

# Second Review of the AfDB's Independent Review Mechanism

CSO Comments, 30 August 2014

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## Introduction

The undersigned 67 CSOs, who have experience using the African Development Bank's Independent Review Mechanism (IRM) and other non-judicial grievance mechanisms or otherwise relevant experience, appreciate the opportunity to provide our comments on the Draft Report (Draft Report) of the Second Review of the Independent Review Mechanism of the African Development Bank Group, prepared by Edward Ayensu (Consultant).

Before doing so, we would like to express our concern about the consultation process. Although we appreciate that the AfDB has provided for a public consultation during the review process, pro-active outreach by the AfDB to civil society only started in this last phase. As a result, we will effectively be involved in only one round of the review process. We would like to request that the final revised draft of the IRM policy be published for public comment, jointly with a summary of the comments received and the corresponding response from the Bank, before the Board approves the final IRM policy so that we can assess the extent to which our comments have been incorporated.

We make both specific comments on the proposed changes to the IRM's Operating Rules and Procedures (ORP) (2010) as well as general comments on the Draft Report. We have analysed the proposed changes and the current ORP against the following four important accountability principles, which are also reflected in the UN's Guiding Principles on Business and Human Rights<sup>1</sup>: Independence, Transparency, Effectiveness, and Accessibility. For each principle, we will explain its definition and provide recommendations to strengthen the AfDB's IRM.

**(1) Independence.** *An independent mechanism is structured and designed to operate independently from the Bank's Management or from undue political influence from any one stakeholder.*

In the current IRM ORP, independence of the IRM from the AfDB's management is not sufficiently guaranteed. We propose the following changes:

### *Restrictions on employment*

Most independent accountability mechanisms include a post-employment "cooling off" period or ban in order to overcome any real or perceived concerns that decisions by the staff of the mechanism would be compromised by their desire to seek employment following their term on the mechanism. While the current draft ORP retains cooling off periods for both the Director of the Compliance Review and Mediation Unit (CRMU) and the IRM Experts, it is insufficient to overcome concerns about their independence given their decision-making

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<sup>1</sup> See Guiding Principle 31, p. 26, <http://business-humanrights.org/sites/default/files/media/documents/ruggie/ruggie-guiding-principles-21-mar-2011.pdf>

authority within the IRM. Thus, paragraph 61 of the ORP should be amended to prohibit the CRMU Director from working at the AfDB following the end of his or her term, as is the case for the Director of the International Finance Corporation (IFC)'s Compliance Advisor Ombudsman (CAO) and the members of the World Bank (WB)'s Inspection Panel (IP).

Similarly, paragraph 66 of the ORP, should be amended to prohibit IRM Experts from working at the AfDB after their terms expire, as with the Asian Development Bank (AsDB)'s Accountability Mechanism<sup>2</sup>, the Project Complaint Mechanism (PCM) at the European Bank for Reconstruction and Development (EBRD)<sup>3</sup> and the WB's IP.<sup>4</sup>

#### *Selection of CRMU Director and IRM Experts and chairperson*

Including external stakeholders in the selection process of key IRM positions will help engender trust among potential users of the mechanisms and prevent any undue influence of AfDB Management on IRM staff. The inclusion of external stakeholders in the selection of the candidates is current practice at the PCM and CAO.<sup>5</sup> Consequently, paragraphs 61 and 64(a) of the ORP should be modified to require the President to establish a nomination committee composed of members both internal and external to the Bank to solicit applications for the positions of the CRMU Director and IRM experts.

To further ensure independence of the IRM, we strongly recommend that the Chairperson of the Roster be nominated by the other experts rather than by the Board on the President's recommendation, following the practice of the World Bank IP, where the panel members themselves select the chairperson. Paragraph 64(b) would then read: *"The members of the Roster will elect the chairperson."*

#### *Relationship between IRM and Board/Management*

One function that independent accountability mechanisms, such as the IRM, serve is to articulate lessons learned so that the Bank can prevent similar issues from arising in future projects or activities. In order for the mechanism to fulfil this function, it is imperative that there are open lines of communication between the mechanism and the Bank's Board. We endorse the Consultant's recommendation that the CRMU/IRM and the Board have regularly scheduled meetings to ensure that CRMU/IRM issues are prioritised within the AfDB,<sup>6</sup> as long as the interaction does not compromise the independence of the IRM.

#### *Additional Expertise and Advice*

It is important for the independence of the mechanism to be able to rely on advice and expertise of those outside the Bank who were not involved in any decisions relating to the financed activity. Consequently, we endorse the Consultant's proposed change to paragraph 75 of the ORP, requiring that additional expertise be sought externally.<sup>7</sup>

Similarly, the AfDB's Legal department should not provide advice in responding to a complaint, as this could possibly lead to a real or perceived conflict of interest if it has

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<sup>2</sup> <http://www.adb.org/sites/default/files/accountability-mechanism-policy-2012.pdf>, para.113, p.22

<sup>3</sup> <http://www.ebrd.com/downloads/integrity/pcmrules2014.pdf>, para. 51, p.14

<sup>4</sup>

<http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>, para. 7, p.7

<sup>5</sup> <http://www.ebrd.com/downloads/integrity/pcmrules2014.pdf>, para. 50, pp. 13-14

<sup>6</sup> Consultant's Draft Report, 10 June 2014, pp. 12-13

<sup>7</sup> Consultant's Draft Report, 10 June 2014, p. 26

already provided advice to the AfDB Investment officers on the same project. Paragraph 77 should therefore be modified to require external/independent legal expertise when legal information or advice is needed with respect to the Bank Group’s policies and procedures and the Bank Group’s rights and obligations. This modification should not preclude the IRM from obtaining information from the Legal department during an investigation, which could include a request for a copy of any advice given by the Legal department to Bank staff or Board.

**(2) Transparency.** *A transparent mechanism is transparent in its operations, information disclosure, and decision-making. Affected communities and the public should know what the mechanism is doing and the results of its work in a timely fashion.*

Although the current IRM ORP makes significant commitments to transparency, there is room for improvement.

The current ORP commits to publishing requests in the Requests Register after the determination is made on whether a problem-solving initiative or investigation will be undertaken.<sup>8</sup> Furthermore, paragraph 26 indicates that “[t]he number of such Requests and communications received shall be noted in the Register on a quarterly basis and the yearly total included in an annual report prepared by the CRMU (the ‘Annual Report’).”

#### *Section on Disclosure of information*

We would like to encourage the AfDB to make its commitment to transparency more explicit by including a very clear section on disclosure of information in its revised IRM ORP. That section should outline, among others:

- A commitment to making **all** relevant documents related to complaints public online in the Requests Register except the name or identifying features of the complainant if the complainant has requested confidentiality. The documents that will be made public should include the complaint, the Management response, problem-solving or compliance review reports, monitoring reports and final reports<sup>9</sup>;
- A commitment to doing so in a timely manner<sup>10</sup>; and
- For each complaint, an indicative timeline of the key decision points during the complaint process, indicating when upcoming reports are due, reasons for (substantial) delays, etc.

#### *Disclosing the availability of the IRM*

The responsibility to ensure potentially affected communities are aware of the IRM should not fall on the IRM exclusively. The primary responsibility for raising awareness of the IRM should lie with AfDB staff and clients. We therefore recommend that the AfDB require its clients to disclose the availability of the IRM at least to local communities and, in principle,

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<sup>8</sup> ORP para. 20

<sup>9</sup> Currently, the ORP uses a less specific description of the documents required to be published in the Register. See ORP para. 62(c), p.16 “the Register [...] shall contain significant data concerning the delivery and registration of Requests, as well as the conduct and outcome of problem-solving exercises and compliance reviews”.

<sup>10</sup> The Bujagali complaint Register, for example does not provide updated information on when the 4<sup>th</sup> Monitoring report was publicly disclosed. See: <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/Request%20Register.pdf>

more broadly. This could mean that clients disclose it in their consultations, through their local project-level grievance mechanisms, and on their own websites.

#### *Transparency with respect to private sector projects complaints*

The Consultant poses the problem of how the CRMU is to deal with confidential information in the case of private sector projects.<sup>11</sup> We believe that paragraph 76 of the ORP, which requires the IRM to follow the Bank's information disclosure policy, including business confidential information, is sufficient to address the issue. Furthermore, the issue of business confidentiality has never been a problem with any other mechanism that handles complaints related to private sector projects. Consequently, we do not believe that any changes to the ORP are warranted.

**(3) Effectiveness.** *An effective mechanism provides fair and positive results for affected communities and for holding the institution accountable for its operations.*

The effectiveness of the IRM relies on the extent to which their recommendations and findings provide appropriate redress for complainants, are taken into account by Bank management, and translated into actions on the ground to prevent or mitigate the negative impacts of a project.

#### *Scope of policies*

The IRM should be authorised to receive requests regarding any action for which the Bank Group has partial responsibility. ORP paragraph 2(ix) is overly broad and could be read to exclude complaints that relate to issues that are the shared responsibility of the Bank and its clients. Therefore, we agree with the Consultant's proposal that the paragraph should be revised to include the word "sole" as follows: "actions that are the [sole] responsibility of other parties [...]."

#### *Monitoring*

More detailed requirements regarding monitoring of solutions agreed upon during problem-solving exercises should be developed,<sup>12</sup> taking into account the recommendations made by the Consultant.<sup>13</sup> In particular, we support the recommendation that the IRM independently verify the implementation of the agreements before closing the case and further recommend that the conclusions are published in the final report and made available on the Requests Register. Monitoring reports for both problem-solving and compliance review should also be made available through the Requests Register, as indicated in the section on Transparency above.

#### *Human Rights*

The purpose of the IRM is undermined by limiting its scope of review to only some of the issues that may arise under the application of AfDB policies. The preamble to the AfDB Group's Integrated Safeguards System (ISS) "affirms that it respects the principles and values of human rights as set out in the UN Charter and the African Charter of Human and Peoples' Rights." However, under ORP amended paragraph 2(xi), the IRM is limited to receiving Requests that allege only human rights violations of "social and economic rights".

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<sup>11</sup> Consultant's Draft Report, 10 June 2014, pp. 5 and 25

<sup>12</sup> ORP para. 49.

<sup>13</sup> Consultant's Draft Report, 10 June 2014, p. 18

The IRM should be able to measure compliance against any and every policy the Bank has. It is arbitrary for the Bank to exclude policies from IRM review, including its exception for complaints relating to human rights violations that are other than those relating to social and economic rights. The nature of human rights is that they are interrelated, interdependent and indivisible.<sup>14</sup> All development activity can have an impact on a multitude of civil, political, economic, social, environmental and cultural rights. Further, the member governments of the AfDB cannot selectively choose to ignore their human rights obligations in their decisions to finance activities, nor can they selectively deny the rights of the communities affected by those activities. Respect for the rights of communities includes their ability to seek recourse when those rights—whatever their nature—are violated.

Thus we agree with the Consultant's comments at Draft Report section 7.1.2 (a). Amended paragraph 2(xi) should be expanded to include consideration of all human rights violations.

#### *Extra functions*

In the Consultant's Draft Report both a "spot-check" function and an advisory role are suggested.<sup>15</sup> Only the advisory role is proposed in the revised procedures. We would recommend the inclusion of a separate paragraph on the advisory role to further describe how it would function.

We are not in favour of the "spot-check" function the way the Consultant conceives of it as it confuses the role between management and the mechanism. What we would strongly support would be the IRM having the authority to trigger a compliance review itself, similar to the CAO. This would allow the IRM to initiate an investigation without requiring receipt of a formal complaint. Thus, *for example*, the IRM should be empowered to undertake investigations if it becomes aware of harm that may have resulted from the failure of the Bank to comply with its policies, especially in situations in which it would be difficult or dangerous for communities themselves to file a complaint, or where no affected community exists.

#### *Private sector*

It is unclear why the current ORP makes a distinction between private sector and public sector projects. Paragraph 2 indicates that "*CRMU is not authorised to receive Requests relating to [...], xi. private sector or other non-sovereign guaranteed projects except in instances of an alleged breach of the Bank-Group's agricultural, education, health, gender, good governance or environmental policies.*" This seems like an arbitrary list of policies. The AfDB's Integrated Safeguards System applies to public and private projects equally, and we see no reason why the same principle should not apply to the IRM. Private clients should not be treated differently than public sector clients with respect to their responsibility to apply the ISS. Consequently, the IRM should be able to determine compliance with any relevant operational policies and procedures with respect to the design, implementation or supervision of a project. Bank loans to, or co-funding of projects with, private sector entities should be conditional upon those private sector entities agreeing in advance to the jurisdiction of the IRM with respect to any aspect of such loans or projects to which the ISS and other Bank policies apply.

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<sup>14</sup> <http://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

<sup>15</sup> Consultant's Draft Report, 10 June 2014, p. 13

### *Timelines*

We disagree with the Consultant's proposal to allow the CRMU Director, in his/her discretion, to extend time periods referred to in the ORP.<sup>16</sup> While full and proper investigation, assessment and review is essential, time periods set forth for such actions must be respected in order to ensure that Requests are dealt with in a timely manner. It is not clear why the Consultant's proposal to allow the CRMU Director essentially unqualified discretion to extend time periods is necessary and it would not be favourable to the complainants nor the Bank, who benefit from a process that handles complaints as a matter of priority. One of the lessons from the complaint on the Bujagali hydropower project in Uganda is exactly that there should be a time limit within which complaints will be handled by the IRM and the process concluded (see Box 1 below for a further description of the Bujagali complaint).

#### **Box 1: Bujagali Dam Project, Uganda Lessons from AfDB IRM complaint**

Complaints related to the Bujagali Dam project were submitted to four different Complaints Mechanisms, of four different banks involved: the AfDB IRM, the EIB Complaints Mechanism, the World Bank's IP and the IFC's CAO. Below we will describe lessons deriving from the way the complaint was handled specifically by the IRM.

##### **IRM strengths**

As concerns Bujagali, the IRM has tried to respond to the request and did what was within its mandate to do. We commend the IRM for sharing its independent report with the complainants at the same time it was sent to the Bank's Board. This demonstrated a clear commitment to transparency and ensured that the Board, Bank staff, and complainants were all working with the same set of facts. Unlike at the WB and EIB's mechanisms, where the report is not shared with complainants until after they were approved by the Board, the IRM's practice allowed complainants to get a better understanding of the issues at stake.

##### **Unsolved issues under IRM**

Despite the IRM's inspection and monitoring missions, some issues regarding the Bujagali complaint are still unresolved. The issue of compensation of the people whose property was affected by the transmission line and the spiritual shrine which has been submerged is still not dealt with. Given the fact that the hydropower project is now completed and running, there are high expectations on the 4<sup>th</sup> monitoring report to include management recommendations related to compensation and resettlement of the affected people.

##### **Recommendation**

Based on experiences with the Bujagali complaint, which was filed in May 2007 and still has important issues pending 7 years later, we would recommend that the new IRM ORP include a time limit within which complaints to the IRM should be handled and finalised. Currently, it seems that the complaints process can be extended indefinitely, and, as we know, justice delayed is justice denied.

**4) Accessibility.** *A mechanism empowers affected communities, including particularly those who invoke the mechanism's assistance, and communities can access the mechanism easily and participate effectively.*

The main goal of the IRM should be not to create a high bar for complainants to file a complaint. There are, however, many elements that create a burden for complainants in using the IRM. From 1967 to the end of 2013, the African Development Bank approved over 4,500 projects. The IRM was established in 2004. Despite the vastness of its contributions to development projects, no complaints were processed in 2013, and only 1 complaint was

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<sup>16</sup> Consultant's Draft Report, 10 June 2014, p. 31

processed in 2011 and 2012 respectively. A total of 9 complaints have been received and registered, with 7 more received but not registered.<sup>17</sup>

#### *Sensitization and simple request procedure*

Given the impacts of the AfDB through the sheer size and number of projects it approves, there is an obvious need to:

- a) Effectively sensitise indigenous and project affected peoples about the AfDB, its role and the role of the IRM. The Consultant has included this as a recommendation under Draft Report section 6.7.2;
- b) Ensure that the threshold to filing a complaint to the IRM is sufficiently low, to enable those from indigenous and project affected peoples to easily access the IRM (note that such peoples are often marginalised within their own communities and may not have the necessary education and skills to satisfy the current registration requirements).<sup>18</sup> For more background on the special status of Indigenous Peoples (IPs), see box 2 below;
- c) The IRM should provide a request form and/or sample requests for requesters to use, as many other mechanisms do. Although ORP paragraph 17 allows Requesters to contact the CRMU for advice on preparing a request, providing forms and samples increases accessibility and provides background for Requesters if they need to contact the CRMU;
- d) Allow easy filing of the complaint: the complainants should be allowed to submit their complaints by email. Other complaints mechanisms allow that; and
- e) An updated IRM ORP, with all amendments incorporated, should be made readily accessible and available in the major African languages. At present the IRM ORP must be read in conjunction with at least one other Resolution (Resolution N° B/BD/2013/20 - F/BD/2013/08). A complete and revised IRM ORP should be reissued immediately following any amendments adopted by the Boards.

### **Box 2: Indigenous Peoples (IP) Interpretation of IP rights in an African Context**

#### **Indigenous peoples**

The Consultant's Draft Report section 7.1.2(b) states that "there is a great discrepancy between who can be described as indigenous people and those that represent vulnerable groups of people" in this particular context. The Consultant then follows that "there is a lack of clarity and specificity as to who should be classified as indigenous", leading to ambiguity as to who may be considered vulnerable.<sup>19</sup>

Contrary to the statements in section 7.1.2(b), there is, in fact, much work done in the African context, supported by leading regional institutions, that provides clarity as to who may be considered "indigenous" in the African context, and the particular characteristics and qualities of such peoples. In this regard, the Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, particularly the 2005 report submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa" is particularly relevant. The report was produced in recognition by the African Commission on Human and Peoples' Rights that "*the protection and promotion of the human rights of the most disadvantaged, marginalised and excluded groups on the continent is a major concern and that the*

<sup>17</sup> See tables in Consultant's Draft Report, 10 June 2014, pp. 15-16

<sup>18</sup> Note for example the procedures of the IFC's CAO

<sup>19</sup> Consultant's Draft Report, 10 June 2014, p. 23

*African Charter on Human and Peoples' Rights must form the framework for this".<sup>20</sup> In particular, the African Commission's Working Group states:*

*"The African peoples who are facing particular human rights violations, and who are applying the term "indigenous" in their efforts to address their situation, cut across various economic systems and embrace hunter-gatherers, pastoralists as well as some small-scale farmers. Similarly, they also practice different cultures, social institutions and observe different religious systems. The examples provided in this report are by no means conclusive, but are meant to provide tangible content to what would otherwise be pure theory. Those identifying as indigenous peoples in Africa have different names, are tied to very differing geographical locations and find themselves with specific realities that have to be evoked for a comprehensive appreciation of their situation and issues." (Our emphasis added).<sup>21</sup>*

The African Commission's Working Group sought to set out particular characteristics of indigenous peoples in the African context. It was stated: *"To summarise briefly the overall characteristics of the groups identifying themselves as indigenous peoples: their cultures and ways of life differ considerably from the dominant society and their cultures are under threat, in some cases to the extent of extinction. A key characteristic for most of them is that the survival of their particular way of life depends on access and rights to their traditional land and the natural resources thereon. They suffer from discrimination as they are being regarded as less developed and less advanced than other more dominant sectors of society. They often live in inaccessible regions, often geographically isolated and suffer from various forms of marginalisation, both politically and socially. They are subject to domination and exploitation within national political and economic structures that are commonly designed to reflect the interests and activities of the national majority. This discrimination, domination and marginalisation violates their human rights as peoples/communities, threatens the continuation of their cultures and ways of life and prevents them from being able to genuinely participate in deciding on their own future and forms of development."<sup>22</sup>*

#### **Conclusion**

In conclusion, while the Consultant's comments on Indigenous Peoples are unclear, especially given that there is no specific Indigenous Peoples policy in the AfDB's ISS, they are outside the scope of the IRM policies. Some of our NGOs have engaged with the AfDB, and will continue to do so, to advocate for better reflection of human rights in its policies and for a clear strategy on how to deal with Indigenous People's rights, to be translated into specific provisions in all relevant policy documents.

Next to the need for sensitization and simple request procedures, there are more requirements in the current ORP that diminish the accessibility of the IRM:

#### *Who can file a complaint?*

Under the current ORP, only a group of two or more people in the country or countries where the Bank Group-financed project is located can file a complaint.<sup>23</sup> In cases of non-local representation, the IRM will require clear evidence that there is no adequate or appropriate representation in the country or countries where the project is located or has a direct and material impact.<sup>24</sup>

These requirements put unnecessary restrictions on the accessibility of the mechanism. We recommend removing these restrictions by:

- Allowing any individual, group, community, or other party to file a complaint, as is the case at the IFC's CAO;
- Allowing non-local representation of complainants under equal conditions as local complainants. Where complainants already have a trusted and working relationship

<sup>20</sup> African Commission Report, p. 8

<sup>21</sup> African Commission Report, p. 15

<sup>22</sup> African Commission Report, p. 89

<sup>23</sup> ORP para. 4a, p.4

<sup>24</sup> ORP para. 13, p.6



with non-local parties, the burden of providing evidence that there is no adequate or appropriate representation in-country could be time-consuming. We therefore recommend that this requirement be removed; and

- Allowing NGOs who are not directly affected by the project to file complaints, to request a compliance review. This would ensure that e.g. complaints in relation to environmental destruction, where there is no impact on communities, would also be eligible for review. Both the EIB and the EBRD's PCM have these less restrictive requirements and could be used as examples. For example, the EIB's Complaint Mechanism indicates that: "*Complainants do not need to be directly affected by the EIB decision, action or omission and are not required to identify the applicable rule, regulation or policy that may have been breached.*"<sup>25</sup>

#### *Contents of requests*

We recommend that the "Contents of Requests," ORP paragraph 5, be simplified, so as to make it easier for affected communities to submit a complaint. To ensure accessibility, requests should include a description of the project and the harm suffered or threatened to the affected parties. Any obligation on the requester to prove that the Bank Group policies, procedures or contractual documents were "seriously" violated should be removed.<sup>26</sup>

Moreover, complainants should indicate whether they would like to pursue problem-solving, compliance review, or both. The Director of the CRMU should defer to the complainants' preferences.

#### *Additional Information*

There are a number of determinations that would lead to an extra burden on the complainants, which we would recommend to eliminate. One of these is the provision for a "revised request"<sup>27</sup>, even in cases where new information becomes available. The IRM should be able to collect new information throughout the process. Asking the complainant to submit a new request, would put too much burden on the complainant. The only reason for a "revised request" would be if the complainants are changing the scope of the request, for example a case where they complained about one project and now they want to change it to a different project. Also, as part of the submission of the request, the Complainants should have the opportunity to correct any deficiencies in their complaint.

#### *Documents*

In order to eliminate the burden on complainants, ORP paragraph 14 "(a) all correspondence with Bank Group staff; (b) notes of meetings with Bank Group staff; (c) a map or diagram, if relevant, showing the location of the affected parties or area affected by the project" should be deleted.

#### *Confidentiality of identity of requesters*

ORP paragraph 8 provides that if the requesters wish to remain anonymous, it is up to the Director to "determine whether such confidentiality is warranted." This creates a barrier to use the IRM because requesters may choose not to file a request for fear that the Director might determine that confidentiality is not warranted. The IFC's CAO, the AsDB's

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<sup>25</sup> <http://www.eib.org/about/accountability/complaints/index.htm>, para "Who may complain?", website consulted on 20 August 2014

<sup>26</sup> ORP para. 5(c)

<sup>27</sup> Consultant's Draft Report, 10 June 2014, p. 30

Accountability Mechanism and the WB's IP all allow confidentiality at the request of a complainant. The ORP should be revised to allow confidentiality if it is requested rather than leaving that decision in the hands of the Director.

#### *Local Grievance Mechanism*

Under the current ORP as set forth in paragraph 1 (p.3), complainants are required to raise their concerns with Bank Management, in order to give them a chance to resolve the issue, before filing a complaint with the IRM. The Consultant proposes a new requirement that the complainant must first raise the issues with the local grievance mechanism AND management.<sup>28</sup> We disagree with the Consultant's recommendation. If the complaint is supposed to relate to the action or inaction of the Bank, then the client's project-level grievance mechanism will not be able to address it. Furthermore, project-level grievance mechanisms, which are usually designed and operated by the client have an inherent conflict of interest in resolving complaints regarding client activities, and, as a result, are generally not trusted by those affected.<sup>29</sup> We would retain the current language unchanged.

In the alternative, complainants could choose with whom they raise the complaint. But at a minimum, there should be a provision that the complainants do not have to raise their concerns with a local grievance mechanism as a pre-requisite for using AfDB IRM. Direct access to the AfDB IRM should be guaranteed.

#### *Sequencing*

The authority currently held by the CRMU Director to determine whether a request should be handled by problem solving or compliance undermines the accessibility of the IRM. This determination should be made by the complainant, as has also been indicated above (under Content of requests). Similarly, complainants should be able to request a compliance review even after the successful completion of a problem solving initiative. Thus, we agree with the Consultant's findings,<sup>30</sup> but we do not see it translated into suggested policy text and we recommend this does get taken up in the final IRM policy. We recommend that ORP paragraph 43 be amended as follows: "*Where at the conclusion of a problem-solving exercise, whether or not successful, **either the complainants or the Director determine, as provided in paragraph 44 below, that a compliance review is warranted, the Director must include in the problem-solving report a recommendation that the project undergo a compliance review. [...]***".

#### **Conclusion**

We, the undersigned NGOs, are fully supportive of the AfDB's commitment to transparency and accountability. We see this second review of the IRM as a welcome and necessary opportunity to improve the Bank's accountability mechanism and have made recommendations to this effect. We hope the AfDB will consider our comments in the process of refining the terms of its IRM and are interested in further engaging in discussions on this subject.

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<sup>28</sup> Consultant's Draft Report, 10 June 2014, p. 27

<sup>29</sup> [http://somo.nl/publications-nl/Publication\\_4059-nl/picture/image\\_view\\_fullscreen](http://somo.nl/publications-nl/Publication_4059-nl/picture/image_view_fullscreen), Using Grievance Mechanisms, SOMO, March 2014

<sup>30</sup> Consultant's Draft Report, 10 June 2014, p. 24

# Signatories

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CSO Coalition on the AfDB, in cooperation with:

## **African CSOs:**

African Law Foundation (AFRILAW), Nigeria  
African Rivers Network  
Association Guinéenne pour la Transparence, Guinea  
Association pour l'Intégration et le Développement Durable au Burundi, Burundi  
Association des Femmes Africaines pour la Recherche et le Développement (AAWORD/AFARD), Senegal  
Association des Jeunes Filles pour la Promotion de L'Espace Francophone, Guinea  
Batwa Development Program, Uganda  
Buliisa Initiative for Rural Development Organisation (BIRUDO), Uganda  
Centre for Applied Legal Studies (CALS), South Africa  
Centre for Civil Society, University of KwaZulu-Natal, South-Africa  
Centre for Human Rights, Faculty of Law, University of Pretoria, South Africa  
Centro terra Viva - Estudos e Advocacia Ambiental, Mozambique  
Committee for Peace and Development Advocacy (COPDA), Liberia  
Community Empowerment for Rehabilitation and Development (CEFoRD-Yei), Republic of South Sudan  
Community Enhancement and Environmental Awareness foundation (CEEAF), Nigeria  
Community Policing Partners for Justice, Security and Democratic Reforms (COMPPART), Nigeria  
Community Resource and Development Center of Narok, Kenya  
Conseil Régional des Organisations Non Gouvernementales de Développement (CRONGD), DRC Congo  
Earthlife Africa, South Africa  
EG Justice, Equatorial Guinea  
Endorois Welfare Council, Kenya  
Environmental Rights Action/Friends of the Earth, Nigeria  
Fahamu Africa, Senegal  
Fondation pour le Développement du Sahel (FDS), Mali  
Foundation for the Conservation of the Earth (FOCONE), Nigeria  
Foundation for Environmental Rights, Advocacy and Development (FENRAD), Nigeria  
Friends of Lake Turkana, Kenya  
Global Network for Good Governance (GNGG), Cameroon  
Habi Center for Environmental Rights, Egypt  
Human Rights Council, Ethiopia  
Integrated Social Development Centre (ISODEC), Ghana  
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Jamaa Resource Initiatives, Kenya  
Jeunes Volontaires pour l'Environnement (JVE) International, Togo  
Justicia Asbl, Democratic Republic of Congo  
Kenya Natural Resources Alliance (KeNRA), Kenya  
Kenya Human Rights Commission, Kenya  
LITE-Africa, Nigeria  
Lumière Synergie pour le Développement, Senegal  
Ogiek Peoples Development Program, Kenya  
ONG Mer Bleue, Mauritania  
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Réseau Camerounais des Organisations des Droits de l'Homme (RECODH), Cameroon  
RIM Youth Climate Movement, Mauritania  
Save Lamu, Kenya  
Secours Net, Mauritania  
Sengwer Indigenous People Programme (SIPP), Kenya  
WACAM, Ghana  
Support Initiative for Sustainable Development (SISDEV), Nigeria  
Women Environment and Development Network (WEDEN), Nigeria  
Worldview, the Gambia

**Non-African CSOs:**

Accountability Counsel, US

ActionAid International

Bank Information Center (BIC), US

Both ENDS, Netherlands

Centre National de Coopération au Développement, CNCD -11.11.11, Belgium

Centre for Research on Multinational Corporations (SOMO), Netherlands

Heinrich Boell Stiftung North America, US

Inclusive Development International, US

International Network on Displacement and Resettlement, US

International Rivers

Kosovo Civil Society Consortium for Sustainable Development (KOSID), Kosovo

Natural Justice, South Africa

Ulu Foundation, US

Urgewald, Germany