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Third Review of the African Development Bank's Independent Review Mechanism

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FINAL REPORT

Table of Contents

ACKNOWLEDGEMENTS **5**

ACRONYMS/ABBREVIATIONS **6**

EXECUTIVE SUMMARY **8**

1. INTRODUCTION: **20**

1.1 Purpose and Objectives of Review: 20
1.2 Approach and Methodology of Review: 21
1.2.1 Approach: *21*
1.2.2 Methodology: *22*
1.3 Summary of Previous Reviews, Outcomes and Lessons Learnt 24
1.4 Current Trends in International Accountability: 26
1.5 The Third IRM Review and Current AfDB Context: 28
1.5.1 Scaling up Implementation of the Bank's Ten-Year Strategy through the High5s: *28*
1.5.2 Enhanced Decentralization and Bank's Development and Business Delivery Model (DBDM) *29*
1.5.3 Integrated Safeguards Systems (ISS) *29*
1.5.4 Private Sector Operations: *30*
1.5.5 Scope of Third Review *31*

2. RESULTS OF THIRD REVIEW - BLOCK ONE: **31**

RELATIONS BETWEEN IRM AND KEY STAKEHOLDERS IN IRM PROCESS **31**

2.1 Relations between IRM and the Boards of Directors 31
2.1.1 Board Resolution: *32*
2.1.2 Features of and Factors influencing the Relationship between IRM and the Boards: *33*
2.1.3 Boards Perceptions of the Relationship with IRM: *34*
2.1.4 Comparison with other IAMs: *35*
2.2 Relationship between IRM and Management: 36
2.2.1 Management's Role according to IORP (2015): *37*
2.2.2 Management Responses (MR) and Management Action Plans (MAP): *38*
2.2.3 Other Management Roles regarding IRM: *39*
2.2.4 IRM's place in the Bank's ISS: *40*
2.2.5 Role of Country and Regional Offices: *41*
2.2.6 NSO Operations and IRM: *41*
2.2.7 Summary of Main Features of the Relationship Between IRM and Management *42*
2.2.8 BCRM and other Accountability units Reporting to the Boards of Directors: *43*
2.2.9 Comparison with other IAMs: *43*
2.3 Relations between IRM and Complainants/Civil Society 45
2.3.1 Engagement with CSOs at AfDB: *45*
2.3.2 Access to IRM: *46*
2.3.3 Communications and Outreach: *49*
2.3.4 Outreach: *49*
2.3.5 Annual Report and Other Communication Tools: *51*
2.3.6 Measures of Anti-retaliation: *53*
2.3.7 Remedy: *54*
2.3.8 Perception of IRM by Complainants/Civil Society: *54*
2.3.9 Comparing with other IAMs: *57*

3. RESULTS OF THIRD REVIEW - BLOCK TWO: **59**

KNOWLEDGE MANAGEMENT, ADVISORY FUNCTION AND SPOT-CHECKS: **59**

3.1 The Advisory Function in the IORP and Guidelines on Spot-Check Advisory Reviews of Project Compliance and Advisory Services (2015): 59
3.2 Advisory Notes: 60
3.3 Spot-Checks: 60
3.4 RT Analysis of Advisory Notes and Spot-Checks: 61
3.5 Comparing with other IAMs: 65

4. RESULTS OF THIRD REVIEW - BLOCK THREE: 66

EFFECTIVENESS OF BCRM AS AN ADMINISTRATIVE UNIT FOR THE IRM: 66

4.1 Current Structure of IRM: 67
4.2 Director of BCRM: 67
4.3 Responsibilities of the Director 67
4.4 Roster of Experts and its Role: 68
4.5 RT Analysis of Complaints Processing, Roles and Structure of IRM/BCRM: 68
4.6 Staffing: 71
4.7 Budget and Work Program: 73
4.8 IRM Functions: 74
4.8.1 Problem-Solving: 74
4.8.2 Analysis of Problem-Solving Function: 75
4.8.3 Compliance Review: 77
4.8.4 Analysis of the Compliance Review Function: 78
4.9 Mali M3 Compliance Review 79
4.10 Comparison with Other IAMs: 81
4.10.1 IAM Structure: 81
4.10.2 IAM Budget: 82
4.10.3 IAM Functions: 82
4.11 Cooperation with other IAMs. 83

5. CONCLUSIONS AND RECOMMENDATIONS: 83

5.1 Changing the Image and Stature of IRM 85
5.1.1 Specific Actions Recommended: 86
5.2 Efficient Preventive Measures: 86
5.2.1 Specific Actions Recommended: 87
5.3 BCRM Communication and Outreach: 87
5.3.1 Specific Actions Recommended: 87
5.3.2 Internal communication: 87
5.4 External Communications and Outreach: 88
5.4.1 Specific Actions Recommended: 88
5.4.2 Website and Social Media: 89
5.4.2.1 Specific Actions Recommended: 89
5.5 Knowledge Management and Advisory Services: 90
5.5.1 Specific Action Recommended: 90
5.6 Financial and Human Resources: 90
5.6.1 Specific Actions Recommended: 90
5.7 IRM Structure, Mandates and Responsibilities: 91
5.8 Towards a Strategic Relationship with Management: 91
5.8.1 Specific Actions Recommended: 92
5.9 Streamlining Documentation: 92
5.9.1 Specific Actions Recommended: 92
5.10 Protecting Complainants: 93
5.10.1 Specific Actions Recommended 93
5.11 Revision of IRM Operating Rules and Procedures (2015): 93

5.12 IMPLEMENTATION OF RECOMMENDATIONS: 94
ANNEX I: LIST OF PERSONS MET/INTERVIEWED 96
ANNEX II: ASSESSMENT OF COMPLAINTS RECEIVED BY BCRM (JANUARY 2015 – JANUARY 2020) 100
ANNEX III: IRM SPOT-CHECK ADVISORY REVIEW OF PROJECT COMPLIANCE FOR THE PERIOD2016 TO 2020 102
ANNEX IV: LIST OF ADVISORY NOTES 103
ANNEX V: RECOMMENDATIONS DERIVED FROM UNGP ASSESSMENT IN, "GLASS HALF FULL"(2016) 104
ANNEX VI: THE CASE OF DIVERSIFICATION OF THE ACTIVITIES OF THE MODERN MILLS OF MALI(M3) PROJECT IN MALI 106
ANNEX VII (A): COMMENTS FROM STAKEHOLDERS DURING PUBLIC CONSULTATION 1 112
ANNEX VII (B): COMMENTS FROM STAKEHOLDERS DURING PUBLIC CONSULTATION 2 113
ANNEX VIII: TERMS OF REFERENCE FOR EXTERNAL STAKEHOLDERS ADVISORY GROUP: 114
ANNEX IX: TERMS OF REFERENCE INTER-DEPARTMENTAL WORKING GROUP (IDWG) TO OVERSEE DEVELOPMENT OF AN ACTION PLAN TO IMPLEMENT IRM REVIEW RECOMMENDATIONS: 115
ANNEX X: LIST OF ENTITIES WHO COMMENTED DURING PUBLIC CONSULTATIONS 116
ANNEX XI: TERMS OF REFERENCE OF THE CONSULTANT – THE THIRD REVIEW OF THE IRM 118
ANNEX XII: LIST OF REFERENCES 129

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ACRONYMS/ABBREVIATIONS

AC	Accountability Counsel
AP	Action Plan
ADB	Asian Development Bank
ADF	African Development Fund
ADOA	Additionality and Development Outcomes Assessment
AfDB	African Development Bank
BIC	Bank Information Center
BCRM	Compliance Review and Mediation Unit
BDEV	Office of the Evaluator General
CAO	Compliance and Accountability Ombudsman
CO	Country Office
CODE	Committee on Operations and Development Effectiveness
CR	Compliance Review
CRMU	Compliance Review and Mediation Unit
CSO	Civil Society Organization
CSP	Country Strategy Paper
DBDM	Development and Business Delivery Model of the Bank
DRC	Democratic Republic of Congo
E&S	Environmental and Social
EBRD	European Bank for Reconstruction and Development
Eds	Executive Directors
EIB	European Investment Bank
EITI	Extractive Industries Transparency Initiative
ESAP	Environmental and Social Assessment Procedures
ESG	Environment, Social, Governance
ESMP	Environmental and Social Management Plan
FO	Field Office
GBV	Gender Based Violence
GCF	Green Climate Fund
GCI	General Capital Increase
GRM	Grievance Redress Mechanism
GRS	Grievance Redress Service
IADB	Inter-American Development Bank
IAMs	International Accountability Mechanisms
IFC	International Finance Corporation
IORP	IRM Operating Rules and Procedures
IPAM	Accountability Mechanism of EBRD after 2019
IPN	Inspection Panel, World Bank
IRM	Independent Review Mechanism
ISS	Integrated Safeguards System
JfYA	Jobs for Youth in Africa
HQ	Headquarters
KPIs	Key Performance Indicators
M3	Modern Mills of Mali
MAP	Management Action Plan
MDBs	Multilateral Development Banks
MICI	Independent Consultation and Investigation Mechanism of Inter-American Development Bank
MOU	Memorandum of Understanding
MR	Management Response
NGO	Non-Governmental Organisation
NSO	Non-Sovereign Operations
ON	Niger Office (Office du Niger)
OPIC	Overseas Private Investment Corporation
ORQR	Quality Assurance and Results Department
PAGL	Office of the Auditor General
PAPs	Project Affected People
PCER	AfDB Communications Department
PCM	Accountability Mechanism of EBRD before 2019
PIAC	Integrity and Anti-Corruption Department
PBO	Policy Based Operation
RMC	Regional Member Country
RT	Review Team
SDGs	Sustainable Development Goals
S-IAM	Super IAM
SMCC	Senior Management Coordination Committee
SNDR	Delivery, Performance Management and Results
SNSC	Environmental and Social Safeguards and Compliance Department
SO	Sovereign Operations
SOMO	Centre for Research on Multinational Corporations
TM(s)	Task Manager(s)
TOR	Terms of Reference
TYS	Ten Year Strategy
UA	Unit of Account
UNDP	United Nations Development Program
WBG	World Bank Group

WWF World Wildlife Fund

EXECUTIVE SUMMARY

1. In line with its Terms of Reference (TOR) this Third Review of the Independent Review Mechanism (IRM) of the African Development Bank has the following broad objectives:
   (i) To undertake a thorough assessment of the extent to which IRM has been an effective recourse mechanism for people affected by a Bank-financed operation and a useful accountability instrument for the Bank. This analysis also considers the effectiveness of the Compliance Review and Mediation Unit (BCRM) in administering the IRM and handling cases through problem-solving exercises, and compliance review, and;

   (ii) To propose recommendations on the revision of the present IRM Enabling Resolution and its Operating Rules and Procedures (IORP) to clarify ambiguities and to review the roles and functions of the BCRM and the IRM Roster Experts, in order to enhance their support of the Board's overall responsibilities.

2. The Review has been divided into three main blocks of analytical work which reflect the main areas outlined in the TORs. The result of this analytical work has been translated into recommendations for adoption by the Bank.The aim is to enhance accountability at the African Development Bank Group (AfDB) and put IRM at par with international accountability standards and procedures, ensuring a mechanism that efficiently delivers on its mission to provide redress to those harmed by AfDB-financed activities, while responding to the concerns of major stakeholders in the process.
   - The first block focuses on evaluating the effectiveness of the IRM as an accountability mechanism for complainants. This includes its capacity to adequately address the needs of complainants and African communities negatively impacted by AfDB operations. This exercise has involved looking at issues such as independence, access, predictability, responsiveness, impartiality, transparency, integrity, professionalism, legitimacy, equitability, source of learning, rights compatible and effectiveness of the IRM. It has specifically entailed examining the evolution of three important and sensitive relationships between the IRM and respectively, the Boards of Directors; Management, Complainants/Civil Society and Borrowers/Clients.

   - The second block of analysis focuses on the role of the IRM as an accountability mechanism for the Bank, with special emphasis on effectiveness of the IRM as a source for learning, knowledge management and relevance to the AfDB context and Bank policies. This block has looked at the effectiveness of the IRM in enhancing learning and knowledge within the Bank, including IRM experience with Spot-Checks and Advisory Notes.

   - The third block of analysis focuses on the functioning of BCRM as a unit administering the IRM and seeks to compare it with its peers and international best practices. This block looks at its functions (here the focus is on Compliance Review and Problem-solving/Dispute Resolution), and the current structure of BCRM, including roles, mandates, and duties of Director, staff and IRM Roster of Experts. The Review Team (RT) also examined and revised the 2015 IORP, with the objective of enhancing clarity, weeding out ambiguities and following best practices set by other International Accountability Mechanisms (IAMs).

3. The Review has not limited itself to an analysis of IRM but has also looked at the context in

which it operates and the relationships it harbors with a wide spectrum of stakeholders who are part and parcel of the accountability system and process in any institution, i.e., the Boards of Directors, Management, Complainants, Borrowers and Clients.

4. The RT used a combination of methods based on the principle of getting as wide a spectrum of views as possible from all relevant levels of the AfDB and a variety of stakeholders involved in the IRM process. The objective has been to gather information on different aspects of effectiveness of the mechanism, including the policy framework as determined by the Boards resolutions, rules and procedures, in addition to issues of access to and knowledge management, lesson learning, and continuous integration of best practices. Therefore, any recommendation proposed has been evidence-based and fully supported by the data gathered, while emphasizing the drawing of lessons, bench marking and adherence to international best practices. A combination of qualitative and quantitative information has been gathered.

5. The RT began with a review of key primary and secondary documentation, including IRM policy documents and guidelines, followed by a desk review of various reports on specific cases with an emphasis on cases handled since 2015. The RT has also reviewed relevant Bank policies and examined their impact on the work of the IRM. Moreover, the RT has looked at relevant documentation produced by other IAMs, civil society, academics and others on the most current issues relating to international accountability.

6. The RT carried out interviews, at AfDB headquarters, and in Washington DC where it met with several IAMs, the US Treasury Department, and several US-based Civil Society Organizations (CSOs), and also in Mali, one of the Regional Member Countries (RMC) from which a recent Complaint was received. Here the RT met with the Country Office, Government Officials and the Client. A planned field mission to Kenya could not take place due to the impact of COVID-19. To make up for this gap the RT contacted and discussed virtually with additional CSOs, notably several representing the Central African Region, in addition to speaking with the Bank's Kinshasa Office. This Report also incorporates comments/suggestions resulting from the first and second public consultation periods (taking place between 18th September-2nd November 2020, and 22nd December 2020- 4th February 2021, respectively). For the second period of public consultation, an amended draft Review Report reflective of comments received in the first consultation, and, accompanied by an amended IRM Operational Rules and Procedures document (IORP) were made available. Annex VII to this Report includes a full table of observations received, and the RTs comments on them. The two previous Reviews did not involve extended consultation periods, and this was heavily criticized by several CSOs, and ran against current best practice for such reviews.

7. The RT frames the Review within both the international accountability context and that of the Bank. In February 2019, the US Supreme Court ruled that an environmental-damages lawsuit could proceed against the International Finance Corporation **(**IFC) of the World Bank Group (WBG), going counter to its claim of immunity from prosecution. The decision left several unanswered questions about the scope of Multilateral Development Bank (MDB) immunity, and thus, potential for increased risk of litigation against MDBs with a presence in the US or in governments that may choose to adopt a similar approach. Subsequent to this, several issues have come under discussion in the realm of international accountability, most being raised to handle some of the failures of IAMs in providing remedy for non-compliance, while also emphasizing the issue of the cost of such non-compliance to poor communities. This

international debate is certainly relevant to the current Review. It demonstrates the reputational risk confronted when IAMs (such as IRM) do not function properly and also the legal risks confronted when the conventional argument of MDBs being immune from legal proceedings is challenged and may no longer hold up. It also raises the issue of whether the existence of IAMs make development institutions more or less risk averse.

8. Regarding the issue of the AfDB context, the Bank has demonstrated a willingness to scale up implementation of its Ten-Year Strategy (TYS) through ambitious initiatives articulated through the High5s. All of this goes hand in hand with increased challenges that will have to be faced in managing heightened environmental and social risks for equally ambitious operations in scope, scale and complexity. It is this higher social and environmental risk, and therefore risk to communities from experiencing harm resulting from the implementation of Bank Group operations, that justifies an even stronger independent accountability function such as IRM at the Bank. Moreover, the context of the enhanced decentralization of the Bank and the Development Business Delivery Model (DBDM) adopted in 2016 provides an opportunity for improved accessibility to the Bank and IRM services, but also improved client responsiveness. In addition, the Bank has stepped up rapidly in response to the COVID-19 pandemic in Africa. It is important, despite the rapidity of the response, that Bank policies and safeguards be complied with, and communities be protected from potential harms resulting from non-compliance, and therefore a strong IRM becomes even more important in these circumstances. This Review, its conclusions, and its resulting recommendations must therefore be seen in such a context.

9. Regarding the relationship between IRM and the Boards of Directors, the RT found that although the principle of the oversight role of the Boards/Committee on Operations and Development Effectiveness (CODE) viz-a-viz the IRM is clear, and in line with international best practice, it needs to be better reflected and made more precise in an amended TORs for CODE accompanied by a clear distinction between the role of CODE as against that of the Boards at large. In the current CODE TORs, it is not clear who IRM should be updating, is it CODE or the Boards and when. Also, due to the demand driven work nature of IRM, a greater effort by IRM is in order to constantly update the Boards, even when there are no active complaints under consideration. This interaction should be both formal and informal.

10. The RT characterizes the relationship between IRM and Management as somewhat problematic.This goes beyond the adversarial nature of the relationship between IAMs, and Management found in most sister institutions, arising from a feeling of defensiveness when its projects are criticized. At AfDB, this relationship approaches a neglect to follow rules and regulations, whether this concerns adhering to timelines for statutory reports or the obligation to disclose the existence of IRM in project and policy documents, and to borrowers/clients and/or facilitating access to requisite staff and project documentation. This is in addition to not making sufficient use of Regional and Country Offices as resources to disseminate information about IRM, or to facilitate highly needed preventive roles, especially in countries/regions with an abundance of high-risk projects. Moreover, despite the many lessons that IRM has included in its various documents (Compliance Reviews (CR) and Annual Report etc.) and expressed at the Boards, Management has not indicated how it has made use of these lessons whether in new policies, procedures or Guidance to staff. In addition, this difficult relationship is at least partly attributable to a lack of clear delineations of responsibility, accountability and liabilities between the Bank and the Borrower/Client of the Bank with

regard to compliance with its own policies and procedures, since implementation of Bank's financed operations is the primary responsibility of Borrowers/Clients.

11. This situation requires action and improved communication between IRM and Management, first to find practical solutions to issues of timelines, ensure availability of responsible staff and project documentation, and allowing ample opportunities for clarification and due diligence throughout the IRM process. In addition, it is important to ensure constant dialogue between both IRM and Management on issues of common interest, notably as related to interpretation of operational policies, enhancing clarity of the scope of Management responsibility and development effectiveness. The relationship between Management and the IRM should focus on two important aspects: first, how to make the IRM process less adversarial and more solutions-oriented and secondly to ensure that institutional learning occurs with consequences for the Bank, whether in terms of policy changes, strengthening implementation and/or taking preventive measures going forward. IDEV seems to have a superior learning delivery channel which should be explored for potential cooperation in this important area.

12. The RT also examined the relationship between IRM and Complainants/Civil society (CSOs). The IRM was perceived by CSOs and complainants as not having pursued effective engagement due to weak communication between IRM and complainants. This situation was further perceived to have caused in some instances a lack of transparency of the IRM processes, and certain provisions in the IORP further complicated access to IRM resulting in a lack of or insufficient effective support when sending complaints, as required by the OIRP, in addition to a lack of knowledge about the IRM among many potentially affected communities.

13. Although IRM has a database of CSOs, and, despite the fact that the Banks Enhanced Engagement with CSOs policy document (2012) specifically mentions IRM as one of the foci of their activity, this strategic relationship is not being put to the best use. It is proposed that in view of improving relations with CSOs, IRM should follow the lead of some IAMS who have established an External Stakeholder Advisory Group with the objective of providing strategic guidance, advice and feedback in an organized and systematic fashion. The proposed membership of this group needs to be inclusive and broad as possible including CSOs, academia and the private sector.

14. The RT are of the opinion that it is only through a revamping of communications and outreach, and facilitating access, including supporting complainants in the process of submitting Requests, that IRM could improve its image with complainants and CSOs. Urgent attention should be given to continuous and sustained communication between IRM and complainants throughout the entire IRM process. Otherwise, the long silences experienced at present will contribute to further eroding IRM's image. Besides direct communication, the most important tool for this can only be an updated and user-friendly website, with an updated case management system that can be easily accessed. Publications also have a role to play, thus the merits of an Annual Report in its current traditional format needs to be re-examined and supplanted by nimble digital tools more focused on reaching CSOs and potentially affected communities in a simplified manner. Also, Management needs to play their communication role of putting information on IRM in an agreed set of policy and project documents as stipulated in the IORP. In addition to ensuring compliance with disclosure requirements to

make borrowers/clients aware of the IRM in their projects, Management should also be required to inform communities through appropriate communications, including through signs and/or billboards, which mention the IRM. This might be piloted initially for a certain type of project (e.g., large Category1 infrastructure projects) before being rolled out more extensively.

15. It should be noted that it is not IRM's role to monitor Management's compliance with disclosure requirements in project documents that are not subject to complaints. Therefore, IRM would only view evidence for projects which have been successfully registered. What is needed is greater specificity and consensus around which Bank public documents should contain information about IRM.

16. The RT acknowledge the importance of outreach. The RT propose that an impact evaluation of outreach activities implemented to date be undertaken, from which lessons should be drawn for developing a forward-looking outreach strategy. Also, regarding internal outreach specifically, and given the constant turnover of the Boards, IRM should be systematically involved in the onboarding of new Boards' members and the holding of Boards seminars during different times of the year.

17. Furthermore, complainants need to feel protected when they approach IRM, that is why IRM needs to develop and adopt anti-retaliation guidelines and institute a risk analysis for the probability of retaliation occurring surrounding a specific complaint. These actions are included in the proposed revised IORP.

18. The RT also analyzed the Advisory and Knowledge Management activities of IRM, specifically Advisory Notes and Spot-Checks. It was found that they have not resulted in the outcomes stipulated in the 2015 Guidelines on Advisory Services, Advisory Reviews of Project Compliance and Advisory Services, namely, to enhance learning and promote a culture of compliance at the Bank. Although a series of Advisory Notes were produced, largely in 2019, the RT have not found evidence that these were developed in response to a request by the President and/or Boards as required by the Guidelines. They did not go through the prescribed review process, and no feedback was received on them, whether from the President, Boards or Management, regarding the advice they contained. They were also not posted on the IRM webpage as stipulated in the Guidelines.

19. Regarding the Spot-Checks, the RT found that they did not follow the Guidelineswhether in terms of selection criteria of projects, processing or expected results. Furthermore,the RT question some of the selection criteria proposed, thus it found little justification for selecting projects which are at the end of their implementation, or projects that have already gone through a problem-solving exercise. The RT also questioned whether Spot-Checks are the best use of scarce IRM resources, especially in view of its limited staffing. Furthermore, as demonstrated there is no way of ensuring whether Management actually implemented the remedial actions proposed by the IRM in specific Spot-Checks. The RT is thus of the position that annual Spot-Checks as they are being conducted at present should be discontinued. It is felt that they distract from the core work of IRM and add little value in terms of contributing to knowledge development. Furthermore, the impact they might have in terms of changes to Bank policies and procedures may be questioned. The RT thus propose that Spot-Checks should be stopped, and they should no longer be considered among advisory activities. Rather, the RT propose the conduct of self-initiated compliance reviews which could be undertaken in line with certain criteria as outlined in the Revised IORP. The RT conclude that the area of

knowledge creation and drawing of lessons has not proven a strong point for IRM, although lessons learnt have been expressed during Board sessions and are mentioned in the Annual Reports. There is no evidence that the knowledge that has been generated has been fed back into Bank policies and procedures. This is partly related to the lack of a sustained dialogue between IRM and Management, and convincing the latter that IRM findings have value for the institution.

20. Finally, the RT have examined the role, functions and performance of BCRM and have posed the following questions: To what extent does the structure of BCRM facilitate the functions it is responsible for, to what extent is its staffing and resources appropriate and fit for purpose, to what extent are its functions clear and its processes for handling complaints unambiguous, and include clear definitions of the roles of the various stakeholders, are the time frames reasonable, to what extent has BCRM acted independently from Management, to what extent are its processes transparent and predictable?

21. The Review also raises the issue of nomenclature, which the Review has found to be rather confusing. This confusion permeates many IRM/CRMU/BCRM documents and throughout the institution, more generally. Clarifying this once and for all would assist with a re-invigorated brand for the mechanism including for people undertaking online searches. This renewed branding would also help clarify the role of the mechanism. Giving the Unit a consistent name throughout would contribute to raising its profile internally and externally. The mechanism is well known to its stakeholders as the IRM, this should be preserved going forward where IRM should now stand for Independent Recourse Mechanism.

22. Currently, the IRM consists of a Compliance Review and Mediation Unit and a Roster of Experts. TheBCRM is an organizational unit of the Bank established in accordance with a Resolution of the Boards of Directors of the Bank Group and is the focal Unit of the IRM. According to the2015 IORP, the activities of IRM are managed by an Organizational Unit Head designated asthe Director BCRM. The Director has the overall responsibility for the day-to-day operationsand external relations of the IRM. The Roster of Experts is comprised of three individuals selected in accordance with the rules applicable by the African Development Bank and African Development Fund to the selection of consultants and appointed by the Boards of Directors on the recommendation of the President.

23. The RT analysis has acknowledged the relative success of IRM in solving various problems raised in complaints it has received and/or identifying areas where Management has not acted in compliance with its own policies resulting in harm to communities. The RT have pointed to several gaps which are undermining the credibility of IRM and hampering its' independent and efficient functioning. These gaps are related to three major factors. First is the standing and credibility of IRM as an accountability mechanism for the Bank. This includes the extent to which it is able to maintain its image and position as an independent and efficient accountability mechanism. The second factor relates to the structure and functioning of BCRM, and the resources it commands. In addition, there are its IORP. In relation to the latter, one of the issues is the extent to which these Rules and Procedures are being adhered to and implemented and the extent to which they conform with standards of best practice in other IAMs. The third factor is the extent to which IRM has been able to act as a source of valued knowledge and lessons learnt for improving Bank operations and enhancing their development effectiveness, and the extent to which it has convinced Bank staff and Management that its

findings have value.

24. The RT found that the IRM position within the institution can be characterized as marginal partly resulting from weak staffing and insufficient resources. This has prevented it from earning the trust and credibility required for its' work and recommendations to be taken seriously by both Management and complainants/Civil Society. It has thus conducted its operations without achieving timely results and in the absence of sufficient transparency. Regarding the second factor, it suffers from lack of resources, especially human resources. This has hindered its efficiency and curtailed its activities notably in terms of the transparency and predictability of its operations, resulting in very lengthy processing of complaints. The RT analysis has indicated that the complaints processing and the roles of the various stakeholders of IRM are generally acceptable and do not, apart from some ambiguities and gaps, deviate widely from best practices in other institutions. Rather, the issue is how these processes are being implemented and the wide margin that exists for deviating from them without consequences or sanctions. In addition, IRM has not succeeded in using the knowledge it has generated over the years to positively influence the Banks' policies and its operations, which is of utmost importance as the Bank ventures into riskier sectors and more fragile environments.
25. The recommendations proposed by RT aim at creating an accountability system that functions efficiently, that is trusted by all stakeholders and that adopts international best practices of similar global and regional institutions. The recommendations relate to the following areas:

Changing the Image and Stature of IRM at the institutional level

26. Clear and strong messages from the President, Senior Management and the Boards are in order, each in their own capacity, about accountability being an important Bank-wide concern and effort, and about the importance, stature, and role of IRM within that effort. Such messages should be clearly embedded in various Bank publications and speeches. These include the Bank's Annual Report, and important speeches by the President and Senior Management at landmark events, such as the Annual Meetings, Africa Investment Forum etc.
27. The Terms of Reference of CODE should be amended to clearly spell out its role viz-a-viz IRM and provide greater clarity on who IRM reports to and when. CODE should ensure a hands-on approach and strong engagement with IRM.
28. It is also proposed to eliminate the confusion around the IRM's name. The mechanism is well known among its stakeholders as the IRM, and this should be preserved going forward where the IRM stands for Independent Recourse Mechanism. Such a move will serve to enhance its credibility and also help improve its accessibility and call attention to the fact of its independence.

Efficient Preventive Measures

29. The RT find that Management needs to be more proactive in identifying early-stage solutions to harms resulting from noncompliance with Bank policies and safeguards, rather than leaving the situation to aggravate, which is when complaints are typically sent. Clearly, functioning Grievance Redress Mechanisms (GRMs) at the project level constitute an integral element of such a change. Management also needs to take a closer look at the pattern of repetitive

grievances in complaints. These have without doubt related to issues of compensation and involuntary resettlement. The revised IORP now include a step of suspending complaints processing with the concurrence of Complainants to allow good faith efforts by Management to proceed. With the Bank's expansion into financing infrastructure in all parts of the continent, including in fragile countries, there is a much higher risk of these issues repeating themselves. An enhanced role for Country and Regional Offices is an integral part of proposed preventive measures.

Communications and Outreach

30. IRM faces many communication challenges. Concise and focused communications are paramount to successful complaints handling, IRM should develop a functioning communication and outreach strategy that is in close alignment with that of the Bank. This strategy should be structured to create visibility for the IRM, simplify IRM processes for the stakeholders, and enable information sharing and knowledge management at a continental level, as well as internally within the Bank. It should be grounded and focused on:
i) internal communication ii) external communication and outreach iii) a website for IRM; and iv) social media. Any action on communications should aim at granting greater autonomy to IRM to make changes to its own website and social media.

Knowledge Management and Advisory Services

31. RT analysis has indicated that insufficient attention and effort have gone into the area of knowledge production and management. IRM has not been able to use the vast amount of experience and lessons learnt to influence the Bank's policy agenda. It is recommended that given some of the issues with Spot-Checks, they should be stopped. It is recommended that the IRM Director be given the prerogative to undertake self-initiated compliance reviews in response to specific criteria outlined in the revised IORP. Emphasis should be placed on Advisory Notes, ensuring that they are relevant and truly contribute to lessons learning about non- compliance and systemic policy challenges faced by the Bank. Wide circulation of these Notes through publications and the website is necessary.

Human and Financial Resources

32. The staffing situation in BCRM has been raised repeatedly by most of the stakeholders the RT spoke to. A sustainable solution for staff shortages can only lie in expeditious recruitment and systematic succession planning. After operating with significant staffing shortages for over one year, some recruitments have been effectuated recently, thus a Communications and Knowledge Management expert was recruited in August 2020, the IRM Director in September 2020, and lately a data analyst also joined the team. This still leaves one vacancy for the position of Chief Compliance Officer. However, in view of reinforcing human resources of IRM and in order to ensure the same staffing shortages do not recur, the RT recommends systematic succession planning, together with the use of consultants, which can assist in closing the gap in certain skills and expedite the handling of the backlog of ongoing cases. This is in addition to expanding the use of interns. While staffing gaps may not be specific to IRM and relate to issues of recruitment more generally at the Bank, the impact for IRM has been especially negative in view of the need to be constantly in touch with complainants and

the nature of its on- demand work which can prove very intensive at times.

33. Regarding financial resources, the RT are of the opinion that these should be increased to allow IRM expand its outreach and knowledge activities. Given the demand driven nature of IRM it is difficult to specify a figure for such a proposed increase, howeverRT concurs with the proposal made by IRM in its Annual Progress Report on Performanceof IRM 2019 Work Program, although it was not approved, where IRM recommended adding a contingency resource for the IRM budget base line. IRM.

IRM Structure, Mandates ad Responsibilities

34. It is recommended that the current mandate for the Director IRM be amended to one six-year term, which aligns with the IDEV Director's term. As explained above, the RT is aware of the issues with and slow rhythm of senior recruitments at the Bank, yet remain convinced that two five-year terms is too long.

35. The Review has pointed out some of the issues with the current IRM structure and has proposed that this structure be examined with the objective of eliminating the current roster model in favour of one where the Director has the responsibility to oversee all three IRM functions, with the assistance of a team of permanent staff and consultants. The current structure of IRM is different from its peers, this recommendation would bring IRMs structure in line with the IPAM at the EBRD, MICI at IADB, and CAO at IFC. The IRM needs to bring the Experts under the independent umbrella of the mechanism itself so that they are accountable to the IRM, and that the mechanism can speak with one voice thereby enhancing its accountability to stakeholders.

36. The RT propose the instauration of a transitional period (length may be aligned with the expiry of contract of current expert), after which the new structure could be launched.

Developing a Strategic Relationship with Management

37. An improved and more strategic relationship and communication between IRM and Management will go a long way in the direction of streamlining the complaints handling process, achieving remedy for complainants and learning the appropriate lessons along the way. A focal point should be designated within Management, possibly at the front office of the Director SNSC, to act as a liaison between Management and IRM. There should be an agreement with Management as to the Bank Reports and Bank Policy Documents which should clearly disclose the existence of IRM and its role in ensuring remedy for Project Affected People (PAPs). There should also be clear messages to Country and Regional Offices regarding the important role they play in the IRM process, whether this relates to communication about IRM and/or receiving complaints. The revised IORP also propose pausing the handling of complaints if complainants concur to allow an opportunity for pursuing good faith efforts with Management for finding solutions.

Streamlining IRM Documentation

38. Several stakeholders have raised with the RT the issue of length, structure, content and tone of both IRM and Management documents. They state that documents tend to be long, the structure is not always uniform, and the tone tends to be accusatory, and not always constructive. It has also been raised that remedial actions are not always clearly spelled out in documentation, neither is the responsibility for their implementation. It is imperative that there is an agreement on a standard format for Management Responses (MR), Management Action Plans (MAPs), IRM Eligibility Reports, Compliance Review and Problem-Solving Reports. While taking into account the specificities of cases, these standard formats should be abided by. Regarding tone, both Management and IRM should avoid accusatory tones and opt for finding solutions rather than questioning each other's arguments. MRs need to focus on whether or not the Bank has complied with its policies and the actions it intends to take to ensure compliance. MAPs need to include specific remedial actions that are monitorable and time bound. CRs findings need to be clear as to whether or not the Bank has complied with its policies and procedures.

Protecting Complainants

39. Protection of complainants during the complaints handling process is one of the fundamental principles of such a process and is an element that enhances trust in and credibility of the mechanism. In reaction to potential retaliation against complainants, IRM will develop anti-retaliation guidelines with the aim of protecting complainants.

Revision of the IRM Operating Rules and Procedures

40. RT have undertaken an extensive review and revision of the above document and the Board Resolution currently governing IRM. The amended IORP have also been shared with external stakeholders during the second consultation period. Once there is a consensus on this revision it will be reflected in the enabling resolution. This revision is based on the following guiding principles:

- Simplifying the rules and weeding out any ambiguities, especially regarding timelines, some of which were not specified, while others were judged by the RT to be unrealistic;
- Ensuring that the IORP facilitate access to IRM, while removing unnecessary obstacles to such access;
- Clarifying roles and responsibilities of the different stakeholders, Director, Management, the President and the Boards of Directors in the IRM process;
- Taking into account comments made by various stakeholders including I R M staff, CSOs and Complainants;
- Adding aspects that are absent from the 2015 OIRP, including reference to protection against retaliation, possibility of recommending financial remedy, allowing self-initiated compliance reviews, abolishing Spot-checks, suspension of complaints processing to allow good faith efforts to solve problems etc.;

- Benchmarking and International Best Practice;

41. It is suggested that a Guidance Note, to be annexed to the revised IORP be developed internally. Its purpose is to provide additional detail and justification while leaving the IORP itself as simple and straightforward as possible.

Implementation of Recommendations

42. While a costed implementation plan is beyond the scope of this Review, the RT think that many of the recommendations proposed are not cost intensive, but rather in order to be effective require will and active cooperation across various Bank departments and structures, and an agreement on the premise that strengthening institutional accountability and the IRM should be a Bank- wide objective and endeavour. In this regard, it is proposed that an inter-departmental working group (IDWG) be established by the President with the objective of developing an Action Plan with clear timelines and with assigned responsibilities for implementing the above recommendations. The objectives of this IDWG should be to develop a time-bound Action Plan for the implementation of the Recommendations of this Review and to oversee their implementation. It is proposed that the IDWG be chaired by the Senior VP, with the membership of: VP responsible for Regional and Country Programmes, Director SNCC, Director Budget, General Counsel, Director Communications, Director SNDR and Director IRM. Two IRM staff can act as the secretariat for the Group, to be in charge of logistics of meetings etc. It is proposed that the IDWG should function for one year, at the end of which the Group may decide in line with the level of implementation achieved whether to continue, and for how long.

43. Regarding the issue of cost, it is not anticipated that restructuring of IRM with the objective of removing the Roster model will have any cost implications for handling complaints, indeed it may well result in some modest savings as the IRM moves away from retainer contracts (currently set for a five- year duration) to contracts that are based on specific TORs and the needs of a project complaint. Greater competition among technical experts and consultants may also result in driving down some costs, and encourage greater accountability in ensuring that contracts timelines and budgets are respected or else they will not be engaged again by the IRM. Furthermore, greater flexibility around some of the rules and procedures may allow some cost savings surrounding site visits, since these do not have to be automatically carried out, and will only be mandated when necessary.

44. The establishment of the External Stakeholder Advisory Group may entail modest costs for IRM. These costs should be considered in light of the impact of establishing such a Group in terms of strengthening collaborative governance and enhancing trust in and credibility of the IRM. The preferred medium for holding meetings will be through video-conferencing, it is however foreseen that Group members may need to meet physically once per year, which may cost approximately around UA15000 annually. The RT has been assured that these additional costs can be absorbed within the existing budget allocated to communications and outreach, and such a meeting can be combined with other Bank business (e.g. attendance of Annual Meetings where a number of CSOs expenses are covered by the Bank) to ensure efficiencies.

45. As regards outreach and communications, it is not foreseen that the related recommendations will result in increase or decrease of costs, it will be more about redirecting the existing budget

towards priority areas. Thus, for instance, although there might be more spending in view of refurbishing the website, the fact that most other IRM activities have had to be virtual this year has generated sufficient savings to go towards the website upgrading. The recommendations in the communications area will thus involve being more effective in spending existent resources rather than entailing new ones.

1. Introduction:

1.1 Purpose and Objectives of Review:

46. The Independent Review Mechanism (IRM) was established through Resolution B/BD/2004/9-F/BD/2004/7 adopted by the AfDB Boards of Directors on 30th June 2004.[1] This Resolution was amended through Resolution B/BD/2010/10-F/BD/2010/04 adopted on 16th June 2010.[2] Resolution B/BD/2015/03-F/BD/2015/02 amended the 2010 Resolution and was adopted by the Boards of Directors on 28th January 2015.[3] A first set of IRM Operating Rules and Procedures (IORP) were developed in 2006.[4] These were amended after the adoption of Resolution B/BD/2010/10-F/BD/2010/04 in 2010. They were amended once again in 2015 after adoption of Resolution B/BD/2015/03-F/BD/2015/02.[5]

47. The 2015 Resolution specifically states in paragraph thirty-nine (39) "The Boards of Directors shall review the experience of the IRM established in conformity with the provisions of Resolution B/BD/2004/9-F/BD/2004/7 after three years from the date of effectiveness of the IRM, which date shall be that of the appointment of the Director. Thereafter, the Boards shall review the IRM every four years or as otherwise decided by the Boards".[6] In the above context, this is the third in a series of Reviews undertaken for the IRM/BCRM since it started operations in 2006. The previous Reviews took place in 2009 and 2014, respectively.

48. This Review coincides with several other Reviews in the process of being undertaken or completed of IAMs in sister institutions. The European Bank for Reconstruction and Development (EBRD) completed their Review in 2019, which resulted in a new Project Accountability Policy. The Inspection Panel of the World Bank undertook a Review of its Tool Kit, and a Board agreement on expanding that Tool Kit has been reached. The Compliance Adviser Ombudsman (CAO) of the International Finance Corporation (IFC) has just posted its Independent Accountability Mechanism Policy for the Office of the Compliance Advisor Ombudsman Consultation Draft, following its External Review of IFC's/MIGA's Environmental and Social Accountability including CAOs Role and Effectiveness. Meanwhile, the Independent Consultation and Investigation Mechanism of the Inter-American Development Bank (MICI) just completed its Review. The former is being undertaken by a team of consultants under Board supervision, and the latter by the Inter-American Bank's Internal Evaluation Department. Also, the World Wildlife Fund (WWF) has in November 2020 published the Report of an Independent Panel of Experts of the Independent Review of Allegations raised regarding human rights violations in the context of WWF conservation work and entitled "Embedding Human Rights in Nature Conservation: From Intent to Action".

49. This Third Review, therefore, comes at an appropriate time, offering ample opportunities for lesson learning, comparisons and benchmarking as appropriate. The Review also comes in the

[1] African Development Bank/African Development Fund Resolution B/BD/2004/9-F/BD/2004/7
[2] African Development Bank/African Development Fund Resolution B/BD/2010/10 – F/BD/2010/04
[3] African Development Bank/African Development Fund Resolution B/BD/2015/03-F/BD/2015/02
[4] IRM Operating Rules and Procedures, 2006
[5] IRM Operating Rules and Procedures 2015
[6] 2015 Board Resolution

aftermath of the most recent General Capital Increase (GCI) for the AfDB[7] and the 15th Replenishment of the African Development Fund.[8] Documents for both exercises specifically raise the importance of accountability for the institution. Thus, Annex A of the GCI Document, entitled "GCI-VII Programme of Priority Reforms" has a paragraph on Accountability, where Management is expected to submit to the Boards of Directors a plan to strengthen mechanisms to support the effectiveness of the Bank's oversight, compliance and accountability functions (Action 19). More generally, most development thinking now looks at Environmental, Social and Governance priorities of institutions (both public and private) as positive trends that work in the direction of safeguarding the profitability, but above all, the sustainability of institutions. In addition, the "work of the accountability mechanisms promotes transparency and engagement by local people in the development process. The mechanisms are especially appropriate for a kaleidoscope world characterized by bottom-up empowerment".[9]

1.2 Approach and Methodology of Review:

1.2.1 Approach:

50. The Terms of Reference (TOR's) (See Annex IX) of this assignment are quite extensive and the RT have tried to cover all its aspects, to the extent possible. This Third Evaluation of the Independent Review Mechanism has the following broad objectives:

    (i) To undertake a thorough assessment of the extent to which IRM has been an effective recourse mechanism for people affected by a project and a useful accountability instrument for the Bank. This analysis will also consider the effectiveness of the BCRM in administering the IRM and handling cases through problem-solving exercises, and compliance review, and;

    (ii) To revise the present IRM Enabling Resolution and its Operating Rules and Procedures (IORP) to clarify ambiguities and to review the roles and functions of the BCRM and the IRM Experts in order to enhance their support of the Board's overall responsibilities.[10]

51. The Review has divided its data collection and subsequent analysis into three main blocks of analytical work, which encompass and reflect the main areas outlined in the TORs. These three blocks, clearly related to each other, have been selected with the probability in mind that they will result in recommendations for adoption by the Bank, aiming at enhancing accountability at AfDB and putting IRM at par with international accountability standards and procedures, ensuring a mechanism that efficiently delivers on its mission to provide redress to those harmed by AfDB-financed activities, while responding to the concerns of major stakeholders in the process.

    - The first block focuses on evaluating the effectiveness of IRM as an accountability mechanism for Complainants. This has entailed looking at IRM's capacity to respond to the needs of Complainants and African communities, more broadly, that may have suffered

[7] African Development Bank, Board of Governors Documents of Fifth Extraordinary Meeting of the AfDB
[8] ADF-15 Deputies Report: An Enabling Environment for Inclusive and Sustainable Transformation, Decent Jobsand Greater Resilience, 2019
[9] Preface by Edith Weiss to Owen McIntyre and Suresh Nanwani (eds) The Practice of Independent Accountability Mechanisms, 2019
[10] Terms of Reference for Third Review of IRM

harm as a result of the implementation of AfDB-funded operations, and to provide adequate remedy to their allegations of harm. This will involve looking at issues such as independence, access, predictability, responsiveness and effectiveness impartiality, transparency, integrity, professionalism, legitimacy, equitability, source of learning, and rights compatibility[11] of IRM. It will specifically entail examining the evolution of three internaland external relationships which the RT deem to be important and sensitive: that between IRM and the Boards of Directors, between IRM and Management, that between IRM and complainants/civil society and that between IRM and borrowers/clients.

- The second block of analysis focuses on the role of IRM as an accountability mechanism for the Bank, with special emphasis on effectiveness of IRM as a source for learning, knowledge development and relevance to the AfDB context and Bank policies. This block will look at the effectiveness of IRM in enhancing learning and knowledge within the Bank. It will specifically look at the IRM experience with Spot- Checks and other means of knowledge generation and lesson learning from IRM cases and experience.
- The third block of analysis focuses on the functioning of BCRM as a unit administering the IRM and seeks to compare it with its peers and international best practices. This block will look primarily at its Compliance Review and Problem-Solving functions (but also at issues such as the current structure of BCRM, and the extent to which it can be described as fit for purpose, examining roles and profiles, employment terms, duties and conditions of the Director, and staff. The RT has examined and revised the 2015 IORP, with the objective of enhancing clarity, weeding out ambiguities, ensuring it is rights compatible, and following best practices of other IAMs.

52. An important part of the Review's approach is that it does not limit itself to an analysis of IRM, but also looks at the context in which it operates and the relationships it harbors with a wide spectrum of stakeholders who are part and parcel of the accountability system and process in the institution. The IRM delivers results through an interactive process involving the Boards, Management, Complainants and Borrowers/Clients. Regarding the IORP, the RT looks at how they have been implemented to date and introduces revisions to make them simpler, while enhancing access, clarity and rights compatibility.

1.2.2 Methodology:

53. The RT has used a combination of methods based on the principle of getting as wide a spectrum of views as possible from all relevant levels of the AfDB and a variety of stakeholders involved in the IRM process, as will be explained below. The objective has been to gather information on different aspects of effectiveness of the mechanism, including the policy framework as set by the Boards resolutions, rules and procedures, in addition to issues of access and knowledge management, lesson learning, and continuous integration of best practices. Therefore, any recommendation proposed has been evidence-based and fully supported by the data gathered, while emphasizing the drawing of lessons, bench marking and adherence to international best practices. A combination of qualitative and quantitative information has been gathered.

54. The RT began with a review of key primary and secondary documentation, including IRM

[11] Although the TORs do not mention all of these factors, these are derived from the United Nations Business Principles. (UNGP) Effectiveness Criteria for Non-Judicial Grievance Mechanisms.

policy documents and guidelines, followed by a desk review of various reports on specific cases with an emphasis on cases since 2015. The RT also reviewed relevant Bank policies, and examined their impact on the work of IRM. Moreover, the RT has looked at the relevant documentation produced by other IAMs (notably results of recent reviews), civil society, academics and others on the most current issues relating to international accountability.

55. The RT carried out interviews, at AfDB headquarters and elsewhere as will be indicated below. The RT have avoided attribution of ideas/information to specific individuals but have rather focused on general trends and directions. Interviews have been based on an indicative interview questionnaire, which has been used flexibly and has been intended to help guide the discussion. It was tailored to each group of stakeholders/interviewees. This has focused on the areas outlined above. To the extent possible, face to face interviews were conducted, otherwise virtual means were used. A visit to Washington DC allowed meetings with the Inspection Panel of the World Bank, CAO of the IFC, MICI of the Inter-American Development Bank and the US Treasury Department. This is in addition to meeting several US-based CSOs such as the Bank Information Center, Accountability Counsel, International Rivers and academics at American University. A full list of persons interviewed is included in Annex I.

56. It was intended that the RT would undertake two missions to RMCs from which Complaints have been received, namely Mali and Kenya. Several criteria, in agreement with IRM were used to select the specific countries for the field visits. These criteria included: number of complaints coming from a specific RMC, regional balance, whether it was a compliance review or problem-solving exercise, whether the complaint concerned a sovereign or non-sovereign operation, etc.

57. These missions intended to interview local stakeholders including the Complainants, local Civil Society, staff of concerned Project Implementation Units, government officials and staff of the country and/or regional office. These missions were to be preceded by a desk review of the documentation of specific complaints, and were to examine how complaints have been handled at both field and HQ levels and whether the results have achieved remedy for the communities concerned. They have not been intended to try to second guess IRM actions, but rather to understand and place them in the right context. These visits were also intended to constitute an opportunity to explain the Review purposes and process, and provide indicative dates for the periods of public consultation, while encouraging the different stakeholders to participate. An emphasis was to be placed on interaction with the respective country offices ensuring their buy-in into the process of the Review. In effect, due to the impact of COVID-19 only the Mali mission took place, in addition a planned IRM workshop to be held with CSOs in Southern Africa was also cancelled. In Mali, the RT met with the Country Office, Government Officials and the Client. The planned field mission to Kenya could not take place due to the impact of COVID-19. To make up for this gap the RT contacted and discussed virtually with additional CSOs, notably several representing the Central African Region, in addition to speaking with the Bank's Kinshasa Office.

58. Also, the RT and in line with the assignment TORs has throughout its analysis reviewed international best practice from other IAMs and institutions. The most relevant are summarized at the end of each section of the Report, with the intention of facilitating a comparison between IRM and sister IAMs, while indicating similarities and differences.

59. Two periods of public consultations (lasting 45 days each) took place. During these periods

the draft documents were posted, subsequent to which a full table of comments received was developed. (See Annex VII A and B) The present Report incorporates comments/suggestions resulting from the first public consultation period (18th September-2nd November 2020) and the second public consultation period (22nd December 2020 - 4th February 2021). For the second consultation, an amended IORP was also posted. Reactions and Comments were received from a total of 76 entities including CSOs, former Panel Experts, the United Nations Human Rights Office, and some individuals.

60. The previous two IRM Reviews did not involve extended consultation periods, and this was heavily criticized by several CSOs and ran against current best practice for such reviews. For the current Review, these two periods provided opportunities for gathering as many viewpoints as possible, undoubtedly contributing to a greater buy in into IRMs image and capacity as a credible and trustworthy complaints mechanism for African communities.

1.3 Summary of Previous Reviews, Outcomes and Lessons Learnt

61. In the context of the document review for this assignment, the RT examined different models for carrying out Reviews in other institutions. These have varied between evaluations carried out by the Independent Evaluation Department of institutions, reviews carried out by a team of consultants selected on an individual basis but working under Board supervision, to Reviewsthat are carried out by a consulting firm, as is the case here. Each model has its pros and cons but must in the end be suitable to the requirements of the organization. The underlying success factor should always be the independence of the evaluation/review, its resourcing and the extent to which it results in recommendations that are accepted by the institutions' governing bodies, and which leads in the direction of positive change for the mechanism, the institution and the various stakeholders involved in the accountability process. Although real, the risk of a Review weakening rather than strengthening a mechanism must be mitigated for, especially through thorough consultations and proposing implementable recommendations around which there is broad buy-in and consensus.

62. The two previous Reviews of IRM were undertaken in 2009 and 2014, respectively. They were both undertaken by individual consultants and both resulted in changes to the relevant Board Resolution and amendments of the Operating Rules and Procedures. The following summarizes the RT's views on these documents. Regarding the first review, the RT found it was not based on a holistic vision of the role of IRM in enhancing effectiveness of Bank operations and did not sufficiently reference the specific context the Bank is operating in. Some of the recommendations were rather vague, were not the result of specific analysis, and were clearly not amenable to implementation. Furthermore, some of the recommendations failed to clearly differentiate between actions that were in the purview of IRM and those that were within the responsibility of other Bank Departments. The Second review also lacked a holistic vision of how improved accountability could enhance Bank effectiveness and many important issues were missed out. It is rather unclear what African problem-solving approaches (as called for by the Review) would be and how they would compare with the IRM Rules and Procedure.

63. In the context of this Review the RT have sought to learn some of the lessons from the previous Reviews, including the following:

    - Recommendations need to be as clear as possible and a distinction must be made

between those that fall within the purview of IRM and those directed at the Boards of Directors, and/or Management;

- In addition to public consultations the different categories of stakeholders need to be kept abreast systematically about developments in the different phases of the Review. This can be done through periodic updates on the IRM website;
- Importance of consultations in RMCs with different categories of stakeholders;
- Importance of benchmarking with other IAMs and taking into account current issues under debate in international accountability.

64. In addition to the above Reviews, the Report Entitled "Glass Half Full: The State of Accountability in Development Finance"[12] has undertaken an evaluation of all IAMs, including IRM, against the United Nations Guiding Principles on Effectiveness Criteria for Non-Judicial Grievance Mechanisms.[13] These principles are mentioned earlier. The conclusion of the Review is as follows: "In general, it is difficult to track the extent to which AfDB is learning from experience and changing its policies in response to IRM cases and reports on trends and challenges".[14] A set of Recommendations directed at AfDB was provided, derived from the application of the above-mentioned principles. These are included in Annex V of this Report.[15]

65. On January 11th, 2019 a coalition of CSOs addressed the AfDB Boards of Directors and the President concerning the Consultation Process for the Third Review of IRM. They referred to the previous Review whose consultation process they found to be inconsistent with standard practice at other IAMs. They stated that in the previous Review only the Consultant's report was initially disclosed for public comment and full drafts of the revised policy documents were only disclosed following CSO requests. CSOs were only given a short time period to prepare comments. The CSOs requested that the current Review take the following into account at a minimum:

    - Include regular updates on the process and opportunities to provide feedback;
    - Disclose the full draft of revisions to the Resolution and Operating Rules and Procedures;
    - Provide for two rounds of public comments on the drafts;
    - Disclose a matrix of all comments received on the drafts outlining which were or were not adopted and why;
    - Publish final draft before Board approval;
    - Include several opportunities for in-person consultation and outreach meetings throughout the Region.[16]

66. To the extent possible, the RT have taken the above into consideration. Several CSOs were consulted prior to the Review drafting, also besides the two rounds of public consultations that took place, there were follow-up meetings with key CSOs. A matrix of comments is annexed

[12] Glass Half Full: The State of Accountability in Development Finance, 2016
[13] Ibid
[14] Ibid
[15] Ibid
[16] Letter from Accountability Counsel with Joint Recommendations to AfDB Boards of Directors on theConsultation Process of the IRM Review, 11th January 2019

to this document indicating how they have been handled by the RT.

1.4 Current Trends in International Accountability:

67. In February 2019, the US Supreme Court ruled that an environmental damages lawsuit could proceed against the IFC of the World Bank, going counter to its claim of immunity from prosecution. The decision left several unanswered questions about the scope of Multilateral Development Bank (MDB) immunity, and thus potential for increases in the risk of litigation against MDBs with a presence in the US or in states that may choose to adopt a similar approach.[17]

68. The events leading to the courts 7-1 decision began over a decade ago when Coastal Gujarat Power in India started a coal-fired power plant in the Indian Port City of Mundra. This was partially financed by a US $450 million loan from the IFC. Thousands of fisher folk and farmers were negatively impacted. Emissions from the plant heated estuaries and seawater killed fish and destroyed mangroves. Furthermore, air pollution and groundwater contamination sickened families. In 2011, a group of beneficiaries filed a complaint against the IFC claiming that the institution had not enforced environmental safeguards which had the intention of minimizing unintended consequences of the project. The CAO had already agreed with this conclusion in their Report dating from 2013. The IFC issued a document acknowledging an action plan but no substantive action was in fact taken by IFC Management.[18]

69. Community groups and social-justice organizations welcomed the ruling as a tentative victory. The community group filed suit against the IFC in Washington DC, where the former is based, with the help of a CSO, Earth Rights International. The IFC did not comment on whether it had acted responsibly; instead, it argued that it could not be sued because international organizations based in the US are protected from prosecution for commercial activity. With the Supreme Court's ruling limiting this immunity, the case went back to the lower courts.[19]

70. The case raised the following question: How can the World Bank (and similar institutions) be held accountable? The general viewpoint was that IFC must consult people affected by its projects to draft comprehensive reform which should include elevating the mandate of the CAO beyond its current advisory role. Second, IAMs should monitor follow-up actions. Third, funds should be set aside to help the harmed party when projects fail. Fourth, international development agencies must be able to learn from their mistakes. The World Bank should invest in mandates and mechanisms to collect data that can establish a baseline against which to evaluate project outcomes. Finally, when complaints are verified, the people affected should receive compensation in a timely manner. One line of thought however, is that such efforts could make the IFC more risk averse.[20]

71. The decision by the Supreme Court means that borrower countries now face a real possibility that their MDB-funded projects could end up in foreign courts where the outcomes are not

[17] Daniel Bradlow, Multilateral Development Banks, Their Member States and Public Accountability: A proposal"p.10
[18] Vijaya Ramachandran "The World Bank Must Clean up its act" World View 19th March 2019
[19] Ibid
[20] Ibid

necessarily known and could prove embarrassing.[21] In a world where there is heightened awareness about climate change, MDBs which are generally seen to have state of the art social and environmental safeguards should demonstrate increased willingness to adhere to such standards.

72. One proposal being forwarded to deal with some of these challenges is to have a single IAM (a super- IAM) which would be created by agreement between all participating MDBs to serve all MDBs. The latter would be independent of all MDBs and would handle complaints according to a single set of agreed procedures and budget.[22]

73. A related proposal would be the establishment of an Assistance Fund (or in some writings a Remedy Fund) whose purpose would be to provide assistance to communities that the S-IAM finds have been harmed by an MDBs non-compliance with its policies. Such a Fund would avoid situations and problems that could arise (which is the case at present) where although the concerned MDB covers the cost of its non-compliance, in actual fact it is the borrower member states that cover such costs through the loan they have taken.[23]

74. Several CSOs have argued in a similar direction that the World Bank should put a percentage of its profits into a "remedy fund" to compensate communities harmed by IFC-backed projects. The call comes in response to growing concerns about how IFC manages and mitigates its investments especially in fragile and conflict-affected countries, where risks are higher. Professor David Hunter of American University is leading on this idea of a Remedy Fund. He is calling for IFC to rebalance its approach so that communities shoulder less of the risk, as they access grievance mechanisms and the pooled Fund itself, and reap more of the benefits associated with development projects. Hunter's idea is that the Fund would be administered by independent accountability mechanisms, like CAO, and could be used to directly compensate affected individuals or pay for community backed actions aimed at overcoming damage. Some funds could also be spent on helping communities prepare complaints to international organizations, when they have been or might be harmed the latter's development projects.

75. Furthermore, at a seminar held in November 2018 at Washington University School of Law on the occasion of the 25th anniversary of the establishment of the Inspection Panel, this issue was thoroughly debated. Some of the trends in thinking at the seminar, include that strengthening of accountability mechanisms and making them more effective is an important guard against the possibility of being stripped of immunity in a court of law. One of the tools for such strengthening is having viable Management Action Plans (MAPs) that provide remedy to communities and ensuring that institutional learning occurs resulting in changes in policies and procedures of an institution and how they are implemented.[24]

76. The External Review of IFC's Environmental and Social Accountability is especially instructive in that it includes a significant recommendation for improved systems for providing remedy to affected communities. This remains one of the weaknesses for most IAMs, where even when there are findings of non-compliance affected communities are left with no or inadequate remedy. The Review recommended the establishment of a "Remedial Action

[21] Ibid
[22] For more details see Daniel Bradlow: Multilateral Development Banks, Their Member States and PublicAccountability: A proposal"
[23] Ibid
[24] Summary of Discussions held at Washington School of Law on occasion of 25th Anniversary of World Bank's Inspection Panel.

Framework", a clearly defined structure and process for how remedy should be provided. Firstly, it recommended that there should be a requirement for all IFC clients to create a means of funding remedy should it be required. It made proposals for such a requirement in the form of insurance, insurance performance bonds and/or contingency reserves. The Review also recommended that the Board should agree to the principle that where the IFC/MIGA itself has contributed to the harm, it should also be required to contribute to the remedy, including in the form of financial compensation where needed.[25]

77. From the above, it is clear that several issues are under discussion in the realm of international accountability, most being raised to handle some of the failures of IAMs in rectifying non-compliance, while also emphasizing the issue of the cost of such non-compliance to poor communities. This international debate is certainly relevant to the current Review, it demonstrates the reputational risk confronted when IAMs (such as IRM) do not function properly and also the legal risks whereby the conventional argument of MDBs being immune from legal proceedings may be challenged and may no longer hold up. It also raises the issue of whether the existence of such IAMs make development institutions more or less risk averse. Several of these issues are raised below specifically in the context of the IRM and AfDB.

1.5 The Third IRM Review and Current AfDB Context:

1.5.1 Scaling up Implementation of the Bank's Ten-Year Strategy through the High5s:

78. This Third IRM Review primarily covers the period 2015 to 2020. This period is characterized by the decision taken by the Bank in May 2016 to scale up investments and implementation of its Ten-Year Strategy (TYS) 2013-2022,[26] as a response to ambitious development engagements from African and world leaders, and the specific challenge of ensuring their attainment in Africa.

79. The Bank's TYS places emphasis on specific sectors led by Infrastructure, in addition to a focus on fragile countries. This has entailed that the Bank is effectively working in both high-risk sectors and high-risk groups of countries. Specifically, with a view to scaling up in five key areas of its TYS, the Bank identified five priority areas referred to as High 5s.[27] They aim to light up and power Africa, feed Africa, industrialize Africa, integrate Africa, and improve the quality of life for Africans. In addition, the Bank has identified critical cross-cutting areas namely, climate change, fragility, gender and governance that are to be fully mainstreamed into the Bank's operations.

80. The willingness of the Bank to scale up implementation of its TYS through ambitious initiatives articulated through the High5s goes hand in hand with increased challenges that will have to be faced in managing heightened environmental and social risks for equally ambitious operations in scope, scale and complexity. It is this higher social and environmental risk, and therefore risk to communities from experiencing harm resulting from the implementation of Bank operations, that justifies an even stronger accountability function at the Bank. This Review, its conclusions, and its resulting recommendations must be seen in such a context.

[25] Katrina Lehmann-Grube and Christine Redell "Lessons Learnt Through the External Review of the IFC's Environmental and Social Accountability" GCF website, October 2020,p.3
[26] AfDB's Ten Year Strategy
[27] AfDB's High5s

1.5.2 Enhanced Decentralization and Bank's Development and Business Delivery Model (DBDM)

81. In 2016, the Bank adopted a new Business Delivery Model[28] together with a new organizational structure in order to improve and accelerate execution of the High5s. The DBDM introduced among others, an enhanced decentralization process with the creation in 2016 of five (05) Regional Directorates representing the five regions of the Bank. Each Regional Director General is responsible and accountable for efficient and effective operations management. This context is conducive for improving the Bank's effectiveness, accountability, responsiveness, accessibility and outreach, engagement and dialogue with stakeholders at the country and project levels. It also has implications for the current and future orientation of the IRM function as decentralization offers an improved opportunity to raise awareness about IRM, but also facilitates processing of complaints at a lower level.

82. To address the increased environmental and social challenges generated by the implementation of the High5s, the new DBDM also included upgrading of the Environmental and Social Safeguards and Compliance Division into a full Department (SNSC) with the mandate of enhancing and mainstreaming environmental and social sustainability into all Bank operations across the entire project cycle. SNSC is in charge of "managing E&S reputational risks associated with operations under implementation and responding to related internal audit reports and complaints registered by the IRM".[29]

83. Beyond its operational mandate as part of operations Task Teams, the SNSC Department has a ***corporate mandate*** related to policy and strategic orientation and compliance, strictly with respect to the Bank's environmental and social safeguards policy.

1.5.3 Integrated Safeguards Systems (ISS)

84. In December 2013, the Bank approved the Integrated Safeguards Systems (ISS)[30] in line with the dual objective of the TYS, namely: (i) ensuring that the continent achieves inclusive growth and (ii) transitions to green growth through environmental and social sustainability. In order to implement its environmental and social safeguards under ISS, the Bank has adopted five Operational Safeguards (OS): (a) Environmental and Social, (b) Involuntary resettlement land acquisition, population displacement and compensation, (c) Biodiversity and ecosystem services, (d) Pollution prevention and control, hazardous materials and resource efficiency, and (e) Labour conditions, health and safety.

85. The RT note that there is a tendency by most stakeholders interviewed to limit the safeguard role of IRM to only these five OS, whereas its mandate covers other Bank policies and procedures. This may be related to the fact that the nine (09) registered complaints since 2015, all relate to E&S issues.

86. Under the ISS, the Bank requests its clients to establish credible and independent local Grievance and Redress Mechanisms (GRMs) to help resolve affected people's grievances and concerns regarding the environmental and social impacts of a project.[31]

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[28] AfDB/BD/WP/2015/54/Rev.3, An Update of the Decentralization Action Plan in line with New DBDM –revised,9 June 2016

[29] Environment and Social Safeguards Strengthening Action Plan, p.2

[30] ISS Policy Statement and Operational Safeguards, Safeguards and Sustainability Series, Vol.I December 2013

[31] Ibid. p.18

87. In 2019, an evaluation of the ISS by the Bank's Evaluation Office (IDEV) revealed several constraints limiting the ability of the Bank to ensure compliance and the dissemination of knowledge and E&S best practice.[32]

1.5.4 Private Sector Operations:

88. With the increased share of Private sector operations, referred to as Non-Sovereign Operations (NSOs), in the Bank Group portfolio, it can be expected that IRM will witness an increase in complaints from NSOs. The Bank also has an increasing role in supporting financial intermediaries, with all that that implies for both Bank policies and IRM's mandate. From 2015 to date, out of nine (9) complaints to IRM, two (2) concerned NSOs. In this regard it is important to examine some of the specificities of such operations, notably with regards to implementation of Bank safeguards policies. NSOs are guided by nine (9) core principles emanating from the Bank Group Private Sector Strategy. Among these, there is a specific principle on compliance with safeguards in order to ensure that "the Bank's NSOs are anchored on social, environmental, and fiduciary responsibility, anti-corruption, and ethical integrity".[33]

89. The ISS Policy and Operational Safeguards state that "to foster more inclusive growth, the ISS seeks to enhance the capacities of the private sector to mainstream environmental and social sustainability into their operations to ensure that project-affected populations participate in and derive sustained economic benefits from operations in their communities".[34]

90. The ISS acknowledges that the changing profile of Bank clients, which includes more private sector ones, requires that some adjustments are made in ISS implementation to accommodate the specific features of NSOs. For instance, private sector clients typically engage with the Bank later in the project cycle than public sector ones.

91. Within the ISS, the Environmental and Social Assessment Procedures (ESAP) provide detailed guidelines on how to implement operational safeguards at any stage of the project cycle for both Sovereign (SO) and NSOs. However, the Bank Group ESAP differs for NSOs slightly from those for SOs. Specifically, the responsibility of adhering to the ISS lies with the NSOs sponsors throughout the project cycle, whereas the Bank is responsible for monitoring compliance and applying sanctions in case of non-compliance.

92. For Category 1 or Category 2 operations where there is a negative E&S impact, the client is required to put in place a credible and independent local grievance mechanism to address concerns and resolve complaints raised by people affected by the NSO. However, individuals or communities affected by a NSO have access to all other grievance redress mechanisms of the Bank.[35]

93. One of the findings of the recent Evaluation of the ISS specifically states that whereas the ISS is supposed to apply to all Bank operations, evidence indicates that they are still more focused on investment project financing to the neglect of Policy Based Operations (PBOs), sector or regional investment programs **and private sector lending**.[36]

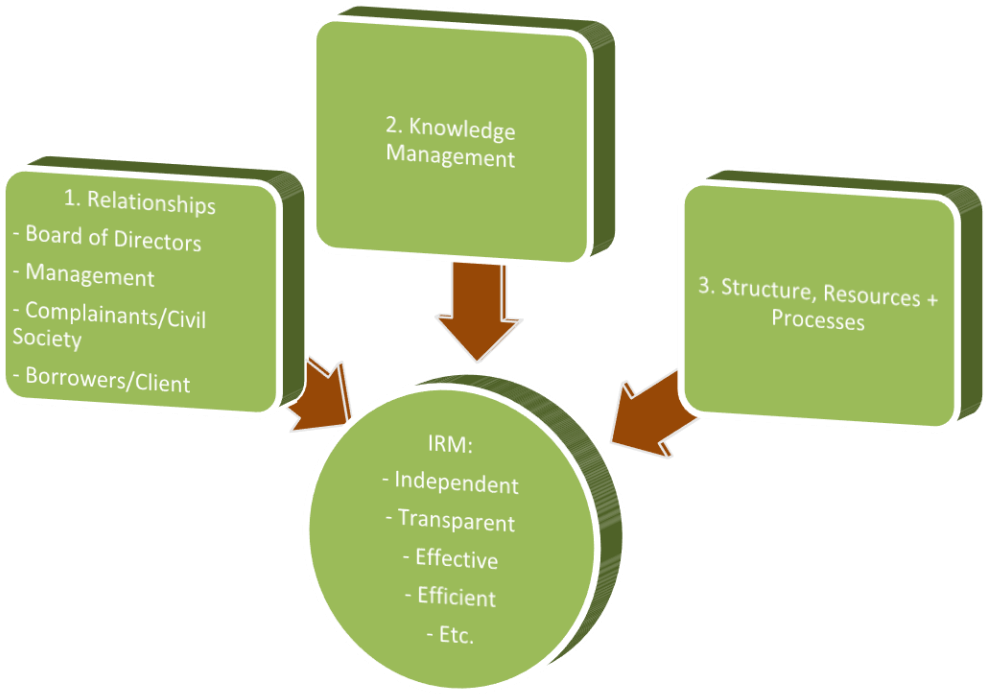
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[32] IDEV: Evaluation of the AfDB's Integrated Safeguards System pp 4-5
[33] Policy on Non-Sovereign Operations, 29 May 2019, p.11
[34] AfDB's Group, ISS Policy Statement and Operational Safeguards. Safeguards and Sustainability Series, Volume1, December 2013. ISS contribution to LTS: (Box 1 p16)
[35] Policy on Non-Sovereign Operations, 29 May 2019, p.38
[36] ISS Evaluation pp28-29

1.5.5 Scope of Third Review

94. The Review, as stated earlier, examines three interrelated areas. These are: the set of important relationships that IRM has with three key stakeholders in the IRM process, the area of knowledge generation and management resulting from IRM complaints handling experience, and IRM/BCRM structure, resources and processes. The Review also examines relations with borrowers/clients through the analysis of a case study on the complaint received for the Mali: M3 Project. This is discussed at length in Annex VI. These areas highlighted are fundamental to the efficiency, transparency and predictability of IRM's work. They determine, to a great extent, the results achieved by IRM, and therefore merit detailed analysis.

Figure 1: Scope of the Review[37]



2. Results of Third Review - Block one:

Relations between IRM and Key Stakeholders in IRM Process

2.1 Relations between IRM and the Boards of Directors

95. This section examines the relationship between IRM and the Boards of Directors, including the terms of reporting of the IRM to the Boards and how these can be strengthened, and notably ensuring greater guidance from CODE. It also assesses the frequency and most effective means of reporting by IRM to the Boards. The Recommendations section makes specific proposals

[37] Although not mentioned in the TOR other factors referred to earlier and derivedfrom the United Nations Business Principles.(UNGP) Effectiveness Criteria forNon-Judicial Grievance Mechanisms, are considered.

on how reporting to the Boards can be clarified and strengthened. In this regard, the RT have interviewed a total number of fifteen Board members, including the Chair and Deputy Chair of CODE and ten Advisers. Interviews have therefore covered all, but one, of the Boards constituencies with the full list provided in Annex I. Boards members emphasized the importance of early involvement of CODE in the Review, notably in view of facilitating buy-in into the Recommendations that are proposed by the RT.

2.1.1 Board Resolution:

96. The Board Resolution B/BD/2015/03-F/BD/2015/02, adopted on 28th January 2015, states: "The IRM shall report to the Boards and its work shall be overseen by a Boards committee".[38] In the case of the IRM, the Committee for Development Effectiveness (CODE) plays this role. The TORs of CODE specifically note the following regarding IRM/BCRM.[39] "Review the Work Program, reports and Management's Responses thereto as well as the budget…" The TORs also state: "Ensure that the lessons learnt on operations and development effectiveness from evaluations and other activities such as the work on social safeguards (including the Bank's ISS and IRM) are reflected in the policies, procedures, operations and programs of the Bank Group, and that these lessons are transmitted to borrowing countries as experiences in development financing".[40] The RT find that this formulation of the role of CODE is not specific enough, and does not take into account the unique role IRM plays in the accountability system of the institution. It cannot be placed on the same footing as the ISS. There is no mention of which IRM Reports will be reviewed, (as is well known there are quite a few including: Eligibility Reports, Problem-Solving Reports, Compliance Review Reports, Monitoring Reports etc.) similarly there is no mention of MAPs despite their primordial role in ensuring remedy for harmed communities and how the Bank will ensure compliance after an IRM complaint is handled.

97. The role of IRM in ensuring policy compliance is not mentioned and there is only mention of ISS but no other Bank policies. Also, the TORs do not distinguish between what is to be considered/approved by CODE and what would require the full Boards decision. The CODE TORs also state that lessons learnt from operations and development effectiveness should be reflected in policies and procedures of the Bank and that these lessons should be transmitted to borrowing countries as experiences in development financing. It is not clear how this will be implemented or who is responsible for such action, and more practically, how lessons integration into policy documents will be tracked.

98. Also, in practice after review of the IRM annual work programme, which contains a budget already approved in the context of a Bank-wide process budget approval, it remains vague what role CODE should play. This ambiguity signifies that a lot of discretion is left to the Chair of CODE to decide on many aspects of importance for the functioning of IRM.

99. In line with the 2015 IORP, the Boards play a variety of roles with regards to IRM. These include approving the proposal to undertake a Compliance Review as included in an Eligibility Report, review of Compliance Review Reports, approval of MAPs, review of IRM Monitoring

[38] African Development Bank/African Development Fund Resolution B/BD/2015/03-F/BD/2015/02
[39] TOR of Committee on Operations and Development Effectiveness
[40] Ibid

Reports review of Reports on Problem-Solving exercises and reports and monitoring Implementation of Problem-Solving Agreements. Regarding Advisory Services, the Boards approve the proposal to undertake Spot-Checks, and approve Spot-Check Reports and Recommendations. The Board may also request specific Advisory Services of IRM. Furthermore, the Boards participate in the selection Panel for the Director of BCRM and appoint Experts to the Roster of Experts on recommendation of the President. From the above, the RT proposes that the TORs of CODE need to be re-examined to clarify the role of CODE viz-a-viz IRM. Furthermore, the OIRP sections on the Boards role need to be aligned to obviate any possible confusion of Boards/CODE roles and responsibilities regarding IRM.

2.1.2 Features of and Factors influencing the Relationship between IRM and the Boards:

100. Several factors influence the relationship between IRM and the Boards. These include the fact that IRM work is by and large demand-driven and depends on the number and nature of complaints received. In view of this demand driven nature, there could be relatively long periods where there is nothing being presented to the Boards from IRM.

101. Furthermore, another factor is that the membership of the Board is constantly changing due to the term limits on Board membership. More specifically, the high turnover is even clearer for chairpersonship of Board Committees, including CODE, which is one year.

102. Due to this high turnover, the relationship between IRM and the Boards is rather unique. By way of example, most of the Boards members interviewed by the RT for the purposes of this Review, had only joined the Boards in the second half of 2019. The significance of this fact is that quite an important effort is necessary to raise awareness about the existence of the IRM, explain its functions and their importance on a continuous basis, so no Board members are left out. From reviewing IRM activities, it is clear that some orientation/outreach has been carried out for Boards' members, however it is not clear the extent to which this is carried out systematically every time there is Boards membership turnover. The IRM Experts are supposed to have an annual familiarization visit to headquarters where they are to meet with Boards' members. The RT investigations have found that this is not systematic across the five-year mandate of the Experts. The relationship with the Board is largely the domain of the IRM Director.

103. The obligation to report to the Boards is clear from the Boards Resolution referred to above. Several Boards members expressed the view that, IRM should become more of an instrument of the Board than is the situation currently. They compared the relationship with IRM to that with the Office of the Evaluator General (IDEV). The latter is characterized as a very close relationship, involving besides approval of annual work programs, very close follow up of recommendations. Meanwhile, in the case of IRM, there is often a perception of it engendering reputational risk for the Bank, (since it involves external complaints) rather than playing a key role in the Board's oversight and accountability functions.

104. Information gathered from a variety of stakeholders including current Boards' members and early IRM management indicate that the relationship between IRM and the Board went through several stages. During early stages in the establishmentof the IRM, there was a marked lack of knowledge about the mechanism, accompanied by a certain apprehension about its functioning. The source of this apprehension lay in a fear and suspicion of international CSOs,

whom it was thought would flood the IRM with complaints. However, it was accepted that since other MDBs had such mechanisms, the AfDB should follow suit. Nevertheless, the apprehension that there is a "market" for complaints production out there, and that there are numerous non-genuine or malicious complaints, is not without support from some Boards members.

105. Certain IRM cases have often proven to be particularly testing, to the extent of causing a rift within the Boards, between those supporting and those who were opposed to a Compliance Review. The sensitivity of Boards members when investigations happen in their countries is understandable and not unique to AfDB. However, currently the RT were able to gauge a much greater interest from the Boards, which needs to be translated into more proactive involvement in reviewing documents, taking decisions concerning cases, ensuring that timelines are adhered to and Management remedial actions are implemented. It should not be forgotten that the area of accountability, where IRM is responsible, is quite complex and might not be as straightforward as other forms of accountability as manifested in the work of the Office of the Auditor General and/or Office of Evaluator General. This means that there is a greater burden on IRM to constantly update the Boards about their role in the IRM process, thus ensuring a high level of Boards' oversight.

2.1.3 Boards Perceptions of the Relationship with IRM:

106. An important message received by the RT is that although reporting lines to the Boards and CODE exist, the relationship to date can be described as "hands off". Thus, for instance, the question of delays and not abiding by the set guidelines whether on the part of IRM or Management, although mentioned to the RT, has not been widely discussed as an issue of concern by the Boards. Several Boards members did mention it, and their response was that it was important to institute "consequences" for such lapses in adhering to timelines and/or guidelines. Several Boards members stated that the views of IRM are generally appreciated for their independent assessment, but some also criticized the quality of IRM reports emphasizing that documentation is often long, wordy and not action oriented. Some Boards members also noted the accusatory language in some IRM reports. There have been instances where the Boards have asked IRM to revise Reports.

107. Several other trends also characterized RT discussions with Boards' members. The weak staffing situation of the IRM[41] was identified as a key challenge many times by Boards' members. Given this resource constraint, Boards' members also questioned the degree of realism of IRM Work Program. Another important theme permeating the discussions was the importance of instituting preventive actions and handling of minor complaints at the lowest levels possible, including through country offices, in view of pre-empting major complaints coming to IRM. There were several conflicting views on the adequacy and necessity of carrying out Spot-Checks. These are considered below.

108. Furthermore, all Boards offices the RT spoke to, raised the issue of compensation/involuntary resettlement as one around which there were constant complaints and where Management was constantly facing problems. Boards' members would like IRM to take this issue up more specifically and come up with lessons learnt from the experience of the Bank to date, which could result in policy amendments and/or proposals regarding how to go about handling this

[41] It should be noted that these interviews were conducted during the first quarter of 2020, so the staffing gaps wereparticularly acute.

problem sustainably. For example, some Boards members proposed to assess compensation capacities of countries during Country Strategy Paper (CSP) preparation exercises and include these considerations in the disbursement schedules of operations, thus allowing the Bank to determine the best compensation approach taking into account the reality of each member country while ensuring remedy.

109. Generally, the main conclusion of the RT regarding this important relationship is that greater clarity around governance and authority is required. In addition to being accountable to individuals and communities in which IRM operates, IRM is accountable to taxpayers around the globe and must therefore demonstrate value for money in its activities. Although the principle of the oversight role of Boards/CODE viz-a-viz the IRM is clear, and in line with international best practice, it needs to be better reflected and made more precise in an amended TORs for CODE, accompanied by a clear distinction between the role of CODE as against that of the Boards at large. Also, due to the demand driven work nature of IRM, a greater effort by IRM is required in order to constantly update the Boards even when there are no active cases under consideration. This interaction should be both formal and informal. The formal side would involve the functions referred to above, but informally IRM should foster constant interaction with Boards' members about the role and functions of IRM even in the absence of active cases. Regular "coffee chats" with Boards' members explaining the function of the office would be useful. The Boards, notably when there are new Boards members, should be regularly brought up to speed about IRM and the important role it plays for accountability and development effectiveness in the Bank. In addition, IRM staff should prepare a training module on the IRM specifically geared to orienting new Boards members. IRM experts/consultants should be allowed to appear virtually in front of the Boards, this would require a re-examination of the Boards rules that currently prevents experts from appearing to present their findings instead of having the Director performing this role on their behalf. IRM experts do not need to appear in person (thereby saving financial and carbon resources) but could use Zoom-type platforms to make short time-bound interventions in front of the Boards as may be required.

110. The Boards themselves need to fully play their oversight role and become more engaged with IRM issues even in the absence of cases to be considered by the Boards. A functioning IRM must be seen by the Boards as an opportunity to strengthen accountability and development effectiveness for the institution and not as a source of reputational risk because of the complaints received. An active feedback loop is thus imperative through, at least, quarterly meetings with CODE. Specific proposals are made in the Recommendations section.

2.1.4 Comparison with other IAMs:

111. The Inspection Panel of the World Bank Group[42] reports to the CODE Committee. However, the relationship is quite hands on, and there is frequent communication with CODE members and especially the CODE Chairperson. An informal lunch with CODE takes place biannually where the Panel will brief CODE members about latest developments and propose specific

[42] It should be noted that the World Bank as a result of a review of its Tool Kit is about to develop a new Accountability Mechanism.

issues for discussion. This is preceded by the preparation of a short brief, shared with CODE members that outlines these issues. When the Board changes membership there are systematic visits to new Board members to inform them about the Panel and its work. When a new Request is registered by the Panel, visits to the Executive Director (ED) concerned are immediately arranged. Visits to the concerned ED also take place throughout the process of compliance reviews.[43]

112. The EBRD accountability mechanism, IPAM reports to the Audit Committee of its Board. MICI of the Inter-American Development Bank reports to the Policy and Evaluation Committee, and the Asian Development Bank mechanism reports to the Board Compliance Review Committee of the Board specifically set up for this purpose. Meanwhile, the CAO of IFC reports to the President, although their recent External Review[44] proposes that CAO should report to the Board through a specialized Sustainability Committee to oversee CAO's operations. Anyway, it remains clear that most IAMs report to a Board committee. This gives Boards special oversight functions over accountability mechanisms, making the relationship with Boards of particular importance to the operation and effectiveness of IAMs and to ensuring that accountability plays an important role in development effectiveness of such institutions.

2.2 Relationship between IRM and Management:

113. By its very nature, the relationship between IAMs and Management may be characterized as a somewhat adversarial one. This is due to the fact that this relationship intrinsically involves a critique of Management, and an implication that it is not following its own policies, rules and procedures. Therefore, the first reaction from Management tends to commonly be a rather defensive one. As will be indicated below, this feature of the relationship with Management is not unique to AfDB.

114. In order to gauge IRM relationships with Management, the RT have interviewed representatives of Senior Management and middle management in addition to a sample of Task Managers, notably those on whose operations complaints have been received. This is in addition to interviewing the current safeguards team, who are now responsible for preparing MRs, MAPs, and responses to Spot-Checks. The RT have also reviewed relevant documents including Bank Policies, MRs and MAPs for cases registered since 2015 to date, in addition to benchmarking/comparing with other IAMs.

115. For the IRM to fulfill its role fully, it requires access to Management and staff and relevant documentation pertaining to operations about which complaints have been received. This has not always been the case thus the Compliance Review Report for the Sendou Coal Fire complaint specifically states: "The Review Panel could not obtain numerous internal documents from Bank Management for the earlier years of the Project's preparation, appraisal and implementation (up to 2014). The failure to access these records is an accountability and transparency risk for the Bank."[45] It is therefore imperative to establish the IRM's access to

[43] Personal notes
[44] "External review of IFC/MIGA Accountability, including CAOs Role and Effectiveness: Report andRecommendations, draft of June 2020 under public consultation.
[45] Compliance Review Report: Sendou Complaint, p. xii

Bank records, this is stated explicitly in the amended IORP. IRM should have access to all files except those explicitly deemed confidential by the President and Boards. Furthermore, for the process of preparing MRs and MAPs, and implementation and monitoring of MAPs to proceed smoothly and within the time limits set for them, cooperation and frequent contacts between IRM and Management is fundamental. Otherwise getting the Bank back into compliance and ensuring remedy for affected communities, risks being jeopardized.

116. Interviews with stakeholders, especially from Management, including SNSC and some Boards members, have indicated that it is fundamental to agree on a clear definition of (i) the meaning, content and limits of Bank's failure to comply with its own policies and procedures especially during project implementation and (ii) the delineation of the Borrower/Client's, responsibility as the main entity in charge of project implementation, with regard to failure/non-performance and responsibility related to the Complaint, which can't be solely attributable to the Bank.

117. It is thus crucial to determine and separate responsibilities and accountabilities between the Management and the Borrower/Client. Generally, it can be stated that Borrowers/Clients are responsible for implementing the Bank's policies and standards whereas the Bank is responsible for oversight of this implementation, and ensuring that Bank policies and standards are upheld. Not only, will such an improved understanding of roles work towards reducing reputational risk for the Bank, it will also increase the efficiency and predictability of IRM's work, in addition to contributing to improving the relationship between IRM and Management.

2.2.1 Management's Role according to IORP (2015):

118. According to the IORP, Management's role in the IRM process involves preparing relevant MRs once a Notice of Registration is issued, MAPs in response to Compliance Reviews, implementing and monitoring these MAPs, participating in Problem-Solving Exercises, responding to Spot-Checks and Advisory Notes. In addition, according to the 2015 IORP, Management is supposed to mainstream information about IRM in Bank policies and procedures and project documentation. The latter should include loan agreements, which in turn should refer to the possibility of IRM investigations when there is a compliance review

119. Furthermore, the IORP stipulate that IRM shall together with Management, establish, maintain and update a list of operational policies and procedures of the Bank Group relevant to the work of IRM.[46] The RT found a list on the IRM webpage including more than 60 policies. The RT was informed that IRM is currently updating its webpage, which should be an opportunity to agree with Management on an updated list of policies and procedures.

120. Various viewpoints exist regarding which policies should be considered when judging compliance, taking into account the fact that the vast majority of Complaints concern safeguard policies. A clear list of relevant policies needs to be established urgently. IRM and Management cannot have different lists. By one estimate the Bank has 144 policies, IRM cannot be expected to track and/or monitor compliance with these many policies and therefore it needs to focus its objective on addressing those policies which are the most relevant in order for it to carry out its mission. Since the purpose of the mechanism is largely to facilitate the resolution of social, environmental and public disclosure issues, so it should focus on relevant policies within the Bank that relate to those issues. So, the question posed is: should the current

[46] IRM Operating Rules and Procedures, 2015

vast list of Bank policies be considered or alternatively (which is the case in several IAMs) should there be a more restricted approach. There is no consensus currently within the Bank on this point. However, the RT are of the opinion that the IRM compliance mandate while applying to all relevant operational policies, should focus on the following: Access to Information and Disclosure Policy and the Integrated Safeguards System. Policies related to credit risk management, loans guidelines etc. are largely not relevant for IRM when addressing issues of project-based harms in communities and should not be considered as part of IRM scope. In all cases whereas it is clear that the ISS are the most relevant Bank policies against which compliance should be judged, it is important for IRM and Management to agree on a set of policies. The Revised IORP a proposal in that direction.

2.2.2 Management Responses (MR) and Management Action Plans (MAP):

121. The RT have reviewed all MRs and MAPs for registered complaints received between 2015 to date, covering both compliance reviews and problem-solving. Comments received from various stakeholders have indicated that there is a lack of standardization in the contents of a MR, there is no agreed format, and the language tends to be rather, verbose, and often too diplomatic. Also, it was felt that there was a lack of clarity concerning who is responsible for the implementation of certain aspects of MAPs. Furthermore, contrary to the case of other IAMs, the draft MAP is not disclosed to Complainants prior to Boards' approval, neither is it subject to consultation with the Complainants, which risks that they will not agree to the proposed remedial measures. (Indeed, this has been the case for a recent IRM Complaint where the complainants did not agree with the contents of the MAP). It is therefore proposed in the revised IORP that Complainants should have access to the MR, draft Compliance Review Report and draft MAP, before their finalization and presentation to the Boards.

122. The RT have undertaken an exercise of examining the processing/case management of all complaints received by IRM since 2015 with the objective of assessing the extent to which set deadlines have been adhered to by both IRM and Management. This analysis is included in Annex II. The RT analysis indicates clear divergence between dates determined in the IORP, and actual dates of when Reports are submitted. The trend is not one of improvement. While flexibility is important especially when dealing with fragile situations and states, guidelines for timelines should be set and met. Adhering to such guidelines should not compromise quality controls or result in, failure to properly conduct due diligence. The revised IORP have looked at these dates and have made some modifications rendering them more realistic.

123. It should be noted that there has been a change in the team responsible for the production of Management documents such as the MR and MAP, post the 2017 Bank restructuring. Prior to 2017, it was the Quality Control and Results Department (ORQR) who were responsible for preparing the documents in question. In 2017, with the Bank's establishment of the Environment and Social Safeguards and Compliance Department (SNSC) with its mandate of enhancing and mainstreaming environmental and social sustainability into Bank operations and across the entire project cycle, they have become responsible for producing these documents.

124. Critical deliverables from the Boards approved Integrated Safeguards System regarding IRM, have been indicated earlier. The Director SNSC clearly informed IRM and the RT that SNSC is not mandated to prepare MRs and MAPs. In fact, SNSC initiated an "Operational Instruction

on the Preparation and Implementation of Management Response to Bank Accountability Mechanisms on Environmental and Social Safeguards and Compliance in Bank Financed Operations" which was approved by the Senior Vice- President (SVP) in February 2020. The Operational Instruction specifically addresses the involvement of sector departments and Regional Offices in the preparation of these documents. This has prolonged the time frames set in the IORP.

125. The SNSC has informed the RT of this procedure[47] whose objective is to streamline the preparation and approval of the MRs and MAPs. The proposed procedure places greater responsibility with the Regional Director General with support from SNSC. It has already created problems for IRM and the IRM process, resulting in even greater delays in submission of requisite documents from Management to IRM. There needs to be greater clarity here as to Management roles and responsibilities, viz-a-viz IRM. The procedure developed has expanded timelines which is not in conformity with similar timelines in other IAMs, this is important especially in cases where Complaints concern co-financed operations with other MDBs. There is a need for much greater clarity of roles and responsibilities, otherwise this slippage in timelines will continue.

126. Furthermore, the follow-up of IRM recommendations included in MRs and MAPs have not been as efficient and rigorous as the case of the Office of the Auditor General (PAGL) recommendations, or those of the Evaluator General. In the case of the recommendations of the former, the front office of the SVP has a dedicated staff member who has among his/her tasks the follow-up of these recommendations. The same does not exist for recommendations emanating either directly from IRM or from MAPs. As a solution to the lack of timely implementation of IRM recommendations, some stakeholders interviewed proposed and RT concurs that there should be a focal point within Management whose function it is to compile, follow up and report on all matters relating to IRM The instauration of a Management Action Responsibility System – an electronic database of how recommendations were implemented – could also help improve the situation. Stakeholders also suggested that IRM could follow some of the practices of the PAGL process, which includes a meeting with Management at the beginning of the process, sharing the draft report with Management and having a discussion regarding the recommendations with Management before finalization of the draft report. Also, the format of PAGL reports, which are very succinct, could be proposed for IRM reports. The internal coordination mechanism of PAGL with a coordinator in the front office of the SVP and each VP front office could inspire a re-organisation of handling IRM matters. In all cases guidance should be developed by IRM (in consultation with Management) to encourage succinct reporting and recommendations It is also important for Management to understand that they should be commenting on recommendations rather than the findings, especially in the case of compliance reviews. Some guidance and agreement on both sides is required.

2.2.3 Other Management Roles regarding IRM:

127. According to the IORP, Management is supposed to mainstream information about the IRM in Bank policies and procedures and project documents.[48] This is currently not the case. In

[47] Operational Instruction on the Preparation and Implementation of Management Responses to Bank AccountabilityMechanism Reports on Environmental and Social Safe-Guards in Bank-financed Operations, 20/2/2020
[48] Ibid

2011, the then Director of IRM addressed a memo to VPs in which they proposed a text of a paragraph to be included in Appraisal Reports and another for ESIAs and Summary of Environmental and Social Impact Assessments informing clients and communities about the existence of IRM and its functions. At the time IRM carried out a survey of 30 Category 1 Projects and five Category 2 projects to gauge the extent of implementation of this request. The survey indicated that the proposed paragraph was not included in any Category I project or ESIA. It was included in five category 2 projects and three Environmental and Social Impact Summaries.[49] It is interesting to note that for one of the Category 2 projects where the paragraph in question was included, a complaint was subsequently received by IRM. This practice has since been discontinued. No reason for the discontinuation has been shared with the RT.

128. The IRM is mentioned in the ISS, NSO Policy, CSO Engagement Framework, and Operations Manual dating from 2018. Nothing in the AfDB Disclosure and Access to Information Policy requires Management or Borrowers/Clients to disclose information pertaining to IRM. Furthermore, the RT have seen several instances where IRM has had to request mention of whether a specific project has been subject to an IRM complaint in the Project Completion Report (PCR), indicating that this is not the practice across the board. In one recent case (Bujugali PCR), Management was asked by the Boards to revise the PCR report to ensure the inclusion of the fact that the project was subject of an IRM complaint. A clear list of documents where the IRM should be mentioned, and the specific wording should be agreed upon with Management. In addition to such disclosure, reference to the IRM should be included in public announcements/billboards etc., especially for certain types of projects, such as large infrastructure ones, for instance.

2.2.4 IRM's place in the Bank's ISS:

129. The ISS describes the grievance and redress system at the Bank as composed of five elements. These are: (i) policies and procedures established by the Bank for addressing requests for dispute resolution in the environmental and social context; (ii) public access to the process through the Bank country office; (iii) country level responsibility for receiving and responding to requests for redress and (iv) the IRM which provides a corporate window for receiving requests for dispute resolution and mediation process and (v) tracking and monitoring grievances and their resolution.[50] The ISS also include a paragraph on IRM as follows: "The mandate of the Bank's IRM is to provide people who are or are likely to be adversely affected by a project financed by the Bank Group as a result of violation of the Bank Group's policies and procedures with an avenue to request the Bank to comply with its own policies and procedures. The Requestors first seek to resolve their complaints with Bank Management but if in their opinion, Bank Management has not adequately handled their complaints, they may submit their requests to IRM. The IRM comprises two separate but related phases: (i) a grievance or problem-solving phase, led by BCRM reporting directly to the Bank President to assist project-affected people in finding solutions to their problems; and (ii) a compliance

[49] For projects,under title of Recourse Mechanism the following paragraph is included: "The Bank Group has established an Independent Review Mechanism(IRM) to enable affected people complain to the Bank if they believethat as a result of non-compliance with Bank Policies". "Assessment of the IRM mainstreaming in Bank policies andProcedures", Unpublished Document 2016

[50] ISS Policy Statement and Operational Safeguards, Safeguards and Sustainability Series, Vol.I December 2013,p.18

review process led by a three-member panel drawn from the IRM Roster of Experts."[51]

130. While RT appreciates that there is more than one mention of IRM in the ISS policy, the way this is done is rather problematic. The characterization of IRM as a "corporate window" gives the incorrect impression that IRM is part of Management and strips it of its most important feature, namely its independence. Furthermore, the description gives the impression, which is contrary to what is in the IORP, that complaints cannot be accepted by IRM unless they have gone through Management first. Moreover, the characterization of IRM functions is also incorrect, problem-solving does not go directly to the President. Also, the Compliance Review process is not sufficiently explained, neither is who manages it and what are the consequences of a Compliance Review for Complainants. In fact, anyone reading this description can only be misled about the real role and unique functions of IRM. The RT is therefore of the opinion that this policy statement in the ISS document should be updated and the characterization of BCRM as a "corporate window" should be corrected.

131. Nevertheless, the fact that the Bank encourages the establishment of Grievance Redress Mechanisms is certainly appreciated. This is an important preventive measure, as will be mentioned again later, but the Bank needs to make sure that although such mechanisms exist, they are not a substitute for IRM, and they must operate and function efficiently.

2.2.5 Role of Country and Regional Offices:

132. An important aspect of the relationship with Management concerns the role of Regional/Country Offices. Information gathered by the RT from one Regional Directorate indicates that the office was not directly involved in two of the problem-solving exercises for that Region and that it was the Director IRM who undertook the exercise single handedly. Furthermore, the RT found no evidence that Regional and Country offices were proactively involved in disseminating information about IRM. Not making use of these offices is seen by the RT as a missed opportunity, not only in view of their potential for disseminating information about the existence of IRM, but also in terms of their potential preventive role in finding solutions to issues before they aggravate. The RT have not found evidence that this is happening and think that such roles of Country/Regional offices have been neglected by Management, despite what is clearly stated in the ISS. Also, there is a dearth of information regarding project level GRMs, in fact, it could prove interesting to track the number of Complainants who used Management led GRMs and their opinion of the process.

2.2.6 NSO Operations and IRM:

133. For NSOs complaints, the Division in charge of strategy and standards (PINS) at HQ is responsible for coordination of MRs and respect of deadlines. Under the new organization, PINS also supervise the portfolio. From interviews undertaken, Managers and staff of PINS do not feel sufficiently involved in compliance review exercises. They consider that a greater involvement on their part would reduce delays in preparing the MR for NSOs.

134. Regarding the relationship between IRM and private sector staff, it is apparent that the collaboration between Bank's Managers and Task Managers in charge of NSOs and IRM was quite difficult at the beginning but after some training sessions for staff, the relationship has improved. However, it was mentioned that the collaboration with Roster Experts is more

[51] Ibid.

difficult. One reason is related to the fact that IRM staff and Roster Experts may not fully understand the specificity of the private sector, i.e., the delicate balance to be maintained between the financial and social aspects of a project, and that sometimes the type of compensations proposed by the Experts can jeopardize the profitability of the project. Clients are even more critical of the role of IRM. This implies that IRM needs to undertake a special effort to raise awareness and work in the direction of an attitudinal change among private sector staff, notably those in charge of Additionality and Development Outcomes Assessments (ADOA) and private sector clients about its processes and their consequences. This should especially be the case as the Bank increases its lending through financial intermediaries.

135. Several stakeholders interviewed by the RT insisted that there needs to be a balance between accountability goals and promotion of the private sector as the driver for the socio-economic transformation of Africa. The political economy behind each decision taken needs to be taken into account in order to strike the right balance between urgency of development and respecting all safeguards, while insisting that accountability obligations to community members should not change due to ownership structure.

2.2.7 Summary of Main Features of the Relationship Between IRM and Management

136. The RT analysis above points to a relationship with Management that may be characterised as somewhat problematic, this characterization goes beyond the adversarial nature, alluded to earlier, and found between most IAMs staff and Management of sister institutions. This approaches a neglect to follow rules and regulations, whether this concerns adhering to timelines for statutory reports or the obligation to disclose the existence of IRM in project and policy documents, and to clients and/or facilitating access to requisite staff and project documentation. This is in addition to not making sufficient use of Regional and Country Offices as resources to disseminate information about IRM or to facilitate highly needed preventive roles, especially in countries/regions with an abundance of high-risk operations. In addition, despite the many lessons that IRM included in its various documents (CRs and Annual Report etc.), Management has not indicated how it has made use of these lessons whether in new policies, procedures or guidance to staff.

137. This situation requires action and improved communication between IRM and Management, first to find practical solutions to issues of departmental responsibility for responding to IRM, timelines, ensuring availability of responsible staff and project documentation, while allowing ample opportunities for clarification and due diligence throughout the IRM process. In addition, it is important to ensure constant dialogue between both IRM and Management on issues of common interest, notably as related to which policies should be subject to compliance, interpretation of operational policies, enhancing clarity of the scope of Management responsibility and impacts for development effectiveness.[52] The relationship between Management and IRM should focus on two important aspects: first, how to clarify roles and responsibilities, make the IRM process less problematic and more solutions oriented and secondly, to ensure that institutional learning occurs with consequences for the Bank, whether in terms of policy changes, strengthening implementation and/or taking preventive measures going forward.[53] Both the Report recommendations and the amended IORP make proposals in

[52] In one Spot-Check the divergence in presentation of facts between IRM and Management was so stark that theBoards asked IRM to go back and come up with a revised Report

[53] By way of example, subsequent to the case of Uganda Roads investigation which involved issues of Gender Based Violence (GBV) for

this direction.

2.2.8 BCRM and other Accountability units Reporting to the Boards of Directors:

138. Apart from BCRM, three other Departments working in the realm of accountability, report directly to the Boards of Directors. These are the Office of the Auditor General (PAGL), which assesses whether the risk management, control and governance processes of the Bank are adequately designed by Management and are functioning effectively, its role is preventive in nature. The Office of the Evaluator General (IDEV) evaluates the effectiveness of Bank Group activities and instruments in achieving development results. It supports the Boards institutional governance and oversight responsibilities. The Integrity and Anti-Corruption Department (PIAC) investigates allegations of fraud, corruption, collusion, coercion and obstruction made against institutions, firms and individuals participating in development operations financed by the Bank. As stated earlier, in the context of both the GCI and the ADF Replenishment great emphasis was placed on these departments, and the important role they play in promoting independence, transparency and accountability within the institution.

139. In this context, it is therefore also important to distinguish between their different roles ensuring that they complement and do not compete with each other. One good practice the RT were informed of is the existence of an informal coordination group made up of the Directors of these different Departments whose objective is to ensure coordination, minimize overlap and improve efficiency of all four Departments. The RT assessment based on relevant interviews with Management and the Boards and document review, is that the role of IRM is quite unique since it depends, for the most part, on complaints from complainants external to the Bank. Of course, it shares with other Departments mentioned above, the fact that it reports to the Boards, and more specifically, to CODE.

140. More recently, PAGL has in its Annual Reports pointed out to operations where there have been issues with Bank policy compliance and these have been taken up by IRM as cases for Spot-Checks.[54] While such cooperation between accountability mechanisms is admirable, it goes against the 2015 Guidelines for Advisory Services and can be considered double work, since these operations have already been subject to an audit. This will be taken up in greater detail in the section on Knowledge Management and Advisory Services.

2.2.9 Comparison with other IAMs:

141. A lot of the best practice referred to in this Review is included in the document entitled "Best of Independent Accountability Policies"[55] prepared by the Center for Research on Multinational Corporations. Regarding the discussion above, the document states MDB Management and staff should be required to fully cooperate with the IAM in order to ensure effective functioning of the mechanism. When requested, the Management and staff should inter alia provide full access to project-related information and respond frankly to questions posed by the mechanism. Achieving full and effective remedy through a compliance review process requires the active and constructive participation of the Management. Management must be required to engage meaningfully with complainants to find mutually agreeable ways

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the first time, the World Bank developed specific guidelines both on GBV and on dealing with large labour influxes and set up a Task Force to deal with issues of GBV. They have also recently updated the procurement policy to enforce GBV rules.

[54] See Annex III

[55] "Best of…Independent Accountability Mechanism Policies", October 2019, by Centre for Research on Multinational Corporations (SOMO), Accountability Counsel, International Accountability Project and Fundacion para el Desarrollo de Politicas Sustentables

to address the IAM findings. The process for Management engagement should be elaborated either in the IAM policy or in a separate procedure governing Management's role in a complaint process.[56] The EBRD IPAM Project Accountability Policy specifically state under the heading "Engagement with Management," "Management will invite the IPAM Head to observe or contribute to management meetings where this may enhance communication and understanding of issues of common concern".[57]

142. The different IAMs and the institutions in which they function have experimented with and continue to experiment with different models/ processes for handling the issue of preparing MRs and MAPs, while ensuring that the process is rendered as timely and efficient as possible. By way of example in the case of the World Bank,[58] deadlines as set in the Inspection Panel's 2014 Operating Guidelines,[59] are strictly adhered to. The Guidelines specifically state "The time limit for the Management response is strictly observed except in circumstances clearly beyond the Management's control. In practice in such situations, and after consulting with the Panel, Management seeks Board approval for any proposed extension of the deadline".[60] Furthermore, there is a designated liaison person positioned in the Policy and Safeguards Department who follows up on all matters relating to the Inspection Panel and who coordinates inputs into the final MR and/or MAP, as the case maybe.

143. Regarding access to information, the EBRD policy states that in connection with a case, IPAM staff will have full access to relevant Bank staff and Project files including electronic files and have access to cabinets and other storage facilities. Bank Management and consultants engaged by Bank Management will be required to fully cooperate with IPAM staff. Financing agreements between the Bank and the Clients will include requirements for the Clients to disclose Project-related information to IPAM in connection with a case upon reasonable request by the Bank and subject to any applicable laws and regulations.[61] Similarly, the Inspection Panel Operating Procedures state that Management makes available to the Panel all available project documentation. The same document states that Management enables the Panel to talk to staff involved with the project both past and present.[62]

144. Regarding disclosure of Reports, EBRD Complaints Mechanism sends the draft MAP to Requesters for comment.[63] Furthermore, according to the Processes and Procedures of the Independent Redress Mechanism of the Green Climate Fund, the Compliance Review Report and proposed remedial actions are shared with the Complainants.[64] Similarly, at the World Bank, Management will communicate to the Inspection Panel the nature and outcomes of the consultations with affected parties on the action plan agreed between the Borrower and the Bank. The Panel may submit to the Board for its consideration, a written or verbal report on

[56] Ibid, p19
[57] EBRD IPAM Project Accountability Policy p.25.
[58] It should be noted that this applies to the situation prior to the establishment to the new Accountability Mechanism at the World Bank which is currently in process.
[59] Inspection Panel's 2014 Operating Guidelines
[60] Ibid, p14
[61] EBRD Project Accountability Policy, p.18
[62] Inspection Panel Operating Procedures, p.19
[63] EBRD Project Accountability Policy, p.16
[64] Procedures and Guidelines of the Independent Redress Mechanism of the Green Climate Fund, p.26

the adequacy of these consultations.[65]

145. The experiences of other IAMs clearly point to the following: obligation of the IAM and Management to cooperate fully whether as regards rendering available information on a complaint, and or adherence to deadlines for submission/presentation of Management documentation. There is a greater involvement of the Board in the latter. Management has in some instances put in place a designated focal point for interaction with the IAM. All of the above, however also entail an institutional willingness to improve communication between Management and the IAM.

2.3 Relations between IRM and Complainants/Civil Society

146. This part of the Review focuses on the relationship between IRM and Complainants/Civil Society. Since this relationship is closely related to issues of access to and knowledge about IRM, the section also examines issues of communication and outreach and impacts for Complainants. Several factors affect the relationship between IRM and Complainants/Civil Society. These factors encompass ease of access to the IRM, the nature of communications with IRM and the expectations that exist regarding the potential results that can be achieved at the end of an IRM process.

2.3.1 Engagement with CSOs at AfDB:

147. The first ever IAM, namely the Inspection Panel of the World Bank was established in 1993 following pressure from civil society, subsequent to several World Bank projects that did not comply with Bank policies.[66] Since then CSOs have remained active in the field of accountability and engagement with IAMs.

148. The Civil Society and Social Innovation Division at the Bank, one of the divisions of the Gender, Women and Social Innovation Department work closely with IRM and share a joint list of CSOs. The overarching objective of the Bank's Framework for Enhanced Engagement with CSOs (2012)[67] is to help the Bank achieve improved results and impacts by strengthening its mechanism for participation and coordination with CSOs. The specific objectives of the Framework are as follows: (i) strengthen the Bank's capacity to build cooperative working modalities with CSOs, (ii) promote staff interactions with CSOs in a way that enhances the Bank's work and contributes to the effectiveness of support to Regional Member Countries (RMCs) and (iii) provide operational guidance for the Bank's headquarters, Regional Resource Centers, country offices and Project staff.[68]

149. The Framework suggests three areas in which collaboration with CSOs should be focused. These are the Integrated Environmental and Social Safeguards System, the IRM, and work in Fragile RMCs. Regarding the IRM, the Framework states it will engage CSOs as intermediaries in transferring information to and from communities. CSOs can also help the IRM understand the nature and scope of complaints and local circumstances that led to

[65] Inspection Panel Operating Procedures, p.22
[66] Independent Accountability Mechanisms Network "Citizen Driven Accountability for Sustainable DevelopmentGiving Affected People a Greater Voice-Twenty Years on", 2012.
[67] Framework for Enhanced Engagement with Civil Society Organizations
[68] Ibid, p.10

complaints, and they can raise awareness about IRM. It states that to enhance cooperation, the Bank should raise awareness about IRM mandate, functions and procedures among CSOs and local communities.[69] CSOs, therefore play a very important role in the IRM process and are among the most important stakeholders of IRM. Many CSOs (both national and international) have very limited knowledge of both the Bank and IRM. It is interesting to note that IDEV are currently in the process of undertaking an evaluation of the relationship between CSOs and the Bank. The questionnaire they are using includes specific questions about IRM. Preliminary results seen by the RT, indicate convergence with some of the conclusions of the RT as will be demonstrated below.

2.3.2 Access to IRM:

150. Generally, the following questions affect access to all IAMs. How well known is a particular accountability mechanism? What is the nature of previous experience of complainants with the mechanism, if any? Issues of language, gender-inclusiveness,[70] responsiveness and predictability of procedures are also important factors in determining access. In addition, there are issues like fear of retaliation. Access to and knowledge of IRM, constitute important factors influencing the number of complaints the mechanism receives. For instance, to date, only two complaints have been received from Central Africa. This is not a testimony to the quality of the portfolio in that region, but rather, to how well known IRM is there. This is confirmed by the results of the RT consultation of a network of CSOs through their coordinating body based in Kinshasa. From about thirty CSOs contacted through this network, only one mentioned their participation in an outreach activity organized by IRM which took place in Cameroun. Another CSO interviewed in Democratic Republic of Congo (DRC) supporting local communities at threat of being affected by the proposed Inga 3 dam project, reported to have participated in the previous review of IRM.

151. The issue is that the very people that the IRM (and other accountability mechanisms for that matter) intend to reach, are in practice the hardest to reach, due to factors such as geographical isolation, illiteracy, language barriers, and quite often lack of a culture of complaints, coupled with a lack of citizen accountability channels, more broadly, in a given country or region. Thus, the number of cases filed directly by poor and vulnerable people harmed by Bank financed operations is relatively small and have tended to be concentrated in particular regions of the continent. The discussions carried out in DRC with some civil society organizations have shed further light on some of the reasons underlying this.

152. In relation to access, the RT have also examined and made specific proposals with the aim of revising the processes governing such access as included in the current IORP. These proposals are included in the Revised IORP. These include proposals to remove some of the limitations to access and to clarify issues relating to representation, confidentiality, contents of a Request, and actions in case of retaliation.

153. Also, in relation to access, the RT have examined the total number of complaints received by IRM, but went unregistered, as compared with those that were registered. RT have looked at three different tables where this information has been included. One table covers the period

[69] Ibid, p.15

[70] See recent CAO publication "How to Adopt a Gender-Inclusive Approach to Dispute Resolution", 2020

from 2009 up to September 2019 and includes 55 unregistered cases, the second covers the period 2009 to March 2017 and the third covers the period 2009 till December 2019. The RT have used the latter since it seems to be the most comprehensive, although the question may be raised about unregistered cases prior to 2009. The fact that there are three different lists and none that is comprehensive (e.g., one unregistered Request is mentioned in an IRM document but appears in none of the lists referred to above) and includes the period before 2009, points to issues with records management and archiving in IRM.

154. Data indicate that since 2009 up to end December 2019, sixty-four (64) complaints have been received but not registered, which is quite a large number. The RT examined the reasons for non- registration and found the following: the large majority of complaints were not registered due to the fact that they were submitted by one person (thirty three (33) complaints), this was followed by complaints that were judged to be outside IRM mandate (relating to either procurement or corruption, fifteen (15) complaints). In two cases, complaints were not registered because they were being handled simultaneously by national courts, five complaints were not registered because the project in question was not being financed by the Bank, seven complaints were not registered because they were "resolved by Management", often with IRM intervention and in one complaint there was a lack of information. The RT think that the category "resolved by Management" requires further precision about its meaning. One complaint has been in the process of registration since 6th November 2019. In one complaint the reason for non-registration provided was that IRM had found that no Bank policies were violated. It is interesting to note that twenty-nine (29) of these unregistered complaints concerned the same project, namely the Mombasa Mariakani Road Project, and it was consistently stated that the reason for non-registration was that only one person complained.

155. In relation to submission of Complaints, the 2015 IORP specifically state "People or entities seeking advice on how to prepare and submit a Request may contact BCRM which will provide information or may meet and discuss the requirements with potential Requestors."[71] The above analysis raises the issue of the extent to which IRM has abided by the requirement of providing advice on preparation of a complaint. The large number of complaints unregistered from one project (namely the Mombasa Mariakani Road Project) due to the fact that only one person complained signifies that no such advice was provided to potential complainants. The first such unregistered complaint for the project in question dates from 27th December 2017, the complaint was only registered on 26th December 2018. Meanwhile, complaints kept on coming for the same project, and consistently not being registered because they were submitted by one person. It can be questioned why IRM did not contact the Complainants to explain further the rule regarding the necessity of having two persons complain, thus ensuring the Complaint was registered earlier. In the other similar cases, there remains the possibility that a further contact from IRM could have resulted in a second person joining the Complaint and a possible registration. Another example illustrating that further support is needed by Complainants in order to prepare and submit their complaints is the ongoing preparation of a Complaint from the Inga 3 project impacted persons in DRC. The CSO supporting the local communities at threat of being affected by the project visited IRM three times, namely in 2018, 2019 and 2020 to collect relevant information in order to prepare a formal Complaint that they intended to

[71] IRM Operational Rules and Procedures, p.8

submit in the coming months. This is after two petitions were sent to the Bank and Boards of Directors in 2014 and 2019 without any response to date. For these reasons, they qualify their interaction with IRM as "one-way".

156. Furthermore, there are several complaints, where the reason for non-registration is stated to be that "Management successfully handled the complaint". The question may be posed: why then did the complainants send in a complaint in the first place, also in some cases it is clear that IRM did intervene to solve the problem but there is no evidence or detail about the process that took place, and therefore the transparency of the process may be questioned. Also, in several complaints the reason for non-registration was cited as lack of information, it is possible to ask whether provision of additional information as requested by IRM could have resulted in a possible registration of the complaint. Lack of transparency about such unregistered cases, especially on the webpage, also means that potential complainants are not able to learn from them going forward,[72] thus curtailing access even further. The above analysis indicates although the number of complaints received by IRM is relatively high, only few end up being registered. In this regard, IRM faces two interrelated issues, the first concerns facilitating access to the mechanism through removing some of the limitations in the 2015 IORP, while continuing and improving community outreach. The second issue is that of ensuring that complaints that could be registered are not simply discarded due to a lack of additional due diligence and assistance to complainants on the part of IRM. It should be emphasized here that "assistance" signifies explaining the IRM rules and providing advice on how to submit a complaint, such as what information to include etc. and does not include financial assistance. There is also the element of trust in the mechanism and ensuring that its image as an impartial and fair mechanism is maintained.

157. However, despite the importance of access to IRM, it is imperative that it guards against fraudulent and malicious complaints. This raises the issue that facilitating access must be accompanied by appropriate due diligence in all steps of complaints handling. Various stakeholders did share with RT their apprehension of IRM being flooded by complaints. This is clearly not happening, neither has it happened in the case of other IAMs, but as stated earlier, facilitating access also needs to be accompanied by appropriate preventive measures such as strengthening project level grievance mechanisms. In addition, part of raising awareness about IRM should also involve managing the expectations of complainants so that they realistically understand what remedy is possible in the context of an IRM complaint's handling process.

158. The existence of the above problems of access do not signify that there have been no positive outcomes to problem-solving and/or compliance review exercises of IRM. By way of example, the problem-solving cases arising from the Nairobi River Rehabilitation and Restoration Program and the Nairobi Outer Ring Road Improvement project were both closed successfully in 2018 to the satisfaction of all parties including the Complainants and other affected people. Similarly, IRM mediation allowed the payment of compensation for losses of assets and income to 3618 people and business owners impacted by the Tanzania Road Sector Support Project II. One CSO, the Centre pour le developpement de la Region de Tensift involved in the handling of the complaint in the Marakech-Agadir Motorway (2010) project on behalf of affected communities has attested in a video to the assistance provided to five hundred

[72] Same issue was raised in one of the comments from the previous IRM Review, See Accountability Counsel etal"Comments on 2nd Review Report Of IRM" August 2014, p.18

households and six villages through improved access to water supply, and the restoration of agricultural lands damaged by the construction of the Marakesh-Agadir Motorway project in Morocco.

2.3.3 Communications and Outreach:

159. It has been unanimously recognized by stakeholders interviewed by the RT, that one of the major problems encountered by IRM is the weakness of communication at all levels, notably among impacted populations - the majority of whom are illiterate and lack access to social networks. This requires extra effort to raise their awareness on the mechanism in order to avoid false expectations and manipulation. Several ideas were proposed by stakeholders, such as translating IRM documents into local languages,[73] making the material more accessible and user friendly, constantly communicating on the complaints being processed, making audio versions of IRM documents and broadcasting them on local radio, systematically including information on IRM on AfDB project billboards in the field etc. IRM has a draft communications strategy covering the period 2016-2019. The RT examined this strategy and compared it with that of other IAMs. While it does raise some of the major communication challenges faced by IRM, it is rather long and lacks an accompanying budget for its implementation. It does not mention the role of country and regional offices, while also lacking clear prioritization of targets and methods of communication. During the initial phase of preparing this Report, IRM did not have a Communication and Knowledge management expert.

2.3.4 Outreach:

160. In most IAMs, the dominant model for outreach, is one of gathering representatives of communities, civil society etc., and informing them about the mechanism or in some cases more than one mechanism in cooperation with other IAMs. It should be noted that to date, no IAM has undertaken an evaluation of the impact of these outreach activities, and what they have actually achieved, especially in terms of facilitating access of aggrieved community members to approach accountability mechanisms. Several IAMs are experimenting with other approaches including using online tools or varying the audience to include more specialized professionals such as auditors, lawyers or the private sector. There is an unfounded fear in many MDBs that outreach might result in an inundation of requests, this has not happened in the case of any IAM.

161. Since it became operational in 2006, the IRM has been conducting outreach activities alone or jointly with other AfDB units such as PIAC or with other IAMs. These activities have been organized at national and regional levels and target key relevant internal and external stakeholders including Boards Members, Bank staff, Project Implementation Units of Bank operations, in addition to external stakeholders such as CSOs and local communities. The objectives of IRM outreach activities are: sensitizing stakeholders about the IRM mission and mandate, facilitating and improving the working relationship between IRM and different stakeholders and increasing the visibility of the IRM.

162. In the Annual Report of 2007, there is a first mention of an outreach strategy which is based on a two-pronged multi-stakeholder approach with the aim of balancing the level of sharing of

[73] According to representative of the Malian NGO IRPAD (which coordinates the African Civil Society coalition on the AfDB),there exist versions of the documents in Fulani, Bambara, Wolof and Swahili.

information about IRM among all interested groups. The Outreach Strategy is divided into Objectives, Approach and Partners. Subsequent years up to 2012 also indicate specific outreach goals for the following year.[74] No evaluation of this strategy is presented, neither is there an assessment of whether the annual outreach goals are achieved. However, at least there was a strategy guiding the different outreach activities.

163. Available information on outreach also includes the targeting of members of the Boards of Directors, however it is not clear what the frequency of these outreach activities is. In all cases interaction/outreach to CODE and the Boards must be intensified going beyond one Board seminar per year. There are two points here: first ensuring that new Boards' members are targeted for awareness raising and second that a special relationship is developed with CODE Chair, Vice-Chair and members. Also, Boards members from whose constituency a complaint has been received, should be contacted right from the start of the IRM process and kept updated throughout. IRM Roster Experts have not (except in one or two cases) participated or contributed to these outreach activities.

164. The amount of resources spent on outreach since the beginning of IRM operations is considerable. Since IRM do not readily have a total figure, the RT have made an estimate of this amount based on information on the cost of one regional and one national workshop, these were used as average costs and then applied to the total of all regional and national outreach activities undertaken. While not exact, the figure provides an idea about how much was spent on Outreach activities. This amounted to approximately $1,339,029. In all cases the RT think that an evaluation of outreach activities carried out to date is in order. This should be followed by the development of an Outreach Strategy which draws lessons from this evaluation. The proposed strategy should also draw lessons from experiences of other IAMs, should be more digitally focused and should involve a much more proactive role for the Banks Regional and Country Offices than is the case at present.

165. At the end of each outreach session, an evaluation questionnaire is filled by the participants which primarily focuses on organization of the workshop, quality of presentations and level of information on IRM after the workshop. The information from these forms could provide an initial basis for an evaluation of outreach activities.

166. A total of sixty-seven (67) outreach activities have been undertaken by IRM to date and a large majority of those, specifically twenty-four (24) have focused on West Africa. It is difficult to develop a strong correlation between the number of outreach activities and number of complaints, but it can be safely assumed that such a correlation does exist.

167. The RT have also noted that out of the total outreach activities only two have targeted the private sector. The RT have also remarked that over the last few years there has been a reduction in the number of outreach activities conducted, the highest number being attained in 2009 when eleven (11) outreach activities were carried out, as compared to only three (3) in 2019. This is related to both budgetary and staff availability issues. Still, regarding communications and outreach, there is no reason why video conferencing cannot be used for outreach activities especially at present with the restrictions imposed by the COVID-19 pandemic. The RT understand that this is being planned for.

[74] IRM Annual Reports 2007 and 2012

2.3.5 Annual Report and Other Communication Tools:

168. The RT tried to gauge resources IRM has been dedicating to communication activities compared to other IAMs. This has not proven an easy exercise since different IAMs use different designations for activities in their budgets. Also, for IRM, due to the way the budget was structured such an exercise was not possible, since there is no dedicated budget line for Communications. It is still interesting to note that for the year 2018, the Inspection Panel spent119,093 on Communications and $84,445 on publications alone.[75] Meanwhile PCM of the EBRD spent the amount of $33.793 on outreach and capacity building for the year 2018.[76]

169. Paragraphs 96 and 97 of the 2015 IORP[77] state that the Director BCRM shall prepare an Annual Report describing the activities of the IRM during the preceding year, including a discussion of any identifiable trends relating to the activities of the Bank Group that have emerged from the IRMs problem-solving and/or compliance review activities and lessons derived from the impacts and challenges encountered in implementing the Bank Group's operational policies and procedures. The Annual Report is to be prepared in consultation with the Roster Experts and shall be submitted to the Boards and the Boards of Governors for information and shall be published on the website.

170. The RT have reviewed the IRM Annual Reports between 2006-2019[78] and have found the following. The Reports are far too long (on average 49.5 pages, therefore costly), repetitive and are not user friendly. They provide too many details on cases, which are already supposed to be available on the IRM website, if it was updated. Parts of the Operating Procedures are repeatedly presented from year to year. It is supposed to include lessons learnt from cases for the particular year (See section on Knowledge Management). For only one year, the Expert Panel wrote the Foreword to the Report, otherwise it is the Director BCRM who writes the Foreword. One ED office has confirmed receipt of the Annual Report, the RT were not able to gauge whether this document was also widely distributed in the rest of the Bank, and notably to Management. The RT have been informed that for the 2019 Annual Report a special effort was made to ensure wide circulation especially outside the Bank.

171. The RT view is that the Report should be used as a strategic tool to communicate messages about IRM both internally and externally. In this regard, it should be streamlined and made shorter. An additional suggestion is to give it a different theme each year. The idea is to make it more attractive to a wider readership. Just by way of comparison the 2020 Annual Report for the Independent Redress Mechanism of the Green Climate Fund was presented virtually in less than 10 slides.[79]

172. Between the years 2006 and 2012, BCRM published a **Quarterly Electronic Newsletter,** entitled **IRM News.** The Director and staff of BCRM prepared the text of the e-newsletter and outsourced the design to an external service provider. The RT were informed that IRM used to share this newsletter with members of civil society in the IRM database to update them on the

[75] Inspection Panel Annual Report 2018-2019
[76] EBRD, PCM Annual Report 2018
[77] IORP, p.26
[78] IRM Annual Reports 2006-2019
[79] Green Climate Fund 2019 Annual Report available on GCF website

activities of IRM. The RT reviewed several issues of the Newsletter, which it found to be quite informative. Besides providing a succinct review of IRM work for the period concerned, it included updates about accountability issues more generally, and electronic links to important Bank documents including appraisal reports and environmental and social impact studies. The words from the IRM Director or often the Chair of the Roster of Experts was also very useful in setting the tone for the role of IRM. The Newsletter also included an update on complaints received and outreach activities carried out during the quarter. The Newsletter has since been suspended. The reason for its suspension, as conveyed to the RT, is that staff were too occupied with the caseload and there was no dedicated communication officer to continue the production of the Newsletter.

173. Another IRM publication is the **Community Information Kit**. This is a document which was cartoon based simplifying steps to follow when filing a complaint. It was used between 2009-2012 and it was translated into several local languages according to need and distributed to communities when IRM was conducting outreach activities to those communities using local CSOs. The RT have reviewed this document and found it quite practical in that it successfully simplifies the steps for lodging a complaint relying on cartoons, making it easy to understand. The added advantage is that it already exists in several local languages.

174. The RT have also been informed about a **Complaint Management Data System**. This system is supposed to be a repository for compliance review and problem-solving cases, and a tool to enable complainants to communicate with the IRM and staff to conduct case-based research, update the complaints handling process and generate statistics and reports on both registered and unregistered complaints.[80] The project has been finalized, and at the time of writing the first draft of this Review, RT have been informed it will be functional shortly. This system was first mentioned in the Annual Report of 2018. Expediting the installation of such a system is included among the recommendations.

175. **The IRM Webpage** is one of the most important communications tools as it should function as a repository of information and data as needed by the complainants and stakeholders. Although the webpage is easily accessible from the AfDB's homepage under the "Topics" section, the RT found that the current content is not structured in a user-friendly manner and that it does not provide easily accessible data and information regarding processes and complaints. The webpage is text heavy, and its content is static. Some of the general content and case information is outdated and finding updates on cases, besides being complicated, in some instances is not available at all. The RT found that, unlike other IAM websites, that of IRM does not have an online case tracking tool. The website can represent a powerful online tool, should it be operationalised with structured and focused information. The webpage should be transformed into a website and is clearly in need of work in the direction of making it more user friendly and keeping it updated. There should also be a link to the IAMnet. RT acknowledges that at present the Bank website is ultimately managed by PCER. The RT has noted that the IRM webpage has recently included instructions about modes of operation during the current COVID-19 crisis, this is a step in the right direction and such proactivity should be continued. Regarding social media the RT found that the IRM does not have a Facebook page or a twitter handle. While it is understood, that IRM does not have its own

[80] IRM Annual Report 2018, p.36

independent social media platforms it is proposed that IRM request PCER to create these social media linkages under the Bank's communications umbrella; as they have done for other Bank units. With social media being one of the easiest and most accessed platforms for information sharing, IRM should utilise these tools to facilitate engagement with communities and create further visibility. Indeed, recently IRM has used these platforms to distribute the 2019 Annual Report and host a webinar on IRM and its functions.

176. From the above, it is clear that while IRM does have a communication strategy, it is lacking one for outreach. Activities in both domains, however, seem to be happening in the absence of clear objectives or identification of key stakeholders, whether internal or external to be targeted. For example, it is not clear whether IRM is targeting geographical areas with substantive portfolios, or whether it is targeting regions from which no requests have been received etc. Furthermore, outreach should not be seen as the sole responsibility of IRM, Management and notably Country and Regional Offices need to take part whether through inclusion of information on IRM in publications and policies and/or through an enhanced role for Regional and Country offices in distributing material on IRM and being involved in outreach. Regarding the Annual Report, it is produced in a traditional format and is very repetitive from one year to the next. Some communication activities that seem more promising (such as the electronic newsletter) have been inexplicably suspended.

177. As the IRM is the only accountability mechanism of the Bank that is specifically focused on hearing from external stakeholder's experiences with impacts on the ground, it is preferable that IRM have their own independent website and social media accounts. This would help send the message that IRM is indeed independent of the Bank Management. Specific proposals are included in the Recommendations section.

2.3.6 Measures of Anti-retaliation:

178. In recent years reprisals against those who bring complaints to IAMs have been on the rise. Such reprisal has negative effects on the lives of those individuals who come forward with the complaints, but can also act as a deterrent to the willingness and capacity of individuals to come forward with such complaints in the first place. As such, IAMs themselves have identified reprisals as a major challenge to their efficient functioning.[81] An integral part of IAMs' good practice, therefore, is to take necessary measures to prevent retaliation and reprisals against complainants and their representatives. IAMs should adopt a zero- tolerance policy on retaliation and should have a process for assessing and minimizing the risks of reprisals against potential complainants and all those associated with them. Minimizing risk of retaliation requires ensuring that complainants are aware that they can request that the IAM keep their identities confidential from internal and external parties.[82]

179. The IRM, contrary to other IAMs, has not to date, considered ways of protecting complainants against reprisals, neither does it evaluate risk of reprisals when it receives a complaint. Examples of other IAMs actions in this regard are provided below.[83]

180. The Bank does have a Whistle Blower Protection Policy (currently being updated) which

[81] Guide for Independent Accountability Mechanisms on Measures to address the Risk of Reprisals in Complaint Management: A practical Toolkit, p.8

[82] Ibid

[83] One local representative of a CSO in a country from which a Complaint was received claimed to have been poisoned as a result of the Complaint, but he chose not to report the case.

caters more for internal whistleblowers and complainants. Regarding external complainants the Policy states: "The protection the Bank can give parties external to the Bank shall be limited to the capabilities of the Bank".[84] Further, the policy states: "Where a party external to the Bank reasonably believes he or she is threatened with Retaliation because he or she assisted in an investigation or an audit by the Bank, on the recommendation of the Auditor- General, the President shall commit the Bank to provide reasonable and appropriate assistance to secure that party's protection."[85] Thus, although the Whistle Blower Policy might provide some protection, this is not systematic for external complainants such as those in the case of IRM, and in all cases there is no assessment of the risk for the potential of retaliation occurring surrounding a specific complaint. The RT proposes changes in the 2015 OIRP to allow evaluating risk of retaliation and some proposals for action in case of retaliation. There is need for some clear procedures and a checklist in place to go through especially at the initial stage when a complaint is received. The IRM also needs to ensure that the complaints that are sent to IRM (especially through web-based forms or other means) heed recommendations from CSOs and be encrypted so as to protect complainants against possible retaliation. The RT believes such action would be instrumental in enhancing the credibility and trust of IRM with complainants and civil society. The RT thus proposes two actions that are further elaborated upon in the Recommendations section, first to undertake a risk analysis for retaliation when complaints are received and secondly to develop IRM Guidelines for Anti-Retaliation, inspired by best practices from other IAMs.

2.3.7 Remedy:

181. As indicated above, remedy at the end of a complaints process is increasingly being debated as an issue for IAMs to consider, especially if it is found that the institution in question is at fault at the end of a compliance review. Such redress does not only have to be financial but can also encompass non-financial forms. Several modalities for remedy are being proposed by other IAMs, including setting aside contingency funds and/or setting up a special remedy fund. Several IAMs including the Independent Redress mechanism of the GCF have included this in their rules. Similarly, the recent External Review of IFC/MIGA E&S Accountability, including CAO's Role And Effectiveness[86] has as one of its recommendations the need to establish a framework for remedial action in cases where non-compliance contributes to harm. Several proposals are under consideration and IRM is closely following this important debate and its results. In all cases, an IRM process should in this regard ensure that negative impacts are remediated and that livelihoods are restored to the extent possible. The revised IORP make proposals in this regard.

2.3.8 Perception of IRM by Complainants/Civil Society:

182. The RT have interviewed members of twelve (12) civil society organizations, which are primarily Africa-based, but have also spoken with CSOs based in the US and Europe. RT interviews have focused on CSOs which have supported complaints to IRM, followed by CSOs with a particular interest in international accountability and monitor closely the accountability

[84] AfDB Whistle Blowing Policy p.4
[85] Ibid
[86] See « External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness: Report and Recommendations", 2020

activities of other MDBs, including the World Bank, Inter-American Development Bank, Asian Development Bank etc. (A list is provided in Annex 1). Due to the COVID-19 pandemic, only one field trip, namely to Mali was possible. In Mali, the RT spoke to several CSOs, and Complainants who did not go through CSOs. Interviews were also held with CSOs in Kinshasha and in Abidjan, including REDDA (Reseau de Developpement Durable en Afrique) and Action pour la Protection de Droit De L'homme, both of the latter work very closely with the AfDB's CSO Division.

183. Results of interviews indicate that the perception of IRM has tended to be largely a negative one. Both CSOs and Complainants spoke of a lack of responsiveness to their demands for information and updates on cases under processing. Most recently, Complainants from one case shared with the RT that they have been waiting over three months for a response to correspondence they have sent to IRM. They also referred to a marked lack of adherence to timelines as set in the IORP, as a consequence of which, there were delays in provision of remedy. They also referred to the lack of updates on the IRM webpage. Moreover, there was a perception that IRM was not sufficiently independent from Management in its analysis and that this only contributed to a lack of trust in and reduced credibility of the mechanism. They also expressed the view that IRM did not command sufficient standing within the Bank, and that, therefore, Management was often able to get away with actions that failed to reverse the situation of harm experienced by Complainants.

184. The above views were also evident in cases of co-financed operations, subject to complaints. In more than one case, complainants were able to compare the response time and communication of IRM with that of the accountability mechanisms of other MDBs. Furthermore, there are several cases where although the AfDB was a co-financier of operations about which there were complaints, the Complainants preferred to resort to the IAMs of other MDBs, rather than send their complaints to IRM. In early cases (e.g., Bujugali in Uganda), the practice was to sign a Memorandum of Understanding (MOU) which would spell out the roles and responsibilities of each IAM. This practice has not been continued, without providing a justification.

185. The CSO Lumiere Synergie Developpement have undertaken a study entitled "Transparence et Efficacite Du MII Du Groupe de la Banque Africaine de Developpement".[87] This study examines the independence, transparency and efficiency of IRM through specific case studies of complaints brought to IRM. The study makes specific remarks on the IORP comparing them with Rules of other IAMs. The study indicates a lack of transparency concerning the processing of complaints and the fact that draft Reports (notably in the case of Compliance Reviews) are not shared with complainants. The study also proposes that representatives of civil society be involved in the recruitment of the Director.

186. The RT have found that Civil Society and Complainants expressed a negative view of the IRM. The interviews and discussions conducted by the RT to further analyse this view revealed that this negative view of IRM could be a result of the following four factors. First, weak communication with complainants, which has also resulted in a lack of transparency of the IRM process. The second concerns the procedures themselves where the complainants felt that certain provisions were making access to IRM more difficult. Third, although support to send

[87] Lumiere, Synergie, Developpement, Transparence et Efficacitu MIDI Du Groupe de la Banque Africaine deDeveloppement

in complaints was required by the OIRP, in effect this support was not forthcoming. Fourth, for many potentially affected communities, there is a lack of knowledge about theIRM in the first place.

187. Although IRM has a shared database of CSOs and despite the fact that the Banks' policy on Enhanced Engagement with CSOs specifically mentions IRM as a focus of their activity, this strategic relationship is not being put to the best use. It should be noted, however, that there were representatives of CSOs on the selection panel of the Director most recently, although this is not explicitly required by the 2015 IORP. It is proposed that a regular perception survey should be carried out among IRM's stakeholders. It is also proposed that in view of improving relations with CSOs, IRM should follow the lead of some IAMs who have established an External Stakeholder Advisory Group(See Annex VIII for proposed TORs of such a Group) with the objective of providing strategic guidance, advice and feedback in an organized and systematic fashion.[88] The idea of an Advisory Group is a good practice both in terms of engagement and furthering collaborative governance. However, it should not only be restricted to CSOs but should include other stakeholders including academia and private sector. Clear Terms of Reference need to be established for the Group. The establishment of an Advisory Group would also help to build credibility for IRM and help strengthen its role as an advocate for accountability. It can also be useful to help inform the views of the Boards and can be used as a sounding board when the IRM faces difficult decisions. It is possible to start with the group, as a pilot, before deciding whether the Advisory Group should be formalized. Additional information is provided on this in the section comparing with other IAMs and the Recommendations section.

188. Generally, the RT are of the opinion that it is only through a revamping of communications and outreach, and facilitating access, including supporting complainants when they submit complaints, that the image of IRM will be improved. Urgent attention should be given to continuous communication between IRM and complainants throughout the entire IRM process. Otherwise, these long silences will contribute to further eroding IRM's image. Besides direct communication, the most important tool for this can only be an updated and user- friendly website, with a current case management system that can be easily accessed. IRM should also actively participate in the Bank's Annual Meetings activities. These are opportunities to hold joint activities with civil society, in addition to updating civil society about ongoing or upcoming cases.

189. Publications also have a role to play, thus the merits of an Annual Report in its current traditional format needs to be re-examined and supplanted by nimble digital tools more focused on reaching civil society and potentially affected communities in a simplified manner. In this regard, the RT propose that the Electronic Newsletter should be revived as should the Community Information Kit, which should be translated into more local languages. Also, Management needs to play their communication role of putting information on IRM in all policy and project documents as stipulated in the IORP. The specification of these documents should be agreed between IRM and Management.

190. The RT acknowledge the importance of outreach, but also think that the extent to which IRM

[88] Best of IAMs, p.10

is able to build trust and have a track record with CSOs remains of paramount importance. Regarding outreach, as stated above, the RT propose that an impact evaluation of outreach activities to date be undertaken. Lessons from this evaluation should be drawn for developing a forward-looking outreach strategy. Also, regarding internal outreach specifically, and given the constant turnover of the Boards, IRM should be systematically involved in the onboarding of new Boards' members and the holding of Boards seminars during different times of the year. The RT also strongly support that the IRM establish an External StakeholdersAdvisory group, starting on a pilot basis, which it can consult on a regular basis and use to seek advice on important matters..

191. Furthermore, complainants need to feel protected when they approach IRM, that is why IRM needs to develop anti-retaliation guidelines and institute a risk analysis for the probability of retaliation surrounding a specific complaint. This will be included in the revised IORP.

192. The RT do acknowledge that the above issues, notably relating to image are ones which most IAMs have grappled with at one time or another. However, these questions seem to have been more aggravated for IRM and can be related to issues of resources and the lack of staff whose job it is to handle communications and outreach, in addition to the existing challenges characterizing the relationship between IRM and Management.

2.3.9 Comparing with other IAMs:

193. The document entitled "Best of…Independent Accountability Policies"[89] emphasizes several best practices on information sharing and outreach as follows:

- Information about the Mechanism should be part of relevant publications and feature clearly on the website;
- Management and clients must be required to disclose the existence of the mechanism to project-affected communities, especially during project consultation processes and through other appropriate means. Information about the mechanism should be included in relevant publications and feature prominently on the website;
- The MDB should require clients to disclose the existence of the mechanism to project affected communities;
- Information about the mechanism including a model complaint letter should be produced and available in multiple languages and accessible formats.

194. The IAM should develop a public outreach strategy including a list of events in the member countries, with adequate budget to support participation in the events by potentially affected communities. The mechanism should also publish a complete and updated complaint registry.[90] In view of improving relations with CSOs some IAMS have established an external stakeholder advisory group with the objective of providing strategic guidance, advice and feedback in an organized and systematic fashion.[91]

195. As mentioned above, some IAMs have a formal external advisory group, thus the CAO meets with this Strategic Advisors Group comprised of CSOs, private industry, academia and experts

[89] Ibid
[90] Ibid p.10
[91] Ibid pp.8-9

in the field of mediation and conflict resolution. The World Bank Inspection Panel does not have a formal advisory group but meets with Washington DC based CSOs and accountability experts before each World Bank Annual Meeting and also at ad hoc times to review issues of mutual interest.

196. The Inspection Panel of the World Bank has control over the content of their website and social media and do not have to go through corporate communications for approval. They need to only demonstrate that content is fact based and non-sensational. They have a dedicated communication expert. Their publications include the Annual Report, a quarterly electronic newsletter and several knowledge products. The newsletter attains 18000 opens. While the Panel partners with other IAMs in many outreach activities, they have also been recently resorting to video conferencing to reach smaller groups, especially in this period of lockdowns resulting from the COVID-19 pandemic. In choosing where to hold outreach they are guided by the weight of the Bank portfolio in a particular region but, also, when last that region had been targeted for outreach.

197. Meanwhile at PCM of EBRD, recent outreach activities included the distribution of a survey to EBRD Resident Offices in recognition that these offices are often the first to learn of project-related environmental and social issues. The survey aimed at understanding Resident Offices engagement with external stakeholders and to identify how the PCM could support their capacity building around PCM practices.[92] In addition PCM created an EBRD PCM intranet page in support of increasing awareness of the PCM process across the Bank. The page houses key information about the PCM including Rules and Procedures, complaint processing flowchart and internal guidance on engaging with PCM in relation to specific complaints.[93]

198. Regarding retaliation, a fundamental threat to the relationship between any IAM and its complainants, there are two aspects, the first concerns evaluating the risk of retaliation in a specific situation and the second are actions to mitigate such risk. Thus, the Inspection Panel of the World Bank Guidelines to Reduce Retaliation Risks state that they have developed a protocol which has the following objectives: (i) identify and monitor potential risks of retaliation, including emerging risks; (ii) plan and adopt preventive measures to address and reduce these risks; and (iii) identify appropriate responses if retaliation occurs".[94]

199. In addition, a Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit has been commissioned by MICI and IAMnet. The Toolkit is intended to assist IAMs address the risk of reprisals within the context of their complaint management process.[95]

200. Regarding the relationship with complainants out of personal experience with the Inspection Panel, this has tended to be very close. In some important cases there is almost daily contact. With modern communications even the most remote of complainants can be reached. So even if the webpage is not up to date this constant contact is reassuring to complainants and helps inform the IAM about changes on the ground especially about harms and also potential retaliation. Such a close relationship is also important in early stages when a complaint is being

[92] EBRD PCM Annual Report 2017, p.4
[93] Ibid
[94] IPN Guidelines on Retaliation para 3
[95] Guide for IAMs on Measures to Address the Risk of Reprisals in Complaints Management, MICI, IAMnet

prepared and/or reviewed, support to complainants is very important here.

201. Regarding the above, the experiences of other IAMs indicate the importance of the following elements: Having a dedicated communication/outreach staff to implement the communications and/or outreach strategy, choosing from a menu of communication tools adapted to the specific needs of the IAM and its clients, emphasizing user friendliness of these tools, in addition to a certain autonomy in developing and disseminating the said communication tools.

3. Results of Third Review - Block Two:

Knowledge Management, Advisory Function and Spot-Checks:

202. This section of the Report examines the area of knowledge, its production and management, and the extent to which lessons learnt from IRM cases are fed back into Bank policies and operations with the objective of enhancing their quality and development effectiveness. The ADF 15 Deputies Report state: "The Bank Group will be capitalizing on knowledge products and services. The Bank Group plays a pivotal role as a knowledge broker and should make greater use of its analytical products and those of other institutions".[96] Experience from other IAMs clearly indicates that for accountability to be effective, the system must be able to change and adapt its policies, procedures and practices in response to the findings of the mechanism as part of a continuous quality assurance process. As the Bank expands into riskier sectors and countries, often with imperfect knowledge, it has to take into account that the knowledge garnered through the process of complaints handling is unique and should be profitably used by the institution to improve its operations and mitigate their associated risks to African communities. This section, therefore, appraises the advisory function of the IRM as a tool to enhance knowledge management activities and development effectiveness of the institution. The section also examines the extent and contribution of IRM to learning and knowledge development for the Bank resulting from processes of problem-solving and compliance reviews.

3.1 The Advisory Function in the IORP and Guidelines on Spot-Check Advisory Reviews of Project Compliance and Advisory Services (2015):

203. While Resolution B/BD/2004/9-F/BD/2004/7 of 2004 and Resolution B/BD/2010/10-F/BD/2010/04 of 2010 mandated the IRM to perform compliance review and problem-solving functions only, Resolution B/BD/2015/03-F/BD/2015/02 expanded this core mandate to include an advisory function or role.[97] The advisory function was considered by the Boards of Directors a welcome development in view of the opportunity it offers IRM to enhance learning and promote the culture of compliance in the Bank. This is especially since the objective of enhancing accountability is a key feature of the Bank's 10 Year Strategy (2013-2022).[98] The AfDB should be commended for expanding IRM functions to include an Advisory one, this is not the case in all IAMs. However, for such a function to be effective, it must involve both the

[96] ADF 15 Deputies Report, p.47
[97] Ibid
[98] See earlier discussion on relevance of Ten-Year Strategy and other policy/strategy documents

IRMs contributions to learning lessons derived from its other functions in addition to Management responding to the learnings that IRM provides. This gives the Bank an opportunity to institute changes to its policies and procedures and reinforces public trust in the institution.

204. In adopting the 2015 Resolution, the Boards stressed the need to clarify the scope of the advisory function and to clearly outline the procedures, especially for the new Spot-Check advisory reviews of project compliance to avoid any conflict of interest by the IRM Experts.[99] Guidelines for Spot-Check Advisory Reviews of Project Compliance and Advisory Services were thus issued in October 2015.[100]

205. The advisory function is intended to complement the Compliance Review and Problem-Solving function and roles of IRM. Two types of advisory services are proposed, the first is providing advice or technical opinion in the form of an Advisory Note on compliance review and problem-solving issues related to Bank policies and procedures, The second is the Spot-Check advisory reviews. Both activities are examined below.

3.2 Advisory Notes:

206. The advisory function is undertaken through advisory services to the Bank carried out by IRM, while Spot-Check Reviews of project compliance are under the responsibility of the IRM Roster Experts. According to the Guidelines, this function is authorized: (a) Upon receipt by IRM of a request for advice or technical opinion from the President and/or Boards of Directors; (b) Upon approval by the President and/or Boards of Directors of a proposal submitted by the Director IRM for such advisory service. The advice or technical opinion will not be project specific. The Director IRM shall prepare a draft advisory note containing the advice or technical opinion and submit it to Management for review. Management shall submit its comments to the Director IRM within 21 business days from date of receipt of the draft report from IRM. When Management comments are received the Director shall finalize the Advisory Note and submit either to the President and/or Management. The Boards or the President shall decide whether or not to accept the advice or technical opinion in the Advisory Note. This decision shall be promptly made public and posted on the webpage.

3.3 Spot-Checks:

207. This is the second form of advisory service provided by IRM. This exercise is characterized as “a compliance review/investigation” and is conducted in order to establish whether or not there has been an infringement of any Bank Group operational policies and procedures in respect of the design, appraisal and/or implementation of a project. The Spot-Check is thus initiated internally.

208. A two-step procedure is followed in the selection of projects to undergo Spot-Checks. At the beginning of each calendar year IRM will, in consultation with Management, select not more than 2 projects on which an IRM expert will conduct the Spot-Check in order to assess

[99] Guidelines, Spot-Check Advisory Review of Project Compliance, p.2, October 2015

[100] Ibid

compliance with Bank Policies and Procedures. Spot-Checks may be forgone for a given year, if in the opinion of the Director, in consultation with the Chairperson of the Roster of IRM Experts, a heavy workload prevents such an exercise. Step two begins once candidate projects have been selected, and agreed upon with Management. The Director IRM shall submit the list of the selected projects to the Boards for approval. Such a recommendation will include the Terms of Reference for the Spot-Check and associated budget.[101]

209. The following selection criteria are applied for Spot-Check candidate projects. They should be Category 1, on-going projects, preferably projects close to completion stage and projects which have not already been subject to a compliance review investigation.[102]

210. The responsibility for a Spot-Check is by rotation among IRM experts. The Director BCRM and the Chairperson of the IRM Roster of Experts will select the Expert for the task. The IRM Expert will solicit additional information from Management, undertake a field visit to the selected project and shall take into account the approved TORs. The time frame for the activity shall not exceed six months. Within 30 business days of completion of the investigation, the IRM Expert shall prepare a draft Spot-Check document containing findings and recommendations. The Report shall be submitted to Management for comments and fact checking. Bank Management shall submit its comments to IRM within 21 business days from the date of receipt of the draft report. Once Management comments are received the Expert shall finalize the Report which shall include a summary discussion of the relevant facts and findings, with a focus on whether there was any violation of Bank policies, in which case, recommendations will be made regarding remedial changes to the systems and procedures, remedial changes in the scope and/or implementation of the project and any remedial action to be taken by Management. The Director IRM will then submit the Spot-Check Report to either the President or the Boards. The Boards or the President as the case maybe will then decide whether or not to accept the recommendations contained in the Spot-Check report. The decision shall be promptly made public and posted on the Bank Group's website. Spot-Checks were added in the 2015 revised IORP and were categorized under Advisory Functions. To date, five Spot-Checks have been undertaken by IRM,[103] an additional two are being finalized.

3.4 RT Analysis of Advisory Notes and Spot-Checks:

211. The RT have reviewed a total of eight Advisory Notes,[104] the majority of which were produced in 2019 (i.e., three years after the Guidelines on Spot-Check Advisory Reviews of Project Compliance and Advisory Services were issued). The information received by the RT is that these notes did not follow the procedure for their production and finalization as prescribed in the Guidelines. They were compiled in a single document and sent to the President and Management in July 2019. Although they had been prepared in different years, the earliest dating from 2013, the majority were produced in 2019. They were not shared with Management prior to being finalized, and the trigger for them which is supposed to be a request for advice or technical opinion from the President and/or Boards, has not been shared with the RT. Furthermore, some of the Notes do not conform to the objectives set in the 2015 Guidelines

[101] Guidelines, Spot-Check Advisory Review of Project Compliance, p.5
[102] Guidelines, Spot-Check Advisory Review of Project Compliance, pp. 4-5
[103] See Annex III for list of Spot-Checks.
[104] See Annex IV for a list of Advisory Notes.

and are just a compilation of general lessons, and one does not even relate to AfDB projects. Also, although the Guidelines expressly state that advice should not be project- specific, there is one Advisory Note which focuses on a specific project, namely Tanzania Roads.

212. Furthermore, there is no evidence whether the President and/or Management accepted the "advice" contained in the Notes. None of these notes were made public or posted on the webpage as required by the Guidelines. The Advisory Notes were supposed to involve the IRM Experts, two of the Experts stated that they had been involved in their production. One of the Experts told the RT that they had contributed but were never informed about what happened to their contribution. It is interesting to note that production of such notes is one of the Key Performance Indicators (KPIs) for the Director position as indicated in the job description.[105] The RT also noted that the responsibility for these Advisory Notes is rather unclear, they cannot be said to be fit for purpose, neither can they be characterized as being particularly insightful, ideally, they should be based on the learnings and experience of IRM. Also, while the existence of timelines may be appreciated, the production of Advisory Notes is clearly less urgent when compared with the main function of IRM notably complaints processing, so overly strict timelines might not be the best way forward. This is not to say that some indicative timelines are not necessary. It might also be questioned whether producing such Advisory Notes should require Boards and/or President's approval, unless they entail high levels of resources.

213. Regarding Spot-Checks, the RT have examined the experience of BCRM from three angles. These are **Selection, Processing** and **Results,** in addition to discussing the utility of the Spot-Check exercise in the first place. Regarding Selection, the Guidelines state that the selection of projects for the Spot-Check exercise shall be decided together with Management and approved by the Boards at the beginning of each calendar year. However, this has not always been followed. Thus, two projects for which Spot-Checks were undertaken, were proposed by PAGL in their 2016 Report. It is not clear why IRM deviated from the prescribed procedure in these two cases. The criteria used by PAGL apply mainly to projects, for which controls are designated to be weak. While it is a positive step signaling cooperation between the two accountability offices, this is not in line with the Guidelines. Also, in one case a project was already the subject of a problem-solving exercise that was just terminated, following which it was subject of a Spot-Check. The RT finds no justification for the selection of this project. Why was it found necessary to undertake a Spot-Check, would it not have been sufficient to undertake monitoring of the IRM proposed remedial actions in the context of the problem-solving exercise? Or alternatively, if it was felt that there remained residual issues of non-compliance, why was a full Compliance Review not undertaken instead? This same project was also subject of an Advisory Note in 2013.

214. In addition, the Guidelines state that projects selected should be projects "close to the Completion stage". The RT find no justification for this criterion, since it would reduce the efficiency of proposed remedial actions. In all cases, it was not always followed (cf. Spot-Check for Ghana Reforestation Project which was in early stages of implementation). Furthermore, regarding the selection of projects for Spot-Checks, it could have served as a vehicle to compensate for the lack of complaints from certain geographical areas. That is why it is hard to justify the carrying out of two Spot-Checks in Kenya, a country from which several complaints have already been received. Furthermore, the stipulation that a Roster Expert

[105] See BCRM Director Job Description

cannot in the same year undertake both a Spot-Check and Compliance Review has not always been abided by, especially in the absence of a full Panel of Experts since 2018.

215. Concerning processing, there is a lack of adherence to the deadlines as stated in the Guidelines. Thus, none of the Spot-Checks have been completed within the prescribed six-month period, which leads to the questioning of whether such strict deadlines are realistic in the first place. It is not clear from the documents reviewed whether Management Responses to the draft Spot-Check have been submitted within the 21 days as stipulated in the Guidelines. In one case, (Tanzania Roads) there was no Management Response.

216. Regarding Results of Spot-Check reviews, since they are considered "advisory work", there is no requirement for monitoring whether the recommendations made for remedial action in the Reports are actually being implemented by Management. In fact, the RT found several instances where Management simply "takes note" of IRM recommendations in the absence of any time bound actions to be implemented. Also, the RT found that some of the recommendations of Spot-Checks are not related to non-compliance with Bank policies but may be characterized as general operational advice to the Bank, that is outside of IRM mandate. One example of this relates to the Tanzania Roads Spot-Check where the resulting Report recommends that the Bank adopt a sector investment financing approach in RMCs where it has significant road sector portfolios.[106] The RT feel this is general operational advice that is outside the mandate of IRM which should be limited to whether the Bank is in compliance with its own policies and procedures.

217. Thus, the RT find that Spot-Checks are investigations without a complaint and without systematic follow-up or assurances that non-compliance will be corrected. Moreover, there is a conflict-of-interest issue, notably if the project in question is subsequently subject of a complaint. In such a case, the IRM cannot be considered an impartial and independent party.

218. Several stakeholders interviewed by the RT questioned why IRM activities related to complaints handling was lagging. Some stakeholders emphasized the aspect of potential conflicts of interest in the carrying out of Spot-Checks and questioned whether they were not just a means of compensating for lack of complaints to IRM during a certain period of time.

219. The RT is thus of the position that annual Spot-Checks as they are being conducted at present should be discontinued. It is felt that they distract from the core work of IRM and add little value in terms of contributing to knowledge development. Furthermore, the impact they might have in terms of changes in Bank policies and procedures may be questioned. The RT thus propose that Spot-Checks should be stopped and they should no longer be considered among advisory activities. Rather, the RT propose self-initiated compliance reviews which could be undertaken in line with certain criteria. Specific criteria for such self-initiated compliance reviews are included in the revised IORP.

220. The IORP state the Annual Report should include a discussion of any identifiable trends relating to activities of the Bank Group that have emerged from the IRM's problem-solving exercises and compliance reviews and lessons that the IRM has learnt about the impacts and challenges in implementing the Bank Group's operating policies and procedures.[107] From the RT's examination of the Annual Reports it found that indeed such a section is part of the

[106] Spot-Check for Tanzania Road Sector Support Project II, p.14
[107] IRM Operating Rules and Procedures

Annual Report, but it tends to be repetitive, recycling the same lessons over and over, without indicating from year to year whether they have been responded to by Management. Several recipients of the Annual Report have made the same comment.

221. It is interesting to note that in one of the IRM brochures entitled "Giving a Voice to Communities Adversely Affected by Projects",[108] advisory services are described as follows: "the IRM gives independent opinions on systemic issues, technical advice on any projects and programs of the Bank Group, and supports efforts of staff and Management to strengthen the social and environmental impact of projects funded by the Bank group". The concept of lesson learning is not even mentioned as part of the advisory function. Also, although the guidelines state that advice will not be project specific, the brochure speaks of technical advice on projects and programmes of the Bank.[109]

222. However, in view of the above, it is clear that IRM Compliance Review Reports in particular, in addition to Spot-Checks have outlined areas where there is room for Management to change. Repeated recommendations of the IRM on issues relating to compensation and resettlement have been made, but the issue is how to ensure that these lessons are elevated from the project to the institutional level. It is important that Management goes beyond the level of the specific MAP for a complaint to the level of Bank policies, procedures and implementation, so that issues in the complaints do not keep repeating themselves. These might be partly beyond the direct control of IRM, but the RT are of the view that stronger communication between IRM and Management can result in a greater acknowledgement by Management of the lessons (which are now primarily confined to the Boards discussion) that can result in changes in existent policies and procedures or even in new policy guidance.

223. The RT analysis finds that Advisory and Knowledge Management activities of IRM have not resulted in the outcomes stipulated in the Guidelines, "namely enhance learning and promote the culture of compliance in the Bank." Although a series of Advisory Notes were produced, the RT have not found evidence that these were developed in response to a request by the President and/or Boards as stipulated in the Guidelines. It is not clear whether this is due to the fact that this role of IRM was not sufficiently known or whether its utility was questioned. Thus, the few Advisory Notes that exist were largely produced in 2019, they did not go through the prescribed review process and no feedback was received on them whether from the President, Boards or Management, regarding the advice they contained. It is also not clear what kind of review they were subject to. Some of them are not even about AfDB, but concern IAM experience in other institutions. They were also not posted on the webpage as stipulated in the Guidelines.

224. It is also clear that much greater emphasis was placed on Spot-Checks rather than Advisory Notes. Regarding the Spot-Checks the RT draws the following conclusions. Spot-Checks did not necessarily follow the Guidelines whether in terms of selection criteria of projects, processing or expected results. Furthermore, the RT question some of the criteria, thus it finds little justification for selecting projects which are at the end of their implementation, or projects that have already gone through a problem-solving exercise. The RT also question whether Spot-Checks are the best use of scarce IRM resources especially in view of its limited staffing. Furthermore, as demonstrated there is no way of ensuring whether Management actually

[108] Giving a voice to Communities Adversely Affected by Projects, p.5
[109] Ibid

implemented the remedial actions proposed by the IRM in specific Spot-Checks. Also, the RT thinks that Spot-Checks pose a potential conflict of interest since there is a possibility that a project subject to a Spot-Check could later on be the subject of a complaint.

225. The RT is of the opinion that it is Advisory Notes that should be favored, although it is also an area requiring overhaul. The value of Advisory Notes needs to be reassessed. The Advisory Function should focus solely on institutional learning that stems from IRMs own casework and lessons learnt involving systemic issues. The recommendations they make should be systematically shared with Management, who should demonstrate how they result in changes to policies and/or their implementation. The RT conclude that the area of knowledge creation and drawing of lessons has not proven a strong point for IRM, although lessons learnt have been expressed during Board sessions and are mentioned in the Annual Report. Even the knowledge that has been generated has not been fed back into Bank policies and procedures. This is partly related to the lack of a sustained dialogue between IRM and Management, and convincing the latter that IRM findings have value for the institution. The RT also think that there should be a reflection on the best knowledge delivery channels and could look for collaboration with other AfDB Departments and IAMs. Specific proposals regarding advisory services and knowledge management are included in the Recommendations Section.

3.5 Comparing with other IAMs:

226. A variety of models for knowledge production exist in other IAMs, the important underlying principle of all knowledge and advisory services is that the MDB is able to change in response to these knowledge products and services. The document entitled "Best of Independent Accountability Mechanism Policies", states the following regarding advisory functions of IAMs.

227. The Advisory function should obtain thematic and systemic lessons from trends in the mechanism's workload in both compliance and dispute resolution and other sources with the objective of providing guidance to the institution on improving social and environmental performance. Two IAMs are cited as providing good practice. These are firstly, the CAO whose guidelines state: "CAO is a source of independent advice to the President and the senior management of IFC and MIGA. Advice is based on insights from CAOs dispute resolution and compliance interventions and is focused on broader environmental and social policies, guidelines, procedures, strategic issues, trends and systemic issues based on the experiences gained through its case work with the goal of fostering systemic improvements in IFC/MIGA".[110] The CAO have an Advisory Series which includes Lessons from Compliance Review cases and from CAO Dispute Resolution Cases. In addition, they have produced a Toolkit for Project Level Grievance Mechanisms. Furthermore, the CAO produced an "Advisory Note on Supply Chain Business Opportunities and Risks", IFC responded explaining how it planned to make use of the advice provided and issued a "Response to CAO Advisory Memos on Supply Chains"[111] Both documents are posted on the CAO website.

228. The policy of the Independent Redress Mechanism of the Green Climate Fund (GCF) meanwhile states "The IRM will report to the Board through the Board Committee on lessons

[110] Ibid, p27
[111]

learnt and insights gained from handling cases and from good international practices and may recommend reconsideration of relevant GCF operational policies and procedures, guidelines and systems". Furthermore, the IRM of GCF and CAO are the only IAMs which have a procedure which is similar in some ways to Spot-Checks since they have self-initiated proceedings.[112] CAO has exercised this authority under its policy resulting in important policy reforms at IFC.[113]

229. Regarding the Inspection Panel of the World Bank, the "Lessons Learnt" series derived from the Panel's investigations contributed to broadened accountability adjustments both in the operation of the Panel as an IAM and in the World Bank's project preparation and implementation activities. Panel cases directly influence learning at the World Bank and lead to tangible outcomes including new guidelines and clarifications related to the application of policies and increased capacity building on social safeguards. These changes help achieve better development outcomes and provide redress to project-affected people.[114]

230. These lessons have covered the following safeguard policies: Indigenous Peoples, Environmental Assessment, Consultation, Involuntary Resettlement and Offsets. The Reports undertake an analysis of Panel cases where lack of compliance has been found regarding the specific policies mentioned. Lessons are then structured according to the different stages of the project cycle. These Reports are produced by the Panel and supported by the Panel secretariat, they undergo external peer reviews and are widely circulated following a launch event which focuses on the specific policy. Management has been quite appreciative of these lessons. World Bank Management has made use of lessons and insights from Panel cases at a variety of levels including, in Guidance Notes to staff on specific issues (recent ones include Guidance Notes on Projects involving Labour Influx), in revisions to policies, in Bank wide staff training on Safeguards and in discussions within Environmental and Social Communities of Practice.

231. From the above, it is clear that knowledge creation and management is a fundamental function of IAMs. The litmus test for the success of such activities is the extent to which the institution in question reacts to and makes changes in response to these knowledge products, thus demonstrating that it has learnt the lesson and avoids repeating the same errors.

4. Results of Third Review - Block Three:

Effectiveness of BCRM as an Administrative Unit for the IRM:

232. Questions that will be posed in this section include: To what extent does the structure of IRM/BCRM facilitate the functions it is responsible for, to what extent is its staffing and resources appropriate, to what extent are its functions well-defined and its processes for handling complaints unambiguous, and include clear definitions of the roles of the various stakeholders, are the time frames reasonable, to what extent has IRM/BCRM acted independently from Management, to what extent are its processes transparent and predictable?

[112] Ibid
[113] CSO Comments on Review of Draft Project Accountability Policy, March 2019.
[114] Gonzalo Castro dela Mata et al," The World Bank Inspection Panel: Accountability and Learning" p.80.

4.1 Current Structure of IRM:

233. The IRM consists of a Compliance Review and Mediation Unit, which is the focal point of IRM, and a Roster of Experts. The BCRM is an organizational unit of the Bank established in accordance with a Resolution of the Board of Directors of the Bank Group.

4.2 Director of BCRM:

234. According to the 2015 IORP, the activities of IRM are managed by an Organizational Unit Head designated as the Director BCRM. The Director functionally reports to the Board and administratively to the President. It is interesting to examine the KPIs for the Director as determined in the current position job description. These are: the number of technical opinions provided to the President and Boards on issues pertaining to project compliance, number of request related reports presented and considered by the President and Boards and IRM annual report submitted to the President and Boards at end of each fiscal year.[115] It is interesting to note that many crucial aspects such as abiding by deadlines, communication and advisory and knowledge services , among others, are not considered among the KPIs of the Director.

235. The Director is selected by a panel composed of a Board member, a representative of Management and an independent external advisor, and shall be appointed by the President with the concurrence of the Boards of Directors for a five- year term, renewable once. The Director shall not have worked for the Bank in any capacity for five years prior to his/her appointment and shall not work for the Bank in any capacity after the expiry of his/her term(s) of office.[116]

4.3 Responsibilities of the Director

236. The Director has the overall responsibility for the day to day operations and external relations of the IRM which include: arranging for selection of Experts to the Roster, establishing administrative procedures necessary for proper functioning of IRM and the Roster, overseeing the establishment of and maintenance of the complaints Register, ensuring that timelines are met, taking decisions on and any extensions in accordance with paragraph thirty-five (35) of the 2015 IORP, administering the budgetary allocations of IRM etc.[117]

237. Regarding the day-to-day handling of complaints, the Director is responsible for: conducting the preliminary review to determine whether a complaint should be registered, registration of a complaint if it is found that it falls within the mandate of the IRM, inform complainants, Boards and President, request MRs, make a determination of whether the complaint should be handled through problem-solving, compliance review or both, and ask for additional information from complainants. The Director has the choice of problem-solving techniques to be used. The Director is also responsible for preparing the problem-solving report in cases of both successful and unsuccessful problem-solving. The Director, in the case of unsuccessful problem-solving may also recommend a Compliance Review.

238. In the case of Compliance Review, eligibility of the complaint will be jointly undertaken by the Director and IRM Roster Experts, in case of a deadlock the Director shall make the final decision. Providing advice and technical opinion to the President and/or Boards are also among

[115] Job Description: BCRM Director
[116] IRM Operating Rules and Procedures 2015
[117] For more details see Operating Rules and Procedures pp 22-23

the Director's functions.

4.4 Roster of Experts and its Role:

239. The Roster of Experts is comprised of three individuals selected in accordance with the rules applicable by the Bank and Fund to the selection of consultants and appointed by the Boards on the recommendation of the President. The Experts are appointed to the Roster of Experts for a non-renewable term of five years. On the recommendation of the President, in consultation with the members of the Roster of Experts, the Board shall appoint a Chairperson of the Roster of Experts each time a member of the Roster is replaced. Previous staff members of the Bank, including EDs, Alternate EDs, Senior Advisers and Advisers to EDs, any officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster at the end of their service with the Bank. An Expert is not entitled to work for the Bank or the Fund after the expiry of his or her term.[118]

240. The Roles of the Roster Experts are confined to Compliance Review, Spot-Checks and Monitoring, according to the 2015 OIRP.

4.5 RT Analysis of Complaints Processing, Roles and Structure of IRM/BCRM:

241. Structurally, IRM conforms to the UN Business Principles Criteria of independence, in that it is independent from Management and does not report to it, but rather reports either to the Boards (through CODE) or the President. The RT, during their interviews did not find evidence of Management interference in IRM processes and decision-making.

242. Regarding complaints processing, two additional elements are important, namely predictability and transparency. The existence of specific well-defined steps in the complaints process is an important indicator of the process predictability. The IRM has in its 2015 IORP a certain number of steps to follow in pursuing a complaint and the sequence of those steps, (apart from a few ambiguities to be indicated later), is generally clear. The issue is that these steps are not followed in all cases and the set timeline for each step is not always adhered to. While deadlines are certainly important, the focus should be on transparency when there is failure to meet these deadlines by disclosing any extenuating circumstances especially in fragile situations/countries. What is important is that extensions to deadlines should be the exception rather than the rule and that their granting be related to circumstances that are truly outside of control of the institution,

243. Another criteria for evaluating complaints processing in IRM is that of transparency. This refers to the extent to which there is easy access to information on where in the process a complaint is, access to draft reports, notifications of decisions etc., and it is here that IRM falls short. As indicated earlier, information is not readily available to complainants about where in the process a complaint is, and the complaint register is not functioning. Some IRM staff argue that given Management delays, there is often little that is new to convey to complainants, a viewpoint not shared by complainants. In fact, even if there is nothing new to convey to complainants, they should be regularly updated as a means of building trust in the process and increasing its transparency. RT have been informed that a proposed online Case Management System was planned to be operational by end of May 2020. This is still not operational..

[118] IRM Operating Rules and Procedures p.23

244. As regards the different roles of stakeholders within the mechanism, it is important to consider the powers and responsibilities of the Director and Roster of Experts. The Director has among others the authority for the extension of time periods. Thus, the 2015 IORP states: "Any time period referred to in these Rules may be extended by the Director for as long as it is strictly necessary to ensure full and proper investigation, assessment, review and initiative. Any such extension shall be promptly notified to the Requestors and posted on the Register".[119] Also, where no preference for either problem-solving or compliance review has been expressed by the Complainants the Director BCRM will determine the best course of action in consultation with the Requestors. Furthermore, during a problem-solving exercise, the Director has the discretion of providing interim reports to the Boards and the President on the progress of a problem-solving exercise.[120] In addition, the Director can recommend turning a problem-solving exercise into a compliance review, and is responsible for submitting reports on advice and technical opinions to the President etc. Furthermore, the Director is governed by the Bank's policy on Access and Disclosure of Information (see Paragraph 96 of Updated IORP)

245. Although currently the norm at other Accountability units at the AfDB, (except for IDEV whose Director has a six-year non-renewable term), the RT believes following its interviews and reviews of sister IAMs regulations, that two terms of five years each for the role of Director is too long and does not conform to current best practice. Having said this the RT are fully aware of the problems encountered with recruitment for senior positions at the Bank. Specific recommendations on terms of office and functions of the Director are included in the Recommendations section of the Review. The RT team also heard objections to the way the Director is selected stating that it is not in conformity with best practice. The absence of civil society representation on the selection panel was specifically noted, although in the latest Director recruitment, a member of civil society was present. Details on current best practice in this regard are presented below.

246. The RT have interviewed both past and the current member of the Roster of Experts to garner their opinions about their role and work, notably in Compliance Reviews and Spot-Checks, but also as regards other aspects of the work of IRM. In total there have been eight Panel members since the beginning of IRM's operation in 2006.[121]

247. Several of the Panel members expressed the view that they felt that there was little communication across the three functions of IRM, namely Compliance Review, Problem-Solving and Advisory Functions. It was as if the "independence" of the Roster was interpreted to signify isolation from the overall activities of IRM. Also, they were rarely involved in the activities of IRM, including meetings with Management and the Boards, (the latter due to the Bank prohibition for consultants to attend Boards' meetings). Very few meetings with Management at headquarters occurred prior to Compliance Reviews and/or Spot-Checks. In fact, even in Compliance Review and Spot- Checks documents experts names are not cited. The experts did participate in the annual IAM meetings.

248. There was a certain opacity about the work program and the timing of specific activities, making it difficult for Experts to organize their activities outside the work of IRM, which they found to be very frustrating. Access to documentation from Management of relevance to

[119] Ibid, p12
[120] Ibid
[121] See Annex I for current and past Roster Members.

specific cases and/or Spot-Checks was very difficult, in one case the Expert had to resort to getting documentation from another institution who were co-financing the project in question. The RT found that only two Experts were involved in the production of the Advisory Notes. According to the IORP, the Roster was supposed to have a Chairperson, from document review this was clear in one case when the Chairperson wrote in the Newsletter. Nowhere is this role of Chair explained or its specific duties specified. Overall, the RT found that the role of the Roster experts was very limited, and they were hardly involved in other IRM activities besides Compliance Review and Spot-Checks.

249. Clearly, there is an issue with the recruitment of Roster Experts. Most Experts complained of the inordinately long time it took for their recruitment. Currently, the Roster consists of only one member, one of the members' term expired in 2018 and the second resigned in 2019 without completing her term. IRM management states that it has been difficult to recruit for this position due to the fact that it is a part time one, and the lack of predictability about when the Experts will be involved in either a Compliance Review and/or Spot-Check, in addition to the issue of how to ensure diversity on the Roster. When looking at the expertise of the Panel members to date some expertise is missing, notably in the area of private sector operations which seems to be an expanding source of IRM complaints.

250. Overall, the RT make the following points about the structure, roles and complaints processing in IRM. Regarding complaints processing, there is a consensus around its predictability, but less agreement on transparency due to the constant delays and non- adherence to deadlines. Regarding the roles explained in the IORP, the RT will be proposing some changes as will be explained below.

251. Regarding the IRM structure, the RT heard several objections from stakeholders which relate to the following factors, the accountability of experts, their recruitment, cost and expertise. The current structure of IRM is different from its peers, the closest comparator would be the World Bank's Inspection Panel, except that there the position of Panel Chair is a fulltime one, and entails significant administrative, management and oversight duties. Even that structure itself, is in the process of being amended in the context of the creation of the World Bank's new Accountability Mechanism. The RT found that the accountability structure of IRM and the role of experts within that structure is a source of confusion and often tension. An outsourced accountability model operated by independent individuals with minimum oversight can create issues where the experts are not held accountable for their decisions and actions which may sometimes not be compatible with the mission and objectives of the IAM. Ultimately, the IAM has to be responsible for the work of the experts and needs to be prepared to stand behind it and defend it, so it is only fitting that the experts are made responsible to the IAM and not just themselves. There is an absence of oversight over the roster experts and their activities. It is important that the expert's role and their activities be made more accountable to the mechanism itself, especially since they are in such a key role of representing the mechanism but are yet not practically responsible for it.

252. In view of the above, therefore, it is proposed that the expert panel model be abolished and that the IRM Director should be responsible for maintaining a list of technical consultants/experts with appropriate expertise to assist both compliance review and problem-solving functions. Such a proposal could be facilitated through a pre-approved list of consultants that the Director could turn to when required through a standing offer agreement

to reduce procurement delays. An added advantage of this proposal is the wide pool of expertise which would then be available for use as needed by IRM. This will give the Director greater control over IRM outcomes across all its functions.

253. A major difficulty of the current governance model of IRM has been the issue of cost. Due to the difficulty of predicting when experts will be used and for which activities, in addition to the absence of a limit as to the maximum number of days they can be employed per year, budgetary uncertainty results. As for expertise, it is frequently difficult to have all the required expertise to investigate a particular case in a three-person panel. IAMs which have panels make extensive use of consultants to cover such gaps in expertise, this has not been the case for IRM. In addition, the recruitment of the roster experts has been faced with serious obstacles, it has not been easy to find the profile of expert required, taking into account both the desire to maintain diversity, while finding individuals who would be willing to work in a situation of unpredictability, in addition to the restrictions on such employment as dictated by the 2015 IORP. The RT recommendation on restructuring of IRM therefore needs to be considered in the light of the above constraints.

254. The Review raises the issue of nomenclature of IRM, which has been unanimously found to be rather confusing. IRM/CRMU/BCRM are used interchangeably. This confusion permeates many Bank documents and is found across the institution more generally. The mechanism is well known among its stakeholders as the IRM and this should be preserved going forward where the IRM stands for the Independent Recourse Mechanism throughout. Clarifying this once and for all would assist in creating a re-invigorated brand for the mechanism including through helping people searching online, this renewed branding would also help with clarifying the role of the mechanism. Giving the Unit a consistent name would also help to raise its profile internally and externally.

4.6 Staffing:

255. Three questions are considered here, first whether there are sufficient staff to implement the mandate of IRM, secondly whether those staff have the requisite skills profile and thirdly whether the staff are at the appropriate grade level. One of the main challenges faced by IRM is that of not having the requisite staff. There was no substantive Director for over a year between the retirement of the previous Director in August 2019 until September 2020, when the current Director came on board. The Director for the Integrity and Anti-Corruption Department filled the role of Acting Director BCRM during the period in question. In addition, the Chief Compliance Officer resigned in November 2019, leaving two PL4 professional staff (one at Headquarters and the other in the Kenya Regional Office) and one PL6 staff (based at Headquarters) to handle **all** the work relating to case management, knowledge management, communication and outreach. Furthermore, as stated above, the term of one of the Roster Experts expired in 2018, and the second resigned in 2019. Currently, all of the work related to Compliance Reviews, Spot-Checks and monitoring is being carried out by the remaining Panel Member. Also, a communication expert joined BCRM in August 2020. This staffing situation has been an untenable one, and was raised by most stakeholders interviewed by the RT during early 2020, notably by the majority of the Boards members and CSOs. The impact of this dire staffing situation had a negative impact for the capacity and effectiveness of IRM as it compromised its ability to efficiently respond to complaints, while undertaking other important

functions. Better protocols should be in place to fill vacancies, especially that of the Director before their term is complete in order to ensure a smooth transition.

256. In the IRM organigram, the following PL positions exist: 1 Principal Compliance Officer- in charge of Problem-Solving, 1 Principal Compliance Officer, 1 Senior Communications, Outreach and Knowledge Management Officer and 1 Case Management and Advisory Services Officer. At the request of the Acting Director, two additional positions were added, namely a Chief Compliance and Advisory Officer and Senior Research and Data Analyst. It is only in the last quarter of 2020 that the positions of Director IRM, Communications Officer and Research and Data analyst have been filled. As of now, only the position of Chief Compliance and Advisory Officer is vacant. Up till the last quarter of 2020, the staff at post fell far short of what is required to carry out the mandate of IRM, whether in terms of compliance review, problem-solving, advisory services and communication.

257. Another question examined by the RT is that of the skills profile of staff members and whether it corresponds to the nature of the tasks undertaken by IRM. In terms of the skills profile, the current staff makeup needs more specific problem-solving and safeguards analysis and data analysis expertise. From a review of cases, it is clear that the vast majority go through problem-solving. Although there is some problem-solving expertise, it is not sufficient to cater for the increasing numbers of problem-solving cases IRM is receiving. A staff member with private sector experience would also be a good fit, given the rising number of private sector complaints.

258. Besides the issue of numbers and expertise of staff, there is the issue of their grading and career development. Currently the highest grade of PL staff is at PL4. Meanwhile, the staff they have to deal with on Management side are at levels of PL3 and PL2 and even higher, this discrepancy in grading does not allow for an equal relationship when dealing with Management. It remains important that the PL3 position be filled expeditiously. In addition, (this is not unique to IRM) there is the issue of career development of IRM staff, where it is rather difficult to move through lateral transfers into other parts of the Bank, due to a certain stigma associated with working in IRM. This is an issue that has been faced by other IAMs but can be at least partly resolved through agreement to rotate IRM staff to other accountability units of the Bank, a proposed action for which there are precedents. In addition, there is the issue of training and upgrading the skills of IRM staff. An appropriate training programme should be drawn to ensure that IRM staff are up to speed regarding issues, skills and methods in international accountability.

259. When comparing staffing across IAMs, IRM would not fare so badly if all the vacancies were filled. In this regard, the Inspection Panel has besides the three-member Panel, an Executive Secretary and five staff who handle only Compliance Reviews.[122] CAO has its head who is at the level of Vice President and fourteen staff members, three of whom handle Compliance Reviews. EIB, besides its head has six Compliance officers and two Dispute Resolution officers. MICI has eight staff members and a fourteen member Roster of Experts working only on Compliance Reviews.

260. Although IRM have come a long way in filling all the vacancies, in future and given the long time it takes for the recruitment process to be completed at the Bank, and given the time-

[122] This will be changing due to the establishment of the new Accountability Mechanism at the World Bank

sensitive nature of the work of IRM, notably the fact that it necessitates constant communication with complainants, several stop gap measures should be eventually considered. These are elaborated upon in the Recommendations section.

4.7 Budget and Work Program:

261. The IRM budget is considered as part of the Bank wide budget examination and approval for all Bank departments and units. Once approved, IRM reflects the approved budget in its annual work program which is considered by CODE, although this happens after budget approval. The RT have reviewed the IRM Work Program for the years 2017, 2018 and 2019. Regarding achievement of the Work Program, one question the RT raises is: what are the key performance indicators for such achievement? and how can success be defined in the unique circumstances of IRM. The importance of this question lies in the fact that the achievement of IRM Work Program partly depends on stakeholders outside of IRM, including Management and complainants, so what does a percentage of achievement mean when Management Responses are late or have not been received or when complainants have not found the remedy they are seeking. The RT thinks that these factors need to be clearly spelled out in any determination of achievement of IRM annual Work Program. This signifies that any percentage of achievement presented needs to be nuanced, and that the role of other stakeholders, notably Management, needs to be taken into account.

262. The RT have examined the evolution of the IRM budget since the start of its operations in 2006, the budget has grown from UA350,330 ($455,429) to approximately UA1,249,000 (approximately $1,727,154.67) in 2019. However, this growth is not commensurate with the increase in the number of eligible requests and other activities undertaken by IRM. According to the 2019 Annual Progress report on Performance of IRM Work Program,[123] budget limitations have impacted IRM ability to intervene rapidly and effectively. The Report goes on to say that the budget limitation has affected the strategic outreach activities of the IRM. (As stated earlier only three outreach activities were carried out in 2019). In this regard, IRM recommended a contingency resource for the IRM budget base line for its activities to be maintained at UA 500,000 and for the Roster of Experts to be maintained at UA400,000.[124] This was not however approved by the Boards. It is interesting to note that PIAC in their updated TORs state that they have full authority on the use of its budget, free from any influence, and decides on its own the best way to execute its work program. A similar flexibility should be afforded IRM.

263. RT have for purposes of comparison looked at the budgets of other IAMs, despite the difficulties of such a comparison. This difficulty of comparison arises from factors such the structure of the IAM, (for e.g., whether or not there is an Expert Roster or Panel) the average number of cases handled, geographical coverage, distances to be travelled and the currency used, these factors are not uniform across all IAMs. Thus, the World Bank's Inspection Panel covers all member countries but only for sovereign operations, whereas CAO covers all member countries but only for NSOs, EBRD covers a fewer number of countries, that are not distant from each other, although it has now expanded into North Africa. Additional information on budget processes is provided below.

[123] Document ADB/BD/WP/2019/257, ADF/BD/WP/2019/173
[124] Annual Progress Report on Performance of IRM Work Program 2019, p.21

264. Regarding cases handled during 2018, the Inspection Panel had eight new Requests and continued work on three previous ones. MICI concluded the management of five active cases, received two new problem-solving complaints, monitored one problem-solving case completed the management of four investigations and issued the investigation report of one case. The PCM of EBRD received thirty-four requests of which ten were registered and ten complaints were closed during 2018. Meanwhile, during 2018, IRM received two new requests, finalized three compliance review reports started in 2017 and finalized two Spot-Checks also started in 2017. In terms of actual figures, the World Bank Inspection Panel for 2018 had a budget of $4,071,144. MICI of the IADB a budget of $2, 304,195. EBRD's PCM had a budget of $328,963,24. IRM had a budget of $899.329 for 2018.[125] From the above, bearing in mind the difficulty of comparisons, IRM had the lightest load in terms of new cases and case management and its budget was in the middle of the range with the Inspection Panel of the World Bank having the biggest budget and PCM of EBRD the smallest. However, it should be noted that IRM also had the smallest number of staff at post and has not been making extensive use of consultants.

4.8 IRM Functions:[126]

4.8.1 Problem-Solving:

265. According to the 2015 IORP, the objective of a problem-solving exercise is to restore "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".[127] The IORP also states, the Requestor's preference for a problem-solving exercise or compliance review or both shall be granted subject to the Request meeting the requirements for registration. Where no preference has been expressed by the Requestors, the Director IRM will determine the best course of action in consultation with the Requestors.[128]

266. According to the OIRP, in deciding whether a problem-solving exercise should be undertaken, the Director shall take the following into consideration: whether the Requestors are amenable to a problem-solving exercise, whether the exercise is appropriate and may assist in addressing the effects resulting from a Bank financed project, whether the exercise is likely to have a positive result, whether the Bank can influence change, whether such an exercise can interfere with the conduct of a compliance review, whether the exercise may duplicate or interfere with or impede any other procedure considered by a court, and/or review body.[129] Within 21 business days after being notified of the Registration of a Request, Management shall provide IRM with a Management Response or evidence that it has complied or intends to comply with the Bank Groups' relevant policies and procedures. After IRM has received the MR, it shall promptly enter the date of receipt in the Register and a copy of the MR shall be sent to the Requestors for information.[130]

267. Thirty business days after conclusion of the problem-solving exercise, the Director shall

[125] Annual Reports for 2018 of Inspection Panel, MICI (IADB)and PCM (EBRD)
[126] Advisory functions are handled in Chapter 3. Here we treat complaint handling functions.
[127] IRM Operating Rules and Procedures pp.14
[128] Ibid, p11
[129] Ibid, p14
[130] Ibid, p13

prepare a problem-solving exercise report. If the problem-solving exercise is successful, the Director will include the solution agreed with the Requestors in the Report, it shall be shared with the Requestors and the President and Boards for consideration. IRM will monitor the implementation of the agreed solution, the monitoring report will be presented to the President and/or Boards. If the exercise is unsuccessful either within a period of three months after start of the exercise or by common consent of the parties, the Director will declare the exercise unsuccessful and will make recommendations on steps the Bank can take to deal with unresolved issues. This Report will be submitted to the parties involved and to the President and Boards for consideration.[131] At the end of a Problem-solving exercise the Director may determine that a Compliance Review is warranted. Such a recommendation will be submitted to the Boards and President for ratification.[132]

268. IRM shall monitor the implementation of the solution agreed upon in a problem-solving exercise. This will include meeting with the affected communities to ascertain that the problem-solving exercise worked as intended and the Bank Group has met its commitments.[133]

4.8.2 Analysis of Problem-Solving Function:

269. The 2015 IORP are not very clear on several points relating to the Problem-Solving function. Thus, there is no formal document that assesses the eligibility of the Complaint for Problem-Solving as stated in paragraph 39 of the IORP. This assessment requires responding to several fundamental questions outlined in paragraph 262 above. From the review of these questions, it is clear that a robust response to many of them may require a site visit, this is not foreseen as part of the procedure, but IRM has gone ahead in one or two cases and undertaken a "fact-finding mission" presumably to answer these assessment queries. In all cases, there is no evidence of standalone assessment documents being produced, some responses to the questions posed in the IORP are sometimes included in the Notice of Registration, but this is not systematic.

270. RT has not been provided with IRM criteria for determining which problem-solving technique will be used in a particular case as outlined in paragraph 42 of the IORP. IRM has in cooperation with the Dispute Resolution Centre of Kenya in 2011 developed a "Guide to Problem-Solving".[134] This document has been used as a guide for IRM staff training in 2011. It is not a Bank document or guide. It does propose following a three-step sequence for problem-solving (namely preparation, engagement and implementation) and assumes the use of a facilitator. There is no evidence that this has been followed and it is not reflected in the 2015 OIRP which is to date the only IRM guide for problem-solving. The cases it quotes are largely based on complaints from other IAMs. The revised IORP proposes further guidance for problem-solving.

271. According to the IORP, a problem-solving exercise should terminate within a period of three months from commencement of the exercise or be declared unsuccessful by common consent of the parties.[135] This timeline, which the RT estimates to be unrealistic, has not, in practically all cases, been attained, either due to lacking documents (e.g., Management Response not

[131] Ibid, p15
[132] Ibid
[133] Ibid
[134] Dispute Resolution Center, "Guide to Problem Solving", 2011
[135] IORP, para 47

received) or failure to reach an agreement. Problem-solving exercises have thus often gone on for a long time. In fact, one case registered in 2014 was only closed in 2019. The complexity of many cases leads the RT to question whether the three months is sufficient time. It is also important to have regular updates to assist in determining when a problem-solving exercise is no longer effective. Examples from other IAMs are considered below for comparison purposes and specific proposals are made in the Recommendations and Revised IORP.

272. Furthermore, the obligation for Management to send a Management Response is not absolutely clear and in one or two cases Management has taken an inordinately long period of time to send its Response. For instance, in the case of Abidjan Urban Transport Project, while the complaint was registered on 28th December 2018, Management only responded on 17th November 2019. In several of the responses reviewed, Management goes ahead and proposes solutions without the clear involvement of IRM, thus there is doubt whether actual mediation is taking place. It is not clear whether these actions have necessarily been agreed to by the Complainants and/or IRM. Furthermore, in the case of Mombasa-Mariakani Road Project (a project co-financed with EIB and KfW) although the Complaint was registered in December 2018, the amended Management Response was only received in April 2019 and a document including an IRM decision on "remedial action" was sent to the Boards in December 2019. It is not clear why IRM decided to wait for the outcome of the EIB mediation? Why did IRM not participate in that same process of mediation since it was a co-financed project? In general, greater collaborative work with the IAMs of co-financiers should be encouraged by all institutions in processes of complaints handling.

273. Also, the RT has encountered some complaints where both a problem-solving exercise and compliance review were requested by complainants, but only a problem-solving exercise was undertaken. While it may be the case that the problem was seen to be solved, undertaking a compliance review would be beneficial in highlighting instances of Management non-compliance. In at least two cases, the RT think that the complaint is so complicated and involves both actual and potential harms that IRM Director should have used his/her prerogative of proposing a compliance review.

274. It is clear that complainants have favoured problem-solving over compliance review in the majority of cases, yet there is an absence of analysis by IRM of this vast problem-solving experience and the lessons deriving there from. Such an analysis could have looked at the different techniques used to determine which is more appropriate in a particular situation. There is also the issue of whether to use external mediators. RT have been informed of two cases where external mediators were used. In one case examined by RT, the mediators report was very thorough and involved very close follow up of what was agreed with Management and complainant's views were clearly included.

275. Although one of the aforementioned Advisory Notes focuses on the lessons learnt from experiences with problem-solving,[136] the Note actually focuses on what is termed the "Liability Risk" of the Bank but provides little insight into the actual methodologies of problem-solving, whether an external mediator was used, and what IRM has learnt from the problem-solving process itself. Also, the IORP do not place a time limit for monitoring of the implementation of the agreed solution, while this should be set out in the agreements with the parties and might

[136] See Annex IV for a list of Advisory Notes

be rather difficult to set, extra-long monitoring as has been the case in some complaints, needs to be streamlined.

276. The RT have undertaken a comparison of problem-solving in other IAMs, this is presented below. In view of this comparison the RT estimate that several gaps characterize the way problem-solving has been carried out by IRM, whether in terms of following the set procedure and/or providing remedy for the complainants. Equally, despite the clear preference for problem-solving, nowhere have lessons been derived from this vast experience. Also, as stated above, BCRM needs to develop specific guidance on problem-solving, in addition to recruiting more staff with a solid problem-solving profile. The revision to the IORP includes some proposed solutions to the identified problems.

4.8.3 Compliance Review:

277. The Compliance Review process is to be initiated by a joint determination of the eligibility of the request by the Director IRM and IRM Experts. In case of a deadlock in determining the eligibility of the Request, the Director BCRM shall make the final decision. If the Director and IRM Experts determine that there is prima facie evidence that the Requestors have been harmed or threatened with harm caused by the failure of the Bank Group to comply with any of its policies in the context of a Bank financed project, they shall within 30 business days submit a report recommending a compliance review either to the President and/or the Boards. In considering the recommendation for a compliance review, the Boards or the President as the case may be, may approve the recommendations on a "non-objection" basis, remit the Request to the Director and the IRM Experts to reassess the recommendation regarding the draft TORs, with a new recommendation, if any, being submitted to the President or the Boards as the case may be. Where the Boards do not authorize a compliance review, the IRM Director should inform the Requestors accordingly. The Panel should aim to reach a consensus of opinion on all decisions, if a consensus cannot be reached, all opinions shall be reported to the Boards.[137]

278. The Panel shall conduct the CR in accordance with the relevant approved TORs and within the required time frame.[138] Within thirty (30) business days of the completion of its investigations the Panel shall prepare a draft compliance review report containing the Panel's findings and recommendations and circulate it to Bank Management for review and comments on factual matters. Management shall submit its comments to IRM within twenty-one business days from date of receipt of the draft report. After receiving Management comments, the Panel shall finalize the Report including elements set out in the IORP.[139]

279. The CR Report will then be submitted to the President and/or Boards as the case maybe. Subject to the provisions of the Bank Group's Disclosure and Access to Information Policy, the CR Report may be made available to Requestors as it is submitted for consideration and decision. Once the CR Report has been received by the President and the Boards, the Management is required to prepare a response to the findings and an Action Plan based on the recommendations of the Compliance Review Report. This Response and Action Plan shall be submitted to the President, the Boards of Directors, IRM and the Requesters within ninety (90) business days. Management should consult with IRM to agree on a joint presentation of the

[137] IRM Operating Rules and Procedures pp.16-17
[138] Ibid, p16
[139] Ibid, p17

Compliance Review, Management Response and Management Action Plan to the Boards of Directors. Management should consult with IRM no later than three months from the date of consideration by the Boards of Directors of the MAP and agree on the preparation and submission to the Boards of any reports on the progress of implementation. Management should also submit to IRM copies of reports on the progress of implementation of the MAP.

280. The IRM Roster Experts and IRM will review these Reports and provide, if necessary, an assessment of the progress achieved in the implementation of the MAP and submit a report to the Boards for consideration. The IRM monitoring team will share its findings with Management and the Requestors for clarification of issues before submitting its report to the Boards for consideration.[140] The Boards or the President shall decide whether or not to accept the recommendations in the Compliance Review Report. Subject to the provisions of the Bank Group Policy on Disclosure and Access to Information the decisions made by the Board or the President pursuant to the decision taken shall be promptly communicated to the Requestors and any interested party. In addition, such decision and the Compliance Review Report shall be published on the Bank Group's website.[141]

281. Regarding monitoring the following is stated in the OIRP. The persons in charge of monitoring implementation of the Management Action Plan shall submit monitoring reports on such implementation to the Boards or President for consideration as often as required, and in any event not less than once a year. The final monitoring report will conclude the compliance review process.[142]

4.8.4 Analysis of the Compliance Review Function:

282. In the period 2015 to date, the IRM has conducted three (3) Compliance Reviews, namely for the Construction of the 125MW Sendou Power Plant, Multinational Road Development and Transport Facilitation Program within the Manu River Union (Guinea Section) and Mali M3 Projects. IRM has also continued conducting monitoring of previous Compliance Review cases notably the Uganda Bujugali and South Africa Medupi Projects.

283. Regarding Compliance Review cases undertaken by IRM, the RT notes the following. All three complaints focused on issues of compensation and resettlement. In all three cases the Notice of Registration was delayed and went beyond the requisite 14 days as stipulated in the IORP. In two of the cases there was considerable delay in receipt of the MR.

284. In the case of Sendou, the Management Response came six months later than the set deadline. The eligibility mission went ahead without the Management response, so Management's reaction to the claims of the Complainants was not formally known prior to IRM evaluation of eligibility of the Complaint for a Compliance Review. Meanwhile, this was not brought to the attention of the Boards. On examination of the MR, which as stated came after the IRM Eligibility Report which presents preliminary assessment of non-compliance, it is found that Management denied non-compliance on practically every single claim by the Complainants, whereas the Eligibility Report shows clear instances of non-compliance.

285. Furthermore, the Rules suppose that there will be just one complaint from a particular project

[140] Ibid, p18
[141] Ibid, p19
[142] Ibid, p19

at a time. Protocols are needed when multiple complaints come in from different sources and at different times regarding a specific project. Thus, the first complaints can be registered, and then subsequent complaints (if appropriate) may have an opportunity to join the existing complaint process. It is necessary to apply some discretion in such cases. Also, the IORP is not precise on the deadline for publication of the decision made by the Boards or the President on the MAP as they prescribe that "it shall be promptly" communicated to the Requestors and any interested party, subject to the provisions of the Policy on Disclosure and Access to Information. The same provision applies for publication of the decision and the CR Report on the Bank's website. Finally, the IORP prescribe that the monitoring reports of the implementation of an approved MAP shall be submitted to the Boards or the President, 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. The IORP is vague on the length of the monitoring process, it only stipulates that the final monitoring report will conclude the compliance review process.[143] Thus the final Monitoring for the Bujugali case complaint took place in 2019, twelve years after the CR. Several stakeholders also conveyed to the RT that they thought CR's themselves were too long and should be streamlined. While the Rules may not be able to set a defined amount of time for monitoring, in all cases the limits of the MAPs should set out a reasonable period for the responsible party to implement the action plan and ensure that the monitoring plan aligns closely with that schedule.

286. Further, according to the 2015 IORP, it is assumed that the Expert Panel will be entirely responsible for the conduct of the CR, except for determining the eligibility of the Complaint for a CR and presentation of the CR report to the Boards of Directors, which are the responsibility of the Director. This has not been adhered to in practice, but in all cases the RT are of the opinion that the role of the Director should be described more explicitly in the revised IORP. Recommendations have tended to be more about improvements in implementation of specific projects, whereas greater emphasis should be placed on systemic improvements. Below the RT presents an analysis of a recent CR case to illustrate some of the issues raised above. The case is also significant since it demonstrates the relationship between IRM and implementing agencies/clients for a specific case.

4.9 Mali M3 Compliance Review

287. The detailed process for handling of the Mali M3 Compliance Review by BCRM is illustrated in Annex VI. In September 2014, AfDB approved a loan of €16.8M to finance this project aimed at producing food items (couscous, semolina and pasta) in the region of Ségou in Mali. A complaint was submitted to the IRM in September 2015 on behalf of the project affected people (PAPs) by an international CSO with local representation in Mali. The complaint related to alleged land grabbing by the project in two villages and disagreement over the compensation mechanism. However, the complaint did not fulfill the criteria for registration because it made reference to a case before the national courts. The complaint was eventually registered in May 2016, after BCRM received additional information from the complainants and verified that there was no pending court case.

288. After conducting an eligibility assessment mission, it was decided to conduct a Compliance Review which took place in March 2017. IRM Experts considered that the assessment and

[143] Ibid, pp 18-19

monitoring of the land dispute by the Bank were inadequate, and exposed the Bank to reputational risk, even in the absence of evidence of "land grabbing" by M3's owner. Management considered that the Bank's investment had not resulted in involuntary resettlement requiring compensation of PAPs, that the list of PAPs submitted by the Requestor was not authentic because of inadequate signatures and that the IRM Experts didn't take into account certain specificities relating to NSOs.

289. IRM conducted a first monitoring mission on the implementation of the results of the MAP following the CR but found very little progress on the ground. The updated MAP requested by the Boards in July 2019 after presentation of the results of the IRM first monitoring review were submitted to IRM on 29 May 2020 as well as a comprehensive Progress Report on the implementation of the recommendations of the MAP. The RT notes significant improvements in terms of the status of implementation of most of the recommendations of the monitoring review (out of 8 actions to be undertaken by Management, 6 were completed and two were ongoing with a completion date set for August 2020); in addition to a clear streamlined format presentation with precise deadlines; evidence of availability of the resources to implement the recommendations; and a planned date for the end of the monitoring (October 2020).

290. In this updated MAP, Management highlights the lack of relevant mapping of the Bank's project site vis à vis the site of the land contested by the villagers showing that there was no physical or economic displacement, nor land disputes associated with the M3 transaction which the Board approved in September 2014. According to them, this shortcoming has serious implications for the implementation of the Updated MAP and in particular, the conduct of inclusive and participatory consultations with various stakeholders in order to solve the dispute. However, they recognize that a better due diligence could have been undertaken to ensure compliance with applicable Bank Group policies at the time the M3 expansion project was prepared.

291. Nevertheless, the handling of this case reveals a recurrent problem of non-respect of the timelines and procedures throughout the process as shown in Box A below. The client's representatives interviewed by the RT in early February 2020 were rather critical of the IRM and the Bank in general. They thought the IRM did not act impartially, and that they rejected all of the positive impacts of the project in the area. They consider their company a victim of the Office du Niger (ON) which has provided them access to land over which there are several conflicts.[144]

292. This conflict that has persisted since 2010, way before the involvement of the Bank in 2014, raises the question of how to conclude a case when there is no agreement among the parties. The IORP state in paragraph 67 that the final monitoring report concludes the compliance review process without indicating for how long and what happens when no agreed remedy is found.

[144] In accordance with the Malian Law, the Office du Niger (ON), a parastatal entity, owns the land. It has leased 7400 ha to the promoter in 2010and 12,300 ha in subsequent years. This land has been used by the promoter to produce wheat, the raw material to be transformed under the AfDB financed project. However, it is only a part of the 7,400 ha which is subject to land dispute of an historical nature.

Box A: Delays and Non respect of the Operating Rules & Procedures in Handling of the M3 Case in Mali

- The complaint was received by BCRM on 23 September 2015, but it was only registered in May 2016. The process took 8 months instead of 14 working days as prescribed by the OIRP. The delay is justified by IRM by the difficulty to check the controversial issues related to the eligibility of the request. However, the request for additional information was only sent in May 2016. According to the Rules in para. 35 to 37, the Director has the possibility to extend the deadlines and if so, they should notify the Boards and the Complainants and post it on the Register. There is no evidence that this was done.
- The Complaint was registered on May 12, 2016. Management took more than 3 months to prepare and submit its Response which was received on 17 August 2016, after the eligibility mission. According to the IORP, Management response needs to be submitted within 21 business days (2015 OIRP para. 26 d).
- The eligibility mission started in June 2016 without a Management Response. According to para. 37 of the OIRP, IRM would need to notify the Boards and the President that no Management Response was received. However, no notification was issued.
- The deadline for submission of the Management Response was extended on July 7, 2016 after return from eligibility mission. The extension should have been granted mid-June when the 21-Business Day period for Management Response expired.
- The Draft Compliance Review Report was sent to Management on October 4, 2017 - 7 months after instead of 2 months as per the approved TORs. According to IRM, the delay was due to disagreement between the two IRM Experts involved in this case, concerning the applicationof the AfDB Involuntary Resettlement Policy and the area of influence of the project. However, Paragraph 58 of the Rules foresees that if there is no consensus between the Experts, the Boards should be informed. However, this was not done.
- The Management Response to the IRM First Monitoring Report approved by the Board in July 2019 was submitted to IRM on 29 May 2020,10 months late whereas the Boards had requested it without undue delay.

293. The above section has considered the operation of the two functions of Problem-solving and Compliance Review by IRM. It noted several gaps in the IORP governing both functions, but more importantly many gaps in the implementation of those rules. Besides a general laxity in abiding by the timelines, the RT found gaps in certain steps such as that of the absence of formal assessment of a complaint in the case of problem-solving and an absence of guidance on which problem-solving method to choose and non-realistic deadlines for completing a problem-solving exercise.

294. Regarding Compliance Reviews, the RT found that there is an absence of timelines for the joint presentation of CRs and MAPs to the Board and that drafts are not shared with Complainants as required by International Best Practice. Also, Monitoring is not subject to specific timelines. Furthermore, RT find that CR recommendations tend to focus on implementation of the specific project rather than including systemic issues. Best Practice indicates that an important feature of a CR is its ability to identify in its findings where the MDB has or has not complied with its own policies, which should assist Management in the design of an appropriate MAP and review, as maybe required, the policies in question.

4.10 Comparison with Other IAMs:

4.10.1 IAM Structure:

295. The IAM must be structured in a manner that maximizes its independence, impartiality, credibility and legitimacy. Project affected people must have the confidence that the mechanism is empowered to address their problems. The mechanism must thus be structured in a way that reinforces its independence from Management. The IAM should report directly to the Board of Directors. It should be run by a senior-level term-limited head whose sole responsibility is to oversee the three functions of dispute resolution, compliance review and advisory services. A head at the helm of the mechanism enhances internal governance and serves as an important voice of accountability whose sole responsibility is to oversee the three

functions within the institution and at the highest level.[145] Regarding terms of office of IAM Heads, the Inspection Panel Chair has a single non-renewable five-year term. EBRD IPAM Head has a term of up to four years renewable once.

4.10.2 IAM Budget:

296. The mechanisms budget including provision of contingency funds should be approved by the Board.[146] All the IAMs, with the exception of OPIC's grievance mechanism,[147] have a clearly distinguished fixed budget. The IFC's CAO, for example, has a budget decided by the President adequate to cover the expenses of the office and to recruit consultants or constitute expert panels for audits or independent reviews of controversial projects. At EBRD, the head of the accountability mechanism prepares an annual budget (including any contingency funds) identifying a sufficient level of resources to ensure that it can carry out all of the roles, responsibilities, and activities set out in the Policy in an effective way. The head of the mechanism is responsible for determining the allocation of resources within the mechanism's department. At the IADB, the Board provides the budgetary resources required for MICI to carry out its activities. The Director of MICI is responsible for preparing and managing the budget and making annual submissions to the Board, including for contingency funds for case management only. Unlike all other IAMs, OPIC's OA does not have its own, dedicated budget. Instead, it must request funding on a case-by-case basis for all expenses (e.g., travel, consultants, etc.) apart from the salary of the Director which is determined by management and included in the overall expenses of the Office of the President.[148]

4.10.3 IAM Functions:

297. Complainants should be allowed to choose dispute resolution, compliance review or both and their sequence. The IAM should be empowered to conduct dispute resolution and compliance review contemporaneously or sequentially as appropriate and as requested by complainants.[149]

298. The Mechanism should also establish clear timelines for each stage of the complaint process. Predictability and transparency of the complaint process is essential for communities' trust in the mechanism. It is important to note that while clear timelines are important in general for predictability, flexibility in timelines, in consultation with the parties may be helpful especially in conditions where Dispute Resolution is used.[150]

299. The dispute resolution/problem-solving function should not be prescriptive but allow the parties to engage with each other and arrive at solutions voluntarily. Dispute resolution should encompass a range of tools and approaches to assist parties in reaching solutions to address or remediate adverse social and environmental risks and impacts. IAMs should not be the ones to present solutions to the parties.[151] When mediation is undertaken as part of dispute resolution the mechanism should resort to a neutral, professional mediator or facilitator as agreed to by the Parties.[152] While adhering to its impartiality the dispute resolution function should seek to

[145] Best of p6
[146] Best of p7
[147] OPIC has been transformed into the Development Finance Corporation.
[148] Draft OPIC: Benchmarking Study: How OPIC's Accountability Mechanism Compares with those at other IFIs.
[149] Best of p15
[150] Ibid, p15
[151] Ibid, p24
[152] Ibid, p25

improve the power imbalances between the parties.[153] The IAM should share lessons from dispute resolution processes with the MDB.[154]

300. For IPAM of the EBRD, the Registration of a Complaint triggers the Assessment process, which includes an assessment of the parties' willingness to engage in each function, upon completion of the Assessment process, an Assessment Report is issued and is made available to the Complainants, Bank Management and the client and is published on the Case Registry. The Assessment process takes 40 days.[155]

301. A strong Compliance Review function is of great importance for all IAMs. A Compliance Review seeks to ensure that the MDB has complied with its policies and procedures. Furthermore, the results of a Compliance Review should inform continuous ameliorations to policies and procedures and their implementation to prevent and minimize problems from arising in the future. Most importantly, a Compliance Review process should result in remedies for complainants.[156] The most important feature of a CR is its ability to identify in its findings where the MDB has or has not complied with its own policies. It is as a result of such identification that Management will be in a position to design an appropriate MAP.

4.11 Cooperation with other IAMs.

302. All IAMs that fulfill the criteria for entry, are part of the IAM Network which is a Network of IAMs professionals which meets annually to discuss issues of common interest and to set best practice standards. Each year the meeting is hosted by one of the Mechanisms. The IRM is a member of this Network and has hosted its annual meeting twice, once in Tunis in 2009 and once in Abidjan in 2019. IRM membership of the IAM Network is included in the revised IORP.

5. Conclusions and Recommendations:

303. The above Review has analyzed various aspects of the work, structure and functioning of IRM, including its relationships with the Boards of Directors, Management, Complainants/Civil Society, Borrowers/Clients, and other Bank accountability units. It has also examined its role in knowledge production/management and institutional learning. Moreover, the Review has analyzed the functioning and structure of BCRM and its role as a focal point for IRM. The Review has to a large extent used the UN Business Principles Effectiveness Criteria for non-Judicial Grievance Mechanisms in analyzing its efficiency/effectiveness, independence and transparency as an administrative unit, in addition to the predictability of its procedures. Finally, the RT have examined the 2015 IORP, focusing on the extent to which they are fit for purpose, and the degree to which they are being correctly implemented by the various stakeholders in the IRM process. Throughout, the RT have sought to make comparisons with other IAMs and highlighted what is considered best practice in the area of accountability.

[153] Ibid
[154] Ibid
[155] https://www.ebrd.com/work-with-us/project-finance/project-complaint-mechanism/pcm-evolution.html
[156] Best of pp18-19

304. The analysis has acknowledged the success of IRM in solving various problems raised in Complaints it has received and/or identifying areas where Management has not acted in compliance with its own policies resulting in harm to communities. IRM recognizes in its 2019 Annual Report that "There are numerous areas where the AfDB should still leverage its efforts. There is need for better coordination with the Borrowers and clients to meet their loan commitments, particularly when it comes to compensation of PAPs and the implementation of the Project's environmental and social action plans. Most of the active cases handled by the IRM have shown that these commitments have not been met".[157] In the same line of thought, RT have pointed to several gaps which are undermining the credibility of IRM and hampering its' independent and efficient functioning. These gaps, as indicated in the analysis are related to three major factors. First is the stature and credibility of IRM as an accountability mechanism for the Bank. This includes the extent to which it is able to maintain its image and position as an independent and efficient accountability mechanism that should be taken seriously. The second factor relates to the structure and functioning of BCRM, and the resources it commands. In addition, there are its IORP. In relation to the latter the issue is the extent to which these Rules and Procedures are being adhered to and implemented, and the extent to which they conform to standards of best practice for rules and procedures in other IAMs. The third factor is the extent to which IRM has been able to act as a source of valued knowledge and lessons learnt for improving Bank operations and enhancing their development effectiveness and the extent to which it has convinced Bank staff and Management that its findings have value.

305. In relation to the first factor, the RT find that IRM occupies a rather marginalized position within the institution. This has prevented it from earning the trust and credibility required for its work and recommendations to be taken seriously by both Management and Complainants/civil society. It has thus conducted its operations without achieving timely results, and in the absence of sufficient transparency. Regarding the second factor, it suffers from a lack of resources, especially human resources. This has hindered its efficiency and curtailed its activities notably in terms of the transparency and predictability of its operations, resulting in very lengthy processing of complaints. The RT analysis has indicated that the functions and processes of IRM are generally acceptable and do not, apart from some ambiguities and gaps, deviate widely from best practices in other institutions. Rather, the issue is how these processes are being implemented and the wide margin that exists for deviating from them without consequences. The RT have raised some issues regarding the structure of IRM which are considered below. In addition, IRM has not succeeded in using the knowledge it has generated over the years to positively influence the Banks policies and its operations, which is of utmost importance as the Bank ventures into riskier sectors and environments.

306. The RT maintain that accountability must be conceptualized as a Bank-wide effort and process. Thus, it is not only specific measures to be implemented by IRM that are required, but rather a comprehensive set of measures that address gaps in accountability across the institution as a whole, and where the main stakeholders in the IRM process each have a role in implementation of corrective measures. These stakeholders include the Boards of Directors, Management and staff. It is only such comprehensive measures that can result in an IRM that is effective, efficient, independent, transparent, and which can adequately and proactively

[157] IRM Annual Report 2019, p.2

respond to both the needs of African communities, but also the needs of an institution that needs to learn from its instances of non-compliance. This will allow the institution to steadily move on a path of enhanced development effectiveness, and the expansion of its operations into riskier environments as it prepares to better contribute to achieving the SDGs, Agenda 2063, and its own TYS and High5s.

307. These recommendations aim at creating an accountability system that functions efficiently, that is trusted by all stakeholders and that adopts international best practices of similar global and regional institutions. In formulating these Recommendations, the RT have taken into account the viewpoints of a wide spectrum of stakeholders in the IRM process and have also sought to make them as clear and simple as possible in order to ensure the continued effectiveness of the process. For this to occur, these recommendations address different institutional levels at AfDB, in addition, there are certain measures that are more urgent than others as will be shown. The recommendations relate to the following areas: **Changing the Image and Stature of IRM at the institutional level, Efficient Preventive Measures, Communications and Outreach, Knowledge Management and Advisory Services, Human and Financial Resources IRM Structure, Mandate and Responsibilities, Developing a Strategic Relationship with Management, Streamlining IRM documentation, Protecting Complainants, Revision of the IRM Operating Rules and Procedures, and Recommendations Implementation.**

5.1 Changing the Image and Stature of IRM

308. Clear and strong messages from the President, Senior Management and the Boards of Directors are in order, each in their own capacity, about accountability being a Bank-wide concern and effort and about the importance, stature, and role of IRM within that effort. These messages should emphasize the role of IRM as a fundamental and important player in the Bank's accountability system. As the Bank ventures into riskier sectors and environments, staff despite their professionalism are confronting such risky situations with imperfect knowledge. The existence of a strong IRM can help in such instances by perfecting that knowledge and pointing out where policies or implementation measures have fallen short.

309. It is the role of IRM to help the Bank learn lessons from its mistakes. The particular value of IRM is that it is reacting in response to Complainants who might not have easy access to the Bank, but who nevertheless bring unique knowledge into the institution. The Bank, therefore, needs to continuously commit to mitigating potential negative social and environmental impacts of its projects. IRM is an important instrument in this process, but only if it is able to function at a high level of competence. The message from the President, Boards of Directors and Management should clearly indicate that the role of IRM is to hold the Bank accountable, to ensure such mitigation of harms occurs and that communities do not suffer harm as a result of Bank operations. Such a message would also go a long way in lowering the defensiveness of Management through not assigning blame, allowing it to start perceiving IRM as an instrument that can be used constructively in contributing to the creation of a culture of excellence and development effectiveness within the institution. The Boards of Directors, and notably CODE, should take their oversight functions viz-a-viz IRM, as an integral part of their mandate to strengthen accountability in the institution as a whole.

310. Efforts at changing the image and stature of IRM should also focus on creating a consistent

brand and identity. Currently the entity has three different nomenclatures which only creates confusion among stakeholders. The current Review process presents an opportunity to re-brand the mechanism as the Independent Recourse Mechanism (**IRM)**, which underlines its independent nature and also helps to address the principle of accessibility. Complainants will not contact the office if they do not know what it does, and nobody knows what BCRM or IRM stand for.

5.1.1 Specific Actions Recommended:

311. The important message on accountability being a Bank-wide effort and the important role of IRM within that effort should be clearly embedded in various Bank publications and speeches. These include the Bank's Annual Report, and important speeches by the President and Senior Management at landmark events, such as the Annual Meetings, Africa Investment Forum etc. It is also proposed that the President and/or CODE Chair write the forward to the IRM Annual Report, while ensuring the President presides over Boards of Director's meetings which discuss important IRM Reports and MAPs etc.

312. The Terms of Reference of CODE should be amended to clearly spell out and specify its role viz-a-viz IRM. CODE should ensure a hands-on approach and strong engagement with IRM through consideration of its Annual Work Program and in its review of documents produced by IRM. Similarly, it should carefully examine Management Responses and Management Action Plans ensuring that they return the Bank to compliance, and provide appropriate remedy for communities. These TORs should differentiate the roles of CODE and the Board as regards IRM. A strong feedback loop should be established between IRM and CODE so that the latter are kept up to date even in the absence of active cases.

313. The mechanism's nomenclature should be maintained as the **Independent Recourse Mechanism** rather than interchangeably using CRMU, BCRM and IRM. This will help with the unique branding of the mechanism and allow a clear understanding of the nature and functions of the mechanism by all stakeholders.

5.2 Efficient Preventive Measures:

314. The RT find that Management needs to be more proactive in identifying early-stage solutions to harms resulting from non-compliance with Bank policies and safeguards, rather than leaving the situation to aggravate, which is when complaints are typically sent. This requires nurturing a culture change in the direction of acting proactively to anticipate and solve problems, identify mistakes, and recommend course correction when necessary. Clearly, functioning Grievance Redress Mechanisms (GRMs) at the project level constitute an integral element of such a change, they should not, in any way, however, be seen as a substitute for IRM.

315. In this regard, the revised IORP have introduced a new procedure which allows the temporary suspension of complaints processing in agreement with complainants following Registration, to allow for good faith efforts by Management to intervene prior to proceeding with either Problem Solving or Compliance Review functions. However, in making this change it is important to ensure that complainants are always in the driver's seat, and that they can at any point in time revert to the complaints process through either Problem Solving and/or Compliance Review.

316. An enhanced role for Country and Regional Offices in different stages of the Complaints Process is also an integral part of proposed preventive measures.

5.2.1 Specific Actions Recommended:

317. GRMs act as recourse for situations where some stakeholders have a concern about a project's potential, notably negative impacts on them. However, for GRMs to be able to provide truly effective resolution of issues, they need to abide by the following guiding principles. They need to be legitimate, accessible, predictable, equitable, and transparent.[158] Management should ensure that all projects under implementation, with a greater focus on Category I projects have functioning GRMs.

318. Management needs to be much more proactive in anticipating problems related to compensation and involuntary resettlement before they occur. This means that social and environmental standards must be enforced, the ISS Action Plan is a step in the right direction, however appropriate actions will need to be taken by the Bank when Borrowers and Clients do not comply in order to ensure communities are protected and remedy is provided.

319. Institute a suspension of the Complaints process to allow good faith efforts to solve problems to proceed in agreement with Complainants. Country and Regional offices must be well equipped to handle minor complaints before they escalate, this should be a combined communications and operations effort.

5.3 BCRM Communication and Outreach:

320. As clear from the RT analysis above, BCRM faces many communication challenges. An important focus of communications should be to educate, inform and share information with local communities, CSOs, Borrowers and Clients, and within the Bank itself. Sharing the right information directed at the right target audience plays an important role in establishing a relationship of trust and transparency with IRM for all stakeholders concerned.

5.3.1 Specific Actions Recommended:

321. IRM should develop a functioning communication and outreach strategy that is in close alignment with that of the Bank. This strategy should be structured to create visibility for IRM, simplify IRM processes for the stakeholders, and enable information sharing and knowledge management at a continental level as well as internally within the Bank. It should be focused on i) internal communication ii) external communication and outreach iii) an IRM website and iv) social media.

5.3.2 Internal communication:

322. As the entry point of Complaints and disputes regarding projects involving the Bank it is important for IRM to share this information in a constructive and progressive manner.

[158] Joint UNDP-World Bank IDB FCPF Guidance Note for REDD+ Countries: Establishing and StrengtheningGRMs, May 2014 pp.2-3 See also CAO: Grievance Mechanisms Tool Kit: A Practical guide for ImplementingGRMs in Different Sectors

323. Internally, Boards' members constitute important stakeholders, notably members of CODE. IRM should be in constant contact with the Boards updating them on latest issues and ensuring that they are onboard with IRM activities. Boards seminars on relevant issues should also be undertaken to ensure dissemination of experience and knowledge. As stated repeatedly, due to the turnover in Boards membership this should be a continuous effort and not a one-time event. In addition, it is recommended to institute more frequent and regular contact with CODE, in particular. This could take the shape of an informal lunch once or twice a year. This is in addition to regular updates when there are new cases and/or documents under Boards' consideration.

324. Considering that Complaints are received from communities across the continent it is recommended that more work needs to be done to educate and inform the country and/or regional Offices of IRM processes and lessons learned.

325. Given budget constraints, IRM could share its planned information sessions with each CO in order to agree at the beginning of each year, how to use events already planned at COs to undertake these sessions.

5.3.2.1 Specific Actions Recommended:

326. IRM should re-issue its electronic newsletter. The Newsletter can be quarterly or bi-annual and should above all be light and informative and should be shared widely, including to the IRM CSO database, the Bank's CSO database, former Complainants, in addition to being shared within the Bank including to country and regional offices.

327. More consistent and effective communication with Board members, especially CODE, keeping them abreast of Complaints cases and knowledge sharing.

328. Schedule an annual information session for all country and/or regional offices. The session could consist of regional workshops or virtual meetings, with supporting documentation packs detailing the IRM processes and lessons learned. The value add of such events is three-fold as it can: (i) enable the country and/or regional offices to educate communities and local civil society on the complaints process, (ii) enable country and/or regional offices to manage and possibly handle complaints locally first, before escalating them to headquarters, (iii) educate field staff on challenges experienced by communities in the project implementation process

5.4 External Communications and Outreach:

5.4.1 Specific Actions Recommended:

329. For external outreach, the RT recommends a two-step process.First to carry out an evaluation of all external outreach undertaken to date. Second to develop an external outreach strategy that incorporates lessons from the proposed evaluation. This proposed outreach strategy should ensure that outreach activities continue with a more targeted focus whether on regions from which no or few complaints have been received, or regions with a higher number of risky projects etc.

330. In addition, it is proposed that an IRM External Stakeholders Advisory group be established, its membership should go beyond CSOs to include academics and representatives of the African private sector. This group should give preference to operating through virtual methods

thus streamlining costs.

331. It is recommended that IRM Annual Reports be streamlined and shortened to include only essential information about IRM activities for the year in question. As stated above, it is also strongly recommended that the Bank President and/or Chair of CODE write the forwardto the Annual Report, which would contribute to increasing the visibility and importance of this document. It is also proposed that the Annual Report should have a specific theme each year.

332. In order to reach communities, several ideas that can be implemented include: translating IRM documents into local languages to make the material more accessible and user friendly, and making audio versions of IRM documents and have them broadcast on local radio.

5.4.2 Website and Social Media:

5.4.2.1 Specific Actions Recommended:

333. The current webpage, though easy to access from the Bank's homepage is very difficult to navigate. The content is text heavy with the landing page having multiple topics with several click-throughs to the essential information. It is therefore recommended that the webpage undergo a complete overhaul and be replaced by an IRM website. From a lay-out and structure perspective the landing page should host a i) short description of IRM, ii) a link to an online case tracker and iii) a detailed description of the complaints process. The latter can be done by either using a short video, a flowchart or a cartoon-based visual similar to the Community Information Kit. Discussions with stakeholders, especially CSOs, identify these three elements as the most frequently researched information on the webpage. Therefore, making this information available upfront will make the website more user-friendly and will help to mitigate any confusion or frustrations that may be experienced by users while navigating the website.

334. The content should be more coherent and focused. The RT considers having an online case tracking system as one of the most important recommendations regarding the website content. Efficient development of a case tracking system will ensure that all documentation pertaining to cases are up to date and easily accessible. This process can also aid in simplifying the reporting procedure.

335. It is recommended that IRM make use of more social media platforms to engage with the broader communities regarding its work. This can be achieved by creating a Twitterhandle and a Facebook page with at least monthly messages. Depending on the IRM activities, the frequency of these messages can be increased. The messages need not be limited to cases only but can also share information on processes, unit activities or announcements relating to international accountability issues.

336. Using social media will also enable IRM to connect with other IAMs in a virtual capacity. Besides expanding the use of social media, it is recommended to reach out to specialized media that focus on Africa and its development issues. These steps will contribute to the greater visibility of IRM and will make the function more accessible to communities.

337. In summary, the following are the recommended actions relating to Communications and Outreach: carrying out an evaluation of outreach to date based on whose conclusions

developing an outreach strategy, re-issue the electronic newsletter, systematically engaging with Boards members at onboarding and through Boards seminars, information sessions with Country and Regional Offices, streamlining contents of the Annual Report, establishing a Stakeholders Advisory Group, overhaul of webpage and greater use of social media. While all activities recommended are important, priority should be given to the overhaul of the webpage.

5.5 Knowledge Management and Advisory Services:

338. RT analysis has indicated that insufficient attention and effort have gone into the area of knowledge production and management. IRM has not been able to use the vast amount of experience and lessons learnt to influence the Bank's policy agenda. The efforts of IRM in this regard have rather focused on conducting Spot-Checks. Some of the problems identified in relation to Spot-Checks have already been elaborated upon earlier. The RT, especially in view of the benchmarking exercise it has undertaken, stipulates that advisory services and knowledge management constitute an area that requires renewed attention but on a different basis.

5.5.1 Specific Action Recommended:

339. It is recommended that given some of the issues with Spot-Checks, they should be discontinued. Alternatively, it is recommended that the Director IRM be granted the possibility of undertaking self-initiated compliance reviews and that this should be governed by several specific criteria outlined in the Revised IORP. Furthermore, emphasis should be placed on Advisory Notes, while ensuring that they are relevant and truly contribute to lessons learning about non-compliance and specific policy challenges faced by the Bank. Wide circulation of these Notes both internallyand externally is recommended whether through workshops, publications and the IRMwebsite.

5.6 Financial and Human Resources:

340. The staffing situation in IRM has been raised repeatedly by most of the stakeholders the RT spoke to. While staffing gaps may not be specific to IRM and relate to issues of recruitment more generally at the Bank, the impact for IRM has proven especially negative in view of the need to be constantly in touch with complainants and the nature of the on- demand work which can be very intensive at times. IRM also suffers from gaps in specific expertise, as outlined above. The RT analysis has also indicated that IRM is faced with low levels of financial resources curtailing many of its activities.

5.6.1 Specific Actions Recommended:

341. Staffing: A sustainable solution for the staff shortage can only lie in expeditious recruitment and systematic succession planning. However, in view of reinforcing human resources of IRM, and in order to ensure the same staffing shortages do not recur, the RT recommends both an expanded use of consultants, which can assist in closing the gap for certain skills and to expand the use of interns. Documents reviewed by the RT indicate that in the past interns

have undertaken useful assignments for IRM, especially in the area of knowledge management.

342. IRM Staff Skills, Training and Grading: Ensure that staff profiles respond to all activities undertaken by IRM. Given the fact that a majority of complaints are now being handled through problem-solving, such problem-solving skills should be clearly defined in the job description for new recruits. In addition, staff training for IRM staff and a reconsideration of their grades is recommended. An annual training program should be developed for IRM staff with the objective that they become up to speed and reinforcing their skills especially on the issues of importance to international accountability.

343. Regarding financial resources, the RT are of the opinion that these should be increased to allow IRM expand its outreach and knowledge activities, and to engage consultants to expedite the processing of the backlog of existing cases. Given the demand driven nature of IRM, it is difficult to specify a figure for such a proposed increase, however RT concurs with, the proposal made by IRM, in its "Annual Progress Report On Performance of IRM 2019 Work Program" although it was not approved by the Boards, where it recommended a contingency resource for the IRM budget base line for IRMactivities. Having a contingency budget is important and aligns with best practice for budgets in other IAMs.

5.7 IRM Structure, Mandates and Responsibilities:

5.7.1 Specific Actions Recommended:

344. The RT are aware of the issues and delays with senior recruitments at the Bank, yet remain convinced that two five year terms for the Director position is too long. It is therefore recommended to align with IDEV, where the Director has a single six- year term.

345. Also, it is recommended that certain of the Director's responsibilities be streamlined and explained better. This has been done in the revised OIRP.

346. In view of earlier analysis the RT recommend that IRM be restructured with the objective of eliminating the current roster model in favour of a model where the Director has the responsibility to oversee the three IRM functions with the assistance of a team of permanent staff. . The IRM should instead move towards developing a pool of qualified consultants who could be pre-approved as part of a standing offer consulting agreement to be called upon on as needed, based on their specific expertise. The RT propose the instauration of a transitional period (whose length may be aligned with the expiry the current expert's contract), after which the new structure should be launched.

5.8 Towards a Strategic Relationship with Management:

347. An improved and more strategic relationship and communication between IRM and Management will go a long way in the direction of streamlining complaints handling, achieving remedy for complainants and learning the appropriate lessons along the way. This among other steps, entails agreeing on processes and how long they should take. For the IRM to fulfill its role, it requires full access to Management and staff and relevant documentation pertaining to projects about which complaints have been received. For the process of preparing the IRM statutory documents, and implementation and monitoring of MAPs to proceed smoothly and within the time limits set for them, cooperation and frequent contacts between

IRM and Management is fundamental. Otherwise getting the Bank back into compliance and ensuring remedy for affected communities, risks being jeopardized.

5.8.1 Specific Actions Recommended:

348. IRM should liaise more upstream with Management even before a Complaint is registered. Improved communication with Management should be emphasized whether formal or informal, opportunities should be sought to clarify facts before registration or the issuance of Reports by both IRM and Management. Both sides should undertake appropriate due diligence in order to ensure that facts are correctly presented. Joint events should be sponsored focusing on common objectives of both Management and IRM namely improving quality of operations and development effectiveness.

349. A focal point should be designated within Management, preferably within SNSC, to act as a liaison between Management and IRM. The TORs of such a focal point should be jointly developed by Management and IRM to ensure common understanding of tasks and responsibilities. An important responsibility of this focal point would be to ensure the timely and efficient production of Management Responses, MAPs etc. and other Reports under Management remit.

350. A list of relevant Bank documents (e.g., Appraisal Reports, Bank Policy Documents, Loan Agreements etc.) should clearly disclose the existence of IRM and its role in ensuring remedy for PAPs. There should also be clear messages to Country and Regional Offices regarding the important role they play in the IRM process, whether this relates to communication about IRM and/or receiving complaints. Also, all projects of a certain size (to be agreed with Management) should be required to show evidence that they have made an effort to inform stakeholders about the existence of IRM.

351. It is furthermore recommended that for those staff responsible for preparing MRs and MAPs, these activities and how efficiently they are implemented should be part of their performance assessment KPIs and not perceived as extra work.

5.9 Streamlining Documentation:

352. Several stakeholders have raised with the RT the issue of length, structure, content and tone of both IRM and Management documents. They state that documents tend to be long, the structure is not always uniform, and the tone tends to be accusatory, and not always constructive. Another issue raised has been that remedial actions are not always clear, neither is the responsibility for their implementation.

5.9.1 Specific Actions Recommended:

353. It is imperative that there is an agreement on a standard format for Management Responses, Management Action Plans, IRM Eligibility Reports, Compliance Review and Problem-solving Reports, while taking into account the specificities of cases these standard formats should be abided by. Regarding tone, both Management and IRM should avoid accusatory tones and opt for finding solutions rather than questioning each other's arguments. MRs need to focus on whether or not the Bank has complied with its policies, and the actions it intends to take to ensure compliance. MAPs need to include specific remedial actions that

are monitorable and time bound. CRs findings need to be clear as to whether or not the Bank has complied with its policies. Specific guidance for staff should be developed in this regard in consultation with relevant stakeholders.

5.10 Protecting Complainants:

354. As stated earlier, protection of complainants during the complaints handling process is one of the fundamental principles of an effective IAM and is an element that enhances trust in and credibility of the mechanism. In reaction to potential retaliation against complainants, IRM will develop anti-retaliation guidelines with the aim of protecting complainants during the complaints process.

5.10.1 Specific Actions Recommended

355. It is recommended that IRM undertake a risk analysis once a complaint is registered to gauge the probability of retaliation against the complainants. This step is now built into the complaints process and is included in the revised IORP. It is also recommended that IRM develop ant-retaliation guidelines which spell out specific actions to take to protect complainants. This should be inspired by best practice on the matter which is widely available.

5.11 Revision of IRM Operating Rules and Procedures (2015):

356. RT have undertaken an extensive review and revision of the above document and the Boards Resolution currently governing IRM. Once there is a consensus on this revision it will be reflected in the enabling resolution. This revision is based on the following guiding principles:

- Simplifying the rules and weeding out any ambiguities, especially regarding timelines, some of which were not specified, while others were judged by the RT to be unrealistic;
- Ensuring that the IORP facilitate access to IRM, while removing unnecessary obstacles to such access;
- Clarifying roles and responsibilities of the different stakeholders, Director IRM, Management, the President and Boards of Directors in the IRM process;
- Taking into account comments made by various stakeholders including IRM staff, members of CSOs and Complainants;
- Adding aspects that are absent from the 2015 OIRP, including reference to protection against retaliation, possibility of recommending financial remedy, allowing self-initiated compliance reviews, abolishing Spot-checks, suspension of complaints processing to allow good faith efforts to solve problems etc.;
- Benchmarking and International Best Practice;

357. The RT recommends that appropriate Guidance be developed in consultation with relevant stakeholders with the objective of clarifying as appropriate the OIRP and facilitating its implementation.

358. As stated earlier, it is recommended that the Operating Rules and Guidelines be amended to follow IAMs best practices, ensuring greater access but also increased streamlining of steps and procedures. However, these changes will remain meaningless unless IRM, Management and the Boards ensure that the IRM Rules and Procedures are closely followed, and that the deadlines as spelled out in the IRM Rules and Procedures are respected.

5.12 Implementation of Recommendations:

359. A detailed costed implementation plan is beyond the scope of this Review. However, the RT maintain that many of the recommendations proposed are not cost intensive, but rather in order to succeed require active cooperation across various Bank departments and structures, and an agreement on the fundamental premise that strengthening accountability and the IRM should be a Bank-wide objective and endeavour. It is proposed that an Inter-Departmental Working Group(IDWG) be established by the President with the objective of developing an Action Plan with clear timelines and with assigned responsibilities for implementing the above recommendations.(See Annex IX for proposed TORS for this Group) The objectives of this IDWG should be to develop a time-bound Action Plan for the implementation of the Recommendations of this Review and to oversee their implementation. It is proposed that the IDWG be chaired by the Senior VP, with the membership of: VP responsible for Regional and Country Programmes, Director SNSC, Director Budget, General Counsel, Director Communications, and Director IRM. Two IRM staff can act as the secretariat for the Group, to be in charge of logistics of meetings etc. It is proposed that the IDWG should function for one year, at the end of which the Group may decide in line with the level of implementation achieved whether to continue, and for how long.

360. Regarding costs, it is not anticipated that restructuring of IRM with the objective of removing the Roster model will have any cost implications for handling complaints, indeed it may well result in some modest savings as the IRM moves away from retainer contracts (currently set for a five- year duration) to contracts that are based on clear TORs and the needs of a specific project complaint. Greater competition among technical experts and consultants may also result in driving down some costs, and encourage greater accountability in ensuring that contracts, timelines and budgets are respected or else they will not be engaged again by the IRM. Furthermore, greater flexibility around some of the rules and procedures may allow some cost savings surrounding site visits, since these do not have to be automatically carried out and will only be mandated when absolutely necessary.

361. The establishment of the External Stakeholder Advisory Group may entail modest costs for IRM. These costs should be considered in light of its impact in terms of strengthening collaborative governance and enhancing trust in and credibility of the mechanism. The preferred medium for holding meetings will be through videoconferencing, it is however foreseen that Group members may need to meet physically once per year, which may cost approximately around UA15000 annually. The RT has been assured that these additional costs can be absorbed within the existing budget allocated to communications and outreach and can be combined with other Bank business (e.g., attendance of Annual Meetings where a number of CSOs expenses are covered by the Bank) to ensure efficiencies.

362. As regards outreach and communications, it is not foreseen that the related recommendations will result in increase or decrease of costs, it will be more about redirecting the existing budget

towards priority areas. Thus, for instance although there might be more spending in view of refurbishing the website, the fact that most other IRM activities have had to be virtual this year has generated sufficient savings to go towards the website upgrading. The recommendations in the communications area will thus involve being more effective in spending existent resources rather than entailing new ones.

Annex I: List of Persons Met/Interviewed

African Development Bank

Board Members and Advisers:

1. Barlay, L.Kenyeh - ED Representing Gambia, Ghana, Liberia, Sierra Leone and Sudan
2. Chalmers, Chalmers - ED Representing Italy, Netherlands and the UK
3. Cudre-Mauroux, Catherine - ED Representing Switzerland, Germany, Luxembourg and Portugal
4. Dekop, Cornelius Karlens - ED Representing Botswana, Malawi, Mauritius and Zambia
5. Dowd, J.Steven - ED Representing USA
6. El Gholabzouri, Mohamed - ED Representing Morocco, Tunisia and Togo
7. Kateera, Judith - ED Representing Angola, Mozambique, Namibia and Zimbabwe
8. Kone, Adama - ED Representing Côte d'Ivoire, Guinnea and Equatorial Guinnea
9. Maherzi, Said - ED Representing Algeria, Guinnea Bissau and Madagascar
10. Matungulu, Mbuyamu I. - ED Representing Burundi, Cameroon, CAR, Congo, DR Congo and Chad
11. Mmakgoshi, Lekhethe - ED Representing Eswatini, Lesotho and South Africa
12. Okugu, Bright E, ED Representing Nigeria and Sao Tome and Principe
13. Paal, Bjornestad - ED Representing Denmark, Finland, India, Norway and Sweden
14. Stevenson, David - ED Representing Canada, China, Korea, Kuwait and Turkey
15. Takuji, Yano - ED Representing Japan, Austria, Brazil, Argentina and Saudi Arabia
16. Zayed, Ahmed Mahmoud-ED Representing Egypt and Djibouti

Advisers:

1. De Keizer, Pim
2. Diop, Ibrahim
3. Dubuisson, Denis
4. Gaoussou, Sylla
5. Knudsen, Lars Kjaer
6. Kouassi, Hyacinthe
7. Persson, Mattis
8. Ranieri, Rafael
9. Schmidl, Judith
10. Seboko, Maleleka David
11. Turner, Matt
12. Weisert, Natascha Annika

AfDB Management and Staff:

1. Asuagbor, Dilys - Principal Legal Counsel
2. Boamah, Charles - Senior Vice-President
3. Dakoure, Amanda - Senior Legal Counsel
4. Dial, Hammadoun Amadou - Former Task Manager of the M3 Project, Mali Country Office
5. Diop, Mbarak - Lead Safeguards and Compliance Officer
6. Djossou-Lorng, Louise - Country Manager, Mali Country Office
7. Dovi, Aouzou - Principal Coordinator Programme and Policy, Private Sector, Infrastructure and Industrialization
8. Ecaat, Justin - Lead Environmental Safeguards Specialist
9. Kaningbi, Nyaki Zangbula - CPO, Mali Country Office
10. Kinane, Lawakilea Modeste - Principal Environmentalist
11. Maman-Sani, Issa - Director Environmental and Social Safeguards and Compliance Department
12. Michelitsch, Roland - Evaluator General

13. Nalletamby, Stefan - Acting Vice-President Private Sector, Infrastructure and Industrialization
14. Negatu, Gabriel - Former Regional Director, East Africa Region
15. Negroustoueva, Svetlana – IDEV
16. Okonko, Chukwuma - Auditor General
17. Oladokun, Victor - Director Communications and External Relations Department
18. Penn, Godfred Awa Eddy - General Counsel
19. Sandeep, Jain - Manager: Chief Operational Risk
20. Toure, Zeinab - Manager: Civil Society and Social Innovation Division
21. Turner, Timothy - Group Chief Risk Officer
22. Zak, Tomas - Consultant Knowledge Management, Communication, IDEV

BCRM:

1. Bacarese, Alan - Director: PIAC and Acting Director BCRM
2. Fall, Birima - Principal Compliance Officer
3. Kargougou, Bernadette - Case Management and Advisory Services Officer
4. Kimani, Grace - Principal Compliance Officer
5. Kokola, Armelle - Senior Secretary
6. Loubao-Gnali, Josiane - Administrative Assistant
7. Sah, Rose Ahouefa - Compliance and Outreach Assistant

Former BCRM Directors:

1. Sovik, Per
2. Toure, Sekou

Current and Previous IRM Expert Panel Members:

1. Arif, Sherif
2. Bradlow, Danny
3. Bissel, Richard
4. De Nevers, Michele
5. Hartmann, Arntraud
6. Konde, Mafing
7. Niasse, Diodio
8. Van Putten, Maartje

International Accountability Mechanisms

European Investment Bank:

1.Abad, Alfredo, ResRep, Egypt, formerly with EIB Complaints Office

World Bank

Inspection Panel:

1. Barlas, Dilek - Executive Secretary
2. Dalai, Rupes - Research Assistant
3. Kuba, Birgit - Operations Officer
4. Salwan, Serge - Senior Operations Officer

Office of the Compliance Adviser Ombudsman:
1. Adler, Daniel - Senior Compliance Officer
2. Bach, Erica - Advisor
3. Barbieri, Gina - Principal Ombudsman, Dispute Resolution
4. Gratacos Osvaldo - Vice President Compliance Adviser Ombudsman

Grievance Redress Service:
Isabel Lavadenz Paccieri, Manager Grievance Redress Service

Inter-American Development Bank:
Victoria Marquez-Mees, Director MICI

Office of Evaluation:
1. Linares , Ana Marie
2. Sembler, Jose Ignacio

American University College of Law
Professor David Hunter

Civil Society Organisations:
Actions pour les Droits, l'Environnement et la Vie" (ADEV), Democratic Republic of Congo
Jean-Marie MUANDA

Bank Information Center
Elana Berger, Executive Director

Accountability Counsel:
Amoako, Stephanie - Senior Policy Associate
Day, Margaux - Policy Director

International Rivers:
Josh Klemm, Senior Policy Adviser

Lumiere, Synergie Developpement:
Aly Sagne

Afrique-Europe Interact:
Fassery Traore, Former Local Representative

Fondation pout le development du Sahel:
Tiemeko Souleymane Sangare

Institute for Research and Promotion of Alternatives in Development:
Mamadou Goita, Executive Director

REDDA (Reseau de Developpement Durable en Afrique):
Nicolas Brou, Coordinator

Action pour la Protection de Droit De L'homme:
Abraham Denis Yacrobat

Centre for Research on Multinational Corporations (SOMO):
Kris Genovese, Senior Researcher

Conseil National des Organisations Non gouvernementales du Congo
Robert Mabala Kasongo, Coordinator Reponjac

Malian Government:
Fadéby Doumbia, Deputy Managing Director, Direction de la Dette Publique, Ministère de l'Economie et des Finances, Mali

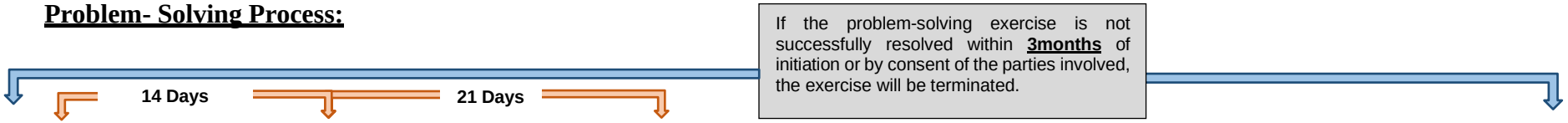
Promoter of the M3 Project in Mali:
1. Koita, Awa Mahamadou - Managing Director of CAI-SA, Keita Group (Complexe Agro-pastoral et Industriel), M3, Mali
2. Soumare, Oumar Deputy Managing Director, KEITA Group (promotor of the M3 Project), Mali

Representatives of the affected villages (Sanamandougou and Sahou), Mali:
1. Daou, Shaka
2. Diarra, Benke
3. Diarra, Karamoko
4. Diarra, Sedou

US Treasury:
1. Allen, Katherine - African Development Bank Desk Officer
2. Bayly, Rachel - Office of Development Results and Accountability, International Affairs
3. Severens, C. Alex - Director of Office of Development Results and Accountability

Annex II: Assessment of Complaints received by BCRM (January 2015 – January 2020)

Problem- Solving Process:



Request Handling Process					Problem-solving Process						
	Receipt of Request	**Registration**	**Request for Management Response**	**Management Responses Received**		**Assess and determine parties' amenability to problem-solving and Bank leverage capacity to influence change**	**Starting of the Problem-solving Exercise by BCRM Director**	**Review problem-solving techniques**	**Problem-solving Report to the President and the Boards and to all relevant parties within 30 days following successful conclusion of the problem-solving exercise**	**Monitoring implementation of settlement agreements (Monitoring Mission)**	**Closure of the Problem-solving Report**
	Project: Nairobi River Rehabilitation and Restoration Program (2015)										
	11 June 2015	**9 July 2015**	**9 July 2015**	**7 August 2015**							**19-20 March 2018**
	Project: Outer Ring Road Improvement Project. Nairobi (2015)										
	14 September 2015	**7 October 2015**	**7 October 2015**	**4 November 2015**							**19 March 2018**
	Project: Blaise Diagne International Airport (2017)										
	22 September 2017	**14 December 2017**	**15 December 2017**	**1 February 2018**		**12-17 October 2017**	**8-14 April 2018**				**N/A**
	Project: Mombasa Mariakani Highway Project (2017)										
	27 December 2017 to August 2018	**26 December 2018**	**26 December 2018**	**11 February 2019**		**20-23 March 2018 27 Feb.-1 March 2019**					**N/A**
	Project: Abidjan Urban Transport Project (2018)										
	18 September 2018	**28 December 2018**	**28 December 2018**	**17 November 2019**			**8 March 2019**				**N/A**
	Project: Dakar Regional Express Train – Phase 1: Dakar – Diamniadio Segment (2019)										
	9 June	**14 August**	**20 August**	**2 April 2020**		**19-23 August 2019**					

Compliance Review Process:

When a request is found to be ineligible by the IRM Expert and the BCRM Director a recommendation is made to the Board and the President not to authorize a compliance review. The requestors are informed and the Request is closed.

14 Days

21 Days

Request Handling Process	Receipt of Request	Registration	Request for Management Response	Management Response Received	Compliance Review Process	Eligibility Assessment of Request	IRM Experts and Directors recommend a Compliance Review in a Report to the President or the Boards President or the Boards	Decision of the President or the Boards authorizing to form a Panel of IRM Experts to conduct a compliance review	Draft Panel Report with findings and recommendations sent to Bank Management for comments on factual issues only within 21 days	Panel Report with findings & recommendations submitted to the Boards or the President. Report made available to the Requestors	Management Response and Action Plan	Boards or President's decision on the Panel Recommendations. These are also transmitted to the Requestors and summary of the decision made public in the Bank	Monitoring of implementation of the approved Management Action Plan BCRM/IRM Expert
	Project: Construction of a 125MW Coal Sendou Power Plant in the Village of Bargny Minam (2016)												
	9 May 2016	10 August 2016	10 August 2016	4 October 2016		24-30 November	3 April 2017	19 April 2017	23 March 2018	6 June 2018	11 July 2018		2-10 November 2019
	Project: Multinational Road Development and Transport Facilitation Programme within the Manu River Union (Guinea Section) (2016)												
	15 September 2016	25 November 2016	25 November 2016	22 March 2017		19-22 March 2017	13 December 2017	10 January 2018	10 December 2018		17 April 2019	19 April 2019	
	Project: Diversification of the Activities of Modern Mills Project in Mali (M3) (2015)												
	23 September 2015	12 May 2016	12 May 2016	17 August 2016		20-26 June 2016	7 November 2016	23 November 2016	4 October 2017	5 July 2018	26 April 2018		24 Feb-2 March 2019

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Annex III: IRM Spot-Check Advisory Review of Project Compliance for the Period 2016 to 2020

Name of Project	Date of Board Decision to go ahead with Spot-Check	Date of submission of Draft Report to Management	Date of Receipt of Management Comments	Status
Tanzania Road Sector Support Project II	04 May 2016	28 October 2016	No comments received.	Completed
Form Ghana Reforestation Project, Ghana	07 June 2017	27 March 2018	02 May 2018	Completed
South Tunisian Gas Pipeline (STGP) Project, Tunisia	07 June 2017	12 June 2018	10 July 2018	Completed
The Semi-Urban Drinking Water Supply And Sanitation (PAEPA-MSU), Cameroon	09 May 2018	22 March 2019	16 April 2019	C ompleted
Ketta-Djoum Road Development Project - Phase 1, Cameroon	09 May 2018	16 May 2019	26 June 2019	Completed
Kumba-Mamfe Road Development Project, Cameroon	09 May 2018	For security reasons, this Project was not visited by the mission, hence no report was prepared.		N/A
Green Zones Development Support Project, Phase I, Kenya	06 March 2019	Spot-check mission was conducted in March 2020.	The IRM Expert resigned: postponed to year 2020.	Work in Progress
Nairobi Rivers Basin Rehabilitation and Restoration Program: Sewerage Improvement Project, Phase 1, Kenya	06 March 2019	Spot-check mission was conducted in March 2020.	The IRM Expert resigned: postponed to year 2020.	Work in Progress
1. The Project for the Sanitation of Peripheral Districts of Ouagadougou (SPAQPO), Burkina Faso	29 January 2020	Mission not yet conducted due to travel restrictions because of the Covid-19 pandemic.		Work in Progress
2. The Mano River Union Road Development and Transport Facilitation Programme: Fish Town Harper Road Paving Project- Phase I (50 Km Harper-Karloken Road Section), Liberia	29 January 2020	Mission not yet conducted due to travel restrictions because of the Covid-19 pandemic.		Work in Progress
3. The Mano River Union Road Development and Transport Facilitation Programme: Fish Town Harper Road Paving Project- Phase II (80 km Karloken – Fish Town, and 16 km Harper - Cavalla Customs Road Sections) (FTHRP), Liberia	29 January 2020	Mission not yet conducted due to travel restrictions because of the Covid-19 pandemic.		Work in Progress

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Annex IV: List of Advisory Notes

2013 Lessons Learnt From Problem-Solving Exercises: Complaint Relating to Tanzania Road Sector Project
2015 Advisory Note on Infrastructure
2018 Ten Lessons Learnt from Compliance Review Cases Conducted by Different Independent Accountability Mechanisms of MDBs
2019 Advisory Note on Complaints Handled through Problem-solving
2019 Advisory Note on Mitigation of Environmental and Social Impacts and Risks associated with AfDB funded Projects
2019 Advisory Notes on Involuntary resettlement in IRM Compliance Reviews

Annex V: Recommendations derived from UNGP Assessment in, "Glass Half Full"(2016)

	IRM	AfDB
LEGITIMACY	• Establish an advisory group of external stakeholders to provide feedback on the IRM's activities.	• Include CSOs in selection process for the CRMU Director and Roster of Experts. • The AfDB should allow the Roster of Experts to select its own chair. • Increase the CRMU's independence with regard to recommending a compliance review.
ACCESSIBILITY	• Improve information available on the website, such as online complaint forms, including by providing material in other languages. • Conduct more outreach to make project- affected communities aware of the IRM.	• Require clients to disclose availability of the mechanism to project-affected people. • Improve the visibility of the IRM on the homepage.
PREDICTABILITY	• Adhere to posted timelines and/or provide public notices, with reasoning, regarding delays. • Monitor the project until all instances of non-compliance found have been rectified.	• Allow IRM to conduct an investigation without the approval of the Board or President.
EQUITABILITY	• Provide complainants with equal opportunities to review draft documents during the complaint process. • Allow complainants to be represented by whomever they choose, including so-called 'foreign representatives', without requiring clear evidence that local representation is inadequate.	• Consult with complainants on the development of the Management Action Plan.
TRANSPARENCY	• On the IRM webpage, provide information on rejected complaints, including the reasons for such rejection. • Provide case summaries and easy-to-understand information regarding the status of complaints.	• On the AfDB's website, ensure that all AfDB-financed activities are listed, and collate all relevant information regarding such projects in a single location to make documents such as impact assessments, environmental and social management plans easily accessible. • Disclose loan agreements.
RIGHTS COMPATIBILITY	• Allow the IRM to receive complaints involving violations of all human rights, and not just social and economic rights.	• Commit not to finance activities that cause, contribute to or exacerbate human rights abuses. • Require clients to assess the human rights impacts of their operations.

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	• Develop protocols for protection of complainants who face security risks. • Take measures to ensure rights compatibility of outcomes, for instance by not endorsing agreements that are clearly coercive, etc.	• Develop a protocol to address retaliation against complainants.
LESSONS LEARNED	• Standardise the consultation process for the Mechanism review, including by committing to disclose the draft changes to the policy.	• Provide verifiable information on how lessons learned from the IRM's cases are being incorporated into AfDB practices. • Commit not to provide additional financing for similar activities to clients found to be in non-compliance until the non-compliance has been Remedied

Glass Half Full? - Annex 5: The Independent Review Mechanism Of The African Development Bank - p. 2|6

Annex VI: The Case of Diversification of The Activities of The Modern Mills of Mali (M3) Project in Mali

I. Introduction and Background

1. The purpose of the analysis of the case of Diversification of the Activities of the Modern Mill of Mali (M3) project in Mali is to examine how it has been handled by IRM and all stakeholders, including the Bank at both field and HQ levels. It also aims to examine whether the results have had an impact for the communities concerned in terms of remedy. In particular,specific issues relating to Non-Sovereign Operations (NSOs) will also be analyzed.

2. The findings are based on a desk review of available documentation on the case, interviews with Task managers and Managers at HQ and in the Mali Country Office, with representatives of complainants and the promoter, with local civil society and government officials.

II. Processing of the Complaint

3. In September 2014, AfDB approved a loan of €16.8M to finance the modernization and diversification of M3, a Malian company. The project aimed at producing food items (couscous, semolina and pasta) is located in the region of Ségou in Mali.

4. A complaint was submitted to IRM in September 2015 on behalf of the PAPs through Africa-Europe Interact, an international CSO with local representation in Mali. The complaint related to land grabbing by the project in two villages and controversy over the compensation mechanism. However, the complaint did not fulfill the criteria for registration because it made reference to a relevant case before the national courts. The complaint was later registered in 2016 after IRM received additional information from the complainants and verified that therewas no pending court case.

5. The Management Response (MR) came three months later instead of the stipulated 21 business days, stating that the Bank's investment has not resulted in involuntary resettlement requiring compensation of PAPs. However, it committed to ensure that the Government of Mali and the promoter actually compensate all affected people. Prior to receiving the MR, IRM conducted an eligibility assessment mission to Mali in June 2016, which is contrary to the Rules. BCRM justifies its position by the long delays usually experienced before receiving the MR. This mission found that failure of the Bank to comply with its 2003 Involuntary Resettlement Policy and 2004 Environment Policy have caused significant harm to about 90 families in the two villages by the acquisition of the land in terms of economic losses, threat to their food security and serious erosion of social capital and cohesion in the villages. It also found that the ESMP prepared for the project overlooked the assessment of the impact of M3's land acquisition for growing raw materials to supply the M3 mills for processing. The Boards approved these findings in November2016 and authorized IRM to undertake the compliance review.

6. The compliance review mission took place in March 2017, almost 70 working days after its approval, and submitted its report in November 2017 (7 months instead of 2). IRM Experts considered that the assessment and monitoring of the land dispute by the Bank were inadequate and resulted in exposing the Bank to reputational risk, even in the absence of evidence of "land grabbing" by M3's owner. They found no compliance with the Bank Group Policy of Poverty Reduction (2004) since no social impact assessment was conducted and no compliance with the

Environmental Review Procedures for NSOs since it failed to prepare an environmental audit on the existing facility of the project.

7. In March 2018, Management sent its Response to the Boards, considering that the compliance review didn't take into account all information available to allow for appropriate conclusions and recommendations. However, the Boards considered that the MAP didn't properly address issues raised by the compliance review report and that the proposed timeline for implementation of remedial actions was not clear.

8. In November 2018, Management submitted an Updated Action Plan with more specific actions and timelines. IRM conducted a first monitoring mission in Mali in February 2019 which concluded that the actions of the updated MAP were not implemented, leading to the persistence of the conflict between M3 and some of the PAPs. It recommended that detailed actions be taken by the country office with the Government and M3, with a six months deadline to finalize the land and compensation dispute.

III. Current Status of the Complaint

9. On July 10, 2019, the Board approved the findings of the IRM first monitoring report and requested Management to submit its updated Action Plan without undue delay, including a clear and time-bound action plan. It also authorized IRM to conduct its second monitoring mission to Mali in Q1 of 2020. The updated MAP requested by the Boards was submitted to IRM on 29 May 2020 as well as a comprehensive Progress Report on the implementation of the recommendations of the MAP. The RT notes significant improvements in terms of the status of implementation of most of the recommendations of the monitoring review (out of 8 actions to be taken by Management, 6 are completed and two are ongoing with a completion date of August 2020); a clear streamlined format presentation with precise deadlines; evidence of availability of the resources to implement the recommendations; and a planned date for the end of the monitoring (October 2020).

10. In this updated MAP, Management highlights the lack of relevant mapping of the Bank's project site vis à vis the site of the land contested by the villagers. According to Management, as they had constantly claimed throughout the process of handling this Request, there was no physical or economic displacement, nor land disputes associated with the M3 transaction which the Board approved in September 2014. Management considers that the lack of distinction between the M3 facility and the land disputed by the villagers has serious implications for the implementation of the Updated MAP and in particular, the conduct of inclusive and participatory consultations with various stakeholders in order to solve the dispute.

11. However, Management recognizes that an improved due diligence could have been undertaken to ensure compliance with applicable Bank Group policies at the time the M3 expansion project was prepared.

12. Meanwhile, considering that the conflict was still not resolved after the Compliance Review Report, the CSO representing the PAPs wrote twice to the Boards, IRM and the German Government to follow up on the unresolved land conflict in the project area, in July 2018 and June 2019. According to IRM, these letters were never received.

IV. Analysis of IRM relationship with main stakeholders

13. BCRM has reported to the Boards at each step of handling this case. The Boards reviewed all reports and documents submitted during the process. On one occasion - during the review of the

MAP following the Compliance Review- the Board expressed concerns about the fact that it did not take into account all issues raised by the Compliance Review and the timelines were unclear. They requested Management to prepare an updated MAP. However, the Boards request did not contribute to reducing the long delays experienced throughout the process (sometimes by several months) and the little progress made in solving the dispute during the lengthy process which appears to still be unsuccessful after more than four years since receipt of the Complaint.

14. The country office and the HQ were involved in the handling of the case through preparation of the MR, MAP, and updated MAPs. In addition, even before Boards approval of the project, as soon as they were informed of the land conflict, Management convened meetings with the promoter to better clarify the allegations of land grabbing. Following concerns raised by EDs during Boards approval of the project, the country office went on mission to the project area to take stock of the situation. This mission took the opportunity to reassure the village farmers that the Bank would not operate in a context of illegality and its concern about the beneficial impact on the populations living in the project intervention area. Most of the people interviewed (Managers and TMs in HQ and in the FO) mentioned existence of strong tensions with the Roster of Experts in particular, as they felt that they did not make any allowances for the specificities of NSOs. They see them as being more influenced by the PAPs to the detriment of compliance with the country's laws and the rules of the Bank. They reported that relations are better with the Director and staff of IRM. They expressed reservations about IRM's mediation approach (although this was a Compliance Review) as they felt that they contributed to exacerbating the problem instead of trying to find solutions.

15. In its latest progress report on implementation of the MAP, Management clearly pointed out what they consider as "one of the fundamental flaws in the IRM reports" on this case, namely. the lack of mapping of the Bank's project sites compared to the site of the land subject to disputes. According to them, all IRM reports have consistently linked the issues related to land disputes /compensation (which are unrelated to the Bank's intervention and are of a historic nature) to the Bank's intervention in Segou. As they consistently argued, the Bank financed the expansion of the M3 facility in Segou which involved no physical or economic displacement of PAPs since they are located at 70km from each other.

16. **On relations between IRM and the Complainants**, communication was mentioned as one of the most challenging issues. The village representatives met by the RT reported that they were only informed about the existence of the IRM through the CSO Afrique-Europe Interaction. They complain about the difficulty of accessing IRM and its reaction times that cango up to 6 months according to them. The long delay (5 months) between the date when the letter was prepared by the CSO (April 13, 2015) and when it was received at IRM (September 23, 2015) raises also the issue of adequate communication channels. In addition, the RT found that BCRM states to have never received the two letters by the NGO in 2018 and 2019 to request implementation of agreements reached in order to solve the conflict. This also revealed that there are clear gaps in the communication channels that need to be addressed.

17. Regarding representatives of the PAPs, several people met by the RT raised the issue of manipulation of PAPs by political parties but also NGOs, either national or international. They insisted that BCRM ensures that the complaints really come from the PAPs. This is particularly important given the ignorance of the populations with regard to the national rules and those of the Bank. It is necessary to manage the expectations of the populations but also of the NGOs.

18. Regarding PAPs appreciation of IRM and the Bank, village representatives appreciate the IRM in principle. They also appreciate the interactions they have had with their different missions, but they regret that this has not been followed by any specific results or actions.

19. **The promoter** reported that he is compensating the populations in accordance with the compensation policy of Office du Niger (ON). In accordance with the Malian Law, the ON, a parastatal entity, owns the land and has leased 20,000 ha to the promoter to produce wheat, the raw material to be transformed under the AfDB financed project. Its compensation policy prescribes that for 10 ha of land developed the villagers receives 1 ha of irrigated land. The promoter also grants CFA100,000 (€152,5449) to farmers for each ha taken by its company. In addition to this, more than 150 ha will be developed and given to villagers by the group.

20. The company claims to disburse around CFA 200 million (about €305,000) per year for socio-economic investments for the 8 villages surrounding the project. These investments include: the development of 1,500 hectares, the construction of 21 km of canal to provide water to peopleand animals, a 17 km electrical connection in the area; 55 km of asphalt road in the area; the planting of more than three million feet of eucalyptus; building schools, equipping health centersand sponsoring ceremonies in surrounding villages, etc. The company has contributed to the creation of 230 direct jobs and 1,200 indirect jobs in the area.

21. The promoter's representatives are very critical of the IRM and the Bank in general. They found them biased and rejecting all of the positive impacts of the project in the area. According to them, no new investor is ready to go to this area because of the problems encountered by the promoter. They see IRM as an instrument that is potentially harmful for the private sector because of what they qualify as lack of equity in their approach. They consider their company as victim of the ON which has given them land on which there are several conflicts.

22. **Relations with the Government**: Representatives of the Government insisted that it is essential to avoid discouraging the private sector by imposing stringent measures on them which may jeopardize their profitability. They consider that the biggest problem is compensation of PAPs. It is a time-consuming procedure that can hardly be implemented by the Government as a condition of the first disbursement of a loan. They recommend that compensation be financed by Bank' resources under a loan or a grant rather than on Government counterpart. According to them, from all donors, AfDB is the most demanding in terms of the timeframe for implementing compensation (6 months), leading to suspension of disbursements for several projects.

V. Effectiveness of IRM in Complaint Handling

5.1 Results in terms of remedy to the PAPs

23. This continuous conflict that has persisted since 2010, way before the involvement of the Bank in 2014, raises the question of how to conclude a case when there is no agreement among the parties. The mediation process should have a beginning and an end. In case of failure of the mediation process, one should be able to stop the process as it is becoming counter-productive to preserve the image of the Bank. The Rules states in paragraph 67 that the final monitoring report conclude the compliance review process without indicating for how long.

24. According to SNSC, "the complete failure of IRM to distinguish on the one hand, the land

dispute that exists prior to Bank's intervention and on the other hand, the lack of proper due diligence by the Bank while preparing its financed project, has created challenges in implementation of the MAP and finding lasting solutions. In this context, the reputational risk to the Bank is a result of the positions taken by IRM Experts on this matter and not Management's inability to implement the recommendations of the IRM Experts".

25. To improve the effectiveness of the IRM, most of the people interviewed mentioned that IRM should stick to the facts, strengthen its mediation role, increase its capacity (human and financial) and intervene more upstream with Management through awareness raising and sharing lessons learnt before the project is presented to the Board.

26. The problem of the M3 project is linked to lack of information of the population on IRM and the Bank but also the lack of clarity on the Malian policy regarding distribution of land and some manipulation of the population.

5.2 Communication

27. It was unanimously recognized that the biggest problem of IRM is the weakness of communication at all levels. Especially the population - the majority of which is illiterate and doesn't have access to social networks- requires extra efforts to raise their awareness on the mechanism in order to avoid false expectations and manipulation. Several ideas were proposed such as translating IRM documents into local languages, make the material more accessible and user friendly, communicate on the files being processed, make audio versions of IRM documents and have them broadcast on local radios.

5.3 Processing and Timelines

28. Almost all activities under the processing of the M3 case experienced delays and lack of respect of the rules as shown below:

- The complaint was received by IRM on 23 September 2015 but it was only registered in May 2016. The process took 8 months instead of 14 working days as prescribed by the policy.
- The delay is justified by IRM by the difficulty to check the controversial issues related tothe eligibility of the request. However, the request for additional information was only sent in May 2016. According to the Rules in para. 35 to 37, the Director has the possibility to extend the deadlines and if so, he should notify the Board and the requestors and post it on the Register. But there is no evidence that this was done.
- The complaint was registered on May 12, 2016. Management took more than 3 months to prepare and submit its Response which was received on 17 August 2016, after the eligibility mission. According to the IORP, Management response needs to be submitted within 21 business days (para. 26 d).
- The eligibility mission started in June 2016 without a Management Response. According to IORP para. 37, IRM would need to notify the Board and the President that no management response was received. However, no notification was issued.
- The deadline for submission of the Management Response was extended on 7 July 2016, after return from eligibility mission. The extension should have been granted mid-June when the 21-business day period for Management Response expired.
- The Draft Review Panel Report was sent to Management on October 4, 2017 (7 months after instead of 2 months as per the approved TORs). According to IRM, the delay is due to disagreement between the two IRM Experts involved in this case, concerning the application of the AfDB Involuntary Resettlement Policy and the area of influence of the project.

VI. Concluding Remarks

29. The analysis of the M3 case in Mali is a good illustration of the challenges that the IRM faces. It also reveals the need for the IRM to better understand the specific aspects of NSOs.
30. Weaknesses are found at the level of most stakeholders active in the process. Despite its involvement throughout the handling of this case, Board's oversight hasn't proved to be effective in terms of enforcing IRM and Management adherence to timelines set by the IORP.
31. Regarding Management, shortcomings were mainly noted such as non-adherence to timelines for providing reports, namely MR and MAP, leading to a negative impact on the image of the IRM and the Bank, and also on the resolution of the dispute. However, the updated MAP report and progress report on the implementation of the recommendations of the IRM monitoring shows more time-bound actions and available budget to implement all actions toward the resolution of this case.
32. For IRM, one of its major problem relates to weakness of and gaps in communication in providing timely information to all stakeholders and in particular, the complainants.
33. Another important challenge lies in the non-adherence to IORP, such as respect of timelines as already mentioned, systematic notification to the Boards in case of delays in submitting the MR, and also undertaking eligibility assessment missions prior to receiving the MR. Recommendations in the main report address all these issues.

Annex VII (A): Comments from Stakeholders during Public Consultation 1

	Comments / Focus Area					
Responders / Organizations	**General / Overall Assessment**	**Structure and Functions**	**Information Disclosure**	**Remedy**	**IORP**	**RT Responses**
Stop Tuberculose, Bouake	Congratulatory note on the report					No Comment
Plate forme des organisations de la société civile Abobo	Commended the inclusive process of the review. Congratulatory note, stated that all the concerns of the stakeholders are reflected in the report.					No Comment
Ligue Ivoirienne Contre l'Hypertension arterielle et les maladies cardiovasculaires	N/A					No Comment
Association du developpement et de la promotion de Droit de l'Homme	Commended the inclusive process of the review. the review process and congratulated the Bank group and IRM.					No Comment
Former Members of Roster Experts (IRM Experts)	Thorough job in identifying challenges that IRM faces. Welcome recommendation for the Bank to adopt an anti-retaliation policy.	Limit the ability of IRM to undertake Spot-checks on Bank projects.				Spot-checks have been abolished and self-initiated Compliance Reviews by the Director imposed.
IFI Synergy Group			IRM should share information and build awareness in communities. Timeframes on consultations should be clear. Human Rights measures of AfDB need to be strengthened.			Proposals for IRM Communications to be revamped including outreach and publications. Timeframes for different steps in Complaint process streamlined. Human Rights restriction removed from IORP.
Accountability Counsel et al	Welcome the report's honest and holistic analysis of AfDB accountability framework and endorse most of its recommendations. Commend AfDB commitment to public consultation in review of IRM.	Recommend change of IRM structure by removal of expert panel.	AfDB borrowers/clients required to disclose availability of IRM to project affected communities.	AfDB should establish a mechanism to reserve resources to remedy environmental and social harms (TORs of Remedy Fund proposed).	Restrictions concerning parallel proceedings should be removed. Edits provided on IORP to align with best practise.	Proposal for IRM restructuring included. Proposal made for disclosure by Borrowers/Clients of availability of IRM. Language of remedy included in IORP. IORP revised to include edits provided by AC.
International Accountability Project			Strengthen AfDB disclosure and access to information policy will support the IRM in delivering remedy. Substantial gaps in disclosure policy inhibit communities from accessing key project information including on existence of IRM.			Measures to enhance disclosure and access to information included. Access and Disclosure policy of AfDB specifically included as one of the policies against which compliance can be reviewed.

Annex VII (B): Comments from Stakeholders during Public Consultation 2

	Comments / Focus Area					
Responders / Organizations	**General / Overall Assessment**	**Transparency / Disclosure of Information**	**Retalliation**	**Remedy**	**IORP**	**RT Response**
Accountability Council et al	Endorse most of the recommendations and exchanges in the revised report and IORP.		Require an AfDB Retaliation Policy	AfDB should take further steps to ensure that resources or remedy are available for complainants. Develop a Remedy Fund.	Include sector specific guidelines and other relevant policies, end Board approval of Compliance Review.	IRM will develop anti-retaliation guidelines including a clearer position on remedy. Removed Board authorization of Compliance Review. Streamlined policies where compliance will be reviewed. Possibility of adding more policies.
International Accountability Project		Gaps in AfDB information disclosure policy hampers the ability of the IRM to deliver remedy to communities harmed by AfDB. Community accessibility hampered by lack of IRM information on AfDB project webpages.				Revamp of communication and outreach strategy proposed. Emphasis on availability of information on IRM using different means. Management to include information on IRM in relevant project documents.
UNHRO	Welcome that UNGPs are a part of the review of IRM effectiveness.	Borrowers required to publish the existence of IRM in contractual agreements. Register should include both eligible and ineligible complaints.	AfDB to publish zero tolerance statement against retaliation. Operational policies to asses, prevent and respond to retaliation. IRM Register to include publication of data of retaliation.	Support the need for urgent thinking on remedy funds and similar mechanisms. IRM to be mandated to recommend remedy in the form of financial compensation and to monitor the extent to which the MAP leads to remedy.	Support Compliance Review without Board authorization.	Recommendations made for Borrowers/Client to publish the existence of IRM. Risk assessment of Complaints instituted, retaliation guidelines to be prepared. Language on remedy included in IORP. Removed Board authorization for Compliance Review.
Page Verte		There is not enough communication around projects.				Communication strategy to be revamped.
ADIG	N/A					No Comment
Afrique Verte		Bank needs to be closer to CSOs.				Agree. Outreach strategy to be developed.
CAPSI	Not being taken into account by AfDB projects.					Outreach strategy being revised
Fédération des ONG de la région du Goh	AfDB should have representatives in different regions of the country and should facilitate access to financing.					Review recommends greater involvement of Regional and Country offices in the Complaints process.
Organisation des jeunes leaders de Côte d'Ivoire	AfDB should have representatives in different regions of the country and should facilitate access to financing.					No Comment
Abundant Grace Female Foundation	Positive assessment of report and IORP					No Comment
EL GHAITH	Requesting for support due to COVID-19					No Comment
Association Handicap Afrique	Do not really know IRM					Check new outreach strategy
CI Profef	Find the report acceptable. IRM must proof its independence.					See new IRM structure and processes proposed.
RJPS	Request financing and institutional support to CSOs as an activity.					No Comment
FAWE RS	Asking about the procedure of a filing a request. Link to be included in the report. Also requesting link of IDEV Evaluation Report on CSOs.					See IRM website: https://www.afdb.org/en/independentreview-mechanism-irm IDEV Evaluation not finalised

Annex VIII: Terms of Reference for External Stakeholders Advisory Group:

I. Objectives/Purpose of Advisory Group and Role of Members:

The main objective of the Advisory Group will be to act as a reference and consultative body for the Independent Recourse Mechanism, providing it, as required, with strategic, independent, relevant and confidential advice and counsel on development matters of concern to its specific role, work and activities. Members will contribute advice in their own personal capacities and not as representatives of particular governmental or non-governmental bodies.

II. Organizational Matters:

- Two meetings per year initially, possibly one coinciding with Bank Annual Meetings, the other to be held virtually, with a possibility of other meetings, in line with IRM requirements and work schedule. Possibility of more frequent consultations in between meetings to be done virtually. Meetings limited to one and half to two days;
- Members must be prepared to be fully briefed and learn about IRM process and experience;
- Initially, the Advisory Group should be composed of six members;
- Appointment of a focal person within the IRM to manage the Advisory group including logistics, preparation for meetings and communication in between meetings etc.

III. Members and their Selection:

The guiding principle for membership should be diversity and an appropriate mix that would result in a member profile that would respond best to the objectives and purpose of the Advisory group as outlined above. Members selected should be supportive of and committed to the IRM's work, should have high standing within their respective communities, commanding high respect and with extensive professional networks. Members should be selected on the basis of an appropriate mix of the criteria listed below:

- Civil Society Experience, including both in Africa and elsewhere;
- Knowledge of and work experience, in a variety of capacities with MDBs and multilateral development institutions more generally;
- Academic, public sector and/or private sector experience of relevance to the work of the IRM;
- Regional balance;
- Gender;
- Educational/Professional background.

IV. Budget Assumptions:

- Travel expenses to Abidjan or wherever the Annual Meetings are being held;
- Logistics miscellaneous meeting expenses covered;

Annex IX: Terms of Reference Inter-Departmental Working Group (IDWG) to Oversee Development of an Action Plan to Implement IRM Review Recommendations:

I. Objectives/Scope:

- Develop time-bound Action Plan for implementation of recommendations of IRM Review;
- Assign responsibilities among different Bank Departments for implementation of recommendations;
- Develop a timeline for implementation of recommendations;
- Assess budgetary implications of recommendations implementation.

II. Membership:

The IDWG is to be chaired by the Senior Vice-President and include the following as members:

- Vice-President Country and Regional Programmes
- Director IRM
- Director SNSC
- General Counsel
- Director SNDR
- Director Budget
- Director Communications

III. Organizational Matters:

The Secretariat for the IDWG should be assumed by two staff members from IRM, who will be responsible for developing meeting records, reports and general follow-up of IDWG activities. The IDWG will meet once a month initially and decide after six months whether this rhythm needs to be maintained. It will report quarterly to CODE on implementation progress achieved. The IDWG will assess implementation status of recommendations after one year and take a decision on whether it will be necessary to continue beyond one year.

Annex X: List of Entities who Commented during Public Consultations

African Organizations

1. Abibinsroma Foundation – Ghana
2. Abundant Grace Female Foundation
3. ACAT Tchad – Chad
4. Action Paysanne Contre la Faim – Democratic Republic of the Congo
5. Africa Development Interchange Network (ADIN) – Cameroon
6. African Development Bank
7. Alliance for Empowering Rural Communities – Ghana
8. Association du developpement et de la promotion de Droit de l'Homme
9. Association Handicap Afrique
10. Association Tunisienne de Droit du Développement – Tunisia
11. Association Talassemtane pour l'Environnement et Développement (ATED) – Morocco
12. Bank Information Center – Côte d'Ivoire
13. Buliisa Initiative for Rural Development Organisation (BIRUDO) – Uganda
14. Capsi
15. Catholic Relief Services – Nigeria
16. Centre de Recherche sur l'Anti-Corruption – Democratic Republic of the Congo
17. Centre for Human Rights and Civic Education – Kenya
18. Community Outreach for Development and Welfare Advocacy (CODWA) – Nigeria
19. Conseil Régional des Organisations Non Gouvernementales de Développement –Democratic Republic of the Congo
20. Espace de Solidarité et de Coopération de l'Oriental – Morocco
21. FAWE RS
22. Fédération des ONG de la région du Goh
23. Foundation for Environmental Rights, Advocacy & Development (FENRAD) – Nigeria
24. Foundation for the Conservation of the Earth – Nigeria
25. Friends with Environment in Development – Uganda
26. Global Rights – Nigeria
27. Green Advocates International – Liberia
28. Hawana Center of Education – Côte d'Ivoire
29. Institute of Sustainable Development – Malawi
30. Jamaa Resource Initiatives – Kenya
31. Le Réseau des journalistes et des professionnels de la communication pour la Paix et la Sécurité (RJPS)
32. Ligue Ivoirienne Contre l'Hypertension arterielle et les maladies cardiovasculaires
33. Lumière Synergie pour le Développement – Senegal
34. Nature Tropical ONG – Benin
35. Observatoire d'Etudes et d'Appui a la Responsabilité Sociale et Environnementale(OEARSE) – Democratic Republic of the Congo
36. ONG ADIG
37. ONG CI PROFEF
38. ONG EL GHAITH
39. ONG GLOBE
40. ONG l'Afrique Verte
41. ONG PAFED – Togo
42. ONG PAGE VERTE
43. Organisation des jeunes leaders de côte d'Ivoire
44. Organisation pour les Libertés d'Information et d'Expression OLIE-HATIM – Morocco
45. Peace Point Development Foundation (PPDF) – Nigeria
46. Plate forme des organisations de la société civile - Abobo
47. Rotab /PWYP – Niger
48. Stop Tuberculose, Bouake
49. Success Capital Organisation – Botswana
50. Sustainable Holistic Development Foundation (SUHODE) – Tanzania

51. Uganda National Users'/Consumers' Organization – Uganda
52. Université Cheikh Anta Diop – Senegal
53. University of Pretoria
54. Water Governance Institute – Uganda

International CSOs

55. Accountability Counsel – United States
56. Accountability Lab – United States
57. Arab Watch Coalition – United States
58. Association For Promotion Sustainable Development – India
59. Both ENDS – Netherlands
60. Center for International Environmental Law (CIEL) – International
61. Centre for Research on Multinational Corporations (SOMO) – Netherlands
62. Christine Harris Therapy – Ireland
63. CLEAN (Coastal Livelihood and Environmental Action Network) – Bangladesh
64. Community Resource Centre – Thailand
65. Gender Action – Global
66. Inclusive Development International – United States
67. International Accountability Project (IAP) – Global
68. Mendel University in Brno/CSO Uganda – Czech Republic
69. New Wind Association – Finland
70. Project HEARD – Netherlands
71. Recourse – Netherlands
72. Rencontres Citoyenneté Numérique – France
73. urgewald e.V. – Germany

Former Members of IRM Expert Panel

United Nations Human Rights Office

Annex XI: Terms of Reference of the Consultant – The Third Review of the IRM

THE THIRD REVIEW OF THE INDEPENDENT REVIEW MECHANISM (IRM) OF THE AFRICAN DEVELOPMENT BANK GROUP

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1. BACKGROUND INFORMATION

The Boards of Directors ("the Boards") of the African Development Bank Group (AfDB) approved the establishment of the Independent Review Mechanism (IRM) on 30 June 2004, and subsequently the IRM Operating Rules and Procedures in July 2006. The IRM became operational from mid-2006 with the appointment of the first Director of the Compliance Review and Mediation Unit (BCRM), which administers the IRM. The First Review of the mechanism commenced in July 2009, following the approval of the Terms of Reference (TOR) of the Consultant which had undergone review by the Boards of Directors on 10 March 2009. The review resulted in the approval of the amendment of the IRM Establishing Resolution and Operating Rules and Procedures by the Boards on 16 June 2010. The Second Review commenced in December 2013, following the approval of the Terms of Reference of the Consultant which had undergone review by the Boards of Directors on 17 September 2013. The Boards of Directors approved the proposed amendments to the IRM Establishing Resolution and Operating Rules and Procedures on 28 January 2015.

The IRM is one of the Bank Group's accountability instruments and serves as both a recourse mechanism and an institutional learning tool. As a recourse mechanism, the mandate of the IRM is to provide people whoare affected or are likely to be adversely affected by any project financed by the Bank Group, with the opportunity to submit their complaints to the Bank. As an institutional learning tool, the rationale of the IRMfunctions is to contribute to enhancing the effectiveness and accountability of the operations of the Bank Group. The mandate of the IRM covers both the public- and private-sector projects financed by the Bank Group.

The IRM handles the complaints through problem-solving (mediation) exercises, facilitated by the Director of the BCRM, or through compliance reviews (investigation), which are conducted by the Independent Roster of IRM Experts.

Functionally, the Director of the BCRM reports to the Boards for approved projects and to the President for projects under consideration for financing by the Bank Group. Administratively, the Director reports to the President. The Director of the BCRM receives, assesses, and registers complaints; prepares their eligibility reports for compliance reviews together with the IRM Experts; undertakes problem-solving exercises; and conducts outreach activities and advisory services. The main objective of outreach activities is to raise awareness about the IRM's mandate, functions, rules, and procedures among government agencies, civil society organizations (CSOs), local communities, and the Bank staff. The BCRM also conducts information-sharing and problem-solving training sessions specifically for Bank staff, CSOs, and project promotors.

The IRM's Roster of Experts comprises three (3) external Experts appointed by the Boards of Directors upon the recommendations of the President for a fixed term of five (5) years. The Experts conduct compliance reviews authorized by the Boards or the President. They also conduct spot-check advisory reviews of project compliance, which are meant for institutional learning, and to encourage a culture of compliance by the Bank staff. Moreover, the IRM Experts undertake other tasks assigned to them by the Director of the BCRM. The IRM Experts constitute Compliance Review Panels that investigate alleged non-compliance with the Bank

Group's policies and procedures and assess whether or not, as a result, harm has been or is likely to be caused to people and/or the environment by the projects in question.

The IRM Enabling Resolution[1] requires that, upon approval of the Boards, IRM performance should undergo a review every four (4) years. The First Review started in July 2009 and was completed in June 2010. The Second Review commenced in December 2013 and was completed in January 2015. The Third Review of the IRM is due to commence once the Boards approve the IRM Review Concept Note and these Terms of Reference in 2019.

2. THE SCOPE OF THE THIRD IRM REVIEW OF 2019

2.1 Objectives

The central objective of the upcoming Third Review is two-fold:

(i) To undertake a thorough assessment of the extent to which the IRM has been an effective recourse mechanism for people affected by a project and a useful accountability instrument to the Bank. This analysis will also consider the effectiveness of the BCRM in administering the IRM and handling cases through problem-solving exercises; and

(ii) To revise the present IRM Enabling Resolution and its Operating Rules and Procedures to clarify ambiguities and to review the roles and functions of the BCRM and the IRM Experts in order to enhance their support of the Boards' overall responsibilities.

The ultimate aim is to have in place an IRM that effectively redresses complaints from people affected by Bank Group-financed projects, contributes to the Bank's learning culture in a meaningful way, promotes the objectives of AfDB's Ten-Year Strategy (2013-2022) and the High 5,[2] and supports the decentralized structure of the recent Development and Business Delivery Model (DBDM) of the Bank, thereby reinforcing development effectiveness actions.

2.2 Scope of Work

The Third Review of the IRM will draw on the lessons learned from requests handled by the IRM Experts and the BCRM over the last four (4) years (i.e., from January 2015 to January 2019), the lessons that have emerged from spot-check advisory reviews of project compliance, and best practices of other Multilateral Development Banks (MDBs); in addition to the IRM operational context with the Boards' adoption of the Integrated Safeguards System (ISS), its Environmental and Social Assessment Procedures (ESAP), and associated Guiding Notes; the ongoing evaluation of the ISS, the Policy on Non-Sovereign Operations (2018), the proposed update of the Bank Group Operations Manual by the Senior Management, and other guidelines pertinent to the work of the IRM.

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9 The IRM Resolution, Operating Rules and Procedures, and the Register of Requests along with other complaints-related reports are accessible on the IRM webpage at <http://www.afdb.org/irm>.
2 High 5 priorities: (i) Light Up and Power Africa; (ii) Feed Africa; (iii) Integrate Africa; (iv) Industrialize Africa; and (v) Improve the Quality of life for the People of Africa.

Accordingly, the Third Review will focus on a wide range of issues, including:

(i) Assessing IRM performance with regard to complaints handled through compliance reviews in terms of independence, integrity, effectiveness, and credibility of the IRM;
(ii) Assessing IRM performance with regard to complaints handled through problem-solving exercises in terms of independence, integrity, effectiveness, and credibility of the IRM;
(iii) Evaluating the contributions of the BCRM's outreach, capacity-building and knowledge-management activities conducted to enhance the visibility of the IRM;
(iv) Appraising the success and relevance of the advisory function of the IRM as a tool to enhance knowledge development and institutional learning in the Bank;
(v) Examining whether the IRM's institutional arrangements are in harmony with the orientation of the Bank's Ten-Year Strategy, the High 5, and the decentralized nature of the Bank's DBDM. The review will identify ways of ensuring effectiveness and efficiency of the compliance review, problem- solving/facilitation, outreach, and advisory functions of the IRM/BCRM, and propose changes where these are required;
(vi) Assessing the implications of recent relevant developments in the Bank on the IRM,including the new Policy on Non-Sovereign Operations (2018), the ISS, its ESAP, the Disclosure and Access to Information Policy (2012), the engagement framework with CSOs,and the AfDB Gender Strategy;
(vii) Identifying means of assessing cost effectiveness of the IRM in achieving benefits for the complainants vis-à-vis efficiency and effectiveness of the Bank's operations;
(viii) Examining the extent and contribution of the IRM/BCRM to learning and knowledge development for the Bank in the spheres of problem-solving (mediation) exercises and compliance reviews; and
(ix) Identifying gaps associated with the current IRM Enabling Resolution and Operating Rules and Procedures and recommending the best approach to address them in order to enhance the effectiveness of the IRM and remove any ambiguities.

3. THE CONSULTANT'S ASSIGNMENT

The Consultant shall prepare a set of recommendations for consideration by the Boards of Directors including, if applicable, proposals for the review of the structures and functions of the BCRM/IRM, and amendments to the IRM Enabling Resolution and Operating Rules and Procedures.

3.1. Duties and Responsibilities

The duties and responsibilities of the Consultant will include the following:

(i) Experience Gained by the IRM and Strengthening of the IRM/BCRM Institutional Framework:

The Consultant will:

- Conduct an analysis of the experiences gained and lessons learned by the IRM since its establishment, with emphasis on the successes of the reforms implemented as a result of the last two IRM reviews. In the assessment, the Consultant will analyze, in particular, the extent of the IRM's autonomy and institutional independence, including with respect to the mechanism's mandate, operational activities, and Bank Management;

- Assess what the overall role and implications of the IRM is in the context of promoting the objectives of the Bank's Ten-Year Strategy (2013- 2022), the High 5, the DBDM, and the decentralized operations of the Bank Group;
- Examine the terms of reporting of the BCRM and the IRM to the Boards and the collaboration and coordination between the BCRM, the IRM, and the Bank Management and propose how these can be further strengthened, especially how there can be greater involvement of CODE in guiding the work of the IRM;
- Assess the frequency and most effective means of reporting by the IRM Experts and the Director of the BCRM to the Boards, and the modalities of coordinating and sharing findings and recommendations of compliance review reports and spot-check advisory reviews of project compliance. The compliance review and monitoring functions will be further clarified, as appropriate. He/she will establish how the reporting of the IRM to the Boards can be further strengthened, and its reporting lines to BCRM and the Boards can be clarified;
- Seek to know how the IRM stands out in practice from the work of the Ombudsman, the Administrative Tribunal, Auditor-General, Ethics Office, the Independent Development Evaluation (BDEV) and the Integrity and Anti-Corruption Department. Is there any overlaps and if yes, how can this be dealt with?
- Assess how the IRM compares with other comparable Independent Accountability Mechanisms (IAMs)? and the best practices which should be introduced to the IRM from practices established in other IAMs. Furthermore, the consultant will established whether the organizational setup of BCRM and IRM is fit for purpose in view of the fact that mediation and problem-solving though useful functions, may draw the Board attention away from its oversight role, namely; holding the Bank Management and project implementing parties accountable for complying with environmental and social safeguards of the Bank.

(ii) Effectiveness of the IRM.

The consultant will:

- determine what is the status of satisfaction of stakeholders in the IRM process;
- address the following questions: Does the IRM adhere to the IRM policy? Are the complaints handled within the timelines stated in the Policy? How effectively arenon-compliances stated in the IRM investigation reports addressed by the Bank? How effectively and how regularly does the IRM use its monitoring mandate? What is the evidence that systemic recommendations listed in the compliance investigation reports, to assure that non-compliances will not reoccur, are being addressed by the Bank?
- How effectively and how regularly does the IRM use its monitoring mandate?
- To what extent is the budget allocated to IRM appropriate to the efficient and effective functioning of BCRM/IRM? How effective is the IRM in attracting professionally qualified experts? Are expert positions filled on a timely basis? What is the contribution of the IRM in the implementation of the Bank Group's policies and procedures, especially the ISS, its related Environmental and Social Assessment Procedures (ESAP), and the Guiding Notes—particularly as they apply to non-sovereign operations and private-sector investments?
- explore ways to improve the protection of individuals or communities who bring cases to the IRM, because in some instances, people who speak out against development projects can face serious reprisals from those who do not want to hear critical comments. In this regards, he/she will take a

look at the Bank's whistle-blowing policy and assess what efforts the AfDB is making and how this can be bolstered.

(iii) **Successes of Internal IRM Engagements:** The consultant will review the IRM work programs to measure the success of the IRM's engagement with the Board's Committee on Operations and Development Effectiveness (CODE) and the Board itself;

(iv) **Bank Policy Framework:** The Consultant will examine the Bank's ISS and highlight its implications for the work of the IRM concerning issues such as resettlement, rights of affected peoples, effective project's recourse system, and additional effort necessary to enhance problem- solving/project facilitation functions. The Consultant will study the interface between the ongoing evaluation of the ISS and the IRM review, and propose any areas that require IRM coordination with the Bank Management or modification/revision of the ISS and/or IRM Enabling Resolution and Operating Rules and Procedures. The Consultant will also explore the possibility of the IRM exercising an overseeing role in the context of the implementation of the Bank's ISS as well as opportunities with the African Legal Facility;

(v) **Private-Sector and Other Non-Sovereign Operations:** The Consultant will examine the ongoing effort to strengthen the Bank's private-sector approach and make recommendations on how the IRM, as a recourse mechanism for people affected by projects financed by the Bank Group, can best support the goals and the High 5 priority areas of the Bank. The newly approved AfDB Policy on Non-Sovereign Operations (2018) states clearly that the ISS, and its related ESAP and the Guiding Notes are applicable to private-sector clients to ensure sustainability of AfDB-financed projects. The policy qualifies that the ESAP for Non-Sovereign Operations (NSOs) differ in a limited number of instances from sovereign operations, taking account of slight variation in the Bank's project cycle requirements for NSOs. These include, among others, the following: (i) the exploratory review process and inclusion of the NSO in the Bank's project pipeline; (ii) the concept note format, including E&S content and the review process; it also clarifies steps required for the NSO in instances of co-financing; (iii) the appraisal report format, including the E&S content, annexes, and the review process; (iv) the NSO disclosure requirements for Category 1 projects; (v) the environmental and social (E&S) loan conditions, covenants, and the negotiation process; and (vi) the format and E&S content of monitoring and completion reports.[3] Through its compliance review, the IRM focuses on the compliance of private-sector- and/or non-sovereign-guaranteed Bank Group-financed projects with any of the applicable Bank Group policies and procedures. The Consultant will suggest approaches to enable the IRM to adequately follow-up with the implementation of the newly approved AfDB Policy on Non-Sovereign Operations (2018) in projects which are the subject of complaints. The Consultant will also explore the possibility of the BCRM handling complaints related to NSOs through the problem-solving approach;

(vi) **Complaint Handling Function:** The Consultant will analyze issues that have arisen in the course of handling complaints through compliance reviews to determine the effectiveness of the IRM in processing complaints. He/she will assess whether complaints are handled within the timelines stated in the policy. Moreover, the Consultant will suggest ways in which the efficiency of the IRM with regard to the "protraction of case-handling and the longevity of some of the investigations» can be enhanced? Additional issues to look at are the delays in Management responses and action plans, the nature and extent of engagement between Compliance Review Panels (which comprise IRM Experts),

[3] See AfDB Policy on Non-Sovereign Operations (2018), Section 10, para. 10.2. 22

Bank Management, and Requestors. In addition, the Consultant will assess the results of complaints handled through problem- solving exercises. In particular, the Consultant will examine the linkages/sequence between the compliance review and the problem-solving functions, and the BCRM's experience in handling cases. the Consultant will explore how the IRM in general can best respond to emerging challenges such as the need for timely conclusion of cases, potential conflict of interests regarding the assignments of the IRM Experts, and ways of making the compliance review work more objective and strategic;

(vii) **Advisory Function:** The Consultant will assess whether the advisory mandate of the IRM has been carried out in line with the Board Resolution. The Consultant will examine how recommendations resulting, e.g. from spot- checks, have been integrated into Bank procedures. She/he will assess also the effectiveness and success of the advisory services offered by the BCRM to the Bank Management and spot-check advisory reviews of project compliance conducted since January 2015 in more details, **scrutinize the methodologies adopted, and report what the views of the stakeholders are. The analysis will dwell on whether this advisory function is a relevant** instrument for enhancing knowledge development and institutional learning within the Bank. The consultant will assess and look for evidence to show that **systemic recommendations listed in the compliance review reports, to ensure that non-compliances will not reoccur, are being addressed by the Bank.** The Consultant will obtain the views of members of the Boards and Bank Management on the suitability of this function of the IRM in fostering development impacts in Regional Member Countries (RMCs) and the credibility of the Bank to its clients and borrowers;

(viii) Often, Board members have expressed the urgency to see the IRM move to play a more proactive role, explore opportunities to anticipate the risks associated with projects to avoid complaints and to help prevent complaints from being filed with BCRM. The Consultant will examine the possibility of mandating the BCRM to intervene in the early stages of project development and see how the IRM might prevent rather than manage complaints;

(ix) **Best Practices:** The Consultant will compare the AfDB's complaint-handling mechanism with its counterpart Independent Accountability Mechanism (IAMs) of other MDBs to propose a model that best fits the specificity of the Bank. The Consultant will in particular draw on results of reviews undertaken by other IAMs concerning institutional arrangements, changes in the Resolution (Matthew Turner) establishing them, their operational rules and procedures, and the articulations between compliance review, problem- solving/project facilitation, and advisory functions. The Consultant will also look at the compliance review and problem-solving strategies utilized by the AfDB's accountability instruments. This information will help in making recommendations concerning the functions of the BCRM and the IRM;

(x) Mainstreaming Lessons Arising from IRM Activities: The Consultant will compile information from AfDB's Independent Development Evaluation (BDEV) and the Knowledge Management Division about strategies and best practices to mainstream lessons learned by the IRM at the institutional level. This is to serve diverse goals, which include improving project delivery; triggering operational changes; strengthening the handling of complaints; and availing information, knowledge, and skills relating to compliance review and problem-solving to the Bank's operations staff. Particular emphasis will be put on exploring the setting up of strong feedback channel(s) at the institutional level and **what could be done to improve learning. The consultant will assess how effective the IRM interaction with Management has been while safeguarding the IRM independence.**

Moreover, the consultant will assess the effectiveness of knowledge being generated to help the Bank Management to avoid repetition of policy failures in projects funded by the AfDB. The Consultant will address in particular the issues of resettlement and compensation that are reported in all the IRM reports to be systemic issues that have a huge potential to damage the reputation of the Bank. **A** careful look at the current practice of dealing with resettlement and compensation will be assessed and mitigation ideas such as **the option of including the cost of resettlement and compensation as part of Bank financing explored;**

(xi) **Outreach Activities:** Making the IRM known, especially to people potentially affected by AfDB-financed projects, is crucial for the success of the IRM. The Consultant will scrutinize the current BCRM outreach strategy, methodologies and approaches and provide recommendations on how to improve the efforts and IRM's visibility, in order to be effectively used as a mechanism by affected people;

(xii) **Strategic Alignment:** The Consultant will examine the Bank's Ten-Year Strategy, the High 5, the Bank's DBDM, and its ISS, and propose areas where the work of the IRM/BCRM can be aligned effectively so as to contribute to the effectiveness of Bank's operations and in dealing with potential complaints;

(xiii) **Terms of Office:** The Consultant will review the terms of office of the staff, including the Director of BCRM and the IRM Experts, in light of new developments at the AfDB and in similar IAMs;

(xiv) Amendments of the IRM Resolution and Operating Rules & Procedures:
The Consultant will review the Resolution establishing the IRM and its Operating Rules and Procedures of 28 January 2015 to propose amendments. These duties will include, but will not be limited, to the following:

(a) Remove any procedural ambiguities, in particular regarding the roles and responsibilities of the IRM Experts vis-à-vis the BCRM;

(b) Clarify the IRM Enabling Resolution and Operating Rules and Procedures governing the conversion of problem-solving initiatives into compliance review processes;

(c) Clarify procedures governing the handling of requests that are being simultaneously dealt with by IAMs of other MDBs, particularly in projects co-financed by the Bank Group;

(d) Revise the requirements for preparing and submitting a request/complaint;

(e) Provide an explicit IRM Rule on the protection of requesters under the Bank's Whistle Blowing and Complaints Handling Policy (2007);

(f) ClarifymodalitiesforundertakingIRMmonitoringactions;

(g) Clarify modalities for undertaking eligibility assessments of requests;

(h) Prepare a potential list of the policies of the Bank Group that could be subject to compliance reviews under the IRM Rules;

(i) DefinemodalitiesofconsultationsbetweentheComplianceReviewPanel and the Bank Management during the preparation of a compliance review report, Management response and action plans, spot-check advisory review reports, and Management's comments on factual matters only in such draft reports;

(j) Review the time required by the Bank Management to prepare a Management response and action plan following the completion of a compliance review report by the Compliance Review Panel. This should take into account the issue raised by the Bank Management multiple times that longer time is required to consult with the clients, especially in private-sector projects, to prepare a Management Action Plan, which may have cost implications on the client. On the other side, some stakeholders, including some of the Requestors, have expressed their frustrations with the IRM process on several occasions because the IRM does not adhere to the timelines provided in the IRM Rules. This prolongs the compliance review process and risks making the IRM lose its relevance and credibility;

(k) Review and propose amendments to the coordination modalities between the IRM and the Bank Management in submitting and presenting the IRM compliance review report and Management response and action plan to the Boards of Directors;

(l) Specify modalities governing the composition and diversity of the IRM Roster of Experts;

(m) Clarify, if necessary, the recruitment and selection process of the IRM Experts and the terms and conditions of their services;

(n) Clarify,if necessary,the recruitment and selection process of theDirector of the BCRM and his/her term of office;

(o) Assess the adequacy and hierarchy, resources, and optimized use of skills for BCRM staff to fulfill their duties, considering that the staff take the lead in assignments to compensate for additional consultancy resources required by the IRM to make it function efficiently;

(p) Define the potential role and structure of the BCRM beyond the administration of the IRM to fit well in the context of the Bank's priority High 5 and the new DBDM; and

(xv) Clarify the extent to which the IRM Experts can make recommendations concerning possible policy areas for the Bank to explore, i.e. recommendation for new policies, guidelines, strategies, updating of new policies, and/or developing guidance notes.

3.2 The Methodology

The review methodology will involve the following:

(i) **Desk Review:** The Consultant will conduct an initial comprehensive desk review to address the issues raised above;

(ii) **Consultations and Interviews:** The Consultant will interview former and current BCRM Directors, IRM staff, IRM Experts, Bank Group's Executive Directors, Senior Management, General Counsel, and relevant professional staff. The Consultant will also solicit views from the IRM stakeholders, including the Requestors, CSOs, Bank clients, and governments who have experience with the IRM. The heads of other IAMs of International Financial Institutions (IFIs), especially those that the IRM has collaborated with on compliance review, problem-solving, and outreach activities will also be consulted. The views of CSOs will specifically be taken into account through an organized consultative process. The Consultant will prepare and make presentations of findings of the Third Review and discuss with members of the Boards of Directors, the General Counsel, the Legal Department, and the Bank Management. This will feed into a draft review report, which will be posted on the Bank's website for public comments for a period of not less than for consideration by the Boards. The record of all inputs at the consultation stage, along with responsive comments by the Consultant, will be posted on the IRM website;

(iii) **The Board of Directors:** The IRM review will be considered in two sessions of the Board. The members will approve the TOR of the Third Review during the first session. The second meeting will be devoted to considering the recommendations of the Consultant and the approval of the new IRM Resolution Operating Rules and Procedures respectively. An informal Board seminar could be an alternative to the second meeting; and
(iv) **CODE:** The IRM review will involve two sessions with CODE. The first session will take place to discuss the initial draft report by the Consultant. The second meeting will review and provide comments on the revised draft of the Consultant's report before it is finalized for consideration by the Board.

3.3 Key Qualifications for Undertaking the Assignment

The assignment requires a qualified consultant (the option of a team of two consultants will be explored) with substantial experience gained from both practical work and academic research on independent handling of complaints and/or recourse mechanisms similar to the IRM. In addition to these professional and academic credentials, the Consultant must be highly familiar with current development issues in Africa. The individual must have experience with public- and private- sector operations of MDBs, and be knowledgeable about community outreach strategies and issues related to impacts of projects on people, communities, and the environment. Experience in project facilitation will be an additional asset.

It is essential for the Consultant to have excellent verbal and written command of one of the Bank Group's official languages, English or French, as well as a good working knowledge of the other official language of the Bank.

The Consultant must have at least a Master's or higher academic degree in a relevant field such as, but not limited to, international law, international development, human rights, environmental and social development, sociology and anthropology, engineering, or any other relevant field.

3.4 Work Phases and Timeframes

The assignment will take eighty (80) working days, with the possibility of extending it by ten (10) additional working days. The assignment will be delivered in five (5) phases as follows:

(i) **Phase One:** The Consultant will conduct a desk review, hold discussions with the Director and the staff of the BCRM, and prepare an *Inception Report* which will identify and propose the main tasks and challenges of the assignment in a detailed work plan. The time allocated for this phase will not exceed ten (10) working days, including travel time;

(ii) **Phase Two:** This will be a consultation phase inside the Bank with Senior Management and Executive Directors (members of the Boards of Directors), the IRM Experts, the Director and staff of the BCRM, and operations staff. The Consultant will also conduct interviews with relevant stakeholders outside the Bank, including the Requestors, CSOs, and RMCs. The Consultant will analyze the information received and prepare a *Draft Report* with recommendations. The time allocated for this phase will not exceed thirty (30) working days, including travel time. The Draft Report will be circulated to CODE members and Senior Management for review and comments. The Consultant, after consultation with the Director of the BCRM, will take into consideration these comments and prepare a *Revised Draft Report;*

(iii) **Phase Three:** This will be an open consultation phase, during which the Consultant's *Revised Draft Report* will be posted on the Bank's website for a period of not less than *forty-five (45) days* to enable external stakeholders and interested parties to make comments on the Report. This period is not part of the Consultant's working days. The Consultant will review comments received during the open consultation period,

incorporate them as appropriate, and prepare a *revised Draft Report*. In addition, the Consultant will produce a detailed summary in comment- and-response format, which will be annexed to the Consultant's Draft Report. The time of the Consultant allocated to this phase will not exceed ten (10) working days. After taken into account comments from the first public comment phase and any other feedback, the Consultant will prepare a revised draft report, which will be posted again on the Bank's website for another period of not less than forty-five (45) days. On the basis of the comments, the Consultant will prepared another revised draft report.

(iv)**Phase Four:** The Consultant will present the *Draft Final Report* with recommendations to a CODE session in Abidjan, Côte d'Ivoire. The time allocated for this phase shall not exceed twenty (20) working days, including travel time. During this phase, additional consultations can take place between the Consultant, the Bank Management, and Executive Directors, upon request; and

(v) **Phase Five:** Following the deliberations of CODE, the Consultant will revise the Draft Final Report, taking into consideration the views and issues raised by CODE members, and prepare the Final Report, which he/she will present to the Boards of Directors for discussion. The time allocated to this phase will not exceed ten (10) working days, including travel time;

Subject to the deliberations and decisions by the Boards, the timeframe of the Consultant may be extended by another ten (10) working days, if necessary, to allow the Consultant to integrate the recommendations, directions, or decisions of the Boards in the *Revised Final Report.* The Revised Final Report will be presented for consideration and approval by the Boards of Directors.

4. REPORTING AND DELIVERABLES OF THE REVIEW ASSIGNMENT

The Consultant will submit the following Reports to the Director of the BCRM at the end of each phase:

(i) **Inception Report** (not a public document) by no later than ten (10) working days after the commencement of the services, which will identify and propose the main tasks and challenges of the assignment in a detailed work plan;

(ii) A **Draft Report** (not a public document) by no later than thirty (30) working days from the completion of Phase One activities described in Section 3.4 of this report to be reviewed by CODE;

(iii) A **Summary of Comments** (not a public document) received from CODE and Senior Management, by no later than two weeks after the Draft Report has been circulated to them. To the extent possible and feasible after consultations with the Director of the BCRM, the Consultant will take into consideration the comments received from Executive Directors and Senior Management and prepare a Revised Draft Report;

(iv) The Revised Draft Report (public document) will be posted on the Bank's website for open consultations for two consecutive comment period of at least forty-five (45) days each. Public meetings with civil society in appropriate locations may also be arranged if there is strong interest for such a meeting;

(v) A **Draft Final Report** should be provided **no later than sixty (60) working days** from the date of commencement of services, for discussion by the CODE. This Report will take into account the comments received from the public and will include the following annexes:

(a) A Summary of Comments received from all sources during the consultation phases.

(b) A Table comparing the revised issues with other IAMs of IFIs.

(c) A Table including proposed changes to the IRM Resolution and Rules, and

(d) A Table of public comments received during the formal consultation period, along with responses explaining reasons for accepting or declining to include within suggestions.

(vi) **The Final Report** should be provided no later than eighty (80) working days from the date of commencement of services, for consideration by the Boards. This Report will include the views and recommendations of CODE and will include the four (4) annexes listed above; and

(vii) **The Revised Final Report**, if necessary, should be provided no later than by ten (10) working days following the Boards' session that considers the Final Report. This Report will incorporate all the views, directions, and recommendations of the Boards of Directors. The Revised Final Report will be submitted to the Boards for consideration and approval.

Following the approval by the Boards, the Revised Final Report along with the Annexes will be posted on the IRM website.

Annex XII: List of References

African Development Bank Group Documents:

1. African Development Bank/African Development Fund Resolution B/BD/2004/9- F/BD/2004/7
2. African Development Bank/African Development Fund Resolution B/BD/2010/10 – F/BD/2010/04
3. African Development Bank/African Development Fund Resolution B/BD/2015/03- F/BD/2015/02
4. African Development Bank, Board of Governors, Fifth Extraordinary Meeting of the ADB, October 2019
5. African Development Fund Deputies Report "ADF 15 Replenishment: An Enabling Environment for Inclusive and Sustainable Transformation, Decent Jobs and Greater Resilience" 2019
6. African Development Bank, Light Up and Power Africa: The New Deal on Energy for Africa, 2016
7. African Development Bank Feed Africa: Strategy for Agricultural Transformation in Africa,2016-2025
8. African Development Bank, Industrialization Strategy
9. African Development Bank Regional Integration Strategy and Policy, 2014
10. African Development Bank, Jobs for Youth in Africa, 2016-2025
11. African Development Bank An Update of the Decentralization Action Plan in line with NewDBDM
12. African Development Bank Environment and Social Safeguards Strengthening Action Plan
13. African Development Bank ISS Policy Statement and Operational Safeguards, Safeguards and Sustainability Series, Vol.I December 2013
14. African Development Bank, Policy on Non-Sovereign Operations, May 2019
15. African Development Bank, Framework for Enhanced Engagement with Civil Society Organizations
16. African Development Bank, Whistle Blowing Policy
17. Independent Review Mechanism, Annual Progress Report on Performance of IRM WorkProgram 2019
18. Independent Review Mechanism, "Assessment of the IRM Mainstreaming in Bank Policies and Procedures, Unpublished Document 2016
19. Independent Review Mechanism, Guidelines, Spot-Check Advisory Review of Project Compliance
20. Independent Review Mechanism, Operating Rules and Procedures, 2006
21. Independent Review Mechanism, Operating Rules and Procedures, 2015
22. Office of the Evaluator General, Evaluation of the AfDB's Integrated Safeguards System, 2019

Other Documents:

1. Accountability Counsel et al, "Comments on 2nd Review Report of Independent Review Mechanism of AfDB" 2014.
2. Compliance Adviser Ombudsman, "Getting Started with Dispute Resolution"

3. Compliance Adviser Ombudsman "Advisory Memos on Supply Chain Business Opportunities and Risks"

4. Centre for Research on Multinational Corporations (SOMO), Accountability Counsel, International Accountability Project, Fondacion para Desarrollo de Politicas Sustenables, "Best of….Independent Accountability Policies" October 2019

5. Daniel D Bradlow, "Multilateral Development Banks, Their Member States and Public Accountability: A Proposal"

6. Dispute Resolution Center, "Guide to Problem-solving" 2011

7. European Bank for Reconstruction and Development, Project Accountability Policy, 2019

8. Glass Half Full: The State of Accountability in Development Finance, January 2016

9. Gonzalo Castro de La Mata, Zeinab ElBakri. Jan Matteson, Dilek Barlas, and Jordan Burns,"The World Bank Inspection Panel: Accountability and Learning" Il Politico (Univ Pavia, Italy) 2019 anno LXXXIV, n 1, pp 70-82.

10. Green Climate Fund 2019 Annual Report

11. Green Climate Fund Website, Katrina Lehmann-Grube and Christine Redell "Lessons Learnt Through the External Review of the IFC's Environmental and Social Accountability" October 2020

12. International Finance Corporation, "Response to CAO Advisory Memos on Supply Chains",2017

13. Inspection Panel, Operating Procedures, April 2014.

14. Inspection Panel Guidelines on Retaliation, 2015

15. Letter from Accountability Counsel with Joint Recommendations to AfDB Boards ofDirectors on the Consultation Process of the IRM Review, 11th January 2019

16. Lumiere, Synergie, Developpement, "Transparence et Efficacite Du MII Du Groupe de laBanque Africaine de Developpement"

17. MICI: "Analysis of the Request Portfolio 2010-2017: A Statistical Review"

18. MICI "Guide For Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit" January 2019.

19. Owen McIntyre and Suresh Nanwani(eds) The Practice of Independent Accountability Mechanisms, 2019

20. The Practice of Independent Accountability Mechanisms, 2019. Preface by Edith Weiss to Owen McIntyre and Suresh Nanwani (eds)

21. UNDP-World Bank, "Joint UNDP-World Bank IDB, FCPF, "Guidance Note for REDD+ Countries: Establishing and Strengthening GRMs", May 2014