Directors.

The purpose of the compliance review is to determine whether the Bank Group has complied with its own policies and procedures. The diagram below (Box 2) illustrates the eligibility review process as well as the steps of conducting a compliance review. With regard to eligibility it shows two possibilities. Firstly, if the director does not recommend a compliance review, then the Chairperson of the Roster shall also review the request, reassess its eligibility and write a recommendation to the President or the Boards of Directors. Secondly, if the director or the Chairperson of the Roster recommends a compliance review, and the President or the Boards of Directors authorizes it, then that decision shall be notified to the requestors, and the eligibility report and decisions shall be disclosed to the public on the Bank Group's website. The compliance reviews shall be conducted by a Panel authorized by the President or the Boards of Directors. The Panel prepares a report with findings and recommendations to the President or the Boards of Directors who will decide whether or not to accept its recommendations. The Panels' reports shall be published on the Bank Group's website together with the decisions of the President or the Boards of Directors.



Since the IRM became operational in 2006, it has received one complaint, which has been accepted for compliance review. The Review Panel's report on this complaint is currently under preparation (see "Compliance Review" section).

Compliance Review



The Panel's meeting with Nabamba Bujagal

The CRMU received on 16 May 2007 its first request from local NGOs and individuals for a compliance review of the Bujagali Hydropower Project and the Bujagali Interconnection Project in Uganda. The request alleged non-compliances with the Bank Group's policies applicable to the assessment of hydrological risks, the environmental protection, the projects' economics, including affordability and alternatives analysis, consultations with affected peoples on resettlement and compensation, and cultural and spiritual issues. On the basis of a preliminary review, the CRMU director considered that the request fulfilled the requirements for a compliance review, and subsequently registered it on 4 June 2007. Upon receipt of the Management's response with further clarifications on 6 July 2007, the CRMU assessed the eligibility of the request. In connection with the eligibility review, the CRMU director and principal compliance officer visited Uganda from 16 - 19 July, 2007. Upon finding a *prima facie* evidence of harm or potential harm, the CRMU director made a recommendation to the Boards of Directors to approve the compliance review of the Bujagali projects. The Boards of Directors authorized on 7 September 2007 the compliance review together with the formation of the Review Panel which, pursuant to IRM procedures, consists of two members of the Roster of Experts and the CRMU director.

Since a similar request for investigation of the Bujagali Hydropower Project had been submitted to the World Bank's Inspection Panel (IPN), the CRMU and IPN agreed to collaborate on the Bujagali review. Consequently the IPN and CRMU signed a Memorandum of Understanding (MOU) which covered the terms of sharing information and the use of specialist consultants; while based on a mutual understanding that the CRMU and IPN will each carry out its own independent assessment of possible violation of policies and procedures of their respective organizations.



Signing of MOU by Peter Lallas, Executive Secretary of IPN and Per Eldar Sovik, Director of CRMU

The IPN and IRM Bujagali Review Panel, accompanied by specialists in key issues raised in the request, undertook an in-depth fact-finding mission in Uganda from 26 November to 8 December, 2007. In addition, the IRM Bujagali Review Panel has conducted document research and interviews with the staff at the Bank Group Temporary Relocation Agency in Tunis. The IRM Panel's Report on the Bujagali projects compliance review is currently being prepared.

Outreach Activities



The rationale of the CRMU outreach activities is to raise awareness of the IRM among people and civil society of the IRM and their right to express their grievances in relation to projects financed by the Bank Group.

Access to information among people, local communities or civil society organizations on independent review mechanisms is neither a widely-endorsed nor a well-established practice in Africa. This is understandable as the concept of accountability is still new; coupled with the few actual experiences of public interest groups resorting for recourse to independent review mechanisms of Multilateral Development Banks (MDBs). To fill this gap, the CRMU has adopted an outreach strategy which is based on a two-pronged "multi stakeholder approach". The objective of this strategy is to balance the level of sharing information about the IRM among all interested groups: the project affected people, as primary beneficiaries, as well as the Bank Group staff and civil society organizations, as message conveyors to people and local communities.

The CRMU outreach activities have been delivered in line with the objectives and schedule of the Unit's 2007 work program. The turnout at the CRMU external and internal workshops and meetings was promising. For some events the Unit invited other independent mechanisms with operations in Africa to discuss their experiences and to add value to the IRM lessons-learning process. An external workshop was co-organized with the Office of the Auditor General as a pilot effort to enhance the visibility of the Bank Group's accountability mechanisms. IRM brochures were disseminated to the Bank Group field offices and among civil society organizations based in different member countries of the Bank Group.

As a result of the outreach activities the CRMU has expanded its network with different public interest groups, and increased the dissemination of IRM information materials. The cooperation with civil society groups will be key for the planning and organization of future outreach activities.

External Outreach

National Workshop on the Role of NGOs in the Dissemination of Information about International Accountability and Independent Review Mechanisms: the Example of the African Development Bank, Kenya

In partnership with Kenya Youth Education and Community Program, Global Call against Poverty and Action Aid, the CRMU co-organized a national workshop on the Role of NGOs in the dissemination of information about IRM



on 23 November 2007 in Nairobi. The event brought together more than twenty representatives of government institutions, local NGOs, national associations, the World Bank Inspection Panel, IFC Ombudsman and Overseas Private Investment Corporation (OPIC). The resident representative of the Bank Group in Kenya addressed the participants followed by a presentation by the CRMU director on the scope and the expected outcome of the IRM. Furthermore, the participants learned about the experiences of the World Bank Inspection Panel, IFC Compliance Adviser/Ombudsman and OPIC's Office of Accountability. The discussion focused on raising awareness of accountability mechanisms and how to get access to information about projects in Kenya supported by international and bilateral financing institutions.

National Workshop on the Role of the Independent Review and Anti-Corruption Mechanisms in Development Operations: the Approach of the African Development Bank, the Democratic Republic of Congo

In Partnership with the Office of the Auditor General and the Bank Group's field office in the Democratic Republic of Congo, the CRMU co-organized a national workshop from 13-14 December 2007, in Kinshasa. The event was attended by eighty two representatives of civil society, community-based organizations, government institutions and parliamentarians. It was an opportunity for the CRMU to raise the participants' awareness of the Bank Group's accountability mechanisms, and to create possibilities for collaboration with civil society



in terms of the dissemination of information about the Bank Group's policies and the complaints mechanisms.

Regional Conference on Human Rights Spaces Initiative in Africa, Egypt

The CRMU presented the IRM at the Regional Conference on Human Rights Spaces Initiatives in Africa, which was organized from 16-18 December 2007 in Cairo by the Arab Institute for Human Rights, the Arab Organization for Human Rights, and the Housing and Land Rights Network, and sponsored by the Ford Foundation. The CRMU director addressed NGOs from thirteen African



countries on the IRM scope, functions and expected outcomes. The conference represented an important opportunity for the CRMU to share views with participant human rights groups on ways of educating people about the IRM.

Regional Training on the Role of Parliament in Good Governance, Tunisia

On 20 November 2007 the CRMU director presented the IRM to thirty parliamentarians from nine African countries (Liberia, Mauritius, Rwanda, Uganda, Sudan, Ghana, Tanzania, Ethiopia and Malawi) who were participating in a seminar organized by the Bank Group's Governance, Economic and Financial Reform Department and the Joint African Institute in Tunis. The presentation focused on the scope and functions of the IRM. The parliamentarians highlighted the importance to work with them in order to educate people in their constituencies about the Bank Group's financed projects, relevant policies and the IRM.

Internal Outreach



Young Professionals informed about the IRM, Oct 2007.

IRM Experts presented to the Bank management and staff, June 2007.

IRM/CAO workshop for Private Sector Investment Officers and Environmentalists, June 2007.

During 2007 the CRMU has presented the IRM in a series of internal meetings, workshops and orientation programs organized by the Bank Group for the staff at headquarters and field offices. The internal events are important for the CRMU as they provide an opportunity to discuss with the Bank Group operational staff possible ways of disseminating information about the IRM to Government officials responsible for the planning and implementation of projects, as well as to the projects' affected people. The CRMU is convinced that the IRM objectives can only be fulfilled when people living in the areas where projects are being planned and implemented are well-informed about their rights to use the mechanism.

In a special event organized at the Bank Group in June 2007, the members of the IRM Roster of Experts, Dr. Madiodio Niasse, Dr. Maartje Van Putten and Prof. Daniel Bradlow, presented their experiences to the Bank Group Management and staff. In this event, the members of the IRM deliberated with the participants on the implications of the current international trends of environmental protection and institutional accountability of international finance institutions.

For a workshop organized for the Bank Group's Private Sector investment officers and social and environmental specialists, the CRMU invited the IFC's Compliance Advisor/Ombudsman (CAO) to present sample cases of mediation and compliance reviews that the CAO had undertaken in the past. Among the main recommendations of the meeting was that managers of operational departments should disseminate more information on the IRM to their staff.

Outreach Events in 2008

The CRMU will host the Annual Meeting of Independent Accountability Mechanisms of International Financial Institutions and related institutions in June 2008. In its efforts to extend the IRM outreach, the Unit will organize on the periphery of this Meeting a regional NGOs workshop as an opportunity for civil society to share experiences with international independent review mechanisms on how to improve local communities' access to accountability mechanisms.

- The CRMU will organize at least five national workshops in different African member countries of the Bank Group, partly in cooperation with other similar mechanisms and/or other departments of the Bank Group.

- Capturing the momentum of the Bank Groups Annual Meetings in 2008, the CRMU plans to organize a seminar for Mozambican Civil Society Organizations to discuss outreach and accessibility of the IRM.

- The CRMU will continue its efforts to educate the Bank Group's Management and staff on IRM, including making presentations in training seminars for new personnel.

Challenges for 2008

Increase awareness among the beneficiaries of projects financed by the Bank Group

Raising awareness of the IRM among potential beneficiaries is an ongoing priority for the CRMU work program in 2008. It is important for people and communities living in areas where the Bank Group is operating to receive timely information on Bank Group financed projects, especially on the projects' social and environmental impact on the community's livelihoods. Furthermore, these communities should be informed about the Bank Group's policies and guidelines as well as the avenues to communicate with the Bank Group to resolve their problems and the procedures through which they can lodge a complaint with the IRM.

The CRMU will continue to undertake outreach activities as modeled and outlined in the aforementioned section of this report, as well as pursuing additional ways to facilitate people's access to relevant information about the Bank Group and the IRM. The CRMU in cooperation with other departments of the Bank Group will look into the possibility of incorporating IRM information in Project Appraisal Report, Social and Social and Environment Impact Assessment (SEIA) and posting IRM information alongside the SEIAs.

Proposing Amendments to IRM Rules and Procedures

The Enabling Resolution of the IRM approved by the Boards of Directors on 30 June 2004 states that, the mechanism shall be reviewed after three years of operation from the date of appointment of the Director of the CRMU. This review should be undertaken in mid 2009. Preparations for this review may start by the end of 2008.

An issue raised during the Boards' approval process of the IRM Operating Rules and Procedures was the role of the Chairperson of the Roster of Experts with respect to determining the eligibility of a request that has undergone an unsuccessful problem-solving exercise and is not subsequently recommended for a compliance review by the Director of CRMU. This issue will be included in the terms of reference of the scheduled 2009 review in addition to other pertinent issues experienced by the IRM by the time of the review.

Roster of Experts

Dr. Madiodio Niasse
Chairperson



Dr. Niasse, Consultant, is currently holding a two-year Research Director position with Institut de Recherche pour le Développement (IRD), based in Montpellier, France His post-doctoral work experience includes:

(a) four years (1988-1992) of research activity on the impacts of dams in the Senegal River Basin; (b) seven years (1992-1998) with USAID in Dakar (Senegal) and in Abidjan (Cote d'Ivoire) as Social Sciences Advisor; (c) two years (1998-2000) as Senior Advisor with the World Commission on Dams (Cape Town, South Africa); (d) four years (2001-2005) as Regional Coordinator of Wetlands and Water Resources Programmes with IUCN-West Africa Office based in Ouagadougou, Burkina Faso.

Since April 2005, Dr. Niasse is the chairman of GWP/West Africa Global Water Partnership (GWP/WAWP).

He has a direct short- and long-term work experience in more than 10 African countries, including Benin, Burkina, Guinea, Ghana, Mali, Mauritania, Niger, Nigeria, Senegal, South Africa, Zambia, and Zimbabwe. He has published extensively on various subjects related to the environmental, socio-economic and institutional aspects, with special emphasis on issues such as wetlands and river basin/water resources management; climate change; land tenure; farming systems; conflict management.

Dr. Niasse holds a Doctorate in Environmental Sciences and a Master's degree in Geography, both from the University of Dakar, Senegal. He is fluent in French and English.

Dr. Maartje van Putten
Member



Dr. van Putten, a Dutch citizen, is a former member of the World Bank Inspection Panel (1999-2004), and the European Parliament (1989-1999) and a journalist and social worker. She founded a Dutch NGO focusing on living conditions of children. She has studied social work at the Social Academy in Amsterdam followed by a three year professional master degree course on management in community work. She was a staff member of the Evert Vermeer Foundation, an institution that focuses on international solidarity. She has published many articles and a book on the phenomena Globalization, and produced radio programs on poverty, feminization of poverty, North-South relations, the informal sector, child labor, grass-roots organizations, and globalization of the labor market and directed a TV documentary on globalization. As a member of the European Parliament she reported on: the effects of the General Agreement on Tariffs and Trade on developing countries, legal basis for the EU budget line for development aid to Asia and Latin America, the Tropical Forest budget line, the EU policy on the rights of Indigenous Peoples, the EU chocolate directive ("position cocoa farmers") or the budget line for integration of environment into development. She wrote her PhD thesis 'Policing the World: Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions' and got her Doctorate in 2006 (Tilburg University Netherlands in cooperation with McGill University Canada). A popular version will be published in several languages in 2008. At present she is the vice-chair of the European Center for Development Policy Management (ECDPM), a member of the supervisory board of the Royal Tropical Institute in the Netherlands and an advisor on Accountability Mechanisms for private financial institutions.

Prof. Daniel D. Bradlow
Member

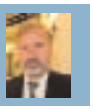


Prof. Bradlow is an expert in international financial law and development finance, with a focus on Sub-Saharan Africa. In addition to being a member of the Roster of Experts for the Independent Review Mechanism at the African Development Bank, he is Professor of Law and Director of the International Legal Studies Program at American University Washington College of Law, a Research Associate of the Centre for Human Rights, University of Pretoria, and serves on the Boards of Directors of International Lawyers and Economists Against Poverty (ILEAP) and the African Law Institute. He has worked as a Senior Special Fellow in the Legal Aspects of Debt and Financial Management Programme of the United National Institute on Training and Research (UNITAR), and as a consultant to a number of organizations including the World Dams Commission, MEFMI (The Macroeconomic and Financial Management Institute for Eastern and Southern Africa), Pole-Dette, the World Bank, UNESCO, the United Kingdom's Department for International Development and the MacArthur Foundation. He served as a member of the International Law Association's Committee on Accountability of International Organizations and is the Co-Rapporteur of the International Law Association's study group on the same topic. He has lectured in the United States and many countries in Africa, Asia and Latin America on both the public and private aspects of international economic and financial law and on the negotiating and structuring of international economic transactions.

His publications include books and articles on international financial law, the international financial institutions, foreign investment, the World Bank Inspection Panel, regulatory frameworks for water, dams and dam safety, globalization and its implications for global economic governance and the changing responsibilities of the World Bank and the IMF in the management of the global economy. Professor Bradlow holds degrees from the University of Witwatersrand in South Africa, and Northeastern University and Georgetown University in the USA and is a member of the New York and District of Columbia Bars.

The CRMU Staff (31 December 2007)

Mr. Per Eldar Sovik
Director



Mr. Sovik is, as Director of the Compliance Review and Mediation Unit (CRMU), in charge of the management of the IRM mechanism, including: the problem-solving exercise, the assessment of eligibility of requests, outreach activities and monitoring. The Director is also a permanent member of Compliance Review Panels. He administratively reports to the President of the Bank Group, and functionally to the President for complaints relating to projects under consideration for financing by the Bank Group, and to the Boards of Directors regarding complaints for projects approved by the Boards. He also represents the CRMU in Annual Meetings of Independent Accountability Mechanisms of International Financial Institutions. He is specialized in development economics and management and has lived and worked in many African countries before he joined the Bank Group.

Mrs. Adila Abusharaf,
Principal Compliance officer



Mrs. Abusharaf is a Principal Officer at the Compliance Review and Mediation Unit. She gives support to the Director in assessing the eligibility of requests for compliance review and mediation, coordination of the CRMU outreach activities in different countries in Africa; and other CRMU administrative and technical issues. She is specialized in the field of private international law of transnational litigation of oil pollution claims.

Mrs. Kênia Parsons, Senior
Analyst/Young Professional



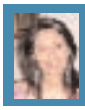
Mrs. Parsons is a Senior Analyst assigned to the CMRU under the Bank Group's Young Professional Program. She assists the CRMU in the compliance review, carries out outreach activities among Portuguese speaking countries, collects data and conducts analysis of policies. She is specialized on the welfare state and social policies.

Mrs. Françoise Konan
Secretary / Team Assistant



Mrs. Konan is the CRMU Secretary/Assistant and in charge of the administrative matters of CRMU and the IRM Roster of Experts. She is trained as bilingual secretary and has long experience from working for different departments within the Bank Group and for the private sector.

Miss. Amira Dhaouadi
Assistant (short-term-staff)



Miss. Dhaouadi has been employed as an Administrative Assistant for the CRMU and supports the CRMU website entries, update and management of its e-data, and production of its communication tools such as posters and brochures. In addition she also gives support to administrative matters of the CRMU.

Budget and Costs in 2007		
Budget item	**Budget (UA)**	**Actual costs (UA)**
Salaries CRMU staff	200 782	195 010
Missions	16 029	14 662
Public Relations, Meetings	18 770	11 226
Experts and Review Missions	222 188	140 300
Consultants *	33 809	12 465
Total	491 578	373 663
UA = Unit of Accounts		
* Purchase orders committed in 2007 of UA 32,923 have been carried over to 2008 budget.		

Annex

IRM Operating Rules and Procedures

Table of contents

I	**Introduction**	**5**
a	Purpose	5
b	Functions	5
c	Composition	6
d	Participants	6
II	**Subject Matter of Requests**	**9**
a	Scope	9
b	Limitations	9
III	**Preparation of a Request**	**11**
a	Who can file a Request?	11
b	Contents of a Request	11
c	Form of Request	11
d	Delivery of Request	12
e	Advise on Preparation	13
f	Effect of Filing a Request	13
IV	**Procedures on Receipt of a Request**	**15**
a	Register	15
b	Request Additional Information	15
c	Outside Scope	15
d	Need for Review	16
e	Revised Request	16
f	Extension of Time Periods	16
V	**Management's Response**	**19**
	Clarification	19
VI	**Problem-Solving**	**21**
a	Problem-Solving Exercise	21
b	Problem-Solving Report	21
c	Conversion of a Problem-Solving Exercise to Compliance Review	22
VII	**Compliance Review**	**25**
a	Recommendation for a Compliance Review	25
b	Denial by Director of a Compliance Review	25
c	Conduct of a Compliance Review	25

d Panel Deliberations 26
e Compliance Review Report 26

VIII Administration of the CRMU 31

a Term of Director 31
b Responsibilities of the Director 31
c Delegation by Director 32
d Appointment of Experts to Roster 32

IX Conduct of CRMU Proceedings 35

a Proceedings generally 35
b Additional expertise 35
c Access to staff and information, and confidentiality 35
d Legal matters 35

X General Provisions 37

a Annual report 37
b Budget 37
c Business Days 37
d Immunities and Privileges 37
e Amendment and effect of the Rules 37

The Independent Review Mechanism

Introduction

I Introduction

The Compliance Review and Mediation Unit ('CRMU') is the focal unit of an independent review mechanism established by the Boards of Directors of the African Development Bank (the 'Bank') and the African Development Fund (the 'Fund') pursuant to Resolutions B/BD/2004/9 - F/BD/2004/7 and B/BD/2004/10 adopted by the Boards of Directors on 30th June 2004 (collectively the 'Enabling Resolution').

The Enabling Resolution establishes the CRMU's authority and these Operating Rules and Procedures ('Rules') are adopted within the framework of the Enabling Resolution to provide detail to the operational provisions. The text is based on the Enabling Resolution.

a Purpose

The CRMU has been established for the purpose of providing people adversely affected by a project financed by the Bank, the Fund, the Nigeria Trust Fund and other Special Funds administered by the Bank (collectively the 'Bank Group') with an independent mechanism through which they can request the Bank Group to comply with all its own policies and procedures. The mechanism is, therefore, available when two or more affected persons believe that the Bank Group has failed to comply with any of its policies and procedures; that this failure has, or threatens, to adversely affect them and that efforts have been made to ask the Bank Group's Management (the 'Management') itself to remedy the problem.

b Functions

The role of the CRMU is to perform both compliance review and problem-solving functions. Through its compliance review function, the CRMU will, in the case of Bank Group-financed sovereign guaranteed projects, focus on issues of non-compliance by an institution within the Bank Group with any of its operational policies and procedures in respect of the design, implementation or supervision of such project, and, in the case of private sector and/or non-sovereign guaranteed Bank Group-financed projects, on social and environmental compliance. The problem-solving function will be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. These techniques will include independent fact-finding, mediation, conciliation, dialogue facilitation and reporting.

The compliance review function will be triggered when the CRMU receives a request for review based on an eligible complaint. It will make a preliminary review of the complaint and determine whether the case is more appropriate for problem-solving or compliance review. The CRMU will oversee the problem-solving exercise. The CRMU will conduct the compliance review function with the assistance of external experts.

The CRMU will make recommendations to the Boards of Directors of the Bank and Fund (collectively the 'Boards') or the President of the Bank Group (the 'President'), as the case may be, on remedial action that may be taken following a problem-solving exercise and/or on the initiation of a compliance review exercise with respect to any particular complaint.

The CRMU may monitor the implementation of recommendations that it makes and that are approved by either the Boards or the President, as the case may be, following completion of a problem-solving or compliance review exercise.

c Composition

A director (the 'Director') assisted by a compliance officer and secretarial support staff heads the CRMU. The CRMU will maintain a roster of three (3) experts ('Roster') appointed by the Boards on fixed, non-renewable terms. The CRMU shall provide administrative support to compliance review panels, comprising the Director and two experts from the Roster ('Expert(s)'), which undertake compliance review exercises.

d Participants

During the preliminary review period – from the receipt of a complaint and request for review up to the time a decision is made on whether to register the request – the CRMU will accept statements or evidence from (i) the Requestors or their representative; (ii) Management; and (iii) any other individual or group of individuals invited by the Director to present evidence or comments.

During a problem-solving exercise or substantive compliance review, the following shall be entitled to submit information or evidence relevant to the complaint: (i) any person who is either a party to the problem-solving exercise or review; and (ii) the authorized representative of a party or parties that satisfies the Director or a compliance review panel ('Panel'), as the case may be, that he has or they have a direct interest in the subject matter of the complaint, apart from the general public interest (collectively 'interested person(s))'.

Subject Matter of Requests

II Subject Matter of Requests

a Scope

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

b Limitations

2 CRMU is not authorized to receive Requests relating to:

i) 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;

ii) fraud or corruption;

iii) matters before the Administrative Tribunal of the Bank;

iv) matters before other judicial review or similar bodies;

v) lfrivolous or malicious complaints;

vi) complaints motivated by an intention to gain competitive advantage;

vii) matters over which the CRMU, a Panel, the President or the Boards has/have already made a recommendation or reached a decision after having received and reviewed a Request, unless justified by clear and compelling new evidence or circumstances not known at the time of the prior request;

viii) complaints filed more than 12 months after the physical completion of the project concerned or more than 12 months after the final disbursement under the loan or grant agreement or the date of cancellation of the undisbursed amount;

ix) lactions that are the responsibility of other parties, including the borrower or potential borrower, and which do not involve any action or omission on the part of the Bank Group;

x) the adequacy or unsuitability of Bank Group policies or procedures; and

xi) private sector or other non-sovereign guaranteed projects except in instances of an alleged breach of the Bank-Group's agricultural, education, health, gender, good governance or environmental policies.

Preparation of a Request

III Preparation of a Request

3 The CRMU's operational proceedings begin when a Request is received. This section of the Rules is primarily designed to give further guidance to potential Requestors on what facts and explanations they should provide.

a Who can file a Request ?

4 The CRMU has authority to receive Requests that complain of a violation of the Bank Group's policies and procedures from the following people or entities:

a) any group of two or more people in the country or countries where the Bank Group-financed project is located who believe that as a result of the Bank Group's violation, their rights or interests have been, or are likely to be, adversely affected in a direct and material way. They may be an organization, association, society or other grouping of individuals; or
b) a duly appointed local representative acting on explicit instructions as the agent of adversely affected people; or
c) in exceptional cases, referred to in paragraph 13 below, a foreign representative acting as agent of adversely affected people.

b Contents of a Request

5 In accordance with the Enabling Resolution, Requests should contain the following information:

a) a description of the project, stating all the relevant facts including the harm suffered by or threatened to the affected parties;
b) where possible, an explanation of ho Bank Group policies, procedures or contractual documents were seriously violated;
c) where possible, a description of how the act or omission on the part of the Bank Group has led or may lead to a violation of the specific provision;
d) a description of how the parties are or are likely to be materially and adversely affected by the Bank Group's act or omission and what rights or interests of the parties were directly affected;
e) a description of the steps taken by the affected parties to resolve the violations with Bank Group staff, and explanation of how the Bank Group's response was inadequate;
f) in Requests relating to matters previously submitted to the CRMU, a statement specifying what new evidence or changed circumstances justify revisiting the issue; and
g) if some of the information cannot be provided, an explanation should be included.

c Form of Request

Written

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

Confidentiality

7. If the Request contains a confidentiality request under paragraph 6 above, the Director shall determine whether such confidentiality is warranted. All reasonable efforts shall be used to keep confidential the identities of the Requestors and other interested persons. If in the reasonable opinion of the Director, the review process

cannot proceed with the requested confidentiality being maintained, the Requestors and other interested persons shall be notified accordingly. The Director shall then agree the terms of proceeding with the Requestors and other interested persons or terminate the process if it is not possible to agree upon such terms.

Format

8 No specific form is necessary: a letter will suffice.

Language

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

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

Representatives

11 Where the Requestors are affected persons, or entities, representing affected people, the Requestors or their representative shall attach to the Request written signed proof that they have authority to act on behalf of the affected people.

12 If a non-affected representative submits the Request, he or she must provide evidence of representational authority and the names and contact address of the affected parties must be provided. Proof of representational authority, which shall consist of the original signed copy of the affected parties explicit instructions and authorization, must be attached.

13 In addition, in cases of non-local representation, the CRMU will require clear evidence that there is no adequate or appropriate representation in the country or countries where the project is located.

Documents

14 Les pièces ci-après doivent être jointes à la requête :

a) all correspondence with Bank Group staff;
b) notes of meetings with Bank Group staff;
c) a map or diagram, if relevant, showing the location of the affected parties or area affected by the project; and
d) any other evidence supporting the Request.

15 If all the information listed cannot be provided an explanation should be included with the Request.

d Delivery of Request

16 Requests must be sent by registered or certified mail or delivered by hand in a sealed envelope against receipt to the CRMU at the Bank Group's [principal office or Temporary Relocation Agency ('TRA')] or to the Bank Group's resident representative in the country or countries where the project is located. In the latter case, the resident representative shall, after issuing a receipt to the Requestors, promptly forward the request to the CRMU through the next pouch.

e Advise on Preparation

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

f Effect of Filing a Request

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

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

Procedures on Receipt of a Request

IV Procedures on Receipt of a Request

19 When the CRMU receives a Request, the Director, on the basis of the information contained in the Request, shall, within fourteen (14) days of receipt of the Request, conduct a preliminary review to determine if the Request contains a *bona fide* allegation of harm arising from a Bank Group-financed operation and thereafter either register the Request, or ask for additional information or find the Request outside the CRMU's mandate.

a Register

20 If a Request contains a *bona fide* allegation of harm arising from a Bank Group-financed operation, and it appears to contain sufficient required information, the Director shall make a determination on whether the Request should be: (i) registered for a problem-solving exercise; and/or (ii) considered further for recommendation for a compliance review. Once this determination is made, the Director shall register the Request in the register of Requests (the 'Register'); promptly notify the Requestors, the Boards and the President of the registration, the proposed remedial course of action and the reasons therefore and transmit to the Boards and/or the President as the case may be a copy of the Request with the accompanying documentation, if any.

Contents of Notice

21 The notice of registration shall:

a) irecord that the Request is registered and indicate the date of the registration and dispatch of that notice;

b) the notice will include the name of the project, the country or countries where the project is located, the names of the Requestors unless anonymity is requested, and a brief description of the Request;

c) notify the Requestors that all communications in connection with the Request will be sent to the address stated in the Request, until another address is indicated to the CRMU; and

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

b Resquest Additional information

22 If the Director finds the contents of the Request or documentation on representation insufficient, he or she may ask the Requestors to supply further information.

23 Upon receipt of a Request, the Director shall send a written acknowledgment to the Requestors, and will specify what additional information is required.

24 The Director may decline to register a Request until all necessary information and documentation is filed.

c Outside Scope

25 If the Director finds that the matter is without doubt manifestly outside the CRMU's mandate, he or she shall notify the Requestors of his or her refusal to register the Request and of the reasons therefore. This will include, without limitation, Requests that:

a) are clearly outside the CRMU's mandate including those listed in paragraph 2 above;
b) do not show the steps taken or effort made to resolve the matter with Management;
c) are from a single individual or from a non-authorized representative of affected parties;
d) are correspondence, including but not limited to letters, memoranda, opinions, submissions or requests on any matter within the CRMU's mandate which are not requests for a review; and
e) are manifestly frivolous, absurd or anonymous..

Dossiers

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

d Need for Review

27 In cases where additional information is required, or where it is not clear whether a Request is manifestly outside the CRMU's mandate, the Director shall designate an Expert to review the Request and advise on whether it is eligible.

e Revised Request

28 If the Requestors receive significant new evidence or information at any time after the initial Request was submitted, they may consider whether or not it is serious enough to justify the submission of a revised Request.

29 If a revised Request is submitted the time period for Management's response and the CRMU or the Panel's recommendation, as the case may be, will begin again from the time such revised Request is registered.

f Extension of Time Periods

30 Any time period referred to in these Rules may be extended by the Director for as long as is strictly necessary to ensure full and proper investigation, assessment, review and initiative. Any such extension shall be promptly notified to the Requestors and all interested persons. In considering whether any extension is required, the Director shall take into account, *inter alia,* the location of the Bank Group-financed project, the need for Bank staff to participate in the process, any time-sensitive issues relating to the Bank Group-financed project, the availability of Experts and the need for translation of communications.

Management's Response

V Management's Response

31 Within twenty-one (21) days after being notified of a Request, Management shall provide the CRMU with evidence that it has, or intends to comply with the Bank Group's relevant policies and procedures. After the CRMU receives Management's response, it shall promptly enter the date of receipt in the Register.

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

Clarification

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

a) whether or not such clarification or information is received within the time limit, undertake and conclude the problem-solving exercise and/or make its recommendation to the Boards or the President as hereinafter provided or otherwise terminate the process within twenty-one (21) days of receipt, or at the expiry of the time limit for the receipt, of Management's clarification; or

b) in the event it is not possible for the Requestors to provide the information quickly, the CRMU, or the Panel, as appropriate may advise the Requestors to submit an amended Request; the Boards and Management will be notified that the process will recommence when the amended Request is received.

Problem-Solving

VI Problem-Solving

a Problem-Solving Exercise

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

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

35 If, as provided in paragraph 34 above, the Director determines that a Request may be handled through a problem-solving exercise, he or she shall invite all the relevant parties, namely the Requestors, Management representatives and other interested persons to participate in the exercise.

36 The objective of a problem-solving exercise is to restore an effective dialogue between the Requestors and any interested persons with a view to resolving the issue or issues underlying a Request, without seeking to attribute blame or fault to any such party. A problem-solving exercise may be conducted only if the Request has been declared eligible in accordance with paragraph 20, but irrespective of whether a compliance review is conducted.

37 In undertaking the problem-solving exercise, the Director may use a variety of problem-solving techniques, including independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting.

b Problem-Solving Report

38 The Director shall prepare a separate problem-solving exercise report ('Problem-Solving Report') within thirty (30) days of the conclusion of the problem-solving exercise and shall include:

a) the facts underlying the Request;
b) the considerations on which the conclusions and recommendations, if any, are based; and
c) any relevant comments from the Requestors and any interested persons.

Successful Problem-solving Exercise

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

40 The CRMU will monitor the implementation of the solution agreed upon in a problem-solving exercise. Where the project

forming the subject matter of the Request has not yet been presented to the Boards for their approval, the Director shall submit the monitoring report to the President and, as and when the project is submitted for Board approval, to the Boards. Any report to the President shall be immediately copied to the Boards.

Unsuccessful Problem-Solving Exercise

41 If the problem-solving efforts are not successful, either within a period of three (3) months from the commencement of the problem-solving exercise or by common consent of the parties, the Director will declare the problem-solving exercise unsuccessful and submit 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. The Problem-Solving Report should be submitted to the participants in the problem-solving exercise, the Boards and the President.

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

c Conversion of a Problem-Solving Exercise to Compliance Review

43 Where at the conclusion of a problem-solving exercise, whether or not successful, the Director determines, as provided in paragraph 44 below, that a compliance review is warranted, the Director may include in the Problem-Solving Report a recommendation that the project undergo a compliance review. Such a recommendation will be submitted to the President or Boards, as the case may be, for ratification in accordance with paragraph 46.

Compliance Review

VII Compliance Review

a Recommendation for a Compliance Review

44 If, as provided in paragraphs 20, 33 or 43 above, the Director determines that there is prima facie evidence the Requestors have been harmed/threatened with harm by a Bank Group-financed project and that the harm or threat was caused by the failure of the Bank Group's staff and Management to comply with any of the Bank Group's relevant policies and procedures, he or she shall within thirty (30) days of such determination submit a report recommending a compliance review of the project in issue to the (a) President, with a copy to the Boards, if the Request relates to a Bank Group-financed operation that has not been approved by the Boards, or (b) Boards if the Request relates to a Bank Group-financed operation that has been approved by the Boards.

45 The compliance review recommendation shall include draft Terms of Reference which shall set out the scope and time frame for the compliance review and shall provide an estimate of the budget and a description of additional resources required to complete the review and shall identify two Experts from the Roster (one of whom shall chair the Panel) who shall constitute, together with the Director, a Panel to conduct the compliance review.

46 In considering the recommendation for a compliance review, the Boards or the President, as the case may be, may:

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

b) remit the Request to the Director or to an Expert to reassess the recommendation regarding the membership and/or chair of the Panel, and the draft Terms of Reference for the compliance review, with a new recommendation, if any, being submitted to the President or the Boards as the case may be.

47 Any decision made by the President pursuant to paragraph 46 in respect of an operation that has not been approved by the Boards shall be immediately copied to the Boards. Subject to the provisions of the Bank Group's Disclosure of Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the recommendation for a compliance review and the decision made by the President or the Boards, as the case may be, pursuant to paragraph 46 shall be promptly communicated to the Requestors and any other interested person, and a summary of the decision and the recommendation for a compliance review shall be published on the Bank Group's website.

b Denial by Director of a Compliance Review

48 Where, following the receipt and registration of a Request in which the Requestors have sought a compliance review and such Request is not otherwise processed through a problem-solving exercise, the Director determines that the Request is not eligible for a compliance review, the Request shall be referred to the Chairperson of the Roster who shall determine the eligibility or otherwise of the Request for compliance review within twenty-one (21) days of the Director's determination.

49 If the Chairperson of the Roster determines that the Request is not eligible for a compliance review, he or she shall inform the Boards or the President (where the project in issue has not been approved

by the Boards) of the ineligibility. If the Chairperson of the Roster determines that the Request is eligible for a compliance review, he or she shall recommend to the Boards or to the President, as the case may be, that a compliance review be authorized. Such compliance review recommendation shall include the details prescribed in paragraph 45 above.

c Conduct of a Compliance Review

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

a) solicit additional oral or written information from, or hold meetings with, the Requestors and any interested party;
b) undertake site visits to the project(s) in issue;
c) retain additional expertise in accordance with paragraph 74; and
d) take any other action as may be required to complete the compliance review within the required time frame.

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

d Panel Deliberations

51 The Experts on the Panel shall each have one (1) vote and decisions of the Panel shall be taken by simple majority. The Director shall participate in all aspects of a compliance review undertaken by a Panel but shall have a vote only in the event of a deadlock in a Panel's deliberations.

e Compliance Review Report

Contents

52 Within thirty (30) days of the completion of its investigations, the Panel shall report its findings and recommendations in a report ('Compliance Review Report'), which shall:

a) include a summary discussion of the relevant facts, the respective positions of any interested party in relation to the subject matter of the Request and the steps taken to conduct the compliance review;
b) set out the findings of the Panel which, unless otherwise provided in the Terms of Reference, shall be limited to determining whether or not any action by the Bank Group, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies in accordance with paragraph 1;
c) if the Panel concludes that any Bank Group action, or failure to act, in respect of a Bank Group-financed project has involved one or more material violations of policies in accordance with paragraph 1, recommend:

   i. any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations;
   ii. any remedial changes in the scope or implementation of the Bank Group-financed project, subject to consideration of any restrictions or arrangements already committed to by the respective Bank Group institution or any other relevant party in existing project-related agreements; and/or

   iii. any steps to be taken to monitor the implementation of the changes referred to in (i) and (ii) above, and the

person in charge of such monitoring (who shall be the Director and an Expert so appointed unless the Boards or the President, as the case may be, decide otherwise); and

d) attach a copy of the original Request, the response of the relevant Bank department(s) and a list of supporting documents relied upon in the compliance review.

If recommendations set out in sub-paragraph (c) above are included in the Compliance Review Report, the Compliance Review Report shall include an assessment from the relevant Bank department setting out whether such recommendations are appropriate and if so, a timetable and an estimate of the human and financial resources required to implement such recommendations, if approved by the Boards or the President, as the case may be.

No Award of Compensation

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

Impartiality

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

Submission

55 The Panel shall submit the Compliance Review Report for consideration and decision to:

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

Communication of the Compliance Review Report

56 Subject to the provisions of the Bank Group's Disclosure of 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 and any other interested persons at the same time as it is submitted for consideration and decision in accordance with paragraph 55.

Contents of Decision

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

Publicity of Compliance Review decision

58 Subject to the provisions of the Bank Group's Disclosure of Information Policy (in particular those relating to the disclosure of confidential information and/or documents), the decision made by the Boards or the President, as the case

may be, pursuant to paragraph 57 shall be promptly communicated to the Requestors and any interested party. Subject to the same provisions, such decision and the Compliance Review Report shall be published on the Bank Group's website.

Monitoring of changes

59 The persons in charge of monitoring the implementation of the changes referred to in sub-paragraph 52(c), shall report on such implementation to the Boards or the President, as the case may be, as often as required and in any event not less than once a year. Any report to the President shall be immediately copied to the Boards.

Administration of the CRMU

VIII Administration of the CRMU

a Term of Director

60 The Director shall be appointed by the President, in consultation with the Boards, for a five (5) year term that may be renewed only once for a successive five (5) year period. The Director shall not have worked for the Bank Group in any capacity whatsoever for the period of at least two (2) 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.

b Responsibilities of the Director

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

a) arranging for the selection of Experts for the Roster as required upon resignation or expiration of an Expert's term of appointment in accordance with the Bank Group's procurement rules applicable to the selection of consultants and preparing the President's recommendation and reports to the Boards concerning the appointment and removal of Experts;
b) establishing, with the approval of the President, such administrative procedures and guidelines necessary for the proper functioning of the CRMU and the Roster;
c) overseeing the establishment and maintenance of the Register open to the public on the Bank Group's website, which shall contain significant data concerning the delivery and registration of Requests, as well as the conduct and outcome of problem-solving exercises and compliance reviews;
d) maintaining a documentary record for each Request, as well as a library of all materials relevant to the functioning of the CRMU;
e) sending out notices of registered Requests to all interested persons; noting the progress of each Request on the Register and, if required by the circumstances, providing additional updates on such progress to the Requestors and other interested persons; responding to requests for information from Requestors and other interested persons in respect of a particular Request;
f) dealing with any requests for information about the CRMU; publicizing and being the spokesperson of the CRMU;
g) insuring that all timeframes are met and approving any extensions in accordance with paragraph 30; liaising with other CRMU officers and the Experts, and ensuring that such CRMU officers and Experts fulfill their responsibilities generally and in accordance with any applicable Terms of Reference;
h) without prejudice to the powers of the Boards and the President under these Rules, taking any steps required to ensure the integrity of CRMU processes, including the replacement of any Expert whose impartiality or independence in any compliance review is in doubt;
i) arranging for any translations of Requests, reports or other documents that may be required;
j) providing administrative and logistical support to other CRMU officers and the Experts, including without limitation, making and supervising arrangements for meetings, site visits and CRMU proceedings in the Bank Group's principal office or elsewhere;
k) administering the budgetary allocations for the CRMU;

l) overseeing the establishment and maintenance of one or more databases of consultants, researchers, technical experts, mediators, conciliators, facilitators, translators, interpreters, etc., whose services may be called upon in connection with compliance reviews and problem-solving exercises;
m) undertaking any other tasks that may be necessary or incidental to the administration of the CRMU and/or the Roster.

c Delegation by Director

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

d Appointment of Experts to Roster

Roster

63 The Roster shall comprise three (3) individuals selected in accordance with the Bank's procurement rules applicable to the selection of consultants and appointed by the Boards on the recommendation of the President. The Experts shall be paid a retainer during their service on the Roster. The retainer, other remuneration and terms of appointment of Experts shall be determined by the Boards, upon the recommendation of the President, such terms to include the right of the Boards to remove an Expert for cause without cost or liability to the Bank. The Experts shall be reimbursed their travel and other expenses on the same basis as judges of the Administrative Tribunal of the Bank. The Boards shall appoint a Chairperson of the Roster from amongst the Experts and the Chairperson shall serve in such capacity for the duration of his or her appointment unless the Boards otherwise determine.

Selection Criteria

64 The Experts shall be nationals of members of the Bank or State participants in the Fund and shall be selected on the basis of their knowledge of Africa, their experience, expertise, integrity and ability to act independently. In making these appointments, the Boards and the President shall pay due regard to maintaining a reasonable degree of diversity of expertise, experience, nationality and gender.

Term of Experts

65 Except for the first three (3) Experts, who shall be appointed by lot for non-renewable terms of three (3), four (4) and five (5) years respectively, Experts shall be appointed to the Roster for a non-renewable term of five (5) years. If an Expert is engaged in a compliance review at the time the Expert's term expires, the term shall be extended for such period as may be necessary to complete the compliance review, unless the Board removes the Expert in accordance with paragraph 72.

Restriction on Bank Group employment

66 An Expert shall not have worked for the Bank Group (either as a staff member, Bank official, Executive Director, Alternate Director, Executive Director's Assistant or Adviser or consultant) for at least two years prior to being appointed to the Roster, and, if called upon to work for the CRMU during his or her term, shall not be entitled to work for the Bank Group (either as a staff member, Bank official, Executive Director, Alternate Director, Executive Director's Advisor or Assistant or consultant)

for a period of two years after the expiry of his or her term.

Capacity of Experts

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

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

No communications by Experts

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

Training of Experts in Bank Group matters

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

Access to documentary records

70 The Experts shall have full access to such documentary records maintained pursuant to sub-paragraph 61(d). Whenever an Expert obtains additional materials in the course of a compliance review, the Expert shall immediately provide a copy of such material for safekeeping in the documentary record.

Replacement of Experts

71 If an Expert appointed to a Panel to conduct a compliance review resigns or is unable to complete such assignment, the Director shall make a recommendation to the Boards through the President on a proposed course of action to ensure the prompt completion of the compliance review.

Removal of Experts

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

Conduct of CRMU Proceedings

IX Conduct of CRMU Proceedings

a Proceedings generally

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

b Additional expertise

74 The Director and/or a Panel shall be entitled to seek additional expertise to assist with an inquiry, assessment, review or exercise, if this is necessary for the successful performance of their duties and responsibilities. The CRMU shall first determine whether the relevant expertise is available from within the Bank Group without compromising the independence of the process. If such expertise cannot be made available due to a conflict of interest, or an appearance of a conflict of interest, the expertise may be sought externally, provided that the selection and appointment of any consultants, researchers, interpreters, translators and/or other technical experts shall:

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

c Access to staff and information, and confidentiality

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

d Legal matters

76 The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank Group's policies and procedures and the Bank Group's rights and obligations in respect of the Bank Group-financed project to which a Request relates.

General Provisions

X General Provisions

a Annual report

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

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

b Budget

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

c Business Days

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

d Immunities and Privileges

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

e Amendment and effect of the Rules

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

The Independent Review Mechanism

© 2008 - AfDB - Design, Unité des relations extérieures et de la communication/JKT&YAL



Compliance Review and Mediation Unit
African Development Bank Group
Temporary Relocation Agency (TRA) – PO Box 323
1002 Tunis Belvedere, Tunisia
Tel. : +216 7110 2056 – Fax : +216 7110 3727
E-mail : crmuinfo@afdb.org – Website : www.afdb.org/irm