

# Multilateral Development Bank Accountability Mechanisms: Developments and Challenges<sup>1</sup>

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## I. Introduction

Prior to 1993, the multilateral development banks<sup>3</sup> (MDBs) could be held to account for their actions only by their shareholders – governments in all cases that provided working capital for the banks for their lending and development purposes. It was thus a fundamental change in the system of international governance for citizens adversely affected by poorly-designed and/or implemented projects supported by these banks to be able to file claims through a formal accountability mechanism or forum to redress their grievances. The term “accountability mechanism” in this article means an avenue for private individuals and groups to file claims against the institution for redress of their grievances on poorly-designed and/or implemented projects. Clearly the MDBs had always been “accountable” to their shareholders; the term is introduced here in the sense that public institutions have become increasingly directly accountable to publics in recent decades, and part of that trend has been the inclusion of international financial institutions (IFIs) with a development mandate.

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<sup>3</sup> The term “multilateral development banks” in this article refers to the World Bank (constituting the International Bank for Reconstruction and Development [IBRD] and the soft concessional lending window, International Development Association [IDA]), African Development Bank (AfDB), Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IDB), International Finance Corporation (IFC), and Multilateral Investment Guarantee Agency (MIGA).

This article focuses on six MDB accountability mechanisms, that is, the World Bank Inspection Panel (WBIP), Inter-American Development Bank (IDB) Independent Investigation Mechanism (IIM), Asian Development Bank's (ADB) Accountability Mechanism of 2003 which replaced its Inspection Function of 1995, the Compliance Advisor/Ombudsman (CAO) Office of International Financial Corporation (IFC) and Multilateral Investment Guarantee Agency (MIGA), European Bank for Reconstruction and Development's (EBRD) Independent Recourse Mechanism (IRM) and African Development Bank's (AfDB) Independent Review Mechanism (IRM). Outside MDBs, accountability mechanisms at several national financial institutions with international activities have also been set up such as Japan Bank for International Corporation (JBIC), Nippon Export and Investment Insurance, Japan (NEXI), Japan International Cooperation Agency (JICA), and Overseas Private Investment Corporation, USA (OPIC).<sup>4</sup> Over the past 15 years, there has been a proliferation of MDB accountability mechanisms, each having its own unique system in attempting to fix problem projects. Grievance claims filed with accountability mechanisms have been increasing over the years, and citizens are still clamoring for MDBs to adopt new approaches or ways to hear their voices and handle their grievances.

This article was originally based on the outreach presentations by ADB's Compliance Review Panel<sup>5</sup> on the ADB Accountability Mechanism and on trends and challenges of MDB accountability mechanisms in Australia, England, Japan, and the Philippines from 2005 to 2007 and the inputs received from the participants including suggestions on better accountability procedures and redress of grievances. Participants were ADB staff, government officials, nongovernmental organizations (NGOs), civil society members, academic staff, undergraduate and postgraduate students, practicing lawyers, private sector officers, and the diplomatic community. The purpose of this article is to stimulate debate and discussion on the challenges faced by MDBs and their accountability mechanisms and to identify possible approaches that can be taken to meet these challenges.

Section II describes the establishment and *raison d'être* of MDB accountability mechanisms. Section III gives a brief overview of these mechanisms and is followed by an analysis on the emerging trends and directions of these mechanisms in Section IV. The article concludes in Section V with a discussion

<sup>4</sup> In 2003, JBIC introduced its "Summary of Procedures to Submit Objections Concerning JBIC Guidelines for Confirmation of Environmental and Social Considerations" and NEXI established its "Procedures for Submitting Objections on Guidelines of Environmental and Social Considerations in Trade Insurance". In 2004, JICA enacted its "Modus Operandi of the Objection System regarding compliance with JICA Guidelines for Environmental and Social Considerations" and OPIC established its Accountability and Advisory Mechanism. These mechanisms are not specifically discussed here as they would be the subject of another article.

<sup>5</sup> See the ADB Compliance Review Panel (CRP)'s outreach activities at <http://www.compliance.adb.org/dir0035p.nsf/alldocs/ELLN-6NC4CT?OpenDocument> (accessed October 1, 2008).

of the challenges that lie ahead for MDBs and their accountability mechanisms and makes suggestions on how these banks and their mechanisms can meet the challenges.

## II. Establishment and Raison D'être of MDB Accountability Mechanisms

The charters or constituent documents of the seven MDBs are clear on the mandates of these institutions, namely, to promote and finance the economic development of the developing or borrowing countries. The charter of the first MDB – International Bank for Reconstruction and Development (IBRD) – was drafted in 1944 to address the need for economic reconstruction and development worldwide with the aftermath of the Second World War. Regional development banks, namely, IDB, AfDB, ADB, and EBRD, were later established to focus on development in countries in their respective regions. IFC and MIGA were created (in 1956 and 1985, respectively) to supplement the activities of IBRD and IDA by covering private sector operations.

Although IBRD was established in 1946 and other MDBs were established thereafter (IDB was established in 1959, AfDB and ADB were set up in the following decade, and EBRD was created in 1991), the role of civil society organizations (CSOs) as a stakeholder was not given prominence in the earlier years of the banks' business processes. Until the late 1980s, people adversely affected by projects, CSOs, and the application of environmental and social policies (such as environment, involuntary resettlement, and disclosure of information) had little impact on MDBs which were otherwise free to design and approve projects in coordination with their borrowing countries for public sector operations and their project sponsors for private sector operations. The MDBs relied on borrowing governments to deal with issues arising from communities and CSOs in the project area.

In the 1980s, the emergence and growth of advocacy NGOs in the United States, operating in Washington D.C. where the World Bank is headquartered, and in Europe, and their working with local communities, citizen groups, or fledgling Southern NGOs in borrowing countries that were affected by World Bank projects in Brazil, Indonesia, and India,<sup>6</sup> set the tone for the World Bank to devise an accountability mechanism to give affected people a voice to present claims. The traditional view that an MDB is formally accountable only to its member governments was getting eroded with increasing public accountability to, and participation from, civil society in both donor and developing countries. Concomitantly, there was a shift in development models towards sustainable

<sup>6</sup> These are the Polonoroeste road and resettlement project in Brazil, the Sardar Sarovar (Narmada) Dam and Power Projects in India, and the Kedung Ombo Multipurpose Dam and Irrigation Project in Indonesia.

development and with the right to development formally recognized at the 1992 United Nations Conference on Environment and Development, MDBs, such as the World Bank (followed by other institutions such as ADB and IDB) began to develop environmental and social policies to improve their development effectiveness by emphasizing the interests of affected communities through policies on involuntary resettlement, environment, and indigenous peoples.<sup>7</sup>

The WBIP and ADB Accountability Mechanism will be discussed in this section; the former is the first, and remains the most experienced, example of an MDB accountability mechanism, and the latter replaced the original Inspection Function with an innovative system which has both problem-solving and investigation phases. The WBIP was created in 1993 through a combination of external and internal pressures, primarily external. The external pressure stemmed from concerns by NGOs in America and Europe with support from NGOs in developing countries, which were disgruntled at poorly-designed and/or environmentally-damaging projects, including the Sardar Sarovar Projects in India and the Yacretá Hydroelectric Project in Argentina and Paraguay. Also, there was pressure from donor countries in IDA's 10th replenishment negotiation process in 1992. The internal pressure came from the Board of Directors, triggered by the publication of the Morse Commission's report<sup>8</sup> in June 1992, and the Wapenhans Report<sup>9</sup> in November 1992. The World Bank created the Morse Commission, an independent commission headed by Bradford Morse to undertake an independent review of the Sardar Sarovar Projects in India. The World Bank also established a portfolio management task force on its lending operations that produced the Wapenhans Report, which documented the low "success rate" of World Bank-financed projects. These two reports reinforced NGO proposals for an independent citizen-driven grievance mechanism. The World Bank, in response to the Wapenhans Report's recommendations, concluded in its action plan that "the interest of the Bank would be better served by the establishment of an independent Inspection Panel" with a view to augmenting the Bank's existing supervision, audit, and evaluation functions.<sup>10</sup> Civil

<sup>7</sup> Günther Handl, "The Legal Mandate of Multilateral Development Banks as Agents for Change Toward Sustainable Development", 92 *American Journal of International Law* 642 (1998).

<sup>8</sup> See Bradford Morse and Thomas Berger, *Sardar Sarovar: Report of the Independent Review* (Ottawa: Resources Future, Inc., 1992). The authors were of the view that the Projects were flawed, the resettlement and rehabilitation of all those displaced by the Projects was not possible under prevailing circumstances, and that the environmental and social impacts of the Projects were not properly considered or adequately addressed.

<sup>9</sup> World Bank, *Effective Implementation: Key to Development Impact, R192-125* (November 3, 1992). The Wapenhans Report noted that it deemed 37.5 percent of the World Bank's projects completed in 1991 as failure, up from 15 percent in 1981 and 30.5 percent in 1989, and that there was a declining trend in project performance because of the presence of an approval culture (where priority was on lending targets rather than on project quality).

<sup>10</sup> World Bank, *Portfolio Management: Next Step: A Program of Actions* (July 22, 1993), para. 60.

society played a catalytic role in the establishment of the WBIP, which in turn resulted in the adoption of similar mechanisms in other MDBs.<sup>11</sup>

The ADB's experience in setting up its accountability mechanisms – the Inspection Function in 1995 and the Accountability Mechanism in 2003 – is instructive in understanding how external and internal factors affected their establishment and reform.<sup>12</sup> The external factors were the measures taken by the World Bank and IDB in promoting transparency and accountability in their operations, as well as enhancing efficiency and development effectiveness through the establishment of their accountability mechanisms in 1993 and 1994 and the bank's commitments in relation to the general capital increase for its ordinary operations and in relation to its Asian Development Fund (ADF)<sup>13</sup> VII negotiations. Markedly absent was the civil society pressure that was the *sin qua non* in the creation of the WBIP. The three internal factors were the bank's response to its task force established in 1994 to review its operations to enhance portfolio quality,<sup>14</sup> giving effect to the bank's policy on confidentiality and information disclosure adopted in 1994; and the aim to "increase transparency and accountability, and also complement the Bank's existing supervision, audit and evaluation systems".<sup>15</sup>

In contrast to the short-lived Inspection Function, the ADB Accountability Mechanism heralded a new dimension of accountability mechanism as it overhauled the previous system of inspection (investigation) to encompass both problem-solving and compliance review. The review of the Inspection Function examined the policy to consider the application of private sector operations as they were not covered under the policy. There were significant external pressures from civil society, primarily advocacy NGOs, who were not satisfied with the handling and outcome of the investigation of the Samut Prakarn Wastewater

<sup>11</sup> Maartje van Putten, 'Policing the World', *Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions* (The Netherlands: Tilburg University and Canada: McGill University, 2006), 79. There is considerable literature on the events shaping the development of accountability mechanisms at the World Bank and ADB and other institutions as well as on the impacts in MDB lending operations. See, for example, Dana Clark, Jonathan Fox, and Kay Treakle, eds., *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel* (Rowman and Littlefield, 2003); Eisuke Suzuki and Suresh Nanwani, "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks", *Michigan Journal of International Law* 27(1) (2005): 181; and David B. Hunter, "Civil Society Networks and the Development of Environmental Standards at International Financial Institutions", 8 *Chicago Journal of International Law* (2008): 437.

<sup>12</sup> ADB, *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism* (Manila: ADB, May 2003). ADB, *Establishment of an Inspection Function* (Manila: ADB, December 1995).

<sup>13</sup> The Asian Development Fund is the bank's special operations window providing concessional funds to borrowing countries, similar to IDA replenishments.

<sup>14</sup> ADB, *Report of the Task Force on Improving Project Quality* (Manila: ADB, January 28, 1994).

<sup>15</sup> ADB, *Establishment of an Inspection Function* (Manila: ADB, December 1995), para. 2.

Management Project in Thailand, the first case under this policy which caused “concerns about independence, credibility, transparency and information dissemination, and effectiveness of the Inspection Function”.<sup>16</sup> External pressure was also exerted by donor countries in the ADF VIII replenishment, where they “recommended a strengthened and more independent Inspection Function, and the Function should have oversight of private sector projects”<sup>17</sup> and by the G-7 countries in 2001 which announced that MDBs “should further improve and strengthen accountability and transparency, including through the establishment or the reinforcement of central control mechanisms to ensure compliance with agreed policies and safeguards”.<sup>18</sup>

The Inspection Function review process took a year and a half from October 2001, with the establishment of a steering committee and a working group to carry out the review, to the approval of the policy by the bank’s Board of Directors in May 2003. The review process included consultations and online comments within and outside the bank with the Board of Directors, Management,<sup>19</sup> staff, government, civil society, and private sector on several drafts of the policy paper in 10 cities across ADB member countries. This was in stark contrast to the previous decision process where no external consultation had taken place.

A similar but less intense external consultation process of getting public comments on a draft paper was also used in the setting up of the EBRD accountability mechanism and in IDB’s proposed enhancements to its IIM in 2005. The AfDB had a proposal on an inspection panel in 1994 but this did not get approval by the bank’s Board of Directors as the institution went through major reorganization, and in 2003, the bank instead hired a consultant to prepare a study on a proposed accountability mechanism. It sought online comments from the public on the report prior to the adoption of the mechanism by the Board. The CAO Office at IFC and MIGA was created in 1999 in response to a request filed with the WBIP on a private sector operation supported by IFC in the Pangue Hydroelectric Dam Project in Chile in 1995 and civil society lobbying for an accountability mechanism at IFC and MIGA as the activities of these two institutions are not covered by the WBIP.

The purpose of project affectees and CSOs in bringing or supporting claims to the MDBs, initially the World Bank, was to demand that the banks

<sup>16</sup> ADB, Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism, para. 4.

<sup>17</sup> ADB, *ADF VIII Donors’ Report: Fighting Poverty in Asia* (November 2000), para. 129, [http://www.adb.org/Documents/Reports/ADF/VIII/ADFVIII\\_Donors\\_Report.pdf](http://www.adb.org/Documents/Reports/ADF/VIII/ADFVIII_Donors_Report.pdf) (accessed October 1, 2008).

<sup>18</sup> *Statement of G-7 Finance Ministers and Central Bank Governors* at Palermo, Italy (February 17, 2001), para. 12, <http://www.g8.utoronto.ca/finance/fm20010217.htm> (accessed October 1, 2008).

<sup>19</sup> At ADB, “Management” refers to the President and the Vice Presidents. This term in other MDBs typically refer to the chief executive officer and the vice presidents.



be transparent and comply with their policies in their operations, in the light of the Rio Earth Summit of 1992 and the protests over projects, especially the Sardar Sarovar Projects in India, where more than 100,000 people would be subject to involuntary resettlement from the construction of the dam. They were using the World Bank as a fulcrum because of its reputed clout and influence over policymaking in the developing countries where civil society was finding it difficult to get political traction.<sup>20</sup> At the same time, the purpose of these mechanisms is to address the absence of access to effective remedies by individuals negatively impacted by bank projects due to an MDB's immunity from local jurisdiction.<sup>21</sup> MDB immunity "has remained absolute, barring exceptions allowed under specific provisions mandated by the nature of the organization or of the dispute in question."<sup>22</sup> Recourse to national courts is not available unless MDBs waive their immunities or organize some form of dispute settlement by agreement. Notwithstanding the progressive development as citizen-driven grievance mechanisms, these mechanisms were primarily intended to serve as internal governance tools as non-judicial bodies and to enhance the institutional development effectiveness, in line with the mandates of their institutions.<sup>23</sup> At the minimum, the MDB accountability mechanisms provide for the first time under international law a window of access for individuals to file claims with these institutions on their complaints with MDB projects and with the opportunity to influence decision making processes at these institutions.

### III. Overview of MDB Accountability Mechanisms and Emerging Trends and Directions

In this section, a brief overview of each MDB accountability mechanism is given followed by an analysis on the emerging trends and directions in structure, functions and operations. The establishment of the WBIP resulted in a cascading effect which began at IDB in 1994 (IDB's Independent Investigation

<sup>20</sup> Richard E. Bissell. 2005. Learning Processes in International Accountability Mechanisms. *The Innovation Journal: The Public Sector Innovation Journal*. Volume 10 (1). p. 2.

<sup>21</sup> Eisuke Suzuki and Suresh Nanwani, "Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks", *Michigan Journal of International Law* 27(1) (2005): 206.

<sup>22</sup> Emmanuel Gaillard and Isabelle Pingel-Lenuzza, "International Organizations and Immunity from Jurisdiction: To Restrict or to Bypass", *International and Comparative Law Quarterly* Vol. 51 (January 2002). See, for example, ADB's charter in Article 50.1 which prescribes that its immunity does not extend to "the exercise of its powers to borrow money, to guarantee obligations, or to buy and sell or underwrite the sale of securities." The World Bank has similar immunities which are stated in IBRD's Articles of Agreement, Chapter VII, Section 3 and in IDA's Articles of Agreement, Chapter VIII, Section 3. AfDB, EBRD, IFC, and MIGA charters have similar provisions.

<sup>23</sup> Suresh Nanwani, "Accountability mechanisms of multilateral development banks: powers, complications, enhancements" in Amanda Perry-Kessaris, editor, «Law in the Pursuit of Development: Principles into Practice?», (Routledge, Taylor & Francis Group, forthcoming)

Mechanism), followed by ADB in 1995 (Inspection Function) and in 2003 (ADB Accountability Mechanism), by IFC and MIGA in 1999 (Compliance Advisor/Ombudsman [CAO] Office), by EBRD in 2003 (its Independent Recourse Mechanism commenced functioning in July 2004), and by AfDB in 2004 (its Independent Review Mechanism was effective in early 2006). The overview focuses on salient aspects, highlighting similarities, differences and unique features, and is not intended to contain detailed information which is available from other studies and from the websites of the MDB accountability mechanisms.<sup>24</sup>

## World Bank Inspection Panel

The precursor of the MDB accountability mechanism is the WBIP which was created by a resolution.<sup>25</sup> The Panel has three members of different nationalities from World Bank member countries and it reports directly to the Board of Directors of IBRD and IDA. One Panel member is a full-time chair who is elected by the members themselves. The Panel members are appointed by the Board for a 5-year nonrenewable term, and after serving on the Panel, cannot be employed by the World Bank Group. The Panel investigates complaints filed by at least two or more persons with common interests or concerns and who are living in the country where the target project is located. An individual is not allowed to file a claim and this common feature runs through all other MDB accountability mechanisms except for IFC/MIGA's CAO Office. The Panel investigation is focused on fact-finding and its report is sent to the Board on whether there is violation of the World Bank's operational policies and procedures without making any recommendations for remedies as it is not allowed to do so. The Panel is supported by a secretariat. The Panel does not carry out monitoring of the action plans prepared by Management in response to the Panel's fact-finding investigation unless the Board, on an exceptional basis, requests the Panel to do so, or if a new request based on new information is filed by the affected group.

There have been two Board-level reviews of the Panel's structure and functions, one in 1996 which was required under the resolution creating the Panel

<sup>24</sup> See the World Bank Inspection Panel at <http://www.worldbank.org/inspectionpanel>; ADB's Accountability Mechanism at <http://www.adb.org/Accountability-Mechanism/default.asp>; AfDB's Independent Review Mechanism at [http://www.afdb.org/portal/page?\\_pageid=473,5848220&\\_dad=portal&\\_schema=PORTAL](http://www.afdb.org/portal/page?_pageid=473,5848220&_dad=portal&_schema=PORTAL); IDB's IIM at [http://www.iadb.org/aboutus/iii/independent\\_invest/independent\\_invest.cfm](http://www.iadb.org/aboutus/iii/independent_invest/independent_invest.cfm); EBRD's Independent Recourse Mechanism at <http://www.ebrd.com/about/integrity/irm/index.htm>; and IFC/MIGA's Compliance Advisor/Ombudsman (CAO) Office at <http://www.cao-ombudsman.org/> (accessed October 1, 2008).

<sup>25</sup> *The World Bank Inspection Panel, Resolution No. IBRD 93-10 and Resolution No. IDA 93-6* (International Bank for Reconstruction and Development and International Development Association, September 22, 1993).



after 2 years from the date of the appointment of the first Panel members, and the other in 1999. The 1996 Clarifications<sup>26</sup> focused on four main areas: preliminary assessment by the Panel, eligibility and access, outreach and the role of the Board of Directors. The 1999 Conclusions<sup>27</sup> clarified the application of the resolution in four main areas: preliminary assessment, Board authorization of an investigation, material adverse effect, and action plans. Both reviews involved some input from civil society, but the ultimate decision was entirely the Board's. From 2000 to 2002, the Panel was in the process of revising its Operating Procedures to reflect the 1996 Clarifications and 1999 Conclusions but there has been no revision made thereafter.<sup>28</sup> As of October 1, 2008, 52 claims have been filed with the Panel.

## IDB's Independent Investigation Mechanism

The IDB's IIM is similar to the WBIP in its operation with two main differences. First, there is no permanent panel but instead a roster of investigators of 15 members from the bank's member countries approved by the Board of Directors (the original figure of 10 members was increased to 15 when the IIM was amended with Board approval in 2000). A panel of investigators from the roster, not fewer than three, is appointed ad hoc by the Board of Directors to investigate a claim as required. The panel can make recommendations to the Board of Directors in relation to its findings. Members of the roster cannot be employed by the bank for a period of 2 years following the termination of their appointment. Second, the IIM also applies to private sector operations except for equity operations as it applies to IDB-supported operations to cover loan, technical cooperation and guarantee operations only.<sup>29</sup> In addition to increasing the number of investigators on its roster, the IIM's amendment in 2000 also included the establishment of a Coordinator function to oversee IIM administration as there was no permanent support or administrative staff to support the IIM. The Coordinator was tasked to provide support functions including processing all requests for investigations including whether the requests meet the requirements under the policy for the roster member to review the request because under the original mechanism, the President made a determination

<sup>26</sup> 1996 Clarifications of Certain Aspects of the Resolution (October 17, 1996).

<sup>27</sup> 1999 Conclusions of the Board's Second Review of the Inspection Panel (April 20, 1999). The 1999 Conclusions of the Board's Second Review of the Inspection Panel is also sometimes referred to as the 1999 Clarifications of the Board's Second Review of the Inspection Panel; see the Inspection Panel's Annual Report (August 1, 2000 to July 31, 2001) where both titles are used at pp. 43 and 44.

<sup>28</sup> World Bank Inspection Panel Annual Report from August 1, 1999 to July 31, 2000, 49. See also the World Bank Inspection Annual Report from August 1, 2000 to July 31, 2001, 47 and the World Bank Inspection Annual Report from August 1, 2001 to June 30, 2002, 59.

<sup>29</sup> IDB Independent Investigation Mechanism (June 30, 2000) at <http://www.iadb.org/cont/poli/mecanism.pdf> para. 1.2 (accessed October 1, 2008).

on eligibility and recommended to the Board whether an investigation panel should be convened.

An IIM review process began in 2005 with a Proposal for Enhancements to the IIM: Draft Consultation and Compliance Review Policy of February 2005<sup>30</sup> and public consultations were held in three cities as well as comments sought from the public with all comments to the draft policy made available in July 2005.<sup>31</sup> The latest IIM annual report states that the matter of “design of any enhancements to the Bank’s IIM will need to reflect the Bank’s new organizational model and strategic focus, raising technical issues regarding the most effective organization and structure of the IIM function within the realigned Bank. These questions will need to be considered during 2008.”<sup>32</sup> There is no full-time person appointed to provide secretariat support though this changed when a full-time Coordinator was appointed in January 2008 to support the IIM review process and to coordinate IIM matters. As of October 1, 2008, five claims have been registered with the IIM.

## ADB Accountability Mechanism

The ADB Accountability Mechanism of 2003 replaced the Inspection Function policy of 1995 which was modeled after IDB’s IIM with its roster of experts with nuanced differences such as the establishment of a standing Board committee – the Board Inspection Committee (BIC) – which selected a panel of experts to carry out an investigation of a claim authorized by the Board of Directors. The ADB Accountability Mechanism is the first MDB system which went beyond the incipient MDB approach to have a pure investigation or inspection function approach by having a dual approach of both problem-solving and compliance review externally driven by claimants.<sup>33</sup> Under this mechanism, the issues of problem-solving (consultation) handled by the Special Project Facilitator (SPF) and investigation (compliance review) handled by the Compliance Review Panel (CRP) are clearly demarcated as separate matters as consultation does not focus on fault of any party while compliance review focuses on the institutional conduct. Separate secretariat support is provided for the consultation phase and compliance review phases to emphasize the

<sup>30</sup> <http://enet.iadb.org/idbdocswebservices/idbdocsInternet/IADBPublicDoc.aspx?docnum=474362> (accessed October 1, 2008).

<sup>31</sup> <http://enet.iadb.org/idbdocswebservices/idbdocsInternet/IADBPublicDoc.aspx?docnum=559818> (accessed October 1, 2008).

<sup>32</sup> IDB. Independent Investigation Mechanism: 2007 Annual Report for January 1, 2007 - December 31, 2007 (Inter-American Development Bank: Washington, D.C.) (March 13, 2008), p. 4.

<sup>33</sup> The ADB accountability mechanism has been described by Maartje van Putten as a “vanguard amongst the accountability mechanisms”. See van Putten, Maartje. 2006. ‘Policing the World’, Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions, Tilburg University, the Netherlands and McGill University, Canada, p. 129.

distinctive features of each phase. Claimants are required to go through the consultation phase first before they can file a request for compliance review. They can file a request for compliance review if the claim is found ineligible by the SPF, or if they find the consultation process not purposeful, or if they have reached an advanced stage of the consultation process and have serious concerns on compliance issues.

The SPF, appointed by the President to handle problem-solving, is seen as an internal function, that is, to strengthen the internal processes of operations departments which are responsible for formulating, processing, or implementing any ADB-assisted project. The SPF's term is 3 years and is renewable. The Panel members handling the investigation are appointed by the Board of Directors in its oversight of transparency and accountability for Management's operations. The Board approves the appointment of the Panel members upon the President's recommendation. With the exception of the initial Panel members who were appointed on a staggered basis of 3, 4, and 5 years, the Panel members are appointed for a 5-year nonrenewable term, and after serving on the Panel, they cannot be employed by the bank in any capacity. The Panel has three members, two of whom must be from the bank's regional countries with at least one from a developing member country. The Panel reports to the Board of Directors on all activities except for clearance of the Panel's terms of reference in conducting a compliance review and for review of its draft monitoring reports where it reports to the Board Compliance Review Committee (BCRC) which is tasked with this oversight role. The Panel's task in investigating claims is not restricted to fact-finding, as in the case of WBIP, but also to making recommendations to ensure project compliance for the Board of Directors to then decide on the remedial actions that Management has to take. Both SPF and CRP are empowered with monitoring mandates, that is, to follow up regularly on agreements reached after the consultation process is successfully concluded (for the SPF) and on the bank's implementation of remedial actions approved by the Board (for the CRP).

The policy provides for a review to be carried out after 3 years from December 2003, when the mechanism was made effective. No review has been carried out yet and as expressed by the Chair, CRP in 2006, the review would be best postponed until at least two more cases have been dealt with by the mechanism under both phases, but not later than 2009.<sup>34</sup> This is due to the limited experience of the mechanism as so far, only one complaint has gone through the full process of the consultation phase and one request has gone through the full process of the compliance review phase. As of October 1, 2008, 12 claims have been registered with the ADB Accountability Mechanism (there were eight claims filed under the previous policy, but only two proceeded with an investigation).

<sup>34</sup> Meeting by Chair, CRP with NGOs in Tokyo, Japan in October 2006 at [http://www.compliance.adb.org/dir0035p.nsf/attachments/Mtg-JpnNGOs-19Oct06.pdf/\\$FILE/Mtg-JpnNGOs-19Oct06.pdf](http://www.compliance.adb.org/dir0035p.nsf/attachments/Mtg-JpnNGOs-19Oct06.pdf/$FILE/Mtg-JpnNGOs-19Oct06.pdf) (accessed October 1, 2008).

## IFC and MIGA's Compliance Advisor/Ombudsman Office

The CAO Office at IFC and MIGA handles the private sector operations of these institutions. It was set up in 1999 in response to the lack of jurisdictional mandate by the WBIP over the request filed on an IFC-financed project in the Pangué Ralco Complex of Hydroelectric Dams in Chile. The primary factors for the establishment of this mechanism were the following: civil society pressure for an accountability mechanism at these institutions; the outcome of the independent investigation commissioned by the World Bank's President over the Pangué project claim; and pressure from IFC's Board of Directors. The Office has three roles: compliance (auditing both institutions' environmental and social performance on sensitive projects to ensure compliance with policies and procedures); advisory (to advise the President and Management of both institutions in dealing with particular projects and on broader environmental and social policies); and ombudsman (responding to complaints by project affectees and attempting to resolve issues through problem-solving). The ombudsman function is unique among all MDB accountability mechanisms in that it allows any individual, in addition to groups of people, affected or likely to be affected by social and/or environmental impacts of an IFC or MIGA project to file a complaint. It has been constructed similar to the ombudsman function at the national level in many countries where individual citizens can seek redress to check on improper government activity against them. All other MDB accountability mechanisms do not allow individual claims as these can only be filed by two or more people with common interests or concerns or by their authorized representatives. The CAO Ombudsman will monitor the implementation of its recommendations and agreements reached by the parties.

The CAO Office commissioned in 2003 an independent 3-person external review team to assess the effectiveness of its Office which identified the ombudsman function as having the "greatest importance" of all three functions.<sup>35</sup> The CAO Office has over the years been reviewing its operational guidelines to manage its roles better and clearly. In April 2007, it issued its Operational Guidelines on its three roles, replacing its previous Operational Guidelines after a review which included a 90-day public comment period to provide greater predictability on CAO processes for resolving complaints. The problem-solving role is externally triggered in that it is initiated by complainants while the compliance role is triggered by a request from senior management of IFC and MIGA or the President of the World Bank Group, a complaint transferred from the CAO Ombudsman where no resolution was possible, and at the discretion of the CAO. The claimants are still required to go through

<sup>35</sup> *Beyond Compliance? An External Review Team Report on the Compliance Advisor/Ombudsman Office of IFC and MIGA* by Ben Dysart, Tim Murphy, and Antonia Chaves, External Review Team (July 24, 2003), p. 38.

the ombudsman function first and “cannot file their cases directly with CAO Compliance”.<sup>36</sup>

The CAO is appointed by, and reports to, the President of the World Bank Group rather than the Boards of Directors of IFC and MIGA and makes periodic reports to them on its activities. The appointment is for a period of 3 to 5 years, renewable by mutual consent and the present CAO has had her initial appointment from 1999 extended to 2010. The appointment of the CAO was the outcome of an independent 6-member external search committee from civil society and industry representatives, including NGOs. All senior staff come from outside the World Bank Group and they are appointed by, and report to, the CAO. Although there is no express provision on a permanent employment bar for the CAO after the assignment, the assumption is made by many NGOs that the CAO is not able to work permanently at IFC or MIGA at the end of the assignment. The CAO also has a group of strategic advisors with expertise on issues of process, accountability, and dispute system design to assist its activities. The CAO Office has been carrying out largely a problem-solving role, followed by its advisory role and the emerging role of the compliance function (only one compliance audit was triggered in the first 4 years of its operations and eight more were triggered in the next 5 years). A reference group of stakeholders established by the CAO Office with representatives from the private sector, the NGO community, academia, and other institutions meets annually to give advice and guide its evolution and growth. As of October 1, 2008, about 70 claims have been registered with the CAO Ombudsman.<sup>37</sup>

## EBRD’s Independent Recourse Mechanism

EBRD’s accountability mechanism went through a public consultation process prior to its adoption by the Board of directors in 2003. It also provides for both problem-solving and compliance review functions, and like AfDB’s accountability mechanism, houses them in one unit for administration – the Office of the Chief Compliance Officer (CCO). The CCO is a staff member appointed by the President and administers the bank’s IRM as the “Co-ordinator”, in addition to its other responsibilities such as monitoring compliance with the requirements imposed on banking teams to complete integrity and anti-money laundering red flag checklists prior to consideration of investment decisions, investigating allegations of corruption or fraud in EBRD’s activities, dealing with staff misconduct, and administering EBRD’s codes of conduct for its employees.

<sup>36</sup> CAO Response to the public comments on CAO’s draft Operational Guidelines of November 2006, p. 43.

<sup>37</sup> See *CAO Annual Report 2006-2007*, pp. 34-36 and the CAO website <http://www.cao-ombudsman.org/> (accessed October 1, 2008).

The CCO is assisted by a roster of up to 10 experts in compliance review. There are currently 3 experts appointed to the roster. Except for the first 3 experts, who are appointed over a staggered period, the experts are appointed by the Board of directors on the recommendation of the President for a term of 3 years which can be renewed for a period of up to 3 years. When a complaint is registered, the CCO and one expert will work jointly as assessors to conduct an assessment on whether the complaint is eligible for compliance review, which will be carried out by one of the experts. Any eligibility and compliance review assessment report or compliance review investigation report prepared is sent to the President or the Board of Directors depending on the nature of the bank operation (to the President if the bank operation does not require Board approval or has not been approved by the Board, and to the Board if the bank operation has been approved by the Board at the time of submission). The expert can make recommendations in carrying out the investigation and these may include recommendations on “any remedial changes to systems or procedures within the EBRD to avoid a recurrence of such or similar violations”.<sup>38</sup>

The CCO is tasked to monitor the implementation of the recommendations approved by the President or the Board unless the approving authority decides that monitoring be carried out by the expert whose recommendation was approved or another expert from the roster. The CCO can also in the course of carrying out the eligibility and compliance review assessment of the complaint consider whether “problem-solving techniques might be usefully employed to resolve the issues”.<sup>39</sup> Accordingly, in assessing a complaint, there may be a recommendation for a compliance review or a problem-solving initiative, or both or neither.<sup>40</sup> The CCO conducts the problem-solving initiative alone or with the help of a problem-solving facilitator and the reporting line is to the President. The CCO is tasked to carry out monitoring of activities under a problem-solving initiative or can delegate the task to another person.

EBRD’s IRM policy provides for a review after 2 years of its operations. The CCO proposed in her latest annual report that “a comprehensive review of the IRM be carried out in 2008”<sup>41</sup> which will include problems adhering to current time lines and the limited scope for problem-solving initiatives. The review commenced in March 2008 and provides for public consultations in seven cities as well as written submissions through a dedicated email address. It is expected to result in the bank’s approval of revised IRM Guidelines and

<sup>38</sup> EBRD. Independent Recourse Mechanism Rules of Procedure (April 6, 2004), para. 34.c.i.

<sup>39</sup> *Ibid.*, para. 27.

<sup>40</sup> EBRD. Independent Recourse Mechanism. Annual Report for 2007. Report of the Chief Compliance Officer, p. 1.

<sup>41</sup> *Ibid.*, p. 6.



Rules of Procedure by June 2009.<sup>42</sup> As of October 1, 2008, five claims have been registered with EBRD's accountability mechanism.

## AfDB's Independent Review Mechanism

The AfDB's Independent Review Mechanism (IRM) was established after a study was carried out in November 2003 by an individual consultant. The study report went through public and informal consultation processes. The study report recommended an option which was a dual approach of problem-solving and compliance review (like ADB's Accountability Mechanism) which was adopted by the Board of Directors. This option is similar to EBRD's accountability mechanism, with two differences: (1) the proposed director of the Compliance Review and Mediation Unit (CRMU) would only work on compliance and problem-solving matters, unlike the equivalent officer at EBRD who worked on other matters such as monitoring integrity of investment decisions and administering the code of conduct for bank personnel; and (2) its mandate of operational policies and procedures was beyond the limited policies reviewable at EBRD's mechanism (environmental policy and public communications policy).<sup>43</sup> The mechanism is pivoted on a centralized office, the CRMU, with the head (director, CRMU) playing a leading role in the mechanism and a roster of experts of three individuals who must be nationals of member states of the bank or state participants in the African Development Fund. With the exception of the initial experts who were appointed on a staggered basis of 3, 4, and 5 years, the experts are appointed by the Board for a nonrenewable term of 5 years and they can work for the AfDB Group 2 years after serving on the IRM. There is, however, no permanent post-employment bar as is provided in WBIP and ADB's Accountability Mechanism.

The director, CRMU is appointed by the President in consultation with the Board of Directors of the AfDB Group, and is tasked to perform both problem-solving and compliance review functions. The director is appointed for a 5-year term, renewable for another 5-year period. The director plays a central role in determining whether the request filed "should be registered for problem-solving exercise or, alternatively, for a compliance review".<sup>44</sup> The director oversees the problem-solving exercise and with the assistance of two experts from the roster forms a three-member panel to conduct the compliance review. The director can at the end of a problem-solving exercise, whether it is successful or otherwise, determine that a compliance review is warranted.<sup>45</sup>

<sup>42</sup> The stakeholder consultation and disclosure plan on the IRM review process is at <http://www.ebrd.com/about/integrity/irm/scdp.pdf> (accessed October 1, 2008).

<sup>43</sup> Daniel D. Bradlow, Study on an Inspection Function for the African Development Bank Group (November 24, 2003), p. 59.

<sup>44</sup> African Development Bank Group. Compliance Review and Mediation Unit of the Independent Review Mechanism. Operating Rules and Procedures (July 27, 2006), para. 20.

<sup>45</sup> *Ibid.*, para. 43.

Compliance review is not externally triggered by the claimants. The director also wields significant power in the investigation as he or she participates in all aspects of the compliance review, including exercising a vote in the event of a deadlock in the panel's deliberations.<sup>46</sup> The director is barred from employment at the AfDB Group after serving his or her appointment.

The panel is empowered to make recommendations to bring the project back into compliance and also make recommendations on "any remedial changes to systems or procedures within the Bank Group to avoid a recurrence of such or similar violations".<sup>47</sup> The AfDB's accountability mechanism refers to the following in the case of projects financed by any AfDB group entity: for a sovereign guaranteed project, the bank's "operational policies and procedures in respect of the design, appraisal and/or implementation of such project",<sup>48</sup> and in the case of private sector or non-sovereign guaranteed projects, "social and environmental policies and safeguards".<sup>49</sup>

The mechanism also has monitoring tasks to carry out the implementation of the problem-solving and compliance review outcomes. A review is required after 3 years of operation from the appointment of the head (in June 2006) and a review is scheduled in mid-2009. As of October 1, 2008, one claim has been registered with this mechanism and the investigation is ongoing with compliance review being carried out together with an investigation by the WBIP on the Bujagali Hydropower Project in Uganda supported by both institutions. The AfDB's IRM issued its compliance review report for this project in June 2008 and provided it to the claimants at the same time it provided the report to the Board for consideration and decision.<sup>50</sup>

## Summary of Main Features of MDB Accountability Mechanisms

In sum, all the MDB accountability mechanisms are focused on at least one aspect of addressing citizen complaints – investigation or problem-solving. Each MDB accountability mechanism has been shaped by its particular resolution approved by the institution's Board of Directors on the principal function, implementers, cut-off point for filing claims, and the reporting lines to the institution (President or Board of Directors). A table of the MDB accountability mechanisms with main features of function, structure and operations is given below illustrating similarities and differences in these mechanisms.

<sup>46</sup> *Ibid.*, para. 51.

<sup>47</sup> *Ibid.*, para. 52.

<sup>48</sup> AfDB. Independent Review Mechanism. Resolutions B/BD/2004/9 and F/BD/2004/7 (June 30, 2004), para. 11 (i).

<sup>49</sup> *Ibid.*, para. 11 (ii).

<sup>50</sup> AfDB Group. Compliance Review and Mediation Unit of the Independent Review Mechanism. Operating Rules and Procedures (approved in July 2006), para. 56.

Table 1: On MDB accountability mechanisms with main features of function, structure and operations

Item	WB Inspection Panel	IDB Independent Investigation Mechanism	ADB Accountability Mechanism	IFC/MIGA CAO Office	EBRD Independent Recourse Mechanism	AIFB Independent Review Mechanism
Function	Investigation	Investigation	Problem-solving and investigation	Problem-solving as the principal function, followed by compliance audit and advisory.	Problem-solving and investigation	Problem-solving and investigation
Implementer and reports	Inspection Panel supported by a secretariat. Panel issues annual reports.	Coordinator with assistance from investigators from a roster. Coordinator issues annual reports.	For problem-solving, Special Project Facilitator supported by staff. SPF issues annual reports.  For compliance review, Compliance Review Panel supported by a secretariat, and Board Compliance Review Committee with oversight role on CRP's activities. CRP and BCRC issue annual reports.	CAO supported by staff. CAO issues annual reports.	Chief Compliance Officer (CCO) handles problem-solving.  CCO is assisted by experts from a roster for compliance review.  CCO is supported by staff. CCO issues annual reports.	Director, Compliance Review and Mediation Unit handles problem-solving.  Director is assisted by experts from a roster for compliance review.  Director issues annual reports.
Reporting line	Panel members report to the Board.	Investigators report to the Board.	SPF reports to the President. CRP members report to the Board (and to BCRC when it exercises its oversight role).	CAO reports to the President of the World Bank Group.	CCO reports to the President for problem-solving.  For compliance review, the expert from the roster reports to the President for projects not yet approved by the Board, and to the Board for approved projects.	For problem-solving, the Director reports to the President for projects not yet approved by the Board, and to the Board for approved projects  For compliance review, the Panel involving the Director and 2 experts from the roster report to the President for projects not yet approved by the Board, and to the Board for approved projects.

Cut-off point for filing claims	Loan not closed or 95 percent of loan has been disbursed.	95 percent of loan has been disbursed.	Issuance of the project completion report (usually 2 years after physical completion of project).	For problem-solving, up to repayment of loan or divestment of operation.	12 months after physical completion of the project or 12 months after final disbursement or cancellation of the undisbursed amount.
Monitoring activities	None	None	Yes	Yes for ombudsman and compliance audit.	Yes
Nature of investigation	Strictly fact-finding, no recommendation.	Fact-finding and can make recommendations.	Fact-finding and can make recommendations.	Fact-finding and can make recommendations.	Fact-finding and can make recommendations.
Scope of policies and procedures covered	Broad spectrum - World Bank's operational policies and procedures (WBIP covers IBRD/IDA projects, public sector operations only).	Broad spectrum - IDB's operational policies and procedures (for both public and private sector operations).	Broad spectrum - ADB's operational policies and procedures (for both public and private sector operations).	For problem-solving, where people are affected by social and environmental impacts of IFC/MIGA projects (IFC and MIGA operations are private sector).	For public sector operations, broad spectrum - AfDB's operational policies and procedures.  For private sector operations, only the social and environmental policies and safeguards.
Years of operation	15	14	5	9	2
Number of claims filed or registered (as of October 1, 2008)	52	5	12 (8 under the inspection policy).	70 (for ombudsman function). On compliance audits, CAO carried out 9 audits.	1

Review of mechanism	Two reviews resulting in 1996 Clarifications and 1999 Conclusions. No scheduled date for another policy review.	Review in 2000, resulting in an amendment. Review ongoing of the draft revised policy issued in 2005.	Inspection Function policy of 1995 replaced by the ADB Accountability Mechanism after an extensive review in 2002 and 2003. No scheduled date for policy review.	Review carried out in 2003. Analysis of CAO's experience carried out in 2006. CAO's Operational Guidelines reviewed; revised in 2007.	Review ongoing; expected to be completed by June 2009.	Review scheduled in mid-2009.
Special features or developments	First MDB accountability mechanism and has considerable experience in handling of claims.		First MDB accountability mechanism with two-pronged approach of problem-solving and compliance review, separately demarcated and with different offices. Claimants given right (together with Management) to comment on Panel's draft investigation report before it is finalized.	First MDB accountability mechanism providing for problem-solving. Individual claims are allowed (other MDB mechanisms require a community of persons of at least two persons).	CCO has other functions e.g. investigating fraud and corruption where reporting line is to the President. Mandatory annual training for experts of at least 5 days in EBRD matters.	Claimants given the Panel's final report when it is submitted to the President or Board for decision. Mandatory annual training for experts of at least 5 days in AfDB matters.

Source: Information from the websites and annual reports of MDB Accountability Mechanisms.

As illustrated in the table, there has been a shift from investigation to other methods such as problem-solving in addressing citizen claims. IFC/MIGA's CAO Office is unique among all MDB accountability mechanisms where individual claims are allowed.<sup>51</sup> At the other accountability mechanisms, claims have to be filed by a community of persons such as an organization, association, society or other grouping of individuals and the affected party must consist of any two or more persons, and the claimants must be in the territory of the borrowing country.<sup>52</sup> ADB's Accountability Mechanism stands out as the only mechanism which provides the claimants the opportunity to comment (together with Management) on the Panel's draft investigation report before it is finalized and issued to the Board.

The term "operational policies and procedures" is used at the World Bank, IDB, ADB, and AfDB in their accountability mechanisms and at EBRD, the term "Relevant EBRD Policy"<sup>53</sup> is used. Depending on the institution, these compliance reviewable policies range from a limited scope (in the case of EBRD, environmental, social and public information matters) to a broader spectrum (in the case of ADB, the Operations Manual which cover environmental and social safeguards, and the Project Administration Instructions which outline the policies and procedures to be followed by staff in the administration of bank-financed projects). The permanent body of the WBIP is emulated in ADB's Accountability Mechanism which has included a distinctive reporting line to a Board committee to exercise an oversight role to clear the CRP's proposed terms of reference in conducting an investigation and to review the CRP's draft monitoring reports. The absence of monitoring activities in earlier mechanisms was expressly provided in IFC/MIGA's CAO Office in 1999, and used in ADB's Accountability Mechanism, EBRD's IRM and AfDB's IRM. All the mechanisms have gone through reviews either as required under their policies or for assessing the effectiveness of the mechanism (as in the case of the CAO Office).

Some MDB accountability mechanisms have the same features. Both EBRD and AfDB accountability mechanisms can make recommendations to bring the project back into compliance and also include recommendations on any remedial changes to systems or procedures within the institution to avoid a recurrence of violations. EBRD and AfDB have the same provision on mandatory training for experts in the institution's operational matters for at least 5 days each year.

<sup>51</sup> Compliance Advisor/Ombudsman (CAO), *CAO Operational Guidelines* (April 2007), para. 2.2.2., <http://www.cao-ombudsman.org/about/whowere/documents/EnglishCAOGuidelines06.08.07Web.pdf> (accessed October 1, 2008).

<sup>52</sup> See for example, *The World Bank Inspection Panel, Resolution No. IBRD 93-10 and Resolution No. IDA 93-6* (International Bank for Reconstruction and Development and International Development Association, September 22, 1993), para. 12; *1999 Conclusions of the Board's Second Review of the Inspection Panel*, para. 9.a; and ADB, *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism* (Manila: ADB, May 2003), para. 68. Under the ADB accountability mechanism, provision is also made allowing the claimant to be in an ADB member country adjacent to the borrowing country.

<sup>53</sup> EBRD, *Independent Recourse Mechanism Rules of Procedure* (April 6, 2004), para. 1.a.



## IV. Emerging Trends and Directions

Each MDB has similar classes of shareholders, with the World Bank, IFC and MIGA, having a far wider coverage of shareholders compared to the regional development banks, and with the same donor countries championing accountability mechanisms, namely, the United States and several European countries including the United Kingdom, Switzerland, Netherlands, and Germany. Yet each institution has adopted a different approach in enhancing the institution's commitment to accountability and enhancement of its development effectiveness. In practice, each approach reflects the institution's uniqueness in its own way of doing business, and the region's financial and political contexts, even though the institutional development mandate is the same. Despite the different approaches taken by MDBs in fashioning their accountability mechanisms, there are emerging trends and directions.

### Addressing Concerns by Both Problem-Solving and Investigation

The variety of different MDB accountability mechanisms across the institutions illustrates the evolution of the mandates of different accountability mechanisms in responding to addressing citizen concerns. First, there have been three approaches so far. The "first wave approach" of an inspection or investigation approach to bringing problem projects into compliance with bank policies was expanded in 1999 with the creation of a "second wave approach" with the addition of a problem-solving function at the CAO Office, with its other two roles (compliance and advisory).<sup>54</sup> The present "third wave approach",<sup>55</sup> that is, provision of a problem-solving function in addition to an investigation function was provided with nuances in the combined approaches in the citizen grievance systems by MDBs and other financial institutions – at ADB (in the current accountability mechanism), EBRD, AfDB, JBIC, NEXI, JICA, and OPIC. This is a departure from the earlier approaches as it was realized that it was equally important for the institution to address the problem of affected communities on the ground through problem-solving, as much as the need for compliance with institutional policies.

<sup>54</sup> The problem-solving function at CAO is externally-driven (by individuals or groups of individuals or organizations) while the compliance and advisory functions are internally-driven (by CAO, IFC/MIGA, or the President or Board of Directors of the World Bank Group).

<sup>55</sup> See Suresh Nanwani, "Holding Multilateral Development Banks to Account: Gateways and Barriers", *International Community Law Review* (2008), 207. Ms. van Putten, formerly a World Bank Inspection Panel member and presently a panel member in AfDB's accountability mechanism is of the view that the introduction of a consultation phase has "in its nature a much more 'human face'". See van Putten, 'Policing the World', *Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions*, 129.

Secondly, the focus on investigation has grown from that of being a mere fact-finder with regard to compliance without the right to make any recommendation (at the WBIP) to that of empowering the Mechanism in question, after completing the investigation, to make recommendations with regard to compliance and remedy of problems in the project. Increasingly, other MDB accountability mechanisms are being given that latter authority.

## **Establishing Permanent Panels Instead of Roster of Experts**

There is an emerging trend to set up a permanent panel to carry out investigations instead of drawing on a roster of experts, as in the case of IDB's accountability mechanism and the ADB Inspection Function. The number of experts selected in an ad hoc panel has been generally three in IDB's IIM and in the ADB Inspection Function, with four persons selected in the claim under the Chashma Right Bank Irrigation (Stage III) Project in Pakistan under the ADB Inspection Function. The EBRD accountability mechanism is a hybrid in practice, since the policy allows for a roster of up to 10 experts but only three have been appointed for the reason that this "helps to ensure that the experts become familiar with the Bank and its policies and procedures",<sup>56</sup> and thus giving the roster the character of a permanent panel. The AfDB accountability mechanism has a roster of three experts to assist the director, CRMU in carrying out investigation in a compliance review, but it also is so small as to create the atmosphere of a panel. IDB's proposal for enhancements to its IIM also takes a fresh approach by providing a panel of three members from different countries of the bank.<sup>57</sup> The experience of having a roster of experts at IDB's IIM and ADB's Inspection Function has shown that roster members will often not be available as needed. Also, members of a large roster have little incentive to become well-versed with the operations of the bank, and are less likely than panel members to understand the bank's context, and would carry little knowledge from claim to claim, although the use of a roster may appear to cost less in the short-term than having a permanent panel.

## **Making Mechanisms More Friendly and Easily Accessible to Users**

Over the years, MDB accountability mechanisms have taken steps or made provisions to ensure friendly and easier accessibility of the mechanisms to users. As a first step in implementing the legalese of the WBIP Resolution,

<sup>56</sup> EBRD. Independent Recourse Mechanism. Roster of Experts. <http://www.ebrd.com/about/integrity/irm/experts.htm> (accessed October 1, 2008).

<sup>57</sup> IDB. Proposal for Enhancements to the Independent Investigation Mechanism: Draft Consultation and Compliance Review Policy (February 3, 2005), para. 16.

the Panel condensed the requirements for filing a request for inspection into a half-page set of questions, subsequently translated into multiple languages. Nevertheless, in some MDB accountability mechanisms, there were prescriptions that the complaint had to be in certain languages (English in the case of the ADB Inspection Function as it is the bank's working language, or in any of the bank's four official languages in the case of IDB's IIM). Complaints by email and facsimile are also not allowed in the case of IDB's IIM and the ADB Inspection Function. These prescriptions have in the course of the establishment of new or revised mechanisms been removed to reduce barriers in filing a claim. The ADB Accountability Mechanism, EBRD's IRM and AfDB's IRM allow claims to be filed in local languages in addition to the banks' official or working languages and also allow claims to be filed by email or facsimile. The IDB's proposal for enhancements to its IIM still disallows claims to be filed by email or facsimile.<sup>58</sup> The complaint forms of MDB accountability mechanisms have through brochures and operating procedures also been made more simple and friendly for people to use in filing claims, especially at the CAO Office, WBIP and ADB Accountability Mechanism, including obviating the need to specifically cite violations of policy in claims for compliance review. Provisions on allowing confidentiality of claims which were either disallowed or not expressly provided in IDB's IIM and ADB's Inspection Function are now allowed in the accountability mechanisms at World Bank, ADB, AfDB, IFC/MIGA, and EBRD, and have also been expressly provided for in IDB's proposal for enhancements to its IIM.<sup>59</sup> Allowing confidentiality of claims gives claimants a measure of comfort to file claims for fear that they may be subject to reprisals if their identities are required to be made publicly available.

## Extending the Period of Time for Filing Claims

The standard for the period of time allowed for filing claims was first set by the WBIP, the "95 percent disbursement rule", which is that claims cannot be filed after the loan is substantially disbursed. This gauge used at the WBIP was replicated in earlier accountability mechanisms (IDB's IIM and ADB's Inspection Function). This benchmark is arbitrary, is susceptible to manipulation in the case of cancellation of a portion of the undisbursed loan, and is extremely difficult for the claimants to ascertain without having access to bank data. In the drafting of the resolution on the WBIP, there were various proposals on the filing of claim period, ranging from 2 years from the loan closing date to 75 percent of the loan disbursed, and the final agreement on the 95 percent disbursement rule was reached and reflected in the resolution. Indeed, the arbitrariness of the

<sup>58</sup> Proposal for Enhancements to the IIM: Draft Consultation and Compliance Review Policy of February 2005, para. 48 at <http://enet.iadb.org/idbdocswebservices/idbdocsInternet/IADBPublicDoc.aspx?docnum=474362> (accessed October 1, 2008).

<sup>59</sup> *Ibid.*, para. 46.

rule was acknowledged by the World Bank General Counsel early in the life of the WBIP, in agreeing that the bank policies apply to any project where the loan has not yet been repaid.<sup>60</sup> On this basis, claims could technically be filed many years beyond project completion, but the Board claimed that the bank would not have leverage on the borrower once the project was substantially completed, and thus set the 95 percent disbursement rule. There was also concern that a much longer period would invite limitless requests for inspection. In fact, there was no basis for the concern that there would be an inundation of claims; as of October 1, 2008, only 153 claims over 15 years have been filed or registered with the MDB accountability mechanisms discussed above. The CAO Office allows claims to be filed with the Ombudsman function up to repayment of the loan or divestment of operation, which provides the widest time period for filing claims and is consistent with the contractual approach that the terms and conditions of the loan agreement apply until the loan is fully repaid. The comfort level reached by several MDB accountability mechanisms – ADB, EBRD and AfDB – is at least 1 year (2 years in the case of ADB’s) after physical completion of the project, which takes into account that physical impacts of the project can still affect local communities after the loan is fully disbursed.

## Provisions on Description of Claimants

The identification of claimants who can use the mechanisms has not changed since the establishment of the WBIP and has been applied for all other MDB accountability mechanisms, except for IFC/MIGA’s CAO Office. The claimants have been identified as a community of persons such as an organization or other grouping of individuals which includes any two or more persons who share common interests, or by the local representative of such party, or by a non-local representative in exceptional cases when local representation is not available. The last option has been rarely used, the most notable exception being the WBIP in the case of the China Western Poverty Reduction Project. The CAO Office is the only MDB mechanism that has a unique provision allowing individual claims and the fear of inundation of frivolous claims seems to be unfounded as there are only about 11 individual claims, as of October 1, 2008, filed with the Ombudsman function over the past 9 years.

## Providing Monitoring of Outcomes from Problem-Solving and Investigation

Monitoring of outcomes was not addressed in the WBIP and other MDB mechanisms emulating it did not have any monitoring provisions, such as

<sup>60</sup> Richard E. Bissell, “The Arun III Hydroelectric Project, Nepal” in Dana Clark, Jonathan Fox, and Kay Treakle, eds., *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel*, (Rowman and Littlefield, 2003) 41.

IDB's IIM and the ADB Inspection Function. IFC/MIGA's CAO Office had clear provisions on monitoring of outcomes in terms of settlement agreements reached during problem-solving and its other functions, and this monitoring function has provided the stimulus for other MDB mechanisms to have clear provisions on monitoring of outcomes from problem-solving and investigation at ADB, EBRD and AfDB. The need for involvement of claimants and the public is highlighted in the monitoring activities to check on the progress in the implementation of the outcomes. In the case of the WBIP, the Board has expressly requested the Panel to return to several projects (such as the Yacyretá Hydroelectric Project in Argentina and Paraguay) after implementation of Management's action plan to determine the impact of remedial measures.

## Ensuring Claimants' Participation in the Accountability Procedures

The earliest standard set for claimants' participation in the WBIP did not allow claimants to actively participate in the accountability procedures once the investigation phase had begun. From the date of filing and being informed that their claims are eligible, the claimants are not involved in the accountability procedures except at specific points when the panel meets them in the field until the outcome of the decision by the Board on the panel's investigation. Civil society has raised the issue of due process for the claimants and their right to be heard and participate in the accountability procedures. There is a growing trend to involve the claimants more in the accountability procedures such as during panel visits to the project area and in its interactions with the claimants during the investigation but these concrete actions are still few and far between. In an unusual departure, the ADB Accountability Mechanism allows the claimants (at the same time as Management) to comment on the Panel's draft investigation report, and the responses of both claimants and Management are posted on the Panel's website when the Board decision is made. AfDB's IRM allows the claimant to be provided with the compliance review panel's investigation report at the same time that the panel provides this report to the Board for consideration and decision, subject "to the provisions of the [AfDB] Group's Disclosure of Information Policy (in particular those relating to the disclosure of confidential information and/or documents)."<sup>61</sup> The AfDB IRM's investigation report of June 2008 for the Bujagali Hydropower Project and

<sup>61</sup> AfDB Group. Compliance Review and Mediation Unit of the Independent Review Mechanism. Operating Rules and Procedures (approved in July 2006), para. 56. A similar provision is provided in the EBRD's accountability. See EBRD. Independent Recourse Mechanism Rules of Procedure (April 6, 2004), para. 38. However, the compliance review report by EBRD's IRM relating to the Vlore Thermal Power Generation Project (dated April 17, 2008) was not issued to the claimants till May 9, 2008 after the Board's decision on May 8, 2008. See the Register for this project at <http://www.ebrd.com/about/integrity/irm/200701.pdf> (accessed October 1, 2008).

Bujagali Interconnection Project was provided to the claimant the same day it was sent to the Board for consideration and decision which took place 3 weeks later on July 14, 2008. While it would be more participatory for the claimant to have a draft investigation report so that it can then give the panel its comments, together with Management, for the panel to deliberate before finalizing the report, this step at least gives the claimant some measure of involvement and participation. However, the full impact of this measure has yet to be tested as the claimant's comments arrived too late for the panel to consider the claimant's views in its already finalized report.

## Mandatory Training of Experts

There is a growing direction to provide for mandatory training for compliance review panel experts although early MDB accountability mechanisms had no formal provisions on training of experts and the practice varied in terms of providing them with briefings on bank's operational matters (in the case of the World Bank Inspection Panel) or orientation programs that were organized for new members and staff (in the case of the ADB Accountability Mechanism). Two MDB accountability mechanisms – EBRD followed by AfDB – have clearly stated that training of at least 5 days a calendar year will be provided to the compliance review panel experts on the bank's operational matters. This measure is clearly beneficial in that the panel members who are unlikely to be highly knowledgeable and up-to-date about the institution's operations and their policies and procedures are given the opportunity to familiarize themselves with the institutions (together with the Board, Management and staff) and have a better understanding of the institution's business processes.

## Lessons Learnt From Emerging Directions and Trends

When an accountability mechanism is being established (such as OPIC's Office of Accountability mechanism) or under review (such as IDB's proposal to enhance its IIM), improvements made by other mechanisms are cited for adoption. In OPIC's accountability mechanism, an individual consultant who carried out a study prior to the approval of the mechanism by OPIC's Board of Directors, had been earlier involved in ADB's review of its Inspection Function. OPIC's mechanism contained similar operational principles found in ADB's Accountability Mechanism<sup>62</sup> and emulated its two-phase approach (problem-solving and compliance review). In the case of IDB's proposal to enhance its

<sup>62</sup> Such as the mechanism should enhance the institutional effectiveness mandate; be transparent and fair to all stakeholders; be accessible and responsive to concerns of local communities; and be cost-effective. Accountability and Advisory Mechanism for the Overseas Private Investment Corporation. General Policy and Guidelines approved on September 20, 2004, para. 2.



IIM, the comments from the public have been wide-ranging and some of these include the extension of the threshold bar from the “95 percent disbursement rule” to 2 years after physical completion of the project, reducing barriers such as the prohibition of email and facsimile in filing claims, and the inclusion of monitoring of outcomes of problem-solving and compliance review.

The European Investment Bank’s (EIB) complaints mechanism policy approved in June 2008 expressly notes that it takes into account the concerns expressed by CSOs and suggestions of internationally-reputed consultancies specialized in the field of accountability thereby incorporating “appropriate inputs”.<sup>63</sup> The EIB organized workshops featuring experts with experience in other mechanisms before adopting its policy. This policy allows any person or group of person “with an interest in the environmental, developmental or social impacts of the EIB Group’s activities” to file a complaint by email in any official European Union (EU) language. The EIB Complaints Office’s focus is on fact-finding with emphasis given to problem-solving. A memorandum of understanding between EIB and the European Ombudsman (EO) has been entered to strengthen EIB’s complaints mechanism policy to allow complaints filed by non-EU citizens or residents as EIB has to overcome its institutional problem due to the mechanism policy being internal (as opposed to the EU which is external) and allowing the EIB Complaints Office to address complaints from citizens/residents in an EU state or entities not having a registered office in an EU state.

Further, MDB mechanisms such as IDB’s IIM and ADB’s Inspection Function did not go through a public consultation process but the trend now is to have public consultation either in the establishment of a new mechanism (as in AfDB’s IRM) or in any review (in the ongoing IDB’s proposal for enhancements to its IIM and the ongoing EBRD’s IRM review). Public consultation is crucial as it gives credibility and legitimacy to an MDB’s accountability mechanism. This is further demonstrated in EIB’s endeavors to periodically review its complaints mechanism policy and EIB has stated it will launch a public consultation on its policy in 2009.<sup>64</sup>

## V. Challenges for MDBs and Their Accountability Mechanisms and Suggestions to Meet These Challenges

In this final section, we will consider the challenges that lie ahead for MDBs and their accountability mechanisms and make suggestions on meeting these challenges.

<sup>63</sup> EIB’s Complaints Mechanism Policy (June 24, 2008) at para. 3.2 at [http://www.eib.org/attachments/strategies/complaints\\_mechanism\\_policy\\_en.pdf](http://www.eib.org/attachments/strategies/complaints_mechanism_policy_en.pdf) (accessed October 1, 2008).

<sup>64</sup> *Ibid.*, para. 3.3.

## Introduction of Accountability Mechanisms and Improvement of Accountability Mechanisms or Other Systems at MDBs

MDBs have taken the lead over other international organizations (as well as national organizations, commercial banks, and CSOs) in setting up accountability mechanisms to address citizen grievances on internationally-funded development projects. The pressure is now on other financial institutions that do not have accountability mechanisms, when they should as their activities influence or have a direct impact on communities.<sup>65</sup> One example of the tensions in this movement was drawn out by the IMF's Independent Evaluation Office, which completed, in April 2008, an evaluation of the institution's corporate governance highlighting that accountability "is probably the weakest aspect of IMF governance" and "is particularly crucial in regard to the Fund, whose actions can have a major impact".<sup>66</sup> The IMF's Executive Board and the IMF Managing Director issued a joint statement in May 2008 stating that the issues raised by the report would take time to address and the "discussion will require the engagement of all parties at many different levels – involving not only the Executive Board and Management, but also the Fund's membership and other stakeholders more broadly."<sup>67</sup> Civil society is closely monitoring IMF's process of reform and monitoring and have stressed that the institution give consideration to the vital areas of accountability and transparency. CSOs have complained of being shut out of the process of reform as the institution does not have an explicit consultation framework to engage external stakeholders.<sup>68</sup>

Having opened the doors of accountability at some institutions, it is not surprising that civil society's demands will necessarily increase in expecting an equal if not higher standard from financial institutions with inadequately functioning accountability mechanisms by highlighting good practices at some MDB accountability mechanisms. These practices include providing monitoring of outcomes, advancing the time frame for filing complaints beyond the 95 percent disbursement rule, and allowing requesters (together with Management) to comment on the Panel's draft investigation report. Where reviews of accountability mechanism are delayed, such as the ongoing IDB's 2004 proposal for enhancements to its IIM, renewed pressure has been applied by

<sup>65</sup> One World Trust. Global Accountability Report 2006, para. 49.

<sup>66</sup> International Monetary Fund. Independent Evaluation Office. Governance of the IMF: an evaluation. (2008), at [http://imf-ieo.org/eval/complete/pdf/05212008/CG\\_main.pdf](http://imf-ieo.org/eval/complete/pdf/05212008/CG_main.pdf) (accessed October 1, 2008) para. 20.

<sup>67</sup> Joint Statement by the Executive Board and the IMF Managing Director, Press Release No. 08/121, (May 27, 2008) at <http://www.imf.org/external/np/sec/pr/2008/pr08121.htm> (accessed October 1, 2008).

<sup>68</sup> Letter from BIC, USA and 16 other NGOs to the IMF Managing Director dated March 25, 2008. The letter is provided in BIC, USA's update dated March 25, 2008 at <http://www.bicusa.org/en/Article.3722.aspx> (accessed October 1, 2008).

CSOs. The Center for International Environmental Law (CIEL), for instance, gave its comments on the proposal for improvements to its current system “incorporating comments from civil society and the best practices of other IFI accountability mechanisms”.<sup>69</sup>

In replenishment exercises of concessional funds for MDBs, such as the World Bank, testimonies provided by civil society before national authorities on how institutional development effectiveness can best be achieved through the WBIP include suggestions on reforms of accountability mechanisms. In June 2008, Lori Udall testified and provided a statement on behalf of seven NGOs, including BIC, USA and CIEL, before the U.S. House of Representatives Committee on Financial Services in its hearing on the 15<sup>th</sup> Replenishment of IDA, that although the NGOs did not recommend opening the resolution creating the WBIP at this time given the current political climate among the Board and Management, they would recommend reforms and updates to make the Panel process more accessible and user-friendly to affected people. In the 15 years of WBIP operations, the NGOs found that “overall, the Panel process has been positive, producing project level reform and/or creating political space for affected people in developing countries.”<sup>70</sup> Some of the recommended reforms included the following: giving claimants access to the Panel’s final report before or as it is sent to the Board, to Management’s response to the report, and to action plans; empowerment by the Board with more flexibility to follow up and monitor implementation of remedial measures to bring the project back into compliance with bank policies and procedures; and development of a Panel selection process that is open, transparent, and participatory.<sup>71</sup>

MDBs such as the World Bank, ADB and EBRD have separate systems handled by its other offices to address specific matters such as fraud and corruption and procurement irregularities of the institution’s civil works contracts, goods and services, including consulting services, in carrying out bank projects. These other systems provide windows of access for individuals to file complaints with MDBs as a check to ensure that the bank’s funds are properly used for the purposes of the project, and that there is integrity maintained without any fraud or corrupt practices in project execution and staff behavior. While there are annual integrity reports issued by the integrity offices of MDBs at the World Bank, ADB and EBRD on how they deal with complaints addressed to them, there are no annual reports filed by MDBs on how they deal with procurement

<sup>69</sup> Center for International Environmental Law. The Inter-American Development Bank’s (Un) Accountability Mechanism (April 4, 2008), at [http://www.ciel.org/Ifi/IDB\\_4Apr08.html](http://www.ciel.org/Ifi/IDB_4Apr08.html) (accessed October 1, 2008).

<sup>70</sup> Statement of Lori Udall regarding the World Bank Inspection Panel – Update and Recommendations for Reform in the Context of the Fifteenth Replenishment of the International Development Association before the Committee on Financial Services, U.S. House of Representatives (June 18, 2008) at <http://financialservices.house.gov/hearing110/udall061808.pdf> (accessed October 1, 2008), p. 5.

<sup>71</sup> *Ibid.*, pp. 13-14.

irregularities and complaints filed by civil society. MDB Management practices on handling corruption in particular have undergone increasing scrutiny from MDB member countries on their inquiries on MDB development financing<sup>72</sup> and the enhancement of development effectiveness in the United Kingdom and the United States, through its Senate Foreign Relations Committee and House Committee on Financial Services, and testimonies given by civil society members on the handling of corruption in MDB projects.<sup>73</sup> It is a positive development that donors generally are paying close attention to the corruption issue, and the process of harmonizing practices on this issue among bilateral and multilateral donors is likely to be driven in fora such as the Organization of Economic Co-operation and Development.<sup>74</sup>

## Movement Beyond Accountability to Demonstrating Responsibility

Civil society is increasingly pursuing the next logical step of “responsibility”, that is, if the MDB is held accountable for violating its policies and procedures in the bank’s project and people have been adversely harmed, it can, and should, be made financially responsible for the damage caused by violating its policies and procedures. Such financial obligations can take on two dimensions: (1) that the bank should provide additional grant financing to the borrower to cover costs to the project resulting from the bank’s conduct, or (2) that the bank should compensate individual project affectees for damage that results directly from its non-compliance with its own policies. The bank’s accountability in the establishment of these accountability mechanisms is to be distinguished from the separate concepts of legal liability and international responsibility. The obligation to make full reparation is the general principle behind the consequences of an internationally wrongful act as laid down by the Permanent Court of International Justice in the *Factory at Chorzów* case.<sup>75</sup>

<sup>72</sup> See the Opening Statement for Hearing on the Review of the Anti-Corruption Strategies of the Regional Development Banks by US Senate Committee on Foreign Relations Chairman Richard G. Lugar (April 21, 2005), <http://foreign.senate.gov/testimony/2005/LugarStatement050421.pdf> (accessed October 1, 2008).

<sup>73</sup> These are given in the hearing of a review of the anti-corruption strategies of the AfDB, ADB and EBRD by the US Senate Committee on Foreign Relations in April 2005 at <http://foreign.senate.gov/hearings/2005/hrg050421a.html> (accessed October 1, 2008) and at the hearing on the role and effectiveness of the World Bank in combating global poverty by the House Committee on Financial Services in May 2007 at [http://www.house.gov/apps/list/hearing/financialsvcs\\_dem/ht052207.shtml](http://www.house.gov/apps/list/hearing/financialsvcs_dem/ht052207.shtml) (accessed October 1, 2008).

<sup>74</sup> [http://www.oecd.org/topic/0,3373,en\\_2649\\_37447\\_1\\_1\\_1\\_1\\_37447,00.html](http://www.oecd.org/topic/0,3373,en_2649_37447_1_1_1_1_37447,00.html) (accessed October 1, 2008).

<sup>75</sup> *Factory at Chorzów*, Merits, Judgment No. 13, 1928, P.C.I.J., Series A, No. 17, p. 47. The Court stated that the “essential principle contained in the actual notion of an illegal act—a principle which seems to be established by international practice and in particular by the decisions of arbitral tribunals—is that reparation must, so far as possible, wipe out all the

International organizations are generally immune from national jurisdictions in which individuals might otherwise bring claims against them. On the international level, claims by individuals must be endorsed and represented by the state of the individual claimant's nationality, which is normally not available.

Affected people who get some measure of satisfaction when the investigating panel hears their voices still want further empowerment though they are not parties to the legal agreements signed by the MDBs with the borrowing countries. Problem-solving is a positive step taken by MDBs in its formal inclusion in their accountability mechanisms, but there is no guarantee that the problem will be solved according to the claimants' wishes as problem-solving is consensual for all the parties and a resolution in favor of the affected people cannot be guaranteed. Compliance is treated as an internal governance tool focusing on what the institution considers its own accountability and taking remedial action to ensure project compliance, which does not necessarily match with the affected peoples' expectations.

The translation from "accountability" into "responsibility" is a particular challenge for MDBs. MDB accountability mechanisms do not provide legal remedies by way of damages or injunctions as they are not judicial bodies. On the other hand, civil society has been clamoring for responsibility in various ways through debates on MDB's "legal and moral obligation"<sup>76</sup> that these banks have such an obligation to ensure that their contract terms are respected, and that the rights of local affected people are respected, consistent with the requirements of the banks' policies, in the case of the cancellation of illegitimate debts owing to MDBs which do not benefit the populations of developing countries.<sup>77</sup>

It is suggested that creative solutions will have to be found for citizen claims to be settled through arbitration as there is general immunity of MDBs before national courts and no recourse to national courts will be available unless they waive their immunity or organize some form of dispute settlement mechanism by agreement. One view is that MDBs can devise an appropriate passage for private parties' claims from an MDB's compliance review phase to its administrative tribunal (which handles employment-related disputes between staff and

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consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed. Restitution in kind, or, if this is not possible, payment of a sum corresponding to the value which a restitution in kind would bear; the award, if need be, of damages for loss sustained which would not be covered by restitution in kind or payment in place of it—such are the principles which should serve to determine the amount of compensation due for an act contrary to international law.”

<sup>76</sup> See, for example, letter from International Accountability Project to Executive Director Carole Brookins dated 23 June 2003 at <http://www.narmada.org/resources/DanaWBLetter.pdf> (accessed October 1, 2008), p. 3. The letter referred to the World Bank's legal and moral obligation under its contracts which would equally apply to the other MDBs' legal and moral obligations on their contracts.

<sup>77</sup> Joint NGO Report (February 2007) Eurodad and other NGOs. *Skeletons in the Cupboard: Illegitimate Debt Claims of the G7*.

the employer and can award damages and other relief) which could be metamorphosed as a special tribunal established at the request and consent of the parties.<sup>78</sup> A second view is that a problem-solving unit be also established within the MDB (in this case, the World Bank), by the establishment of a problem-solving unit called the Development Effectiveness Remedial Team which would report directly to the Board of Directors and be tasked with “remediating the social and environmental policy violations identified by the Inspection Panel and helping to ensure that displaced and aggrieved communities are adequately compensated and assisted to improve their standards of living.”<sup>79</sup> Problem-solving has been adopted by other MDB accountability mechanisms together with compliance review with nuanced approaches. This suggestion is to improve the current system at the World Bank. The authors hold the opinion that problem-solving would be better served before a compliance review is undertaken as it is more urgent to address the claimants’ needs in a timely way than to focus on an investigation which is in the interest of the institution in ensuring institutional compliance and improvement of its overall project quality in the long run.

A third view has been provided that the MDB establish an Office of Claims Resolution (OCR) without the need for the present accountability mechanisms.<sup>80</sup> Under this proposal, there would be a two-stage process where claimants would file a request for claim resolution with the OCR and the director of this office would appoint an independent intermediary to attempt to solve the problem created by the bank’s alleged noncompliance with its policies and procedures. If the intermediary failed to resolve the claim or if the bank agreed to corrective measures but failed to comply with them, the claimants would have the option to institute arbitration proceedings against the bank conducted on a modified version of the Optional Rules for Arbitration between International Organizations and Private Parties produced by the Permanent Court of Arbitration. This tribunal would have the power to award damages to the claimants. This proposal is premised on the MDB’s “willingness to waive its immunity”<sup>81</sup> which would be difficult to achieve easily as this would require consent of its members to amend its charter.

A fourth view espouses “a radical rethink of the law of jurisdictional immunities of international organizations”.<sup>82</sup> By this approach, affected people

<sup>78</sup> Eisuke Suzuki and Suresh Nanwani, “Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks”, *Michigan Journal of International Law* 27(1) (2005), 224.

<sup>79</sup> Dana Clark, “The World Bank and Human Rights: The Need for Greater Accountability”, 15 *Harvard Human Rights Journal* (2002), 224.

<sup>80</sup> Enrique R. Carrasco and Alison K. Guernsey, “The World Bank’s Inspection Panel: Promoting True Accountability through Arbitration” 41 *Cornell International Law Journal* (2008).

<sup>81</sup> *Ibid.*, p. 629.

<sup>82</sup> Gerhard Thallinger, “Piercing jurisdictional immunity: The possible role of domestic courts in enhancing World Bank accountability” *Vienna Online Journal on International Constitutional Law* (Vol. 1, 2008), p. 30.

should proceed to sue the MDB in the domestic courts after unsuccessfully exhausting the process under the accountability mechanism, and the “domestic courts should deny immunity and exercise jurisdiction over international organizations as long as these lack adequate instruments guaranteeing the right to a court for individuals adversely affected by an organization’s actions or omissions”.<sup>83</sup> This proposal is admittedly radical in its approach to domestic courts’ handling of the jurisdictional immunities of MDBs which is generally absolute unless the MDBs agree to waive their immunities and has yet to be tested. The jury is still out on this debate on the movement from accountability to demonstrating responsibility.

There is ongoing discussion on the issue of responsibility of international organizations by academics, judicial pronouncements, and the International Law Commission (ILC)’s current work on this area, which would provide sources of evidence as general principles of international law. The ILC’s work since 2002, when the ILC added this topic to its agenda, is ongoing. However, the issuance of ILC’s Fifth Report in May 2007 noted that while 30 draft articles on “Responsibility of international organizations” have already been provisionally adopted, decisions on some of the questions raised on these draft articles relating to the internationally wrongful act of an international organization would be postponed to the time when the ILC would have the opportunity to reconsider certain issues dealt with in the additional 14 draft articles provisionally adopted in the session covered by the report. This reconsideration would benefit from “elements of practice that States and international organizations could supply in the meantime. ... A wider knowledge of practice would clearly allow a better apprehension of questions relating to the international responsibility of international organizations. Moreover, the Commission would then be more consistently able to illustrate its draft articles with examples drawn from practice.”<sup>84</sup> The report also noted the frequently made remarks by both states and international organizations that the ILC’s current draft takes “insufficiently into account the great variety of international organizations”.<sup>85</sup> In February 2008, the European Commission in providing its comments, expressed concerns as to the feasibility of subsuming all international organizations under one draft when there is a highly diverse nature of international organizations (including the EC itself).<sup>86</sup>

<sup>83</sup> *Ibid.*, p. 35.

<sup>84</sup> International Law Commission. Fifth report on responsibility of international organizations by Giorgio Gaja, Special Rapporteur (May 2, 2007) at [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_583.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_583.pdf), para. 5. (accessed October 1, 2008).

<sup>85</sup> *Ibid.*, para. 7.

<sup>86</sup> International Law Commission. Responsibility of international organizations. Comments and observations received from international organizations. (March 31, 2008) at [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_593.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_593.pdf), p. 4. (accessed October 1, 2008).



The International Court of Justice (ICJ) has opined that international organizations may be responsible for their own conduct under international law.<sup>87</sup> In its advisory opinion on the *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, the ICJ stated “that the question of immunity from legal process is distinct from the issue of compensation for any damages incurred as a result of acts performed by the United Nations or by its agents acting in their official capacity. The United Nations may be required to bear responsibility for the damage arising from such acts.”<sup>88</sup> Professor Crawford has remarked that when international organizations were merely forums of state activity, responsible for preparing agendas but not implementing them, the issue of accountability was largely ignored but with the position changed over the past 50 years since the creation of the United Nations and the proliferation of international organizations with diversified members and functions, the “problem [of international responsibility for international organizations] is not going to go away by categorical denials.”<sup>89</sup>

In addressing accountability of their operations, MDBs are in an invidious position on how best to position themselves in relation to the spectrum and different needs of various stakeholders, including borrowers, project affectees and civil society groups, in fixing problem projects. Most MDBs have responded to the presence of accountability mechanisms by transferring more responsibility for remedies to the borrowers. The accountability towards project-affected people has also become sidelined in keeping with the mandate of enhancing institutional development effectiveness or still remains to be effectively addressed when the affected people want staff sanctions imposed on staff responsible for violating the bank’s policies, project suspension, and award of damages arising from problem-solving and panel investigation, as these are outside the remit of the mechanisms.

MDBs are confronted with two reality checks – one is that of political will where the “ultimate decision to raise and effectively implement accountability will always remain a political one”<sup>90</sup> and the other is the limited remedies available under the accountability mechanism as it is an internal governance tool (albeit externally-launched) focusing on the bank’s accountability which does not match with civil society’s expectations of legal and moral responsibility. The International Law Association (ILA) has deliberated on the accountability of international organizations to their members and third parties over 8 years

<sup>87</sup> *Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights*, 1999 I.C.J. 62.

<sup>88</sup> *Ibid.*, pp. 88-89.

<sup>89</sup> Crawford, James. March 2007. Fifth Steinkraus-Cohen International Law Lecture: Holding International Organizations and Their Members to Account. para. 34 at [http://www.unawestminster.org.uk/pdf/crawford\\_lecture.pdf](http://www.unawestminster.org.uk/pdf/crawford_lecture.pdf) (accessed October 1, 2008).

<sup>90</sup> International Law Association Report of the Sixty-Eighth Conference, Taipei, May 24–30, 1998, *Report of the International Law Association Committee on Accountability of International Organizations*, p. 603.

through 4 biennial conferences from 1998 to 2004. The ILA found that the balance between the autonomy which international organizations including MDBs require in their decision-making and operational processes and the requirements of an accountability regime functioning well and leaving no loopholes is a “delicate one”.<sup>91</sup>

## Maintaining Key Features of an MDB Accountability Mechanism

There is considerable literature on the key features of an MDB accountability mechanism. Bradlow has categorized the following seven principles that should guide the design of an international organization’s inspection mechanism: clarity of purpose; user friendliness; independence; powers of investigation; impartiality, competence and fairness; efficiency and cost-effectiveness; and effective management of issues presented.<sup>92</sup> Bridgeman and Hunter have indicated six principles on which a new accountability mechanism should be based and judged against: independence; transparency; fairness and objectivity; professionalism; accessibility; and effectiveness.<sup>93</sup> The accountability mechanisms of MDBs and other institutions have proposed a framework against which the accountability mechanisms of these institutions should be tested: accessibility, credibility, efficiency, and effectiveness (ACEE).<sup>94</sup> While there is no mechanical formula to determine the establishment of an ideal accountability mechanism, the authors propose that the main characteristics of an accountability mechanism should be, based on good practice and their experiences with MDB accountability mechanisms, the following: credibility; effectiveness; independence; objectivity; professionalism; and accessibility.

There is no hierarchical order of importance in the characteristics and all are equally important. Credibility, effectiveness and independence are probably the most difficult to measure because they are finally determined by the users of the mechanism – whether the communities find the mechanism credible in conducting the problem-solving and/or compliance review, as well as monitoring the outcomes; whether they find the mechanism independent in that they believe they have been heard by a few good persons who are untainted and have

<sup>91</sup> International Law Association Report of the Seventy-First Conference, Berlin, August 16–21, 2004 *Final Report of the International Law Association Committee on Accountability of International Organizations*, p. 230.

<sup>92</sup> Daniel D. Bradlow, Private Complainants and International Organizations: A Comparative Study of The Independent Inspection Mechanisms in International Financial Institutions, *Georgetown Journal of International Law* (2005) Vol. 36 403.

<sup>93</sup> Natalie L. Bridgeman and David B. Hunter, Narrowing the Accountability Gap: Toward a New Foreign Investor Accountability Mechanism 20 *Georgetown International Environmental Law Review* (2008) 187.

<sup>94</sup> Fourth Meeting of Principals of Independent Accountability Mechanisms in International Financial Institutions held in June 2007 in EBRD, London.

nothing to lose in expressing their views; and whether they find the mechanism effective in delivering the results that they would like to have, which in turn is impacted by the restrictions of the mandate such as the inability to award damages and restitution. If the claimants find the mechanism and its key personnel (that is, problem-solver, investigating panelists and secretariat) not credible, independent and effective, they would have no faith in the mechanism, quite apart from the reputational risk and damage suffered by the institutions in empowering citizens to bring claims in pursuit of their aims in being accountable for their operations.

Independence is the ability to avoid influences from outside the mechanism such as Management, member governments, executing agencies, claimants, together with defined entry and exit points that exhibit no connection with the institution (covering the length of period worked with the institution prior to the assignment, a complete employment bar after the assignment, and recusals from a particular activity in the event of a conflict of interest). Objectivity is the ability to carry out the work through a fair and impartial hearing of all sides. Professionalism is the delivery of outputs that will ensure the best standards are employed through the problem-solver and the investigating panelists and their secretariat staff and consultants. Accessibility is the process of making the mechanism easier for use by the claimants, lessening barriers by issuing simple claim forms in local languages, and having outreach with communities through using network NGOs as agents of the mechanism.

Despite the self-styled use of “independent” in the mechanisms at AfDB (Independent Review Mechanism), IDB (Independent Investigation Mechanism) and EBRD (Independent Recourse Mechanism), the mere use of this term does not guarantee that independence is necessarily ensured or maintained. The term “independent” as used in these three accountability mechanisms would mean independence of key personnel from operations departments or Management as the case may be but that would not necessarily satisfy the perceptions of the ultimate users of the mechanism. At IDB’s IIM, the roster members cannot be employed by the bank for a period of 2 years following the termination of appointment and at AfDB’s IRM, the experts can work for the AfDB Group 2 years after serving on the mechanism. Even if in practice these roster members do not resume any employment at the institution, the perception of independence will be compromised in the eyes of the claimants. The independence of an accountability mechanism is also manifested in the staff within the office where the staff are recruited by the principal officer heading the mechanism and have restrictions on their employment in working for the organization after their engagement at the mechanism. For example, all senior staff in the CAO Office come from outside the World Bank Group and they are appointed by, and report to, the CAO which effectively gives her more independence in running her office. The CAO ensures that its professional staff contracts restrict the professional staff members from obtaining employment with IFC or

MIGA for a period of 2 years after they end their engagement with the CAO.<sup>95</sup> At the WBIP, the executive secretary of the WBIP is assigned by the World Bank President after consultation with the Board and the executive secretary, in consultation with the chairperson of WBIP, selects the staff members.

By Wahi's definition, all the MDB accountability mechanisms are "semi-independent" as they function within the structure of their respective institutions and their powers are strictly limited by the terms of their mandates.<sup>96</sup> Bissell has opined that the WBIP's independence is "partial at best, with the Board often divided in supporting the statutory independence of the Panel from Management"<sup>97</sup> with the ground reality that both the "Board and Management, in their own ways and from different perspectives, are uncomfortable with the Panel being independent."<sup>98</sup> The EBRD's mechanism and AfDB's mechanism can be considered to be not independent due to the lack of clear distinction between problem-solving and compliance review. EBRD's mechanism has been viewed as failing the test of independence as it "is an internal mechanism, managed by the President."<sup>99</sup> The consultation phase at the ADB Accountability Mechanism has also been criticized as this function reports to the President, and is "potentially compromising the structural independence"<sup>100</sup> of the mechanism. In addition, there is no imposition of a permanent employment bar on the after serving the assignment as SPF. The view has also been expressed that the consultation phase proposed under IDB's enhancements to its IIM should be conducted by someone selected and reporting to the Board as it would maintain independence from Management.<sup>101</sup>

The functioning of both problem-solving and compliance review functions within EBRD's accountability mechanism could be strengthened by making them separate and not housed under one administrator (Co-ordinator) who in assessing a complaint, may recommend a compliance review or a problem-solving initiative, or both or neither. CEE Bankwatch Network has commented that the EBRD's mechanism should have "a clear distinction between the problem-solving and compliance review functions. ... These windows should

<sup>95</sup> CAO Operational Guidelines (April 2007), para. 1.3.

<sup>96</sup> Namita Wahi, Human Rights Accountability of the IMF and the World Bank: A Critique of Existing Mechanisms and Articulation of a Theory of Horizontal Accountability 12 U. C. Davis Journal International Law and Policy (2005-2006) 331, 356.

<sup>97</sup> Richard E. Bissell, "Institutional and Procedural Aspects of the Inspection Panel" in G. Alfredsson and R. Ring, eds., *The Inspection Panel of the World Bank: A Different Complaints Procedure* (Kluwer Law International, 2001) p. 124.

<sup>98</sup> *Ibid.*, p. 125.

<sup>99</sup> Letter from Richard E. Bissell and Jim MacNeill to the EBRD President dated January 15, 2003 at [http://bankwatch.org/documents/ebdr\\_irm\\_wbcomments.pdf](http://bankwatch.org/documents/ebdr_irm_wbcomments.pdf) (accessed October 1, 2008).

<sup>100</sup> Letter to IDB on its proposal for enhancements to the Independent Investigation Mechanism by David Hunter and five NGOs dated May 4, 2005 at <http://enet.iadb.org/idbdocswebservices/idbdocsInternet/IADBPUBLICDOC.aspx?docnum=559818>, p. 5. (accessed October 1, 2008)

<sup>101</sup> *Ibid.*, p. 9.

operate independently of one another.<sup>102</sup> The AfDB's mechanism likewise has a similar problem of having two windows which are not operating independently of one another as the director, CRMU in administering the mechanism oversees the problem-solving exercise and conducts the compliance review with assistance of two experts from the roster. Van Putten views the involvement of the director, CRMU in these two functions as "rather complicated" because in carrying out these tasks, the director bears the risk of a conflict of interest.<sup>103</sup> Problem-solving is focused on fostering amicable settlement without apportionment of blame on any party while compliance review is focused on the bank's conduct on the possible violation of policies.

### **Ensuring the Buy-in of Civil Society in Selection Process of Key Personnel in the Accountability Mechanism**

There are no express provisions in the resolutions or policy papers on the MDB accountability mechanisms on the selection process of key personnel of these mechanisms. The absence of such provisions or operating procedures is of concern to civil society as they cannot be assured that these key personnel will remain independent from Management. The selection process for the WBIP members was not transparent in the 1990s.<sup>104</sup> In 2003, a committee was appointed to select a new Panel member which includes the chairperson of the Committee on Development Effectiveness (CODE), the Dean or co-Dean of the Board, a Managing Director or Regional Vice President, and the General Counsel.<sup>105</sup> The selection procedures for WBIP members are also made publicly available which specify how the selection committee members prepare a shortlist of candidates and after interviewing the shortlisted candidates, with the most senior member of the Inspection Panel, the committee would then recommend the best two or three candidates to the President for further consideration for him to put forward his nomination to the Board for its decision.<sup>106</sup> The

<sup>102</sup> CEE Bankwatch Network's Comments on the Existing IRM. The EBRD Independent Recourse Mechanism Review (June 2008) at [http://bankwatch.org/documents/bwn\\_comments\\_IRM\\_06\\_08\\_FINAL.pdf](http://bankwatch.org/documents/bwn_comments_IRM_06_08_FINAL.pdf) (accessed October 1, 2008) at p. 14.

<sup>103</sup> Maartje van Putten, 'Policing the World', *Accountability Mechanisms for Multilateral Financial Institutions and Private Financial Institutions* (The Netherlands: Tilburg University and Canada: McGill University, 2006), 144.

<sup>104</sup> Lori Udall, *The World Bank Inspection Panel: A Three Year Review* (Washington, D.C.: The Bank Information Center, 1977), p. 82.

<sup>105</sup> World Bank. Appointment of Committee to Select a New Member of the Inspection Panel at [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Appointment\\_of\\_Committee\\_to\\_Select.pdf?resourceurlname=Appointment\\_of\\_Committee\\_to\\_Select.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Appointment_of_Committee_to_Select.pdf?resourceurlname=Appointment_of_Committee_to_Select.pdf) (accessed October 1, 2008).

<sup>106</sup> Selection Procedures for Members of the Inspection Panel (IR2002-0004) Excerpts at [http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Selection\\_Procedures\\_Members\\_Inspection\\_Panel.pdf?resourceurlname=Selection\\_Procedures\\_Members\\_Inspection\\_Panel.pdf](http://siteresources.worldbank.org/EXTINSPECTIONPANEL/Resources/Selection_Procedures_Members_Inspection_Panel.pdf?resourceurlname=Selection_Procedures_Members_Inspection_Panel.pdf) (accessed October 1, 2008).

ADB also provided information on its website on how its first CRP members were selected – though a selection committee consisting of the head of its personnel department, the bank’s Secretary, the General Counsel, and the head of its Operations Evaluation Department, together with a Board member who is also the chair of the bank’s Board Inspection Committee (the forerunner of the current Board Compliance Review Committee).<sup>107</sup>

NGOs have voiced their concerns with the U.S. House of Representatives on the selection process for selecting WBIP members over recent years, noting that the process has “become increasingly more internal to the Bank and less transparent.”<sup>108</sup> A letter from CIEL and BIC, USA together with 11 other NGOs to the World Bank president in April 2008 expressed concerns on the existing procedures for selecting the WBIP members and in particular on the Selection Committee which they believed would “potentially threaten the Panel’s independence.”<sup>109</sup> To these NGOs, the inclusion of a Regional Vice President whose region includes projects that are the subject of Panel claims was a conflict of interest. They requested that civil society, as the Panel’s primary stakeholders, be provided a means to participate in the selection of new members and that the selection committee be constituted to exclude representatives of Management and consist of the Chair of the Panel, the Dean of the Board, the Chair of CODE, and one civil society representative.

The World Bank’s response was to remove the Regional Vice President from the selection committee as projects in her region are the subject of Panel complaints. It rejected the argument that having any bank staff on the selection committee represented a conflict of interest, and claimed that involving civil society would present “practical difficulties of selecting them”.<sup>110</sup> The CAO has the unique distinction among all key personnel in the MDB accountability mechanisms to have civil society buy-in in her selection process as her appointment resulted from the creation of a working group of six people from civil society and the private sector, all from outside IFC/MIGA, and the working group’s top choice was appointed by the President of the World Bank Group. The CAO Office of all MDB accountability mechanisms comes closest to how

<sup>107</sup> ADB Accountability Mechanism Extension of Effective Date and Declaration of Effectiveness (November 27, 2003) at [http://www.adb.org/Documents/Others/ADBAM-Bd\\_paper-effectiveness.pdf](http://www.adb.org/Documents/Others/ADBAM-Bd_paper-effectiveness.pdf) (accessed October 1, 2008).

<sup>108</sup> Statement of Lori Udall regarding the World Bank Inspection Panel – Update and Recommendations for Reform in the Context of the Fifteenth Replenishment of the International Development Association before the Committee on Financial Services, U.S. House of Representatives (June 18, 2008) at <http://financialservices.house.gov/hearing110/udall061808.pdf> (accessed October 1, 2008), p. 11.

<sup>109</sup> Letter from CIEL and BIC, USA, together with other NGOs, to the World Bank President on Inspection Panel Selection Committee and Process (April 17, 2008) at [http://www.ciel.org/Publications/Zoellick\\_InspectionPanel\\_17Apr08.pdf](http://www.ciel.org/Publications/Zoellick_InspectionPanel_17Apr08.pdf) (accessed October 1, 2008).

<sup>110</sup> See Bretton Woods Project, Inspection Panel Conflicts, Update 61 (June 17, 2008) at <http://www.brettonwoodsproject.org/art-561839> (accessed October 1, 2008).

a multi-stakeholder group can effectively be involved in the selection process. The involvement of civil society in the selection process of key personnel in accountability mechanisms continues to be a challenge for the other MDBs.

## Facilitating Citizen Access by Lowering Threshold Levels

MDBs can lower the threshold levels of their respective accountability mechanisms in order that citizens will have easier access to these mechanisms. Among all MDB accountability mechanisms, the CAO Office has the lowest threshold level in that it accepts complaints from individuals or groups of people or organizations that believe they are, or may be, affected by the social and environmental impacts of IFC/MIGA projects, while the others have raised bars to disallow individual claims and require elements of “adversely affected” or “material harm” to be proven by the claimants. Similarly, the expansion of policies such as the limited policies (currently two) at EBRD – its 2008 environmental and social policy (replacing the 2003 environmental policy) and the public information policy<sup>111</sup> – would provide a broader oversight of policy which would be consistent with the mandate of an institutional accountability mechanism.

The annual meetings of accountability mechanisms of MDBs and other financial institutions held since 2004 provide an opportunity for these mechanisms to, apart from sharing their experiences and views, also discuss harmonization of activities, such as use of simple and user-friendly claim forms, conducting joint outreach, and agreed understandings in carrying out their activities in the event of joint referrals by claimants on cofinanced projects for efficiency and cost-effective purposes, in accordance with the Paris Declaration on Aid Effectiveness. There is no perfect MDB accountability mechanism as the systems are evolving and there is no comfort zone reached by the parties – the institutions, governments, and citizens – on what would give citizens the optimal redress.

## Lessons Learnt and the Way Ahead

For the MDBs, the challenges that lie ahead in the strengthening of accountability mechanisms are how to demonstrate accountability and responsibility for harm caused to project affectees, to generate lessons learnt to improve the institution’s development effectiveness, to avoid or mitigate politicization of process, and to harmonize accountability mechanisms to rationalize donor activities to make them more cost-effective under the Paris Declaration on Aid Effectiveness. MDBs may consider allowing the filing of individual claims in accountability mechanisms which is already done at IFC/MIGA’s CAO Office

<sup>111</sup> EBRD. *About the IRM*, <http://www.ebrd.com/about/integrity/irm/about/index.htm> (accessed October 1, 2008).



and has not posed a problem in the Office's operations, and allowing claimants to respond to the Panel's draft investigation report, thereby giving people due process in ensuring that their voices are heard during the accountability procedures. Fears of allowing individual claims in other MDB accountability mechanisms that they would result in a floodgate of frivolous claims have apparently proved to be unfounded as overall, there has been no disruption of operations in the CAO Office. These fears also seem misplaced based on the figures from CAO's ombudsman (problem-solving) function as it has received over the past 9 years about 70 complaints<sup>112</sup> out of which about 11 are filed by individuals, and seven have arisen from one project (the Baku-Tbilisi-Ceyhan Main Export Pipeline Project).<sup>113</sup>

MDB accountability mechanisms are sailing in relatively uncharted waters when it comes to monitoring the outcomes of their activities. The WBIP does not have a mandate to monitor the Management's action plan presented to the Board when the Panel issues its findings to the Board, even though the Board has occasionally availed itself of the Panel's expertise to carry out a monitoring function. Newer accountability mechanisms have incorporated a monitoring function to cover the outcomes reached after problem-solving and/or investigation but the ambit of monitoring is still unclear. The CAO Office's experience, based on its review of its effectiveness in 2006, shows how its monitoring function has been developed to be useful internally, as a tool for designing improvements to its procedures, and externally, to improve its ability to report on its achievements.<sup>114</sup>

Monitoring can be made easy if the recommendations made from the Panel's findings are appropriate and clear, but the monitoring takes on new perspectives. Claimants still have standing but the focus changes in monitoring in that the mechanisms now consider the implementation of the outcomes which involves checking primarily on Management and their actions. Also, if the mechanisms find that the implementation of the outcomes is not carried out, can they issue recommendations that will have "teeth" upon approval by the Board as the Board's decision will be binding on Management? In the Bujagali project claim at the AfDB's IRM, the Panel recommended that the Board approve general measures such as the bank streamlining and systematizing its policies and procedures so that they become easily accessible to staff and the public in line with the bank's policy on information disclosure instead of project-specific recommendations notwithstanding violations of several policies including gender, involuntary resettlement, poverty reduction, and environment, and that the

<sup>112</sup> See *CAO Annual Report 2006-2007*, pp. 50-52 and the CAO website, <http://www.cao-ombudsman.org> (accessed October 1, 2008).

<sup>113</sup> See Summary of BTC Pipeline complaints from 2003 to March 2008 at [http://www.cao-ombudsman.org/html-english/documents/CurrentBTCComplaintTracker\\_updatedMarch08.pdf](http://www.cao-ombudsman.org/html-english/documents/CurrentBTCComplaintTracker_updatedMarch08.pdf) (accessed October 1, 2008).

<sup>114</sup> *CAO Annual Report 2006-2007*, p. 15.

Board appoint an IRM expert and the director, CRMU to “conduct the annual reviews of the implementation”<sup>115</sup> of the Board’s decision based on its report. The Board accepted the Panel’s findings and recommendations and instructed Management to prepare two action plans, one responding to the Panel’s recommendations on the bank’s policies and procedures (that is, on general measures) and the other for “actionable project-specific findings on non-compliance and areas of concern.”<sup>116</sup> The Board approved the Panel’s recommendation that the IRM “monitor the implementation of the project-specific action plan” which would mean that the IRM would not monitor Management’s action plan responding to the Panel’s recommendations on general measures. The lack of clarity in marking out the Panel’s terms of monitoring will be an issue for the Panel and for the claimants who expect the mechanism to have a monitoring mandate.

Citizen voices on the future of MDBs, in particular, the World Bank, are increasing through public hearings such as the Independent People’s Tribunal on the World Bank Group in India on the World Bank and its policies and procedures in September 2007<sup>117</sup> and the World Bank Campaign Europe in its public hearing on the World Bank under the auspices of the Permanent Peoples’ Tribunal in October 2007.<sup>118</sup> The preliminary findings of the jury in the Independent People’s Tribunal have called for “India and the international community to join to hold the World Bank accountable for policies and projects that in practice directly contradict its mandate of alleviating poverty for the poorest and potential alternatives.”<sup>119</sup>

The participation by CSOs in the Third High-Level Forum on Aid Effectiveness in Accra in September 2008 to review the Paris Declaration of 2005 stemmed from the formation of an Advisory Group in January 2007 to a growing interest on the part of CSOs to engage with donors and country governments on issues of aid effectiveness as they are largely excluded from the Paris Declaration framework and its implementation.<sup>120</sup> This participation is another instance of civil society’s demonstration of its engagement in the international

<sup>115</sup> AfDB. Independent Review Panel. Compliance Review Report on the Bujagali Hydropower and Interconnection Projects. (June 20, 2008) at [http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/30740990-EN-BUJAGALI-FINAL-REPORT-17-06-08.PDF?bcsi\\_scan\\_B90AE85AF6AB15C6=0&bcsi\\_scan\\_filename=30740990-EN-BUJAGALI-FINAL-REPORT-17-06-08.PDF](http://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance-Review/30740990-EN-BUJAGALI-FINAL-REPORT-17-06-08.PDF?bcsi_scan_B90AE85AF6AB15C6=0&bcsi_scan_filename=30740990-EN-BUJAGALI-FINAL-REPORT-17-06-08.PDF), p. 16. (accessed October 1, 2008).

<sup>116</sup> AfDB’s Boards of Directors decision (July 9, 2008) at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Generic-Documents/30740992-EN-BOARDS-DECISION-BUJAGLI-REPORT.PDF> (accessed October 1, 2008).

<sup>117</sup> At [http://www.worldbanktribunal.org/about\\_the.html](http://www.worldbanktribunal.org/about_the.html) (accessed October 1, 2008).

<sup>118</sup> At <http://www.worldbankcampaigneurope.org/spip.php?article68> (accessed October 1, 2008).

<sup>119</sup> At <http://www.worldbanktribunal.org/pdf/initial-findings.pdf> (accessed October 1, 2008).

<sup>120</sup> See *Turning the Tables. Aid and accountability under the Paris framework. A civil society report by Eurodad.* (April 2008) at [http://www.eurodad.org/uploadedFiles/Whats\\_New/Reports/Turning\\_the\\_Tables.pdf](http://www.eurodad.org/uploadedFiles/Whats_New/Reports/Turning_the_Tables.pdf) (accessed October 1, 2008). p. 13.

aid effectiveness debate and the important role it can play and voice on aid effectiveness issues at the same forum with governments and donors. The “foot in the door” of the decision-making process approach has now been transformed into “a seat at the table” approach, as vocally articulated by NGOs calling upon governments to open up the G8 summit in Hokkaido to participants of civil society<sup>121</sup> and by calls from CSOs that “civil society groups *should always be offered a seat at the table* and policy dialogues need to feed into political processes” (emphasis added) at discussions between donors and governments including the high-level forums following the Paris Declaration.<sup>122</sup> Eurodad’s engagement with the World Bank in April 2008 on odious debt, illegitimate debt, and responsible lending illustrates the concerns of civil society that these issues should be further debated at the international level even though there are disagreements on workable definitions of odious and illegitimate debts, and on operational issues on the framework for responsible financing.<sup>123</sup>

Concomitant with calls for accountability, civil society groups are themselves conscious that as they demand accountability from MDBs as well as new targets of national institutions such as export credit agencies which are bilateral export promotion agencies and do not necessarily have development mandates,<sup>124</sup> they in turn must be accountable to their stakeholders. Examples of accountability measures taken include introspections by a large NGO network on how it can improve accountability of its own NGO members,<sup>125</sup> the establishment of complaint and response mechanisms by several NGOs<sup>126</sup> and the

<sup>121</sup> See the recommendations by 2008 Japan G8 Summit NGO on “Calling for the G8 summit to be open to civil society” at <http://g8ngoforum.org/forum/uploads/holdingg8.pdf> (accessed October 1, 2008).

<sup>122</sup> See Turning the Tables. Aid and accountability under the Paris framework. A civil society report by Eurodad. (April 2008) at [http://www.eurodad.org/uploadedFiles/Whats\\_New/Reports/Turning\\_the\\_Tables.pdf](http://www.eurodad.org/uploadedFiles/Whats_New/Reports/Turning_the_Tables.pdf) (accessed October 1, 2008). p. 6.

<sup>123</sup> See Meeting Notes drafted by Eurodad and World Bank staff on Round Table on Conceptual and Operational Issues of Lender Responsibility for Sovereign Debt (April 14, 2008) at [http://www.eurodad.org/uploadedFiles/Whats\\_New/Reports/Odious\\_Debt\\_Roundtable\\_Report\\_FINAL\\_July\\_17\\_08.pdf](http://www.eurodad.org/uploadedFiles/Whats_New/Reports/Odious_Debt_Roundtable_Report_FINAL_July_17_08.pdf) (accessed July 27, 2008). See also Gail Hurley, Eurodad Charter on Responsible Financing. (January 2008) at [http://www.eurodad.org/uploadedFiles/Whats\\_New/Reports/Responsible\\_Financing\\_Charter\\_report.pdf](http://www.eurodad.org/uploadedFiles/Whats_New/Reports/Responsible_Financing_Charter_report.pdf) (accessed October 1, 2008).

<sup>124</sup> See, for example, Briefing paper for the revision of the Common Approaches – August 2006 prepared by Friends of the Earth France for ECA Watch at pp. 14-16 available at [http://www.eca-watch.org/problems/fora/oecd/Common\\_Approaches\\_Review/ECAW\\_CA\\_Monitoring\\_Paper\\_25Aug2006.pdf](http://www.eca-watch.org/problems/fora/oecd/Common_Approaches_Review/ECAW_CA_Monitoring_Paper_25Aug2006.pdf) (accessed October 1, 2008).

<sup>125</sup> In 2006, BOND (British Overseas NGOs for Development), the United Kingdom’s broadest network of voluntary NGOs working in international development, commissioned a report “A BOND Approach to Quality Standards in Non-Governmental Organizations: Putting Beneficiaries First” after researching its members’ approaches and views on quality and accountability. With the issuance of the report, BOND continues to support its members on issues of quality, effectiveness and accountability in development work.

<sup>126</sup> See for example Oxfam’s establishment in 2005 of a complaints and response mechanism in its field program in the tsunami-affected area in Aceh and Nias, Indonesia to allow beneficiaries save access to raise their concerns over housing and livelihood support projects. See:

adoption of an International Nongovernmental Organization (INGO) Accountability Charter in June 2006 by 11 INGOs including Oxfam International and ActionAid International. This charter is open to INGOs to become signatories, and it establishes and implements a system that not only sets common standards of conduct for INGOs but also creates mechanisms to report, monitor and evaluate compliance as well as provide redress.<sup>127</sup>

There are relentless calls for MDB accountability based on the democratic space sought by CSOs in their quests for stronger accountability mechanisms and variations thereof in redressing grievances by project affectees. The debate will carry on in present and future policy reviews of any MDB accountability mechanism and there is no categorical answer on what is the “right” approach. The approach taken by any MDB will necessarily be suited to that institution’s context and the political will of its members as the Board of Directors is the approving authority. If civil society has little or no comfort with an MDB’s accountability mechanism, it will reiterate its demands to reform the mechanism.

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Humanitarian Accountability Partnership – International Newsletter Issue No. 6 (November 2005) at <http://www.hapinternational.org/pool/files/617-Newsletter%20Issue%20no%206%20PDF.pdf> (accessed October 1, 2008).

<sup>127</sup> See <http://www.ingoaccountabilitycharter.org/about-the-charter.php> (accessed October 1, 2008).

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