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External Review of the Inspection Panel's Toolkit

Prepared
for the
Committee on Development Effectiveness
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Executive Summary

1. This report is based on the Terms of Reference (ToR) for the External Review of the Inspection Panel's Toolkit (the External Review) provided by the Committee on Development Effectiveness (CODE).
2. The mandates of all the independent accountability mechanisms (IAMs) stipulate that they should offer requesters a compliance review. All the IAMs, except the Inspection Panel (IPN), also offer requesters dispute resolution and their own institutions monitoring and advisory services.
3. IAMs have different governance structures. Four IAMs offer both compliance review and dispute resolution services. The entities at the EBRD and IDB report to the board of the bank. The IFC-MIGA/CAO reports to the President of the World Bank. The EIB/CM reports to an EIB Vice-President but dissatisfied requesters can complain about the CM to the European Ombudsman. The ADB and the AfDB provide dispute resolution and compliance reviews through different IAM components. In both cases, the dispute resolution component reports to the President while the compliance review component reports to the board.
4. Over 2013-2016, the IAMs' average annual budget ranged from US\$592,347.11 to US\$4,802,457.40. The IPN's average annual budget for the period was US\$3,363,917.60. The IAMs' staff range from 3 full time staff members plus up to 10 part-time experts to 17 full-time staff members plus 14 part-time experts. The IPN has 8 staff members and 3 Panel members, one of whom is full-time.
5. The fact that the Bank's operational policies are applicable to the diverse operating environments in its 144 borrowing member states has unavoidable consequences. First, the Bank cannot eliminate the need for staff to exercise judgement in applying the policies to particular operations. Second, regardless of their training, competence, good faith and professionalism, there is always a risk that fallible human beings exercising judgement in complex contexts will make decisions that have unintended adverse consequences.
6. Third, the IPN provides the Board with a mechanism for dealing with these unintended adverse impacts. It adds value to the Bank in two ways. The IPN helps mitigate the harm caused by non-compliance with the Bank's operational policies. Second, it offers the Bank an opportunity to learn lessons about the functioning of its operational policies and procedures.
7. The fact that the IPN's mandate requires it to concentrate on the shortcomings in Bank operations has one unfortunate consequence. It creates tension in its relations with Bank staff and management, who are responsible for the decisions that give rise to IPN investigations. These tensions may be intensified by the fact that the financial and operational costs of any IPN investigation are incurred upfront while the benefits accrue over time.

Topic 1: Potential Changes to the IPN's Toolkit.

Dispute Resolution

8. IAM dispute resolution involves helping the parties to a dispute arising from a MDB-funded operation—which includes project affected people, the borrower and MDB management --

try and find a mutually acceptable outcome to their dispute. The IAM does not render enforceable judgments or assign blame.

9. The IBRD and IDA have addressed the need for dispute resolution in a number of ways. First, under the new Environmental and Social Framework borrowers will be required to establish project level grievance recourse mechanisms.
10. Second, the Bank has established the Grievance Redress Service (GRS). Since it reports to the Vice-President, Operations Policy and Country Services Department, external stakeholders and experts view it as an instrument of Bank Management and are sceptical of its claims to provide independent dispute resolution services. Bank Management disagrees and contends that the GRS' location in the Bank hierarchy facilitates efficient resolution of its cases. They cite the steady increase in number of GRS cases as evidence of growing confidence in its efficacy.
11. Third, the IPN has created two mechanisms to help requesters and Bank management resolve their disputes without a formal compliance investigation. The first is a pilot project in which the Panel delays registering requests to give management and the requesters time to resolve their dispute. In the second, based on its operating procedures, the IPN delays making a recommendation on investigation to give management and the requesters time to try and resolve their dispute.
12. These mechanisms blur the clear distinction between the IPN's responsibilities as an independent and objective fact finder and management's role in the IPN process. If management is interested in using either mechanism, the IPN needs to work with it to explore the possibility of engaging the requesters in dispute resolution. This can inadvertently cause requesters to feel pressured to accept the invitation to avoid creating a problem with the IPN. In addition, the use of the mechanisms delays any IPN decision on their request while the management explores the feasibility of reaching a solution that avoids the compliance review that the IPN process offers them.

Options in regard to dispute resolution

13. *Maintain the status quo:* Requesters seeking dispute resolution would contact the GRS. The IPN could continue utilizing its current delaying mechanisms to create space for dispute resolution. Unlike the other IAMs, the IPN lacks formal authority to monitor the implementation of the agreements reached through these mechanisms.
14. *Delegate all dispute resolution functions to a separate entity that reports to the President:* This option would require the IPN to terminate its efforts to encourage dispute resolution. It would have both budgetary and staffing implications, if it is implemented through creating a new entity.
15. *Grant the IPN dispute resolution authority:* If the Board adopted this option, it would have to decide whether the Panel members or the Executive Secretary should play the lead role in dispute resolution. It could have both staffing and budgetary consequences. The Board would need to decide whether to implement the option either through a clarification of or an amendment to the IPN Resolution.

Monitoring Implementation of Management's Action Plan

16. The purpose of dispute resolution monitoring is to help build confidence in the outcome of the process. The purpose of compliance review monitoring is to assess if the action plan is being implemented and is actually correcting the problems. All IAMs, except the IPN, have monitoring authority in regard to both dispute resolution and the implementation of action plans.
17. There is general agreement that IAMs need to have dispute resolution monitoring authority but there is disagreement about the role of compliance review monitoring. There are two arguments against IAM compliance review monitoring. The first is that developing an action plan and monitoring its implementation are management functions. The second is that IAM monitoring would merely duplicate the work of management.
18. Even if there is some duplication, it does not follow that IAM monitoring would be wasteful. Monitoring addresses two separate issues. The first is whether or not the MDB staff are actually implementing the approved action plan. The second is whether or not the action plan is actually dealing with the problems identified in the IAM report. The former is clearly a management function. The latter concerns the board's interest in ascertaining that its decision is actually producing its intended outcome.
19. The IAM offers the board an independent, disinterested view on whether or not the action plan is achieving its intended result and, if not, if this is due to problems with the design or the implementation of the action plan.
20. The requesters interpret the board's approval of the IAM report as confirmation that the bank's failure to comply with the applicable bank policies caused their harm. They interpret the board's approval of the management action plan to mean that it expects the plan to deal with their problem. Consequently, any failure by the board to ensure that its decisions are achieving their intended outcome could have adverse reputational consequences for the MDB.

Options in regard to Monitoring

21. If the IPN were given dispute resolution authority, it would also need monitoring authority. This section focuses on monitoring of compliance reviews.
22. *Maintain the Status Quo*: This would mean that management retains the responsibility to develop, implement and monitor implementation of an action plan. The Board could still assign the IPN monitoring responsibilities on an *ad hoc* basis.
23. *Grant the IPN monitoring responsibilities upon Board approval of a recommendation from the IPN*: This means the IPN could monitor in complex compliance review cases. It could have budgetary implications.
24. *Require the IPN to monitor the implementation of all management action plans developed in response to all findings of non-compliance*: The Board would receive independent reports on the adequacy of the management action plans. It would have budget and staffing implications.

25. The second and third options would require the Board to revise the 1999 Clarification of the IPN Resolution, which stipulates that the action plan is outside the “purview” of the IPN.

Advisory Services

26. Advisory services focus primarily on the lessons that the IAMs learn about the functioning of MDB operational policies. The advice can be given as recommendations in specific compliance reports, lessons learned sections in annual reports and in other publications.
27. All the IAMs except the IPN have explicit advisory authority. The IPN does provide informal advice through statements in its compliance reports and its publications, including its annual report and Emerging Lessons series.

Options in regard to advisory powers

28. *Maintain the Status Quo*: The IPN could continue giving advice informally through its publications and, when appropriate, through comments in its compliance reports. The IPN would continue to be the only IAM without formal advisory authority.
29. *Authorize the IPN to include recommendations in its compliance investigation reports and to publicize the lessons it has learned from its cases*: The IPN could include recommendations in its compliance review reports and general comments on lessons learned in its publications.
30. *Authorize the IPN to provide advice only in its annual report and other publications and upon request from the Board*: The IPN could convey its lessons learned in its general publications but not in its compliance review reports.

TOPIC 2: Assess the time-limit on the eligibility of requests in respect of the Panel Resolution, particularly for projects supported by guarantees.

31. Paragraph 14(c) of the 1993 Resolution establishing the IPN stipulates that it cannot accept requests that are filed after its loans are “substantially disbursed”. A footnote states that a loan is “substantially disbursed” when 95% of loan proceeds have been disbursed.
32. Two developments over the past 25 years are relevant to assessing the continuing suitability of this time limit on eligibility. First, both the Bank’s operations and financial products have become more diverse. In some cases, the Bank’s commitments may extend beyond the loan being “substantially disbursed”. For example, in the case of a Bank guarantee, it may continue supervising the borrower’s compliance with its obligations until the guarantee expires. If the Bank fails to do so for reasons that are arguably non-compliant with its own operational policies, the current time limit could deprive deserving requesters of the opportunity to file requests with the IPN. It could also raise questions about the Bank’s commitment to upholding its legal obligations.
33. The second development is that the other MDBs have established their own IAMs. They all have longer eligibility time periods than the IPN. The time limit for those MDBs that stipulate a time limit is either 12 or 24 months after a specified event. In the case of the IFC-MIGA/CAO and the EIB/CM eligibility ends when the institution’s engagement with the client or the project ends.

Possible Responses to the Effect of Time on the Eligibility of Requests

34. *Maintain the Status Quo*: The current time limit may exclude some potentially deserving claims. While this would be the case with any time limit, it is particularly noticeable with the IPN because its limit is so different from those of the other IAMs.
35. *Extend the Time Limit to a stipulated period beyond the Closing Date of the Loan*: This option would bring the IPN's practice into line with that of many of the other IAMs. The change could lead some Borrowers to reassess the attractiveness of Bank financing.
36. *Eliminate the time period and rely on other factors in determining eligibility*: The IPN would accept any request for investigation that meets the other requirements for eligibility. In most cases, the most challenging requirement will be establishing causation, which over time will become harder as an expanding range of factors impact on the project. The cost of some eligibility investigations may rise. The option could also lead some Borrowers to reassess the attractiveness of Bank financing.

TOPIC 3: Assess the extension of Panel case eligibility to Bank-Executed Trust Funds (BETFs).

37. The Bank's classifies its trust funds into three groups. First is bank executed trust funds (BETFs), which fall outside the IPN mandate because they only must comply with the Bank's procurement and administrative rules and procedures. The other two categories, recipient executed trust funds and international financial intermediary funds, are both subject to the IPN's mandate.
38. The significance of the distinction between Bank work that is financed by BETFs and work that is funded from other Bank sources of funds is not easily appreciated by external stakeholders. They maintain that BETF-funded activity should fall with the IPN's mandate. They note that the IPN rejected a request involving BETF funded activity even though it was alleged to have threatened material adverse social and environmental impacts.
39. Most MDBs do not specifically exclude BETFs from their IAM's mandate.

Options for the IPN

40. *Maintain the Status Quo*: Any change in the status quo could require the consent of all BETF donors. The current approach entails some reputational risk for the Bank.
41. *Make BETFs subject to all Bank Operational Policies and Procedures*: This eliminates the risk that the same activity could be excluded from the IPN mandate when it is funded by a BETF but included when it is funded from another source. This option would create additional requirements for BETF-funded activities.
42. *Allow IPN the discretion to treat BETF cases on an ad hoc basis*: The IPN could recommend to the Board that it assess the eligibility of any request relating to a BETF-funded activity that allegedly had a "material adverse social and/or environmental impact". If accepted by the Board, the IPN could investigate the eligibility of this request and, if applicable, conduct a compliance review. The "material adverse social and/or environmental impact" requirement

should provide staff with some guidance on when BETF-funded activity may become the object of an IPN investigation.

TOPIC 4: Determine whether accountability gaps may exist in the context of Bank co-financing operations as a result of differences between the respective institutions' accountability mechanisms.

43. The World Bank engages in co-financing arrangements with other MDBs. In these cases, requesters could file requests for investigations regarding the same set of issues with the IAMs at two institutions. This can lead to two challenges.
44. The first challenge arises when one IAM receives a request regarding a project whose agreements stipulate that the policies of another institution govern the project. The second arises from differences in the procedures of the two IAMs, such as different time limits for eligibility and different rules on sharing draft reports with the requesters.
45. None of the IAMs have developed any explicit policies or practices on how to deal with these situations. Instead, they have dealt with these situations by signing a case-specific MOU detailing how they will cooperate in investigating the same project.

Options for addressing the gaps/conflicts in accountability

46. *Maintain the Status Quo: Allow the IPN to conclude an MOU with any other IAM that receives a complaint relating to the same co-financed project.* This is consistent with the practice of the IAMs.
47. *Address the issue in the co-financing agreements:* This option suggests that the MDBs should deal with the issue in their agreements to co-fund a particular project or operation. It has implications for IAM independence.
48. *Establish a policy on the mandate of the IPN in co-financing cases:* The Board would establish a general policy on the mandate of the IPN in co-financed projects.

TOPIC 5: "Assess the need and possible measures to improve communications with requesters regarding investigation findings."

49. Under the IPN's operating procedures, the requesters are not given a copy of the IPN's investigation report until after the Board has approved it. The requesters maintain that this creates two problems. First, the practice is unfair because requesters are being treated differently from Management. Second, requesters lack the knowledge to engage effectively with Management about the action plan.
50. Other IAMs do share the report with the requesters at the same time that it is shared with management. Some offer requesters the opportunity to comment on the draft report. The experience of the MDBs that share the draft report with requesters is that they respect the confidentiality of the draft report.

Options Available to the Bank

51. *Maintain the Status Quo*: Currently, the IPN supplements this practice by informally sharing information on the report's finding with requesters. This approach leaves the IPN out of step with the other IAMs.
52. *Share the Report with the requester at the same time as it is shared with Management and the Board*: Although they could not comment on the report, requesters could engage meaningfully with Management about the action plan.
53. *Share the draft report with requesters and seek their comments*: The additional information could enhance the accuracy and quality of IPN reports. It also ensures that the Board is aware of all relevant perspectives on the report at the time of its deliberations.

List of Abbreviations

ADB	Asian Development Bank
AfDB	African Development Bank
AM (ADB)	Accountability Mechanism
BETF	Bank-Executed Trust Fund
CAO (IFC/MIGA)	Compliance Advisory Ombudsman
CODE	Committee on Development Effectiveness
CRMU (AfDB)	Compliance Review and Mediation Unit
CRP (ADB)	Compliance Review Panel
CM (EIB)	Complaints Mechanism
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EO	European Ombudsman
GCF	Green Climate Fund
GRS (IBRD/IDA)	Grievance Redress Service
IAM	Independent Accountability Mechanism
IDB	Inter-American Development Bank
IFC	International Finance Corporation
IPN	Inspection Panel
IRM (AfDB)	Independent Review Mechanism
MICI (IDB)	Independent Consultation and Investigation Mechanism Unit
MIGA	Multilateral Investment Guarantee Agency
MDB	Multilateral Development Bank
MoU	Memorandum of Understanding
OP	Operational Policies
OPCS (IBRD/IDA)	Operations Policy and Country Services
OSPF (ADB)	Office of the Special Project Facilitator
PCM (EBRD)	Project Complaints Mechanism
PCO (EBRD)	Project Complaints Officer
RETF	Recipient-Executed Trust Fund
ToR	Terms of Reference

External Review of the Inspection Panel's Toolkit

Daniel D. Bradlow

I. Introduction

1. This paper focuses on the issues raised in the Terms of Reference (ToR) for the External Review of the Inspection Panel's Toolkit (the External Review) commissioned by the Committee on Development Effectiveness (CODE). It is divided into 5 sections. The first section briefly describes the ToR for the External Review and the sources of information that the External Review stipulated should be utilized in preparing this report.¹ It also discusses how the External Reviewer has implemented the methodology described in the approach paper submitted to and discussed with CODE.² The second section provides a brief comparison of the Inspection Panel (IPN) and the independent accountability mechanisms (IAMs) at the other multilateral development banks (MDBs) considered in this report. It concentrates on these aspects of their structure and operations that are most relevant to the ToR for this External Review. Its purpose is to provide a basis for evaluating the applicability of the lessons that can be learned from the practices of the other IAMs to the issues raised in the ToR. The third section briefly considers the context in which the Inspection Panel (IPN) functions. Its purpose is to address some factors that are useful in assessing each of the issues raised by the ToR. The fourth section discusses each of the topics raised in the ToR. The fifth section is a conclusion.

II. The Terms of Reference for the External Review

2. The ToR indicate that the External Review should provide CODE with sufficient factual information and detailed enough findings for it to determine if it should make any changes in the IPN's toolkit and to provide a credible and convincing basis for whatever decisions it chooses to make in this regard. They further stipulate that the External Review should address five topics relating to the IPN's toolkit. The first topic is an assessment of the costs and benefits of including dispute resolution, monitoring and advisory services in the IPN's toolkit. The second topic concerns the time-limit on eligibility for filing requests for compliance reviews with the IPN. Third is the issue of extending IPN eligibility to activities funded by bank executed trust funds (BETFs). Fourth, the External Review should consider whether the differences between the various IAMs result in any gaps in accountability in cases of co-financed projects. The final topic concerns communications with requesters regarding the findings of IPN investigations.
3. The ToR indicate that the External Reviewer should review the relevant World Bank documents relating to the IPN and the World Bank Group's other accountability mechanisms, namely the Grievance Redress Service (GRS) and the Compliance Advisor Ombudsman (CAO), relevant documents at other institutions and general literature relating to the IAMs. Finally, the ToR require that the External Reviewer interview representatives of all the stakeholders in the IPN process.
4. Pursuant to the ToR, the Reviewer has read all the relevant World Bank documents and the mandates and operating procedures of the IPN and the IAMs at the MDBs discussed in this

¹ The full terms of reference are attached as Annex 1.

² The approach papers is attached as Annex 2.

report. He has also reviewed some academic articles written about the Inspection Panel (IPN) and some articles and a report prepared by civil society organizations. A full bibliography of the sources consulted is contained in Annex 6.

5. In addition, the Reviewer has conducted 60 interviews with approximately 120 people. The persons interviewed were
 - a. Twenty World Bank Executive Directors and representatives from the 5 other Executive Directors offices;
 - b. senior management in the World Bank's Legal Department, Operational Policy and Country Services Department, and the Sustainable Development Department
 - c. the members of the IPN and its Executive Secretary
 - d. senior officials at the CAO
 - e. senior officials at the independent accountability mechanisms at the African Development Bank (AfDB), the Asian Development Bank (ADB), the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the Green Climate Fund (GCF) and the Inter-American Development Bank (IDB)
 - f. representatives of World Bank borrowers and contractors on World Bank funded projects
 - g. former members of the IPN and its staff
 - h. requesters to the IPN
 - i. representatives of international civil society
 - j. academics and other experts on the IAMs.

A full list of the people interviewed are contained in Annex 3. It is important to note that, consistent with the commitment made to each of the interviewees, the Reviewer has not directly quoted any interviewee in this report.

6. The information contained in this External Review is based on the information learned from all these sources.

III. A Brief Comparative Analysis of the IAMs

7. This section provides some comparative information on the mandates, governance, staffing and budgets of the IAMs. Its purpose is to provide readers with a basis for assessing the significance of the similarities and differences between the IPN and other IAMs in regard to the 5 topics stipulated in the ToR and addressed in this External Review. It does not provide a comprehensive comparison of the IPN and the IAMs at other MDBs.³
8. The IAMs included in this comparative analysis are:
 - a. The AfDB's Independent Review Mechanism (AfDB/IRM): it consists of a Roster of Experts and the Compliance Review and Mediation Unit (AfDB/CRMU).

³ For a more detailed comparison, see, Udall, Comparative Study of Function and Trends in IFI Accountability Mechanisms: Report to the World Bank Inspection Panel (June 12, 2015)

- b. The ADB’s Accountability Mechanism (ADB/AM): it consists of the Office of the Special Project Facilitator (ADB/OSPF) and the Compliance Review Panel (ADB/CRP)
 - c. The EBRD’s Project Complaints Mechanism (EBRD/PCM): it consists of a Roster of Experts and a Projects Complaints Officer (EBRD/PCO).
 - d. The EIB’s Complaints Mechanism (EIB/CM)
 - e. The IFC and MIGA’s Compliance Advisor Ombudsman (IFC-MIGA/CAO).
 - f. The IDB’s Independent Consultation and Investigation Unit (IDB/MICI).
9. A table summarizing the mandates and governance structures of the IAMs discussed in this section can be found in Annex 4. A table with information on the budget and staffing arrangements at these IAMs can be found in Annex 5.

Mandates

10. A key characteristic of all IAMs, including the IPN, is that their operations are initiated by requests for investigations from project affected people⁴. The mandates of the IAMs stipulate what services the IAMs can offer to these requesters and to their own institutions. These services can include compliance reviews, dispute resolution services, monitoring of the implementation of the outcomes of both compliance reviews and dispute resolution processes, and advisory services.
11. All the IAMs, including the IPN, offer requesters the opportunity to ask for a compliance review. This means that each of these IAMs will undertake a fact-finding investigation of the issues raised any request that claims that the failure of the management and staff of the relevant bank to comply with its operational policies and procedures in a particular bank operation has caused them harm or threatens to cause them harm and that is found eligible. These investigation end with an IAM report that is submitted to the board of the bank and ultimately becomes a public document.
12. All the IAMs, except the IPN, offer requesters the opportunity to ask for dispute resolution or problem solving.⁵ In all cases in which this service is offered, the IAM’s role is limited to helping the parties find a mutually satisfactory way to resolve their disputes. It does not render judgment on the dispute or assign blame in any way. It also does not impose any particular solution on the parties to the dispute. This means that the parties themselves structure their own solution to their dispute. It is important to note that the IAM will only agree to provide dispute resolution services if all the parties necessary to effectively resolve the dispute agree to participate in a dispute resolution process. These are likely to include the

⁴ It should be noted that the mandates of some IAMs may also provide that individual directors or the boards of the MDB can initiate investigations. For example, the 1993 Resolution establishing the Inspection Panel provides that an Executive Director may ask the IPN for an investigation in “special cases of serious alleged violations” of the Bank’s policies and procedures and that the Executive Directors “acting as a Board may at any time instruct the Panel to conduct an investigation.” See, Paragraph 12, Resolution No. IBRD93-10 and Resolution IDA93-6, “The World Bank Inspection Panel (September 22, 1993) (hereinafter IPN Resolution)

⁵ Some IAMs call this service problem solving and some dispute resolution. In the IAM context, the two terms refer to the same services and so for the sake of clarity, this paper will only use the term “dispute resolution” since this is the term used in the ToR for the External Review. The dispute resolution services offered by the IAMs is discussed in more detail in Section 4, *infra Paragraphs 48-72*.

requester; the recipient of the MDB's financing, which can be the sovereign, a public sector entity or a private sector entity; and the management of the relevant MDB. Depending on the facts of particular cases, they may include other parties such as project contractors.

13. All the IAMs, except the IPN, are expressly authorized to offer their institutions advisory services.⁶ These advisory services may be offered to both the board and the management of the relevant MDB and in a variety of forms. The advice is usually offered in general terms about lessons that the IAM has learned in the course of its compliance or dispute resolution work. The IAMs avoid giving advice on operation-specific issues. The rationale for this approach is that it mitigates the risk that the IAM creates a conflict of interest by giving specific advice on a particular operation which could later be the subject of a request to the IAM.
14. The advisory services in most IAMs are provided by the staff responsible for compliance reviews and/or dispute resolution. The only IAM that has a dedicated advisory services staff is the IFC-MIGA/CAO. This is a relatively recent development for the CAO, even though its staff has been providing advisory services to the IFC and MIGA since its creation.
15. All the IAMs, except the IPN, are expressly authorized to monitor the implementation of the management action plans developed to address the IAMs findings of non-compliance and the outcomes of dispute resolution procedures.⁷

Governance

16. One characteristic of IAM governance is that they function independently of their bank's operations. This helps give all their stakeholders confidence that they are, and are seen to be, able to operate without fear or favour to any party to the process. One indicator of their independence is to whom the IAMs reports. This section, therefore, focuses on to the location of each IAM in the structure of the relevant MDB.
17. As discussed in the previous section, all the IAMs except the IPN perform both dispute resolution and compliance review functions.⁸ In some cases, the two functions are performed by different components of the IAM. Consequently, it is helpful to discuss the governance of each of the two functions separately.
18. The compliance review functions of all the IAMs, with two exceptions, report to the board of their respective MDB. One exception is the IFC-MIGA/CAO which reports to the President of the World Bank.⁹ The second is the EIB/CM. It is part of the EIB's Inspectorate General, which is headed by an EIB Vice-President.¹⁰ Thus the CM is not independent of Bank management although it is independent of the departments in the EIB that are responsible for

⁶ The advisory services offered by the IAMs is discussed in more detail in Section 4, *infra Paragraphs 91-100*.

⁷ The monitoring services offered by the IAMs is discussed in more detail in Section 4, *infra Paragraphs 73-90*.

⁸ The advisory services offered by the IAMs are usually performed in the context of either dispute resolution or compliance review services. Consequently, except for the IFC-MIGA/CAO, there is no separate dedicated advisory services component.

⁹ Section 1.5, CAO Operational Guidelines (hereinafter "CAO Guidelines") available at: <http://www.cao-ombudsman.org/about/howweare/documents/EnglishCAOGuidelines06.08.07Web.pdf>

¹⁰ III Terms of Reference: Section 2.3, EIB Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (adopted February 2010 and revised 31 October 2012) (hereinafter "EIB/CM Principles")

bank operations. The CM differs in two critical respects from the other IAMs. First, its focus is on maladministration rather than non-compliance *per se*. Second, dissatisfied requesters can take their complaint about the CM to the European Ombudsman and, if applicable, to the European Court of Justice.

19. In the case of two IAMs, only the experts who actually conduct the compliance reviews report to the boards of their respective banks. In the EBRD/PCM, the Roster of Experts reports to the board but the EBRD/PCO, who provides secretariat support to the Experts, reports to the bank's Chief Compliance Officer.¹¹ The PCO is responsible for selecting the Expert who will conduct the compliance review and for being a co-assessor with the Expert of the eligibility of the request to the PCM. The AfDB/IRM Roster of Experts is appointed by the bank's board based on recommendation from the President and reports to the board.¹² The Director of the AfDB/CRMU is appointed by the President of the bank with the concurrence of the board.¹³ The Director reports in the first instance to the President of the bank. This official is responsible for registering requests and deciding if the request should be managed through a compliance review or problem solving exercise and for conducting an eligibility assessment together with the AfDB/IRM Experts. The CRMU also provides secretariat support to the Experts who are conducting the compliance review
20. The situation in regard to dispute resolution is more varied. The following four IAMs all provide dispute resolution services through the same entity that undertakes compliance reviews: EBRD/PCM, EIB/CM, IFC-MIGA/CAO and IDB/MICI. Consequently, their dispute resolution services are subject to the same reporting lines as their compliance review mechanism. Thus, the Expert at the EBRD/PCM who undertakes the dispute resolution¹⁴ and the Director and staff members at IDB/MICI report to the boards of their respective banks.¹⁵ The IFC-MIGA/CAO, as indicated, reports to the President of the World Bank and the EIB/CM reports to a Vice-President of the EIB. In the case of the AfDB/IRM, the Director of the CRMU is responsible for dispute resolution and reports on these activities to the President and provides reports to the board.¹⁶
21. The ADB provide dispute resolution services through a separate, dedicated part of its IAM. The OSPF operates separately from the CRP and only offers dispute resolution services. It reports to the President of the bank.¹⁷
22. The IPN does not have explicit dispute resolution authority. The IBRD and IDA have established the Grievance Redress Service (GRS)¹⁸ to resolve the disputes that project affected individuals and communities may have with the Bank. The GRS reports to the Vice President in charge of the Operations Policy and Country Services Department. Thus, although it is not independent of Bank Management, it is not part of the Bank's operational

¹¹ Sections 48, 50 EBRD Project Complaint Mechanism: A User's Guide and Rules of Procedures (November 2014) (hereinafter "EBRD/PCM Procedures")

¹² Section 81, AfDB IRM Operating Rules and Procedures (January 2015) (hereinafter "AfDB/IRM Rules")

¹³ Section 78, AfDB/IRM Rules

¹⁴ Section 50 EBRD/PCM Procedures

¹⁵ Section J (paragraphs 50-54) Policy of the Independent Consultation and Investigation Mechanism of the IDB (December 16, 2015) (hereinafter "IDB/MICI Policy")

¹⁶ Section 39,44, & 45, AfDB/IRM Rules

¹⁷ Section 108, ADB, Accountability Mechanism Policy (2012) (hereinafter "ADB/AM Policy")

¹⁸ See generally <http://worldbank.org/grs>

staff and Management. In this sense it is similar in structure to the EIB/CM. However, as indicated above, in the case of the CM dissatisfied complainants have the possibility of appealing to an external authority that is completely independent of the EIB. In the case of the GRS, there is no comparable option. Although, complainants who are not satisfied with the outcome of their case at the GRS may request a compliance review from the IPN.

Staffing and Budget

23. The purpose of this section is to provide a perspective on how the IPN's resources compare to those of the other IAMs. The information is provided subject to three caveats. First, the differences in the staffing practices of the different IAMs makes comparing their operating budgets difficult. The ADB/OSPF, the IFC-MIGA/CA) and the EIB/CM employ all the relevant personnel as full time employees of their respective institutions. In the AfDB/IRM, the EBRD/PCM, and the IDB/MICI, there are some staff who are full-time employees of the relevant institution and a Roster of Experts who are only employed when needed for a specific compliance review or dispute resolution exercise. The ADB/CRP is similar to the IPN in that one of the Panel members is employed full-time by the Bank, while the other Panel members are employed only on an "as-needed" basis.
24. The second caveat is that, it is very difficult to provide a meaningful figure for the average cost of a case at each IAM. The figures below are based on the total annual budgets of each IAM and the number of cases that each IAM states it has handled during the year. The annual budgets include all the activities undertaken by the IAM during the year. The figures cited can include, in addition to case work, such items as the cost of IAM participation in outreach events, publications and communications with various stakeholders. Another complicating factor is that the costs of some cases are spread over more than one annual budget. There is also not one uniform standard for determining the number of cases an IAM reports it has handled per year. IAMs follow different practices in regard to whether to include requests that are clearly inadmissible – for example requests dealing with procurement issues -- in their definition of "cases". For the purposes of this report, it is important to note that the IPN excludes requests dealing with procurement and requests in which the requesters did not first bring their concerns to Management's attention from its definition of "cases".
25. The costs of each case will also vary considerably depending on the complexity of the case and the process followed. For example, the cost of a case that is found to be ineligible for a full compliance review will be considerably lower than the cost of a case involving a full compliance review. The costs of full compliance reviews may also vary depending on such factors as how many expert consultants are used in the review and the amount of staff time spent on the case. There can also be considerable variation in the costs of dispute settlement cases. For example, the cost of resolving a dispute between the project sponsor and a few workers over pay and benefits is likely to be considerably lower than a case involving a dispute about the health impacts of a project on an entire community. The publicly available budgetary information for each IAM only includes general information on annual expenses. They do not provide enough information on the costs of each case to allow for adjustments in the calculation of the average cost per case to reflect these differences. Consequently, the information on average costs per case indicated below should be treated with caution.

26. The third caveat is that the IPN differs in two relevant ways from most of the other IAMs. First, the IPN operates on a global scale whereas most of the other IAMs operate on a regional basis. This affects the number and diversity of cases the IPN is likely to receive, and the travel budgets associated with the cases. The other IAMs that operate on a global scale are the IFC-MIGA/CAO and the EIB/CM, although over 90% of the EIB's operations are concentrated in the countries of the European Union. This difference in scale of operations has staffing and budgetary implications for the IAMs. Second, the IPN offers less services than the other IAMs since it is the only IAM that focuses exclusively on compliance reviews.
27. The staffing and budget information discussed below has been obtained from the annual reports of the IAMs and from the interviews with officials of these IAMs. It is also summarized in Annex 5 to this report.
28. The AfDB/IRM has a permanent staff of 8 people, headed by the director of the CRMU. In addition, it has a 3-member Roster of Experts, who are only employed when needed to conduct compliance reviews and to monitor their implementation. The Director and staff of the CRMU both support the Roster of Experts and are responsible for dispute resolution. In FY2016 the IRM's actual expenses were US\$574,457.08. Between 2012-2016 its actual expenses averaged US\$592,347.11 per annum. In 2016, it managed 6 dispute resolution cases, 2 of which were in the monitoring phase, and 5 compliance review cases, 3 of which were in the eligibility phase and 2 in the monitoring phase. In addition, it denied registration to 17 requests. Between 2012 and 2016, the AfDB/IRM, had an average of 2,4 dispute resolution cases per year and 0,6 compliance review cases per year. These cases consisted only of compliance eligibility reviews and dispute resolution. No full compliance investigations were undertaken during this period. The average cost per case, including salaries for full time staff, was US\$185,108.47.
29. The ADB/AM consists of 2 separate offices. The CRP, which does compliance reviews, consists of a 3-member panel, only one member of which works full time at the ADB. The CRP is supported by a staff of 4 people. In addition, there is one person who is hired to serve as the Complaints Receiving Officer for both the CRP and the OPSF. This official receives all requests coming to the Bank and directs the requester to the appropriate part of the IAM. The total budget for the CRP in 2016 was US\$1,441, 600.00. Between 2013-16¹⁹ the average annual budget was US\$1,312,974.25, which includes salaries for the full-time staff and the other panel members. In 2016, the CRP was involved in 7 compliance cases, 3 of which were in the eligibility phase, 1 was a compliance review and 3 were in the monitoring phase. Between 2013-2016, it undertook an average of 1,5 eligibility reviews per year, an average of 1,25 compliance reviews per year and 2,75 monitoring exercises per year. The average cost per case, including salaries of full time staff, was \$477,445.18.
30. The ADB/OSPF is responsible for dispute resolution. It has a four-person staff, all of whom are full-time. The office's actual expenses in 2016 were US\$911,173.00. Between 2013-2016 its average annual budget was US\$808,203.25. In 2016, the office handled 7 cases of which 6 were in the eligibility phase and 1 was a dispute resolution process. Between 2013-16 it handled on average 5 cases per year, of which 4 were in the eligibility phase and 1 was a

¹⁹ In 2012, the ADB/AM transitioned from its old rules to its new operating rules and procedures. For this reason budget information is not given pre-2013.

dispute resolution process. The average cost of these cases, including salary of full-time staff, was US\$161, 640.65.

31. The EIB/CM has a staff of 16 people. This includes the head of the office plus 6 compliance officers, 2 dispute resolution specialists and 7 administrative support staff. Since its mandate includes all cases of maladministration, the office receives complaints on topics other than compliance with the bank's operational policies and procedures and requests for dispute resolution. Its budget varies according to the number of cases that it receives and the way in which they need to be managed. Its budget is part of the Inspector General's budget but is not publicly available.
32. The EBRD/PCM consists of a Roster of Experts and the Project Complaints Officer. The Experts are appointed by the Board and report to the Board. There can be up to 10 members of the Roster, all of whom work on an "as-needed" basis. The EBRD/PCO, who is a full time employee of the bank, receives requests for investigations for compliance reviews and dispute resolution and decides which member of the Roster of Experts will be responsible for the case. The PCM has three full-time staff members consisting of the EBRD/PCO, one other professional and an administrative person. Its operating budget in FY2016 was GBP324,667 (USD 403,918.2147)²⁰ excluding salaries and benefits. During FY 2016, the PCM handled 17 cases, consisting of 1 problem solving exercise, 2 eligibility reviews, 8 compliance investigations and 6 monitoring exercises. Given that salaries are not included in this budget, it is not possible to give a comparatively useful indication of the average cost of a case. The EBRD has not made budget information on earlier years available.
33. The CAO has a staff of 14, headed by an official at the level of Vice-President. In FY2016, its actual expenditures were US\$5,302,345.00 and in FY2017 they were US\$5,375,718.00. During 2013-2017, its actual average expenditures were US\$4,322, 018.00 per annum. In FY 2017, the CAO handed 74 cases, of which 20 were assessments of eligibility, 21 involved dispute resolution, 8 were compliance appraisal cases²¹, 10 were compliance investigations and 15 were monitoring (3 from dispute resolution and 12 from compliance reviews). On average between 2013-2017, the CAO handled 13,2 dispute resolution cases per year, 9 compliance reviews per year and 11,8 monitoring exercises per year, of which 7,4 dealt with compliance reviews and 4,4 with dispute resolutions. It has also done an average of 10,4 compliance appraisals per year. Its average cost per case is US\$147,314.64.
34. The IDB's MICI has full-time staff of 17 consisting of a Director, 2 Phase Coordinators, one for dispute resolution²² and one for compliance reviews, and another 14 professional and administrative personnel. It also has a 14 member roster of experts who only work on an as-needed basis on compliance reviews. In 2016, the office had a budget of US\$2,673,990.00. During the year, it managed 4 dispute resolution cases, of which 2 were monitoring exercises, and 5 compliance reviews, of which 3 were in the eligibility phase and 2 were in the monitoring phase.²³ The average annual MICI budget between 2012-2016 was US\$2,497,135.00 and during this period it handed an average of 3,8 dispute resolution

²⁰ Average USD: Pound Sterling Exchange Rate in 2016 was 1 GBP = 1.2441 USD

²¹ Compliance appraisal refers to a process similar to eligibility for compliance reviews in other IAMs.

²² Known as a consultation phase coordinator.

²³ In addition, MICI closed a number of cases during 2016. These are not included in the calculations since they may not have involved significant MICI expenditures.

procedures per year and 5,4 compliance reviews of which 2,6 were in the eligibility phase. The average cost per case is US\$211,621.61.

35. The IPN has a staff of 3 panel members, only one of whom is full-time, and a secretariat of 8 people headed by an Executive Secretary. In FY 2016, its actual expenditures were US\$3,463,965.00 and in FY 2017 expenditures were US\$3,272,220.00. Its average annual budget over the period 2013-2016 was US\$3,363,917.60. In 2016 it had a case load of 7 compliance cases, of which 4 were in the eligibility phase and 3 in the compliance investigation phase. This increased to 9 cases in FY2017, of which 6 were in the eligibility phase and 3 in the investigation phase. Over the period 2013-2017, the IPN had an average of 8,6 cases per year, of which 4,4 were in the eligibility phase, 3,4 were in the compliance investigation phase and 0,5 were handled as part of the pilot project designed to help resolve some cases through dispute resolution.²⁴ The average cost of a case over the period 2013-16 was US\$431,271.49.
36. As indicated in paragraph 24, the IPN excludes inadmissible requests from those that it reports as “cases” on its website. If, as is the practice of some IAMs, these inadmissible requests are included in its caseload²⁵, the IPN would have reported receiving 27 cases in FY2017 as opposed to 9 cases. Over the period 2015-17, its average annual caseload, including inadmissible requests was 21.66 as opposed to 8,33, excluding inadmissible requests. The average annual cost of a case over these 3 years, including inadmissible requests was US\$153,461.46 as opposed to US\$398,999.80, excluding inadmissible requests.

IV. The Context in Which the Inspection Panel Operates

37. This section discusses the context in which the IPN, operates. It raises some factors that CODE may wish to take into account in determining what changes, if any, it wishes to make to the IPN’s toolkit.
38. The first point to note relates to the challenges that Bank staff and Management face in both drafting and applying the Bank’s operational policies and procedures. These policies and procedures, including the new Environmental and Social Framework, must be applicable to all Bank operations and to the operating environments in the 144 member states that are eligible to borrow from IDA and/or the IBRD. The challenge that the staff and Management face in interpreting and implementing these policies and procedures is further intensified by the fact that they must sometimes be applied to complicated operations situated in complex and dynamic contexts about which they cannot have complete knowledge.²⁶ This necessarily means that Bank Management and staff are designing and applying the Bank’s operational policies and procedures in a context of uncertainty.
39. This reality leads to two unavoidable consequences and one governance implication. First, regardless of how well designed the Bank’s operational policies and procedures are, they cannot be drafted with sufficient specificity and detail to address all the various issues that can arise in the course of all the Bank operations to which they are applicable and in all the

²⁴ Piloting a New Approach to Support Early Solutions in the Inspection Panel Process”, November 2013.

²⁵ The figures in this paragraph were provided by the IPN.

²⁶ On the challenges arising from large complicated projects, see *Megaprojects and Risk*, Bent Blybjerg (Cambridge University Press, 2003).

contexts in which they must be implemented. Consequently, despite all the efforts that the Bank Management puts into training staff and providing guidance to them on how to apply these policies, it is not possible for the Bank to eliminate the need for staff and Management to exercise judgement in applying the policies and procedures to particular operations.

40. Second, it is an inevitable consequence of people exercising judgement in contexts of uncertainty that, regardless of their training, competence, good faith and professional responsibility, their inherent human fallibility will affect their judgements and actions. This means that there is an unavoidable risk that staff and Management will make decisions about the implementation of bank operational policies and procedures that cause unintended harm to some stakeholders in these operations. It also means that in order to ensure that the bank is operating with maximum possible efficacy and achieving maximum possible positive developmental impact, it needs to have ways of learning about these unintended impacts. This is necessary both so that it can address the consequences of these impacts and so it can learn lessons about how to more effectively implement the policies and procedures in the future.
41. The governance implication is that the Board, as part of its oversight of Management, needs to have a mechanism through which it can learn, in a timely manner, about the unintended adverse impacts of bank operations on project affected people caused by the Bank Management and staff's non-compliance with the relevant policies and procedures. This mechanism will also help the Board assess what actions, if any, are needed to address the unintended harm. This information can also be used to mitigate the risk of such harm occurring in the future. The best source of this information are the people who have suffered the adverse impacts. This suggests that the Bank needs to offer project affected people and communities a mechanism through which they can raise their concerns about the consequences of staff and Management's non-compliance with Bank policies and have them investigated and addressed fairly and on the merits. In most cases, the primary interest of these project affected people and communities is in obtaining a solution for the problem that the Bank-funded operation in which the non-compliance with applicable policies occurs has caused them. However, because they are also interested in understanding the cause of their problem so that they can avoid suffering the same harm again in the future, they have an interest in seeing their claims of non-compliance investigated.
42. The IPN is the mechanism that the World Bank has created to deal with the implications of this unavoidable reality for its operations and the legitimacy of the Bank.²⁷ It adds value to the Bank in two ways. First, it contributes to the Bank's developmental mission by providing those who claim that they have been harmed by the failure of Bank funded operations to comply with all applicable policies and procedures with an opportunity to raise their concerns and, if found to be valid, addressed. It thus contributes to helping the Bank mitigate the consequences of the unintended adverse effects that its implementation of its operational policies and procedures may have caused. Second, it offers the Bank management and staff an opportunity to learn lessons about the actual impact of its operational policies and procedures on its operations and about how to minimize the adverse impacts. In this regard, it is important to note that the IPN is the only independent Bank mechanism that investigates

²⁷ The IBRD and IDA have other mechanisms in addition to the IPN for learning about the impacts of its operations. These include the Independent Evaluation Group (IEG) and the Independent Audit Department. These other mechanisms are not discussed in this report because they are outside the scope of the External Review's ToR. Unlike the IPN, these other mechanisms are not activated by requests from project affected people.

compliance with Bank operational policies and procedures and is driven by requests from project affected people and communities.²⁸ Consequently, it offers the Bank management and Board a unique perspective on its operations.

43. The IPN’s contribution to the Bank, however, has one unfortunate consequence. Both by design and responsibility the IPN is always focused on the problems in Bank-funded projects. It is required to concentrate on the adverse consequences and the shortcomings of these projects or operations, regardless of its overall view of the projects or Bank operations that are the subjects of its investigations. It would be exceeding its mandate for the IPN to discuss the positive aspects of the operations that it investigates or to provide a full cost/benefit analysis of the project. Moreover, because it is focused on allegations of compliance failures that have caused, or threaten to cause, material adverse effects²⁹, there will inevitably be a degree of tension in its relationship with Bank staff and management. This is because Bank staff and Management are responsible for the decisions that give rise to the issues that the IPN is being asked to investigate. These tensions are likely to be intensified by the fact that the costs of any IPN investigation and of correcting the harm caused by its findings of non-compliance are incurred upfront. Although some of the benefits arising from correcting the non-compliance may be obvious early on, others only accrue over the life of the project. Consequently, the full value of a mechanism like the IPN to the Bank is not easily determined and it is always likely to be a source of controversy.
44. Having now provided some background on the IAMs at the other MDBs and on the context in which the IPN operates, it is now time to assess each of the topics raised in the ToR for the External Review. This is the focus of the next section.

V. The Topics Raised in the Terms of Reference for the External Review

45. This section focuses on each of the topics referred to in the ToR. The topics are discussed in the order they have been listed in the ToR. The discussion of each topic is divided into three sections. The first section explains the issue raised by the topic and its implications for the IPN. The second section describes how the IAMs at the other MDBs address the issue. The third section discusses some options for how the World Bank can address the issue and the costs and benefits of each option. In each case the options include maintaining the current IPN approach to the issue and two options based on the practices at the other IAMs. It is important to note that no significance should be attached to the order in which the options are listed in each topic.

Topic 1: Potential Changes to the IPN’s Toolkit.

46. Topic 1 in the ToR requires that the External Review provide a “qualitative assessment of, and findings related to, the benefits and disadvantages; financial and operational costs; and risks to the World Bank, as well as potential impacts on project affected communities, of including the following to the Panel’s toolkit, including potential options to do so:
 - i. monitoring the implementation of management’s action plans;

²⁸ The Bank’s Grievance Redress Service (GRS) is also driven by complaints from project affected people. However, it is not independent from Bank Management. In addition, its primary focus is on resolving grievances. Thus, it has a different focus from the IPN and so offers different lessons learned possibilities.

²⁹ See Paragraph 12, “The World Bank Inspection Panel”, Resolution No. IBRD 93-10/IDA Resolution 93-6 (September 22, 1993)

- ii. dispute resolution;
- iii. advisory services.”

47. Monitoring by the IPN could cover both compliance reviews and the outcomes of dispute resolution processes. This suggests that it would be easier to assess the issue of monitoring after a full discussion of dispute resolution. This section will therefore begin with an assessment of dispute resolution. Thereafter it will discuss monitoring. It will conclude with an assessment of advisory services.

Dispute Resolution

The Issue and its Implications

48. In the IAM context, dispute resolution means that the IAM will help resolve a dispute between the individuals or communities who they allege have been harmed by a MDB-funded project and those actors – primarily the MDB’s client or borrower and MDB management-- that they contend are responsible for the harm. While the IAM will make an effort to establish that there is a *bona fide* dispute between the parties and that it can contribute to its resolution, it makes no effort to determine who is to blame for the dispute. The IAM’s role is to help the parties resolve their differences in a way that is mutually acceptable to them rather than to actively guide the parties to a particular outcome. It will also seek to ensure that the process is fair to all parties to the dispute. It is important to stress that dispute resolution is a voluntary process. It cannot succeed if either party is unwilling to engage in the dispute resolution process or does not accept any of the outcomes proposed by the other side.
49. The primary objectives of a compliance review and of a dispute resolution process are not identical. The primary goal of a compliance review is to determine if the bank staff and management are acting in compliance with bank operating policies and procedures. If there are findings of non-compliance the bank should learn from these examples and should take steps to address their adverse consequences. This means that solving problems is a possible outcome of the compliance review but not its primary objective. On the other hand, the primary purpose of dispute resolution is to try and resolve the problems that the requesters are facing. The dispute resolution process may or may not identify instances of non-compliance in the course of resolving the dispute. In other words, findings on compliance can result from the dispute resolution process but it is not a primary objective.
50. When an IAM receives a request for dispute resolution, its first concern will be to determine whether the relevant MDB is actually funding the project leading to the dispute, whether the dispute relates to the MDB’s engagement in the project and if the IAM thinks it can contribute to resolving the dispute consistent with its mandate. The issue of whether the harm suffered by the requesters has been caused by non-compliance with the MDB’s operational policies and procedures is a secondary consideration. This means that, although the IAM cannot accept the parties reaching an outcome that directly contradicts the bank’s operational policies and procedures, the resolution to the dispute need not be fully consistent with every detail of the applicable policies and procedures, as long as it is acceptable to the parties to the dispute.

51. The IAM with the most experience in dispute resolution is the IFC-MIGA/CAO. Consequently, its dispute resolution procedure provides the best example of how this process works. When the CAO receives a complaint, it uses 3 criteria for deciding if the complaint is eligible.³⁰ They are whether the complaint pertains to a project in which IFC or MIGA participates or is actively considering participation; if the complaint relates to the CAO's mandate, which is "to address environmental and social impacts of IFC/MIGA projects"³¹; and if the complainant has been or may be affected by the environmental or social impacts discussed in the complaint. It is important to note that there is no requirement that the complaint arise from the performance standards of the IFC or MIGA or that non-compliance with these standards be the cause of the complaint. The IFC-MIGA/CAO's Operational Guidelines stipulate that the CAO's main objective in a dispute resolution is to "help resolve issues raised about the environmental and/or social impacts of IFC/MIGA projects and improve outcomes on the ground".³² They add that the CAO will not support "agreements that would coerce one or more parties, be contrary to IFC/MIGA policies or violate domestic laws of the parties or international law".³³ The requirement that the agreement must not be contrary to IFC/MIGA policies does not mean that it must be fully compliant with every detail of IFC/MIGA policies. Some deviation from the policies could be acceptable provided the parties have voluntarily agreed to the deviation. This could happen, for example, if the complainants decide to accept less compensation than they may be entitled to under the policies because they believe that it is more useful to obtain certain compensation now rather than the possibility of more compensation in the future or they could agree to accept less compensation than the policies stipulate in return for access to other project benefits.
52. There are different types of disputes that can arise in the context of bank-funded operations. They can range from relatively simple matters such as whether a particular individual received the compensation to which they were entitled pursuant to the project's resettlement plan to complex matters such as whether or not the project is causing the pollution that is adversely affecting the health and livelihood of a community. In the former case, the dispute resolution process can be concluded relatively quickly once the facts are established. In the latter case, the dispute resolution process can be complicated, drawn out and expensive.
53. The World Bank Group has recognized the need for the operations that the IBRD and IDA fund to have a dispute resolution capacity in a number of ways. First, under the new Environmental and Social Framework, borrowers will be required to establish grievance recourse mechanisms at the project level.³⁴ These, in principle, are well suited to dealing with the relatively simple type of disputes.
54. Second, at a corporate level, the Bank has established the Grievance Redress Service (GRS) to receive and investigate complaints from people or communities who claim they have been harmed by Bank-funded operations. The GRS functions as one of the divisions in the Operational Policy and Country Services Department (OPCS) and reports to the Vice-

³⁰ CAO Operational Guidelines Section 2.2.1

³¹ CAO Operational Guidelines Section 2.2.1.(2)

³² CAO Operational Guidelines Section 3.1

³³ CAO Operational Guidelines Section 3.2.2

³⁴ World Bank, Environmental and Social Framework (2017), Environmental and Social Standard #10: "Stakeholder Engagement and Information Disclosure" para 26, p97 available at:

<http://pubdocs.worldbank.org/en/837721522762050108/Environmental-and-Social-Framework.pdf#page=111&zoom=80>

President in charge of OPCS. The location of the GRS in OPCS means that it is not directly involved in Bank operations. However, it also means that the GRS reports to Bank Management. In this regard, it is important to note that the GRS is the only dispute resolution mechanism at a MDB that reports to a less senior level of bank management than the bank President without any recourse to a higher body.³⁵ The dispute resolution offices at the AfDB, ADB, and IFC-MIGA all report to the President of the bank. In the case of the EIB, the dispute resolution office reports to the Inspector General but requesters have the right to take their complaint to the European Ombudsman³⁶ and possibly to the European Court of Justice if they are not satisfied with the way in which the EIB/CM handles the case.

55. The result is that the GRS is viewed by external stakeholders and experts³⁷ as being an instrument of Bank Management. This leads them to express two reservations about the credibility of the GRS' claims to be able to provide independent redress services. First, they have concerns about its efficacy. They maintain that it lacks the standing to deal effectively with operational staff and Management of the Bank. In this regard, it should be noted that representatives of other dispute resolution mechanisms maintain that the efficacy of a dispute resolution mechanism depends heavily on the confidence that all the parties to a dispute have in the mechanisms ability to function independently. They maintain that one factor that helps them establish their credibility is the fact that they either report directly to the President or to the board of their bank. This fact helps them in their dealings with requesters, the borrower and with other departments in their own bank.
56. The GRS and the OPCS senior Management do not share this concern. They maintain that the GRS is able to effectively deal with the complaints that it receives. They contend that the GRS' position in OPCS allows it to network with Bank staff and that these relations facilitate efficient resolution of many of the complaints that it receives. Moreover, they suggest that the location of the GRS in the Bank hierarchy has not, in fact, been a problem. They point to the increase in number of cases the GRS has received each year as evidence of growing confidence in its efficacy.³⁸ In 2015, the year in which it was established, the GRS received 28 complaints, 16 of which related to operational issues and 12 to procurement. Five of the 16 operational complaints were declared ineligible and 1 was closed for lack of information. In 2016, the GRS received 76 complaints of which 45 related to environmental and social issues and 31 related to procurement. Nineteen of the complaints relating to environmental and social issues were found ineligible. In 2017, the GRS received 82 complaints of which 43 related to operational issues, 32 related to procurement and 7 to fraud and corruption.
57. Second, these stakeholders and experts note that there could be some duplication between the work of the GRS and that of project level grievance mechanisms. They indicated that both the

³⁵ Dissatisfied complainants to the GRS can file a request with the IPN.

³⁶ The European Ombudsman, pursuant to a Memorandum of Understanding with the EIB, has committed that, in cases involving non-EU complainants, it will use its own powers of initiation to handle complaints against the EIB/CM brought by non-EU complainants. See, Terms of Reference: paragraph 6.3, EIB Complaints Mechanism, Principles, Terms of Reference and Rules of Procedure (adopted February 2010 and revised in October 2012)

³⁷ The information in this paragraph is based on interviews conducted by the External Reviewer with both international CSOs and representatives of local organizations that have had experience dealing with the IAMs, including the GRS, with representatives of the dispute resolution components of the IAMs at a number of the MDBs discussed in this report, with former IAM panel members and with experts on the IAMs.

³⁸ The information for 2015 and 2016 are taken from GRS annual reports and the information for 2017 is taken from the GRS complaints register. All the information is available at: www.worldbank.org/grs

GRS and the project level grievance mechanisms are well suited to dealing with the relatively simple category of disputes described above. However, they thought that the GRS's relatively junior status in the Bank hierarchy undermines its capacity to resolve more complex or controversial cases. Consequently, while they agree that the Bank needs an entity with dispute resolution capacity to deal with this latter category of cases, they expressed scepticism about the GRS' capacity to fulfil this need.

58. Finally, the practice of the IPN suggests that the Bank may need a dispute resolution capacity that reports directly to the top levels of the Bank. It has developed and implemented two strategies that create space for the requesters and Bank Management to try and resolve their dispute without a formal IPN investigation. The first of these mechanisms is a pilot project in which the Panel proposed to delay registration of requests for inspection in three cases to allow time for management and the requesters to resolve their dispute without a full compliance investigation.³⁹ The effect of delaying registration is that it suspends the requirement for Management to file a response to the request within 21 days of registration and allows it to use the time to try and reach an agreement with the requesters. The plan was for the IPN to review the experiment after the third case. However, to date the Panel has only used this mechanism in two cases. It has not yet identified a suitable third case. As a result, no review has been done of the pilot project and so there is no systematic study of how successful the experiment has been.⁴⁰
59. The second mechanism is based on footnote 7 to paragraph 44 of the IPN's operating procedures.⁴¹ In this case the IPN registers the request, receives a management response but proposes to the Board that the IPN delay making a recommendation on investigation for a stipulated period of time to give Management and the requesters an opportunity to try and resolve their dispute. This approach has been adopted in cases in which management suggests that it is aware of the problems and is working on an action plan that will resolve the matter and the requesters are amenable to trying to resolve the dispute without a full compliance investigation. It is important to note however that if the dispute is not satisfactorily resolved the requesters can ask for a finding on eligibility.
60. These mechanisms have two consequences. First, while it is possible that both of them can produce results that the requesters and the Bank find acceptable, they make the IPN's formal compliance review procedures less predictable. The current operational policies clearly set out the steps in the compliance review process and establish specific time periods for the various steps in the process. The IPN's actions to delay these steps in the hopes of promoting something other than a compliance review undermines the predictability of the procedures. Second, they blur the clear distinction between the IPN's and management's responsibilities in the IPN process. When management is interested in either of these mechanisms, the IPN, which is expected to act as an independent and objective fact finder, effectively needs to work with it to explore the possibility of engaging in dispute resolution. Although the dispute resolution process is voluntary and so the requesters can decline the invitation from the IPN, the fact that it is the party that would conduct the compliance review that is making the

³⁹ Piloting a New Approach to Support Early Solutions in the Inspection Panel Process", November 2013

⁴⁰ The view of a number of people with knowledge of the two cases interviewed by the External Reviewer is that one case was reasonably successful and one was not a success. These people included some former IPN members, some experts on IAMs and some representatives of civil society.

⁴¹ Inspection Panel at the World Bank, Operating Procedures (April 2014) (hereinafter "IPN Procedures") available at: <http://ewebapps.worldbank.org/apps/ip/PanelMandateDocuments/2014%20Updated%20Operating%20Procedures.pdf>

invitation can cause requesters to feel they should accept the invitation to avoid creating a problem with the IPN. In addition, the requesters must accept the fact that any decision on their request will be delayed while the management, with IPN acquiescence, explores with them the feasibility of reaching a solution that avoids the compliance review that the IPN process offers them.

61. One concern with giving dispute resolution authority to the IPN is the feasibility of the IPN playing a constructive role in cases involving public sector borrowers. Those who raise this concern suggest that a sovereign state may be reluctant to utilize the services of an international organization to help it resolve disputes with its own citizens. They also note that a public borrower has different incentives from a private sector entity. The latter is primarily interested in reaching a pragmatic solution to a problem that is threatening to undermine the profitability of its operations. In addition, the private sector entity may have no other interactions with the complainants and so may not need to pay too much attention to the precedents being set by this dispute resolution process. This is particularly relevant if the terms of the resolution can be kept confidential. However, sovereign borrowers have to be concerned about the precedent that the dispute resolution process may set, the expectations that it raises and how it could be used by the stakeholders in its other activities in its own jurisdiction. They also may not have the option of keeping the outcome of the dispute resolution process confidential.
62. These are important and relevant issues that will affect whether public sector borrowers are inclined to use whatever dispute resolution services the Board may decide to establish. However, there are grounds for thinking that there may be a demand for such services. First, it is useful to distinguish between cases in which the sovereign itself is the party to the dispute and cases in which the agencies or instrumentalities of the state are the party to the dispute. In the latter case, these agencies and instrumentalities—for example the state power company or the roads authority—may be interested in resolving a dispute with the requesters in order to avoid undermining the sustainability and success of a particular project. These entities may also be less concerned than the sovereign about establishing precedents that could affect operations outside the sector in which they operate and more interested in reaching pragmatic solutions. Second, there is empirical evidence to suggest that some public sector borrowers are willing to use MDB dispute resolution services. For example, both the AfDB/CRMU⁴² and the ADB/OPSF⁴³ have had dispute resolution cases involving public sector borrowers. Similarly, the IFC-MIGA/CAO, although usually involved with disputes involving private sector clients has, managed some disputes involving state owned entities.⁴⁴
63. A final point to note about this issue is that it is possible that the relevance of dispute resolution for the Bank could increase as the new Environmental and Social Framework is implemented. The reason is that the Framework, similar to the IFC's Sustainability

⁴² See, for example, Problem Solving Report: Request No: RQ2010/01 Project: Construction of Marrakech-Agadir Motorway, Morocco (available at: https://www.afdb.org/fileadmin/uploads/afdb/Documents/Compliance_Review/IIRM%20Problem%20Solving%20Report%20Morocco%20Request%20web.pdf)

⁴³ See OPSF Complaints Registry by Projects, available at: <https://www.adb.org/site/accountability-mechanism/problem-solving-function/complaint-registry-project>

⁴⁴ See, for example, Cambodia: Cambodia Airport II –01/Preah Sihanouk available at: http://www.cao-ombudsman.org/cases/case_detail.aspx?id=155

Framework⁴⁵, seeks to more clearly define the respective responsibilities of the Bank and the Borrower in regard to the design and implementation of Bank-funded operations. It indicates that the Bank will pay close attention to the Borrower's compliance with its responsibilities. This suggests that showing that the harm suffered by the requesters is caused by the Bank's failure to comply with its operating policies and procedures may become more challenging. This in turn could encourage requesters to be relatively more interested in dispute resolution than compliance reviews.

The Situation at other MDBs

64. All the IAMs considered in this report, besides the IPN, have a mandate to undertake dispute resolution. The governance of the dispute resolution function and its relation to the compliance review function varies. However, all the IAMs will use a variety of techniques in implementing their dispute resolution mandate. These are designed to help the parties identify and reach their own resolution to the dispute.
65. The ADB has created a separate entity, with its own structure and reporting lines, for dispute resolution.⁴⁶ In this case, the requesters can indicate when they submit their request to the Complaints Receiving Officer whether they wish to initiate a dispute resolution process or a compliance review. The Officer refers the request to the appropriate entity. They may later be able to switch from the dispute resolution process to compliance review—but they cannot switch in the other direction. The ADB's dispute resolution office, known as the Office of Special Project Facilitator, reports to the President of the ADB and only files an annual report with the board. The logic for this reporting structure is that resolving these types of disputes is closer to a management function than a board oversight function. Consequently, it is appropriate that the President is the final authority on matters relating to dispute settlement.
66. The dispute resolution function at the IFC-MIGA, EIB, EBRD and IDB are all part of the same IAM mechanism as compliance review. In the EBRD/PCM, the experts or panel members who are selected by the board of the bank undertake the dispute resolution.⁴⁷ In the case of the IFC-MIGA/CAO, the whole mechanism reports to the President of the Bank.⁴⁸ In the IDB/MICI, the roster of experts may be involved in the dispute resolution together with the secretariat.⁴⁹ The experts and the director at MICI all report to the Board. At the EIB, the officials in the CM who engage in dispute resolution report to the Inspector General of the bank.
67. In the AfDB, dispute resolution is handled by the director of the CRMU and not by the Experts of the IRM.⁵⁰ The director of the CRMU is appointed by the President with the

⁴⁵ [IFC Sustainability Framework](https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability+framework) is available at: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability+framework

⁴⁶ See, generally, ADB/AM Policy

⁴⁷ See, generally, EBRD/PCM Procedure.

⁴⁸ See, Section 1.5, CAO Guidelines

⁴⁹ See generally, IDB/MICI Policies

⁵⁰ See Section 79, AfDB/IRM Rules

concurrence of the Board and reports to the President and has some reporting obligations to the Board.⁵¹

Options in regard to dispute resolution

68. *Maintain the status quo:* In this case, the IPN would not have any dispute resolution authority. Any requesters seeking dispute resolution would need to contact the GRS. If the GRS failed to resolve the dispute, complainants would be able to request a compliance review from the IPN. The benefit of this option is that it would retain the existing structures in the Bank and would not have any staffing or budgetary implications for the Bank. The first cost of this option is that it would mean that the World Bank would be offering requesters dispute resolution services at a lower level in the institutional hierarchy than any other MDB. As discussed above, this has some implications for the credibility and reputation of the Bank. Another potential cost is that the IPN would presumably continue utilizing its current delaying mechanisms in its compliance review procedures to create space for some dispute resolution activities. As noted above, these efforts blur the distinction between compliance review and dispute resolution and result in a loss of predictability in the compliance review process. They also raise questions about the ability of the IPN to continue undertaking objective compliance investigations in those cases in which it has invoked the delaying mechanisms. In addition, in cases in which these mechanisms result in agreements, there is less capacity to monitor the implementation of the agreements than exist in other IAMs. This is a problem because, as discussed above, IAM monitoring of the outcomes of dispute resolution processes is usually required to build the parties confidence in the process and its outcomes.
69. *Delegate all dispute resolution functions to an entity that reports to the President:* This option would adopt a version of the structure at the ADB by creating a dispute resolution function that operates alongside but independently of the IPN. Requesters would be given the option of choosing if they would like a dispute resolution process or a compliance review. They would also be entitled to switch from a dispute resolution to a compliance review at any time. The first benefit of this option would be that the compliance review and dispute resolution components of the Bank's IAM would have well defined, predictable and transparent mandates and governance structures. This will enhance both the functioning and the accountability of both components of the World Bank's IAM. One consequence of adopting this option would be that the IPN would be required to end its pilot project and to focus on compliance reviews. The IPN would also need to amend its Operating Procedures to so that it does not retain the ability to defer its recommendation on whether to investigate requests.⁵² The second benefit is that it would ensure that the dispute resolution component of the Bank's IAM functions in a way that is relatively independent of Bank Management. As discussed above, the perception of independence is an important consideration for the efficacy of the dispute resolution function. A third benefit is that this option could be implemented without having to amend the IPN Resolution since it would not involve any changes in the mandate of the IPN. This option would have both budgetary and staffing

⁵¹ There is one exception to this reporting arrangement. Both the CRMU and IRM Experts report to the President with a notification to the Board, in the specific case of projects that have not yet been approved by the Board. See Paragraphs 48,51,AfDB/IRM Rules

⁵² See Footnote 7 to Paragraph 44, Inspection Panel, Operating Procedures (April 2014)

implications if it is implemented through the creation of a new entity reporting to the President.

70. *Grant the IPN dispute resolution authority:* In this case the Bank would have one unit, the IPN, assume all responsibility for compliance reviews and dispute resolution. The unit would continue to report to the Board. In order to ensure that there is a clear distinction between compliance reviews and dispute settlement, the IPN procedures would allow requesters to stipulate if they would prefer compliance review or dispute settlement. As in the previous option, they would have the ability to switch from a dispute settlement to a compliance review at any time.
71. If the Board adopted this option, it would have to decide what role if any the Panel members should play in dispute resolution. It could adopt the AfDB model and have the IPN Secretariat assume full responsibility for dispute resolution. In this case, the IPN Executive Secretary would review all complaints to determine the choice of the requesters. If they choose dispute resolution, the Executive Secretary would need to determine that the case is suitable for dispute resolution. If so, the Executive Secretary would decide if the IPN Secretariat had the staff to undertake the dispute resolution itself or if it needed to hire consultants with the appropriate skills.
72. Alternatively, the Board could decide to adopt a version of the EBRD/PCM and IDB/MICI models. In this case, either the Executive Secretary or the Panel chair could allocate the dispute settlement responsibilities to one Panel member. This could have implications for the availability of this Panel member for compliance reviews. Depending on demand, it may also necessitate that this Panel member work full-time for the IPN, which would have budgetary implications. It may also be necessary for the Board to ensure that at least one of the Panel members has dispute resolution skills. It should be noted that the EBRD/PCM and IDB/MICI maintain a relatively large Roster of Experts rather than a three-member panel. These Experts only work on an “as-needed” basis for the IAM.
73. The benefit of this option is that it would allow requesters to choose between dispute resolution and compliance review while retaining a clear distinction between the two functions. It would also ensure that the dispute resolution function is independent of Bank Management and can be seen to be independent. As discussed above, the perception of independence is an important consideration for the efficacy of the dispute resolution function. In addition, because both functions would report to the Board, the dispute resolution function would be viewed as sufficiently senior to deal effectively and directly with Bank Management. The costs of this option is that, depending on the structure chosen, it may affect the role that the Executive Secretary or one Panel member can play in compliance reviews undertaken by the IPN. This approach could require the IPN to hire some new staff because dispute resolution specialists need different skills from those required of compliance specialists. Thus, this option is also likely to have some budgetary implications for the Bank and the IPN. Another consequence of this option is that it would require the Board to decide whether it needs to implement the option through amending the IPN Resolution to add dispute resolution authority to its mandate. In this regard, it should be noted that the Resolution does not expressly preclude the IPN from engaging in dispute resolution. This suggests that it may be possible for the Board to add dispute resolution to the IPN’s mandate through a clarification of the Resolution.

Monitoring Implementation of Management's Action Plan

The Issue and Its Implications

74. One of the issues relating to the mandates of IAMs is what role, if any, they should play in monitoring the implementation of the outcomes of their dispute resolution and compliance review activities. The first point to note is that the purpose of monitoring is different in dispute resolution and compliance reviews. In the case of dispute the IAM's monitoring authority helps to build the parties' confidence in the dispute resolution process. It does this by assuring them that an independent party will determine that both parties comply with their obligations under their agreement ending the dispute resolution process. In fact, IAM monitoring is often made a term of the settlement agreement between the parties. As noted above, all the IAMs with a dispute resolution mandate also have monitoring authority.
75. On the other hand, the primary purpose of monitoring in the case of compliance reviews is to assess if the action plan for correcting the problems caused by the Bank's non-compliance with its policies and procedures, in fact, is being implemented and if the plan is actually correcting the problems. Given that overseeing implementation of the management action plan is a management function, there is disagreement about the need for IAM monitoring in the case of compliance reviews. There are two arguments against an IAM playing a monitoring role after the Board deliberates on and adopts its report. The first argument is that the IAM's responsibility is to conduct the investigation and make findings about Bank non-compliance with its policies and procedures. Thereafter, it should be the responsibility of management to both devise an action plan for correcting the instances of non-compliance and monitor its implementation. In fact, pursuant to this argument, it would be inappropriate for the IAM to play any role in monitoring because there is a possibility that the action plan or the project to which it relates could become the object of a future request for investigation by the IAM. In this case, the IAM would have a conflict of interest which would compromise its ability to conduct an objective and independent investigation of the second request.
76. It is important to note that this risk appears to be more theoretically than practically significant. There does not appear to have been any case in which a second complaint has been brought directly arising from IAM monitoring of the action plan.⁵³ It is unclear why this is the case. It could, of course, be because the outcomes of the action plans have effectively addressed the requesters concerns. It could also, however, be due to the fact that it is difficult for requesters to bring a request and they are not confident that a second request would produce a meaningfully better outcome than the first request. Finally, it is possible that by the

⁵³ The IPN received 2 separate requests regarding the Yacyreta hydroelectric project. However, these arose from two different loan agreements. In 1996, it received a request regarding certain activities that the requesters claimed should have been completed before filling of the dam was commenced. In this case, which was before the second clarification of the IPN resolution, the Board rejected the IPN's recommendation of a resolution and instead requested the IPN to assess the Management's proposed action plan. See IPN Review of Problems and Assessment of Action Plans: Argentina/Paraguay: Yacyretá Hydroelectric Project, 16 September 1997. In 2002, the IPN receive a second request relating to this project although it arose from a second loan agreement. This request did result in an investigation and an IPN report. See, IPN Investigation Report: Paraguay – Reform Project for the Water and Telecommunications Sector (Loan No. 3842-PA); Argentina – SEGBA V Power Distribution Project (Loan 2854-AR), 24 February 2004. The IPN has also received 4 requests relating to the Bujagali dam case, including one dealing with the Kalagala offset that is discussed in Topic 2, *infra* paragraphs 102-114. None of these requests related to issues arising from the implementation of the action plan from an earlier request.

time the requesters realize that the action plan has failed to address all their concerns, the time limit for request eligibility has been exceeded.

77. A second argument against giving the IAMs monitoring authority is that it duplicates the work of management. The relevance of this argument is that it highlights that adding a monitoring function to the IAM toolkit would raise its overall operating costs. However, it does not follow that the additional costs would be wasted.
78. The reason for this is that there are two separate issues that need to be monitored after the IAM process is concluded. The first is whether or not the various actions set out in the action plan are being implemented. The second is whether or not the action plan that the board approved is actually achieving its intended objective, which is dealing with the harm caused by the instances of non-compliance identified in the IAM report. The former is clearly a management function. However, the second, relates to the implementation of a board decision. Consequently, the board has an interest in determining for itself that the action plan is producing the intended outcome.
79. It is not clear that the management's monitoring reports are sufficient to meet the board's concerns. One argument in favour of the IAM playing a monitoring role is that it is a mechanism that reports to the board and is independent of the MDB's management.⁵⁴ Hence it is well-placed to offer the board an independent and objective view on whether or not the action plan is achieving its intended result and, if not, if this is due to problems with the design or the implementation of the action plan. The IAM playing this monitoring role can be seen as merely a continuation of its fact-finding role in the sense that monitoring is investigating whether or not the bank staff and management, in fact, are achieving the objectives of the board decision.
80. One inference that can be drawn from these differences in board and management concerns is that, some attention should be paid to defining the scope of IAM monitoring. This should make clear that the primary focus of the IAM's monitoring is on whether or not the action plan is actually correcting the instances of non-compliance identified in the IAM report. It is of secondary concern whether the management is actually implementing all the items specified in the action plan.
81. Another argument in favour of giving the IAM monitoring authority is its implications for the MDBs credibility and reputation. The requester and the other stakeholders interpret the board's approval of the IAM compliance report to mean that the board has accepted its findings that the staff and management have not complied with the applicable policies and procedures and that this non-compliance has caused harm to the requesters. In addition, they interpret the board's approval of the management action plan to mean that it expects the management to deal with the impacts of the instances of non-compliance. Any failure by the board to ensure that its decisions are being effectively implemented and are achieving their intended purpose will adversely affect the credibility and reputation of the MDB and its board.

⁵⁴ It should be noted that, in the case of the World Bank, the Independent Evaluation Group and the Independent Audit Department also report directly to the Board and are independent of Management.

82. Currently, the IPN does not have any monitoring authority. In fact, Paragraph 15 of the 1999 Clarification of the Board’s Second Review of the Inspection Panel stipulates that the action plan agreed “between the Bank and the borrower, in consultation with the requesters” is outside the “purview” of the Resolution establishing the Panel. Nevertheless, the Board has the prerogative to authorize the Panel to undertake monitoring in a particular case. In fact, it has done so on two occasions—in 2004 in the second Yacyreta case⁵⁵ and in 2006 in the second Mumbai Transport case⁵⁶. In this regard, it should be noted that pursuant to Paragraph 13 of Resolution establishing the Panel, the Board “may at any time instruct the Panel to conduct an investigation.”⁵⁷ Presumably, this would include instructing the Panel to monitor the implementation of a specific action plan.

Situation at the Other IAMs

83. As indicated above, all IAMs that engage in dispute resolution have authority to monitor the implementation of the outcomes of the dispute resolution if the parties so request. In addition, the IAMs at the AfDB, ADB, EIB, EBRD, IFC-MIGA and IDB have authority to monitor the implementation of management action plans developed in response to findings of non-compliance. The authority of the IAMs does vary. In some cases, the IAMs are authorized to monitor all cases in which they have made findings of non-compliance. This is the case with the ADB/CRP⁵⁸, EIB/CM⁵⁹, and IFC-MIGA/CAO⁶⁰. In the case of the AfDB/IRM⁶¹ and the IDB/MICI⁶² this authority requires prior Board authorization. It is usually given at the time the board approves the IAM findings on compliance and is based on a recommendation from the relevant IAM. In the case of the EBRD/PCM, the expert conducting the compliance review, makes a recommendation on monitoring together with the findings on non-compliance. The actual monitoring of the management action plan is done by the EBRD/PCO.⁶³
84. All the IAMs rely on their existing personnel to do the monitoring. This means that the components of the IAM that work on compliance reviews do the monitoring for the implementation of the action plan and the components working on dispute resolution monitor the implementation of the outcome of the dispute resolution. The monitoring will be done by the IAM itself either on an annual or a bi-annual basis. The mechanism will then submit a report to the board detailing its findings. In all cases the board decides on a case by case basis whether or not to have a meeting to discuss the monitoring report.
85. The duration of the monitoring can vary. In some cases, it continues until the action plan is fully implemented and the problems that lead to the request have been resolved. In other

⁵⁵ See, Paraguay/Argentina: Paraguay/Argentina Reform Project for the Water and Telecommunications Sectors, SEGBA V Power Distribution Project (Yacyretá) available at:

<http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=56>

⁵⁶ See, India: Mumbai Urban Transport Project (Second Request) available at:

<http://ewebapps.worldbank.org/apps/ip/Pages/ViewCase.aspx?CaseId=43>

⁵⁷ Resolution No. IBRD 93-10/Resolution No IDA 93-6: “The World Bank Inspection Panel” September 22, 1993.

⁵⁸ Section 131 (xi), ADB/AM Policy

⁵⁹ IV Rules of Procedure: Paragraph 7.11, EIB/CM Principles

⁶⁰ Section 4.4.6, CAO Guidelines

⁶¹ Section 59(iii)(c), AfDB/IRM Rules

⁶² Paragraph 49, IDB/MICI Policy

⁶³ Paragraphs 44-47, EBRD/PCM Procedures

cases, it can continue until the project is fully implemented. In still other cases, the authority to monitor exists for a specific period of time, for example, 5 years in the case of IDB/MICI.⁶⁴

Options in regard to Monitoring

86. As indicated above, if the IPN were given dispute resolution authority, it would also need to be given the authority to monitor the implementation of the outcomes of any dispute resolution process, if requested to do so by the parties to the dispute. Without this authority, the IPN's dispute resolution credibility would be significantly impaired. This, however, does not necessarily mean that the IPN must also be given the authority to monitor the implementation of any action plan relating to a compliance review. Consequently, this section only focuses on options in regard to this compliance review monitoring.
87. *Maintain the Status Quo:* This option would mean that the IPN does not have any monitoring authority and management would exercise exclusive monitoring authority. The Board, of course, would still have the prerogative to continue assigning the IPN monitoring responsibilities on an *ad hoc* basis, as it has done in the past. The benefits of this option is that it will continue to make clear that management retains the responsibility to develop and implement a plan that corrects the consequences of its own non-compliance. The option is also consistent with the current expectations of the Borrower and Bank staff and Management. There are some costs associated with this option. The first relates to the scope of Management's monitoring of the implementation of the action plan. As indicated above, the Management's monitoring may be more focused on whether each element of the action plan is being fully implemented than on the design of the action plan. This could be problematic since the latter is the issue of most interest to the Board. The Board can overcome this problem by requiring Management to specifically address this issue in its monitoring reports. However, this would mean that the Board is foregoing the opportunity to fully utilize the IPN's independent fact-finding capacities to obtain an independent assessment of how effectively Management is correcting the consequences of its own acts of non-compliance. The second potential cost is increased reputation risk. This follows from the fact that the IPN is the only IAM without monitoring authority. This could be taken to mean that the Board and the Bank are less responsive than other MDBs to the concerns of project affected people even when the Board itself has found that the requesters have been harmed by the Bank's failure to comply with its own policies and procedures.
88. *Grant the IPN monitoring responsibilities upon Board approval of a recommendation from the IPN:* This option, adopts the practice used in the AfDB/IRM, EBRD/PCM and IDB/MICI. It would require that the IPN be authorized to make recommendations on monitoring in its inspection reports. The recommendation could stipulate the scope, frequency and duration of the IPN monitoring. It would be designed to determine if the action plan, in fact, is adequately addressing the problems caused by the instances of non-compliance identified in the IPN's compliance report. The first benefit of this option is that it would ensure that the IPN has the authority to monitor in particularly difficult compliance review cases. This would offer the Board the advantage of receiving an independent assessment of the adequacy of the action plan in cases in which correcting the harm caused by the non-compliance is deemed to be a particularly complex or sensitive exercise. The second benefit is that the IPN would be

⁶⁴ Paragraph 49, IDB/MICI Policy

able to avoid duplication of Management monitoring in those cases in which the IPN decides that addressing the consequences of Bank non-compliance is relatively straight-forward and uncontroversial.

89. The option also has some negative consequences. The first one is that this option will increase the operational costs of the IPN. It is inevitable that once the IPN monitors implementation of the action plan in a particular case that the cost of that case will increase. It is not clear from the practices of the other IAMs exactly how big the increase in costs will be. This will depend on such issues as the frequency, duration and scope of the monitoring, and how the IPN is able to staff the exercise. In this regard, it should be noted that most of the IAMs use the same staff for monitoring and investigations. The second possible negative consequence is that there could be disagreements between the IPN and Management about the appropriateness of IPN monitoring in particular cases. This could complicate Board decisions on whether or not to adopt the IPN's recommendations on monitoring. The risks of these disagreements however could be mitigated if the IPN is required to provide reasons for its recommendation and to define the scope of the monitoring in the recommendation.
90. *Require the IPN to monitor the implementation of any management action plans developed in response to all findings of non-compliance:* This option, adopts the practice used in the ADB/AM and the EIB/CM. In this case, the IPN could be required to conduct monitoring activities in all inspection reports in which it makes findings of non-compliance. The scope, frequency and duration of the monitoring could be specified in a Board decision regarding any IPN findings of non-compliance. The benefit of this option is that the Board would be assured of receiving independent reports on the adequacy of the management action plans. This will help the Board manage the potential adverse impacts of the Bank's non-compliance on the credibility and reputation of the Bank. The option has negative consequences as well. The first adverse consequence of this is its impact on the operational budget of the IPN. If the IPN members and staff have to undertake monitoring in all cases that involves findings of non-compliance, it is inevitable that its operating costs will rise. It is also possible, given the number of cases that the IPN receives on average every year and the number that result in non-compliance findings that the IPN will need to increase the size of its staff. It may also need to convert the positions of an additional one or two Panel members into full-time positions. Another potential adverse consequence is that there may be some duplication in monitoring in the sense that in relatively simple cases the IPN and management are likely to produce similar reports. The fact that the reports would be similar but not identical could complicate the Bank's relations with Borrowers. On the issues on which the reports differ, Borrowers could be unsure which of the two approaches to treat as definitive.
91. It should be noted that a consequence of adopting either the second or third of these options would be that the Board would need to revise the 1999 Clarification of the Resolution establishing the IPN. As indicated above, Paragraph 15 of this Clarification makes clear that review of the action plans are outside the "purview" of the IPN.

Advisory Services

The Issue and its implications:

92. During the course of their investigations, IAMs learn a lot about the impact of MDB policies and procedures on people who have been adversely affected by bank-funded operations. In

fact, the IAM has a unique perspective⁶⁵ because it is the only entity in the bank whose insights arise from compliance investigations regarding the implementation of operational policies and procedures by bank staff and management that are instigated and shaped by external stakeholders in these operations. Consequently, one potential contribution that IAMs can make to MDBs is to inform them about the lessons that they learn about the impact of these policies and procedures.

93. The IAM can make this contribution through providing advice to either the management or the board of the MDB about any issue about which it gains knowledge during its activities. The advice can be given in a variety of forms, including recommendations in specific compliance investigation reports, lessons learned sections in annual reports or in the form of publications that discuss the lessons the IAM has learned about a specific issue that has arisen in a range of IAM cases. It can also be given in response to specific requests for information or advice from management or the board.
94. It is important to note however that the IAMs could face a significant challenge if they are indiscriminate in their use of their advisory powers. If they give advice on a particular bank-funded operation, they could face a conflict of interest if that operation becomes the object of a request for a compliance review. This suggests that the IAMs should limit the scope of their advice to general observations on bank operations and the implementation of operational policies and procedures. They should refrain from giving specific advice on the application of policies and procedures to particular aspects of specific bank operations.
95. It is important to note, while it does not have explicit advisory powers, the IPN, in fact, does provide informal advisory services to the World Bank. It makes statements in its compliance reports and annual report that indicate the lessons it has learned from its cases. In addition, the IPN has recently begun publishing an Emerging Lessons series of publications—to date there have been four⁶⁶—that discuss the lessons it has learned from its experiences conducting compliance investigations. Management has indicated that it finds these publications useful.

Situation in Other IAMs

96. The following IAMs all have express advisory authority: AfDB/IRM; ADB/AM; EBRD/PCM; EIB/CM; IFC-MIGA/CAO and IDB/MICI. The AfDB/IRM makes recommendations in its compliance review reports.⁶⁷ In addition, the AfDB/CRMU can provide advice on request to the President and Board of the AfDB. It is also authorized to undertake spot checking exercises.⁶⁸ This involves the CRMU identifying one or two Bank-funded projects each year that it designates to undergo a spot checking investigation. These investigations are similar to a standard compliance review investigation. One member of the AfDB/IRM's Roster of Experts undertakes this investigation. This expert does not participate

⁶⁵ It should be noted that the GRS at the World Bank, is not an IAM but its work is initiated by complaints received from individuals or communities with grievances about Bank-funded projects or operations.

⁶⁶ The publications deal with involuntary resettlement, indigenous peoples, environmental assessments, and consultation, participation and disclosure of information. The publications are available at:

<http://ewebapps.worldbank.org/apps/ip/Pages/Publications.aspx#>

⁶⁷ See Paragraph 59 AfDB/IRM Rules

⁶⁸ See Paragraphs 73-76, AfDB/IRM Rules

in any other compliance reviews during the year. The primary purpose of these spot checks is to gather information and learn lessons about high risk projects.

97. In the ADB both the CRP and the OPSF can provide information on lessons learned in the course of their work.⁶⁹ In addition, the OPSF is specifically authorized to provide advice to ADB operational departments.⁷⁰ The EBRD/PCM's Procedures state that the experts conducting compliance reviews should make recommendations in cases in which they find non-compliance.⁷¹ The EIB/CM is authorized to make recommendations in its reports following investigations of complaints and to discuss any decisions taken by the EIB on the basis of the recommendations of either the EIB/CM or the European Ombudsman in its annual report.⁷² The IFC-MIGA/CAO has a specifically dedicated advisory services staff.⁷³ The advisory services can be triggered by the CAO Vice-President or by a request from the President of the World Bank or senior management of IFC/MIGA. The CAO Guidelines make clear that the advice cannot be project specific but can relate to IFC/MIGA policies, guidelines, or procedures, as well as to strategic issues and trends and to systemic concerns.⁷⁴ Moreover, the advice should be derived from the lessons learned in the course of the CAO's dispute resolution and compliance work. IDB/MICI is authorized to make recommendations in its compliance review reports.⁷⁵ It is also authorized to make recommendations in its annual report based on its lessons learned and the information gathered in its work.⁷⁶

Options in regard to advisory powers

98. *Maintain the Status Quo:* In this case, the IPN would have no formal advisory authority but would remain free to publish its emerging lessons series on an *ad hoc* basis. When appropriate, it could supplement these publications with insights on the lessons it is learning in its compliance reports and annual report. The benefits of this approach is that it gives the IPN the possibility of informing the Board and the Bank about the lessons it has learned when it feels that it has learned something it wishes to inform the Board about or has gained enough experience and knowledge to communicate useful lessons on a particular issue. Moreover, it could do so in a form that allows it to manage the risk that its advice could create conflicts of interest in the future. Another benefit is that if the IPN does not have formal advisory authority, it will have a principled basis for refusing to provide advice in situations in which it deems there to be an unacceptable risk of creating a conflict of interest. The informality of this approach does however have a downside. It creates some uncertainty about the IPN's mandate to render advice. This, in turn, raises the possibility of unnecessarily politicizing the IPN. This would happen if stakeholders who disagree with the advice that the IPN provides contend that the IPN by providing this information has exceeded its mandate. Another downside is that the IPN would remain as the only IAM that does not have advisory services as part of its mandate. This has some reputational cost for the Bank.

⁶⁹ See Paragraphs 128 (OPSF provides advice to operational depts.) and 208-212 (learning in bank), ADB/AM Policy

⁷⁰ See Paragraph 128, ADB/AM Policy

⁷¹ Paragraph 44 EBRD/PCM Procedure

⁷² IV Rules of Procedure: Paragraphs 7.11-12, EIB/CM Principles

⁷³ See Sections 5.1-5.3, CAO Guidelines

⁷⁴ See Section 5.1.2, CAO Guidelines

⁷⁵ Paragraph 45, IDB/MICI Policy

⁷⁶ Paragraph 61, *Id.*

99. *Authorize the IPN to include recommendations in its compliance investigation reports and to publicize the lessons it has learned from its cases:* This option follows the practice of the AfDB/IRM; ADB/AM; EBRD/PCM; EIB/CM and the IDB/MICI. The benefit of formally authorizing the IPN to provide recommendations in its compliance reports is that it will enable the IPN to provide some general guidance to Bank Management and the Board on what sorts of measures might prevent similar cases of non-compliance in the future. The primary cost of this option is the possibility that the IPN's recommendations are so specific that they risk creating conflicts of interest for the IPN. These risks could arise in regard to the particular project that is the subject of the investigation and because the IPN is viewed as having a particular view on a particular set of issues. Another potential cost is that the recommendations could create tension between the IPN and Bank Management if they disagree about the recommendations. These costs can however be managed and potentially eliminated if the IPN drafts its recommendations appropriately. It should be noted that it is unlikely that this option would have significant budgetary or staffing options.
100. One possible consequence of this option could be that the IPN could be required to include lessons learned in its annual report. The benefit of mandating it to include a lessons learned section in the annual report is that this section would be a tool for holding the IPN accountable for the quality of its work. This follows from the fact that the annual reports are public. Consequently, the IPN would be open to criticism both from inside and outside the Bank if the lessons in the annual report, for example, are deemed to be superficial or too vague to be of use.
101. *Authorize the IPN to provide advice only in its annual report and other publications and upon request from the Board:* This option would allow the IPN to convey its lessons learned in its general publications but not in its compliance review reports. Thus, unlike most of the other IAMs, it would be precluded from including recommendations in its compliance reports. However, the option would offer the Board greater access to the knowledge that the IPN has gained from its investigations than is currently the case. The option does however create the risk that the Board could inadvertently put the IPN in an untenable position if it asked for advice in regard to specific projects or operations.

TOPIC 2: Assess the time-limit on the eligibility of requests in respect of the Panel Resolution, particularly for projects supported by guarantees.

The Issue and its Implications:

102. Paragraph 14(c) of the 1993 Resolution establishing the IPN stipulates that the IPN cannot accept requests that are filed “after the Closing Date of the loan financing the project with respect to which the request is filed or after the loan financing the project has been substantially disbursed”. A footnote to this paragraph states that a loan will be considered to be “substantially disbursed” when 95% of the loan proceeds have been disbursed.⁷⁷ When the IPN was established, it was an unprecedented development and so the Bank had no model that it could utilize in determining what would be a reasonable time limit on bringing requests to the IPN. It therefore established a limit that seemed appropriate in light of the nature of Bank operations at the time. Given that in those days the Bank primarily funded projects that had both long lead times and relatively long implementation periods, it seemed

⁷⁷ Footnote 1 to Paragraph 13(c) of Resolution No. IBRD 93-10, IDA 93-6 (22 September 22, 1993)

reasonable to set the time limit as being when the loan was substantially disbursed. The combination of the long lead time and the long construction period seemed to offer requesters a reasonable amount of time in which to discover that they have been harmed or would be harmed by a Bank-funded operation and that the harm appeared to have been caused by the Bank's failure to comply with its own operating policies and procedures. In addition, the stipulation that the time period for filing requests ended when the loan was 95% disbursed seemed to provide both the Bank and Borrower with appropriate guidance on when their potential exposure to an IPN investigation would end. This clear standard also ensured that there was still some undisbursed funds at the time the request was filed. This meant that the Bank still had some means of exercising leverage over the Borrower whose acquiescence would be required to implement the action plan for dealing with findings of non-compliance. In addition, it meant that, at least in principle, there were some funds available to cover the costs of implementing the action plan.

103. There are two developments in Bank operations since 1993 that are relevant to the continuing suitability of this time limit on eligibility of requests. The first is that Bank operations have become more diverse over the past 25 years. In 1993, the Bank's lending activities were predominantly focused on project loans and structural and sectoral adjustment loans.⁷⁸ Over the past 25 years, its active range of financial products have expanded to include, in addition to project and policy-based loans, guarantees, loans linked to specific growth and poverty reduction targets, loans linked to specific outcomes and multi-phase loans in which the Bank approves loans for a large complex operation that consists of a number of smaller projects or phases.⁷⁹ For some of these products, either because of the rate at which they are disbursed or because of the complexity of the operation being funded by the Bank, their full impacts may not become clear before the loans are considered "substantially disbursed". It also may not be clear before this point if the harm is due to the Bank's failure to comply with its policies and procedures. Consequently, there is now the possibility that the original time limit may work to deprive requesters of a fair opportunity to bring their complaint.
104. In addition, over the past 25 years, the Bank's operational policies and procedures applicable to environmental and social issues have become more complex and sophisticated. This is a result of increased knowledge about these issues and their potential impacts over time. It is also because of the increasing relevance of such complex issues as climate change, fragile and post-conflict states, migration, gender and vulnerable population groups to the work of the Bank. The evolution in these policies also affect the chances that project affected groups are in a position to identify that Bank non-compliance with its own policies and procedures is the cause of their harm within the currently stipulated time period.
105. Another aspect of both some of these newer instruments and the increasing attention to environmental and social impacts is that the relevant Bank commitments may extend beyond the Closing Date of the loan. One case in which this can happen is Bank guarantees. In this case, the Bank's commitment to supervise the project or operation can extend for as long as the guarantee remains in place. One example of this situation is the Bank guarantee in the Bujagali project and its implications for the Borrower's commitment to maintain an environmental offset—the Kalagala offset. The legal nature of a guarantee would suggest that

⁷⁸ See, for example, World Bank 1993 Annual Report at p12

⁷⁹ See, World Bank Products and Services, available at: <http://www.worldbank.org/en/projects-operations/products-and-services>

the Bank would continue supervising the borrower's compliance with its obligations under the loan agreement and in connection with the guarantee agreement until the relevant legal commitments are fully matured. Moreover, it would suggest that the Bank would execute this commitment in a way that is compliant with the applicable Bank operating policies and procedures. This in turn may give external stakeholders in the project the confidence to make investments and other changes in their living or economic situations. If, after the loan is "substantially disbursed", the Bank fails to ensure compliance with the commitments in the guarantee and does so for reasons that are arguably non-compliant with its own operational policies and procedures, the current time limit can work to deprive deserving requesters of the opportunity to file requests with the IPN. In addition to the risk of the Bank avoiding being held accountable for acts that are non-compliant with its policies and procedures, this situation can create reputational risk for the Bank. The reputational risk relates not only to external stakeholders but also to perceptions about the Bank's commitment to upholding its legal obligations.

106. The second development is that the other MDBs have established their own IAMs during the past 25 years. As is discussed in more detail below, all these IAMs have longer eligibility time periods than the IPN. Given the growing number of co-financed projects, this means that there is the potential for the IPN to declare ineligible some requests that would be accepted as eligible by the IAM at one or more of its co-funders. This creates both reputational risk for the Bank and the risk of confusing borrowers and project affected people about their rights and responsibilities in regard to the particular project.
107. In assessing the need for the IPN to change its time limit, it should be recalled that the principle of placing a time limit on eligibility to bring a complaint is well-established. Statutes of limitation are well known in all legal systems. In fact, such statutes are seen as necessary so that all stakeholders in the legal system have some predictability both about their potential exposure to liability and about how much time they have to file their claims. However, these statutes often include carefully defined exceptions. This is done in order to avoid tolerating an obvious injustice by denying a deserving claimant an opportunity for a hearing merely because of the passage of time.
108. It is, therefore, appropriate for the Board to impose a limit on the period in which requesters can bring a request to the IPN. In establishing this limit, there are a number of factors that should be taken into account. They are: ensuring that the requesters have sufficient time to be reasonably able to identify that a particular Bank operation is harming or threatening to harm them and that the Bank's non-compliance with its policies and procedures is likely to be the cause of the harm; the need for the Bank and the Borrower to be able to predict when their potential exposure to an IPN investigation will end; the ability of the Bank to effectively address any findings of non-compliance that the IPN may make; and the need for the Bank to be able to offer the stakeholders in its operations a meaningful opportunity to hold the Bank accountable for its failure to comply with its own operating policies and procedures.
109. A final point to note on this issue is that the time limit is not the only technical requirement for eligibility of a request. Another requirement is that the Bank's failure to comply with the applicable operational policies and procedures is the cause of the material adverse effect

suffered by the requesters.⁸⁰ This causation requirement suggests that there is effectively a natural limit on the time in which requesters can bring successful claims. The further in time the request arises from the completion of the project or the time of full loan disbursement, the more difficult it will be for the requester, the Bank and the IPN to establish if the Bank's non-compliance is the cause of the requester's harm.

Situation in Other MDBs

110. None of the other MDBs have adopted the IPN's time limit. In the case of those MDBs that stipulate a time limit it is either 12 or 24 months after a specified event. In the case of the AfDB/IRM, the Operating Rules and Procedures paragraph 3, entitled "Statute of Limitations", states that the mechanism cannot handle any complaint filed "more than 24 months after physical completion of the project ...or more than 24 months after the final disbursement under the loan or grant agreement or the date of cancellation of the disbursement amount, whichever comes first". The ADB/AM establishes the "cut-off date" as being 2 years after the loan or grant closing date.⁸¹ The EBRD/PCM stipulates that requests can be filed as long as the Bank maintains a financial interest in the project. This is defined, in the case of loans, as being 12 months after the last disbursement of funds by the EBRD.⁸² The IDB/MICI stipulates that requests can be filed until 24 months after the last disbursement for the IDB funded operation.⁸³
111. The IFC-MIGA/CAO and the EIB/CM do not specify a clear end to the period of eligibility. In both cases, eligibility essentially ends when the institution's engagement with the client or the project ends. This means, in effect, that these banks rely more on the issue of causation than on time limits to determine which requests for compliance reviews are eligible.

Possible Responses to the Effect of Time on the Eligibility of Requests

112. *Maintain the Status Quo*: This option involves retaining the existing time limit for eligibility. The benefit of this option is that the time limit is well established and understood by all the stakeholders in the IPN process. As a result, it provides them with predictable time limits for filing requests. Another benefit is that the 95% rule means that the Bank has not yet fully disbursed the loan and so has some leverage over the borrower. This could be useful in the discussions between management and the borrower about the content of the action plan. The cost of maintaining the status quo is that it can result in certain justifiable claims being excluded. While this would be the case with any time limit established for the IPN, the consequences are particularly noticeable under the current time limit because it is so different from the limit that other MDBs have set for their IAMs. As discussed above, the risk of the time limit excluding potentially meritorious cases has increased as the diversity of Bank operations has grown. In at least some cases, it is becoming harder for requesters to identify that they are likely to be harmed by Bank-funded projects before the end of the time limit is reached.

⁸⁰ See Paragraph 12 Resolution No. IBRD 93-10 and IDA 93-6 (22 September 22, 1993) and 1999 Clarification Paragraph 13.

⁸¹ Paragraph 87, ADB/AM Policy

⁸² Paragraph 12(b), EBRD/PCM Procedure

⁸³ Paragraph 19(f), IDB/MICI Policy

113. *Extend the Time Limit to a stipulated period beyond the Closing Date of the Loan:* This option would involve following the example of the ADB, AfDB, EBRD and IDB and setting the time limit at a stipulated number of months after a defined event such as the Closing Date of the loan. The benefit of this option is that it still provides the Bank, Borrower and other relevant stakeholders with a clearly defined and therefore predictable end to the eligibility period. It also would mean that the IPN has a similar time limit to the other IAMs and so is no longer seen as being unduly restrictive in its acceptance of requests for investigations. The first cost of this option is that it will mean a change in IPN practice, which could lead the Bank Management and the Borrower to reassess their potential exposure to an IPN case. It is also possible that this could lead some Borrowers to see the change as adversely affecting the attractiveness of Bank financing.
114. *Eliminate the time period and rely on other factors in determining eligibility:* In this case the IPN would adopt the practice of the EIB/CM and the IFC-MIGA/CAO. The IPN could agree to accept any request for investigation that meets the other requirements for eligibility, namely, that there are 2 or more requesters who claim they have been harmed or threatened with harm by a Bank-funded operation, and that the cause of the harm is the Bank's failure to comply with its own operating policies and procedures. In most cases, the most challenging criteria for establishing eligibility will be the causation test. This test would impose a *de facto* time limit on the bringing of successful requests because with the passage of time a broader range of factors will impact on the project, making it harder to establish that Bank non-compliance with the applicable operational policies is the cause of the requesters' harm. Thus, the benefit of this approach is that it will ensure that any complaint that alleges that the requesters have been harmed by the Bank's failure to comply with its own operating policies and procedures, in principle, will be admissible and will receive an eligibility evaluation. The cost of this approach is that there is an increased element of unpredictability for the Bank and the Borrower, who would now face a longer and less well defined period in which they could be the target of a compliance investigation. Another possible downside is the challenge that the IPN would face in assessing causation would grow in proportion to the temporal distance from the end of the project. This, in turn, would increase the risk of controversy about its findings and risk politicizing its work. It may also have some financial implications for the cost of each eligibility investigation. Finally, it is also possible that this change could lead some Borrowers to see the change as adversely affecting the attractiveness of Bank financing.

TOPIC 3: Assess the extension of Panel case eligibility to Bank-Executed Trust Funds (BETFs).

The Issue and Its Implications

115. The Bank's classifies its trust funds into three groups. The first group is bank executed trust funds (BETFs). These funds are used to finance Bank analytic and advisory work and for some project preparation activities. They are not used in Bank lending operations. Since BETFs are not used to fund lending instruments, the Bank has determined that the utilization of these funds need only comply with the Bank's procurement and administrative rules and procedures. They do not have to comply with the policies and procedures that are applicable to the Bank's lending operations, including its environmental and social policies.
116. The second category is recipient executed trust funds (RETF). In this case the Bank functions as a conduit that passes the funds onto the receiving entity who then uses the funds for a project approved by the Bank. The Bank has determined that RETF-funded activities are

subject to all the Bank's operational policies and procedures, including its environmental and social policies. Consequently, they fall within the IPN's mandate.

117. The third category are international financial intermediary funds in which the Bank manages the funds for the benefit of the implementing agency that executes the trust's purposes. Examples of the latter group are the Global Environmental Fund and GAVI. These funds may choose to apply the World Bank's operational policies and procedures. Consequently, they may also fall within the IPN's mandate.
118. The fact that BETF funded activities are not governed by the Bank's operational policies and procedures is unlikely to be an issue in most cases. However, the fact that one such operation, namely advisory work relating to new legislation for the extractive industry sector in Haiti, did result in a request to the IPN suggests that there are some BETF-funded operations that can have material social and environmental impacts.
119. While the significance of the distinction between Bank work that is financed by BETFs, and operations that are funded by other trust funds and standard Bank loans may be readily understood by Bank officials, it is not easily appreciated by external stakeholders. As far as these stakeholders are concerned these are all Bank operations and should be eligible for investigation by the IPN. Consequently, references to lack of eligibility because of the particular funding vehicle chosen for the activity may be interpreted by these stakeholders as an attempt by the Bank to avoid being held responsible for the harm caused by its failure to comply with applicable policies.
120. Given both the reputational risk to the Bank of excluding BETF-funded activities from the IPN's authority and the low risk of most BETF-funded activities meeting the other IPN eligibility requirements, it is reasonable to ask what the downside would be in making BETF-funded activities subject to the IPN. One argument against making them subject to the IPN is based on the scale of BETF-funded activities. A substantial amount of the Bank's analytic work and of its administrative expenses are funded by BETFs. However, it is clear that in most, probably the vast majority of cases, BETF activities will not have such substantial impacts that they are likely to adversely affect or even attract the attention of potential requesters. The issue will only arise in a small number of cases in which the activities have a sufficiently noticeable impact to attract this sort of attention. Moreover, even in this small number of cases the requesters would still have to meet the other requirements for eligibility, namely that the failure of the staff involved in the BETF-funded activity to comply with the applicable policies caused their harm or threatened them with harm. Thus, it will be a rare BETF case indeed that is able to meet the requirements for eligibility.

Situation at other MDBs

121. While all the MDBs administer trust funds, they do not appear to have confronted the situation that the IPN has recently faced in which it had to decline a request because of the technical characteristics of the trust funds used in a particular operation. Nevertheless, it would appear that in most cases the MDBs do not specifically exclude BETFs from the scope of their IAM's mandate.⁸⁴ In fact, in one case, the IAM mandate appears to incorporate all

⁸⁴ Most IAM procedures do not specifically address the issue of trust funds. However, they do not specifically exclude activities funded by trust funds from the scope of IAM mandates. For example, the EBRD/PCM's mandate covers all

trust funds. This is the case of the IDB/MICI. Its policies stipulate that the scope of MICI’s work covers any “Bank-Financed Operation”.⁸⁵ The Policy defines “Bank-Financed Operations” to be “any Bank investment or other financing activities...financed in whole or part...from funds administered...by the Bank...”⁸⁶

Options for the IPN

122. *Maintain the Status Quo:* The current situation with BETFs has existed for a long time. It appears that it has only resulted in one request to the IPN. The benefit of keeping the current approach is that it is predictable and there may be some grantors of BETFs that established the trust on the specific understanding that its operations would only be subject to the Bank’s procurement and administrative procedures. Thus, any change in the status quo could require the Bank to communicate with all BETF donors to ensure that they are satisfied with the change. The cost of maintaining the current approach is increased reputational risk to the Bank. This follows from the fact that the IPN has to reject potentially admissible requests because they are BETF-funded rather than Bank or RETF funded.
123. *Make BETFs subject to all Bank Operational Policies and Procedures:* In this option, all BETF activities would be required to comply with all Bank operational policies and procedures, including the environmental and social framework. The benefit of this approach is that it would eliminate the risk that the same activity could be excluded from the IPN mandate when it is funded by a BETF but included in the IPN mandate when it is funded from another source. In this regard it is important to note that BETFs do not fund all the Bank’s analytical work—which means that some analytical work is funded from other sources and so may fall within the scope of the IPN mandate. The cost of this approach would be that it would add additional requirements onto BETF-funded operations. It should be noted that the actual cost and complexity of implementing these additional requirements would depend on the precise wording of the requirement. One possibility would be to incorporate into the requirement a standard for determining when the operational policies and procedures of the Bank should be applicable and the operation made subject to the IPN’s mandate. This standard could, for example, stipulate that all BETF operations that only have a *de minimus* environmental or social impact are exempted from the operational policies and procedures.
124. *Allow IPN the discretion to treat BETF cases on an ad hoc basis:* This option would allow the IPN to recommend to the Board that it assess the eligibility of any request that it receives relating to a BETF-funded activity that alleges that the activity has had a sufficiently “material adverse social and/or environmental impact” that harms or threaten to harm two or more people. The Board would have to adopt the recommendation before the IPN could investigate the eligibility of this request. If the request is found eligible the IPN would conduct a compliance review. The benefit of this option is that it creates a reasonably predictable exception to the blanket exclusion of BETF activities from the scope of the IPN’s mandate. This approach would enable both Bank staff engaged in the BETF activity and the

EBRD funded projects. Its Rules of Procedures, includes a definition of “Project” which states that it includes “any Bank activity that is subject to the application of a Relevant EBRD Policy with the exception of those activities that are expressly exempted from the application of these rules by a Board decision”, Definitions and Abbreviations, EBRD/PCM Procedures. “Relevant EBRD Policy” is defined as referring to policies dealing with environmental and social requirements and any other policies approved by the Board to be included in this definition. *Id*

⁸⁵ Section 10, IDB/MICI Policy

⁸⁶ Glossary, *Id.*

affected people or communities to make an informed judgement about the likely applicability of the IPN process to the activity. Moreover, it does so in a way that retains for the Board the final decision on whether to proceed with an IPN operation. The cost of the option is that it could expose some Bank advisory and analytic work to the IPN. However, the requirement that there needs to be a “material adverse social and/or environmental impact” should limit the scope of the exposure and should provide staff with some guidance on when analytical or advisory work may become the object of an IPN investigation.

TOPIC 4: Determine whether accountability gaps may exist in the context of Bank co-financing operations as a result of differences between the respective institutions’ accountability mechanisms.

The Issue and Its Implications

125. The World Bank is increasingly engaged in co-financing arrangements with other MDBs and other financial institutions that have their own operating policies and procedures and IAMs. In some cases the co-financing institutions will each be funding different aspects of the same project and so their IAMs can apply their own institution’s policies and procedures in any investigation. In other cases, however the different institutions will all be contributing to one common project and will agree that one institution’s operational policies should apply to the whole project. In the second case, it is possible that the same or different requesters could file requests for inspection regarding the same set of issues with, for example, the IPN and the IAM at another financial institution. This can lead to two different challenges.
126. The first challenge relates to the substance of the applicable operational policies and procedures. These challenges will arise when one IAM is mandated to investigate claims of non-compliance with its bank’s operating policies and procedures but the project agreements stipulate that the policies of another institution govern the project. This situation can lead to possible conflicts or gaps in accountability. For example, assume a project in which the governing policies and procedures are those of the World Bank but these standards are different from the operating policies and procedures of one of the other funders. If the same request is filed with the IAMs at the two institutions, it is possible that the IPN applies the World Bank policy and finds compliance with the applicable standards, while the other IAM, based on its own institution’s policies, finds instances of non-compliance. In this case, the second institution would presumably need to develop an action plan that is designed to bring the relevant aspects of the project into conformity with its own policies, even though the World Bank policies are supposed to govern the whole project.⁸⁷ This situation would create problems for the borrower who would be faced with conflicting interpretations about which lender’s policies, in fact, are applicable to those aspects of the project that are the object of the action plan. It may also create problems for the requesters who will not be able to understand which policies in fact are being applied to the project.
127. The second set of challenges will arise from differences in the procedures of the two IAMs, such as different time limits for eligibility and different rules on sharing draft reports with the requesters. For example, since the IPN has the most restrictive time limits on eligibility, it could determine that a particular request is ineligible because it is filed after the loan is 95%

⁸⁷ The alternative would be for the other bank to use its interpretation of the World Bank’s policies in determining if there are instances of non-compliance that have caused harm and, if applicable, in developing the action plan.

disbursed. The other IAM, based on its own time limits, would find the same request is eligible and recommend an investigation. The inability of the IPN to investigate in this case could lead to a reputational cost for the World Bank. It could also result in the second IAM having to investigate compliance in a project in which the World Bank standards are the governing standards for the project.

128. Another example of conflict would be that both the IPN and the other IAM undertake a compliance review. However, pursuant to its operating procedures, the other IAM releases its draft report finding instances of non-compliance to the requesters before the World Bank Board has had an opportunity to consider the IPN report which finds compliance with the applicable policies and procedures. The Board could then be confronted with a situation in which the requesters have a draft report from another institution saying that there were instances of non-compliance with the applicable policies for the project, while the IPN report does not agree with these findings. In this case, regardless of the Board's decision, the borrower will need to work with the other MDB's management to develop an action plan for a project that is governed by World Bank policies and procedures.
129. These conflicts in accountability all pose reputational risk for the World Bank because it can be seen as being either less willing to acknowledge problems in a project and address them than other financial institutions or less open to being held accountable. They may also create an operational challenge for Management. It could find itself in the position that it must negotiate with other MDBs about how they will design and implement action plans for a project that is governed by World Bank policies and procedures-- when they consider the project to already be compliant with these policies and procedures.
130. It should be noted that the issue of gaps or conflicts in accountability could also arise within the World Bank Group. The new IDA private sector window will result in IDA funds being used by the IFC for investments that could lead to requests for compliance reviews. These requesters may seek to access both the IPN and the CAO. They may contend that the IPN should investigate because the operation is using IDA funding and IDA failed to ensure that the IFC used the funds consistently with IDA operational policies and procedures. In addition, they could ask the CAO to investigate because IFC is the entity making the investment decisions and is applying its operational policies and procedures.

Situation at Other MDBs

131. It should be clear from the above that these conflicts of accountability could arise not only for the World Bank but for all other MDBs as well. It would appear however that none of them have developed any explicit policies or practices on how to deal with these situations. In the relatively few cases in which more than one IAM has been conducting a compliance review of a project, the IAMs have signed an MOU that sets out how they will collaborate in the investigation but specifying that they will each do their own report.⁸⁸ This suggests that the current practice is for the IAMs to handle these matters on an *ad hoc* basis.

⁸⁸ This was the case in the Bujagali investigations in 2008. In this case, the IPN and the AfDB/IRM coordinated their field investigations of the Bujagali project. They each produced their own compliance report based on their own bank's operational standards. Their collaborations were based on an MOU that was negotiated between the Executive Secretary of the IPN and the Director of the AfDB/CRMU. See Executive summary of IRM Compliance Review Report on the Bujagali Hydropower and Interconnection Projects June 20, 2008, ("The Compliance Review Panel and

Options for addressing the gaps/conflicts in accountability

132. It is not clear that these conflicts in accountability can be most effectively managed through the toolkit or mandate of the IPN. Even if the toolkit and/or the mandate of the IPN is adjusted so that it is identical to those of other IAMs, there could still be conflicts in accountability. The reason is that there can still be differences in the operational policies and procedures of the different banks.
133. The following three options take the above observation into account.
134. *Address the issue in the co-financing agreements:* This option is based on the possibility that these conflicts of accountability are an inevitable part of co-financed operations in which the funders each have their own operational policies and procedures. This suggests that the solution to these conflicts of accountability should be addressed by the respective MDBs in their agreements to co-fund a particular project or operation. The benefit of this approach is that it would establish a clear governing principle for accountability in the operation that is understandable and predictable to the Borrower and the MDBs. It will also be understandable to potential requesters, provided they have access to the relevant project documents. The downside is that it is not clear that management can decide to preclude its bank's IAM from accepting claims that but for the co-financing agreement would be eligible. This would raise issues about the independence of the IAM because it could be interpreted as suggesting management is ousting the IAM from investigating allegations of non-compliance by management.
135. *Establish a policy on the mandate of the IPN in co-financing cases:* In this option, the Board would establish a general policy on the mandate of the IPN in co-financed projects. It could for example determine that the World Bank's operational policies and procedures must be applied in all co-financing projects and that, as a result, only the IPN retains the authority to investigate any claims of non-compliance that are deemed eligible relating to the project. The benefit of this approach is that it would establish a clear and predictable policy for the IPN and its stakeholders. The downside is that, because the Board cannot exclude the IAMs at the co-funders from accepting cases that they deem eligible, it would not fully resolve the conflict of accountability problem for the borrower.

the World Bank Inspection Panel coordinated their field investigations of the Bujagali projects and shared consultants and technical information during this investigation in order to enhance the efficiency and cost effectiveness of each of their investigations.”) *Also See* Executive summary of IPN Investigation Report, Uganda: Private Power Generation (Bujagali) Project (Guarantee No. B0130-UG), 29 August 2008, (“The Panel and the IRM collaborated by sharing experts and conducting a joint field mission. The conclusions of the Panel and the IRM are, however, independent and based on different applicable policies.”) It should be noted that the External Reviewer chaired the AfDB/IRM investigation in this case.

A MOU was also concluded between the IPN and the EIB/CM in the Kenya Electricity Expansion Project. See Annex D Memorandum of Understanding between the World Bank Inspection Panel and the European Investment Bank Complaints Mechanism on cooperation regarding complaints received in relation to the Kenya Electricity Project, (28 April 2015) in IPN Investigation Report Kenya Electricity Expansion Project (P103037), 2 July 2015.

136. *Maintain the Status Quo: Allow the IPN to conclude an MOU with any other IAM that receives a complaint relating to the same co-financed project.* This option would follow the precedents that the IPN has followed in the past. Its benefit is that it allows the IPN and the other relevant IAMs to negotiate a pragmatic arrangement that meets the need of each particular case. The downside is that it injects an element of unpredictability into the situation because neither borrowers nor requesters can be sure that there will be consistency in the way these cases are handled by the relevant IAMs.

TOPIC 5: “Assess the need and possible measures to improve communications with requesters regarding investigation findings.”

The Issue and Its Implications

137. Under the IPN operating procedures, the requesters are not given a copy of the IPN’s investigation report until after the Board has discussed the report and decided whether or not to accept it. This means that from the time they file their request until the report is made publicly available, the requesters only formal communication with the IPN is when the IPN comes to interview them either during the eligibility phase or during the compliance investigation. The requesters maintain that this creates two problems. First, it means that they are being treated differently from the Bank Management who are given a copy of the report at the same time as it is given to the Board and so, *de facto*, have an opportunity to comment on it before the Board meets to discuss the report. They contend that this is unfair. Second, it means that they are handicapped in their interactions with Management about the proposed action plan. The requesters contend that, without having seen the report, it is difficult for them to either know on what issues the action plan should focus or assess if the Management’s proposed action plan will adequately address the instances of non-compliance. Consequently, they argue that in the interests of producing an appropriate action plan, they should be shown the report at the same time as Management.
138. The requesters also suggest that it would be in the interest of the Board to know the requester’s views on the report when they hold their deliberations about the compliance investigation report. They maintain that this is useful information for the Board members and that it is in the interests of the Board and the Bank that the Executive Directors have as much relevant information about the case as possible when they hold their deliberations.
139. It should be noted that the IPN in 2015, with CODE’s agreement, initiated a practice of informally calling the requester to discuss the report and its key findings and to provide it with the table of findings of the report.

Situation at Other MDBs

140. A number of the other MDBs do share the report with the requesters at the same time that it is shared with management and the board. The AfDB/IRM shares the compliance review report with the requesters at the same time that they give the final report to the management and the board.⁸⁹ In the case of the ADB/CRP, the requesters get a copy of the draft report at the same time that it goes to management.⁹⁰ Both recipients are then given an opportunity to comment on

⁸⁹ Section 63, AfDB/IRM Rules

⁹⁰ Section 185 ADB/AM Policy

the report. The final report and a document with these comments together with the CRP's response to the comments from both management and the requesters are submitted to the board. In the case of the EBRD/PCM,⁹¹ the management is sent a copy of the compliance report when there are findings of non-compliance in order for it to prepare a response and an action plan. Once it has completed the action plan, the PCM sends the requester a copy of the compliance report together with the management response and the action plan for comment. After the requester submits comments, the Expert who drafted the report is given an opportunity to finalize the report but may not change the findings in the report. The PCM then submits the final report, the management response and action plan and the requester's comments to the board of the bank. In the case of the EIB/CM, the mechanism will give requesters an opportunity to comment on the draft report before it is finalised and submitted to the EIB's Management Committee.⁹² After the Management Committee has decided whether or not to accept the recommendations of the CM, the requester is sent a copy of the final conclusions on the report.⁹³ The IFC-MIGA/CAO posts a notice on its website when it sends the final report to IFC/MIGA management for an official response.⁹⁴ The report and the management response are then sent to the President of the Bank, who cannot change the report but can discuss it with the CAO.⁹⁵ Once the President is satisfied with the response, the President clears the report and the management response and it is released to the Board and is posted on the CAO website.⁹⁶ The IDB/MICI also allows the requesters and management an opportunity to comment on the draft compliance report.⁹⁷ Once MICI has reviewed these comments it finalizes the report and submits it to the Board for consideration.⁹⁸ After the Board has considered the report it is made publicly available.⁹⁹

141. It should be noted that the experience of the MDBs that have shared the draft report with the requesters and asked them to keep it confidential is that the requesters have respected their requirement that the report be kept confidential.

Options Available to the Bank

142. *Maintain the Status Quo*: The Board could decide to maintain the current formal situation, in which the requesters do not get a copy of the report until after the Board considers it. Currently, the IPN informally informs them about the report and its findings and shares the table of findings with them. The cost of this approach however, is that it leaves the IPN out of step with what is happening at other IAMs. Thus, requesters are left with less opportunity to inform the Board and Management about their views of the IPN report than other banks have found to be optimal. In addition, the Board is making decisions with less information than could be available to it.

⁹¹ Sections 45-46, EBRD/PCM Procedures

⁹² Section 7.15-7.16, EIB/CM Principles

⁹³ Section 7.17, EIB/CM Principles. It is important to note that the complainant can take this decision for review to the European Ombudsman.

⁹⁴ Section 4.4.5, CAO Guidelines

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Section 44, IDB/MICI Policy

⁹⁸ Sections 46-47 IDB/MICI Policy

⁹⁹ Section 48, IDB/MICI Policy

143. *Share the Report with the requester at the same time as shared with Management and the Board:* The Bank could adopt the approach taken by the AfDB/IRM, which is to share the final report with requesters at the same that it is given to Management and the Board. In this case, the requesters are not given an opportunity to comment on the report but are empowered to engage meaningfully with the Management about any anticipated action plan. One risk with this approach is that it is possible that the report will become publicly available before the Board has considered the report and perhaps rejected its findings. However, as noted above the experience of the MDBs that have shared the draft report with the requesters and asked them to keep it confidential is that the requesters have respected their requirement that the report be kept confidential.
144. *Share the draft report with requesters and seek their comments:* The Bank could adopt the approach taken by the ADB/AM, EBRD/PCM, EIB/CM and IDB/MICI. In this case, the IPN would give the requesters and Management an opportunity at the same time to comment on the report and would inform the Board about these comments and its responses to these comments. The benefit of this approach is that it helps the IPN eliminate any inaccuracies or misstatements in its report. It also ensures that the Board is aware of all relevant perspectives on the report at the time of their deliberations. The costs of this approach is that it creates some delay in the process and makes it more complex. One risk with this approach is that it is possible that the report will become publicly available before the Board has considered the report and perhaps rejected its findings. As noted above, the experience at other MDBs suggests it is not a significant risk because requesters have respected the requirement to keep the report confidential.

VI. Conclusion

145. The ToR for this External Review specifically state that the Reviewer should not make any recommendations on whether any changes should be made to the IPN's mandate or toolkit. Instead, the External Review should provide as much factual information as possible on how the practices of the IPN compare to those of other IAMs in regard to the 5 topic listed in the ToR so that the Board can make fully informed decisions about what changes, if any, it wishes to make to the IPN toolkit. Consistent with these instructions, this final section of the External Review does not draw any conclusions or make any recommendations. It merely expresses the hope that the Board will find the factual information contained in this report useful as it proceeds with its deliberations on the IPN's toolkit.

ANNEX 1

TERMS OF REFERENCE:

EXTERNAL REVIEW OF THE INSPECTION PANEL'S TOOLKIT

I. INSPECTION PANEL BACKGROUND

1. The Inspection Panel (“the Panel”) was officially created by two resolutions of the International Bank for Reconstruction and Development (IBRD) and the International Development Agency (IDA) on September 22, 1993 (Resolution IBRD 93–10 and Resolution IDA 93–6). It is referred to collectively as “the Resolution” because of their identical content. The Resolution specifies that the Panel has jurisdiction with respect to operations supported by IBRD and IDA (“WB” or “the Bank”). In 1996 and 1999, Clarifications were added to the Resolution.

2. The Resolution establishes the basic mandate and structure of the Panel. At its core, and in response to requests from affected parties, the Panel has the power to carry out independent investigations of Bank- financed projects to determine whether the Bank is in compliance with its operational policies and procedures. The Panel reports its findings to the Bank’s Board of Executive Directors. Bank Management is required to prepare a response with recommendations and actions to address the Panel’s findings of noncompliance and harm. The Board of Executive Directors considers both the Panel’s findings and Management’s response and decides future actions.

3. The Panel adopted updated Operating Procedures¹ in April 2014. These updated procedures, including the introduction of a new “pilot approach to support early solutions”, aim to make the Panel more accessible, user-friendly, and effective in responding to grievances and concerns raised by project affected people, while staying within the ambit of the Panel's governing framework. CODE2014-0014.

II. OBJECTIVE

4. The External Review (“the Review”) is requested by the Committee on Development Effectiveness (CODE), on behalf of the Bank’s Board of Executive Directors. The objective of the Review is to:

- a. Obtain a qualitative assessment of, and findings related to, the benefits and disadvantages; financial and operational costs; and risks to the World Bank, as well as potential impacts on project affected communities, of including the following to the Panel’s toolkit, including potential options to do so.
 - i. monitoring the implementation of management’s action plans;
 - ii. dispute resolution;
 - iii. advisory services.
- b. Assess the time-limit on the eligibility of requests in respect of the Panel Resolution, particularly for projects supported by guarantees.

¹ CODE2014-0014.

- c. Assess the extension of Panel case eligibility to Bank-Executed Trust Funds (BETFs).
- d. Determine whether accountability gaps may exist in the context of Bank co-financing operations as a result of differences between the respective institutions' accountability mechanisms.
- e. Assess the need and possible measures to improve communications with requesters regarding investigation findings.

5. The Review should take into account the Panel's mandate as defined in the Resolution and 1996 and 1999 Clarifications and should, in addition, take into consideration the following:

- a. The Panel's updated Operating Procedures (April 2014)
- b. The Panel's pilot on Piloting a New Approach to Support Early Solutions in the Inspection Panel Process
- c. The Panel's pilot on sharing the "Table of Findings" of its Investigation Reports with Requesters
- d. The Panel's "Emerging Lessons" series
- e. The World Bank Grievance Redress Service (GRS)²
- f. The Bank's current safeguard policies and the Bank's new Environmental and Social Framework, which will replace the existing safeguard policies upon implementation in 2018
- g. The relationship with the IFC's CAO in the context of IDA financing for IFC and MIGA via the Private Sector Window
- h. Comparative Study of Functions and Trends in IFI Accountability Mechanisms Report to the Inspection Panel (from CODE informal meeting held on 09/02/15)
- i. Relevant external literature and research on the structures, functions and experiences of other IAMs.

6. The Review should include consultations with World Bank Executive Directors; the Inspection Panel Chair and members; OPCS and WBG Management; the World Bank Group Senior Vice President and General Counsel; IFC/MIGA Compliance Advisor Ombudsman (CAO); and the management and accountability mechanisms of other relevant IFIs, in particular with respect to experience with use of the aforementioned functions and the governance arrangements for these functions; and external stakeholders with relevant expertise and experience (e.g., academics, former members of the Panel or other MDB accountability mechanisms, civil society, etc.).

III. KEY QUALIFICATIONS AND PROVISIONS

7. The following qualification requirements will be

² The new World Bank Grievance Redress Service (GRS) started its operation on January 31, 2015. It supports TTLs in addressing and managing grievances efficiently from project affected communities and provides a single entry point at the corporate level for communities to voice grievances. The GRS closes the gap between project-level grievance mechanisms and the IPN and is aligned with the ongoing development of the Bank's ESF as well as OPCS support for high risk operations.

applied:

- High professional stature
- Knowledge of international development, the challenges of development, the work of Multilateral Development Banks and the history and challenges of instituting effective independent accountability mechanisms at the MDBs
- Knowledge of the WBG and its oversight and accountability structure
- Knowledge of the WBG's operations and environmental and social policies

8. The Review shall be conducted by a person who currently is not employed by the World Bank or the Panel. Any past assignments (staff or consultancy) with the World Bank, OPCS or the Panel will be disclosed by the applicant in the credentials submitted.

ANNEX 2

Approach Paper for External Review of the Inspection Panel's Toolkit

Daniel Bradlow

1. This Approach Paper describes the methodology that the external reviewer will utilize in preparing a high-quality report that meets all the requirements stipulated in the Terms of Reference (ToR) prepared by the Committee on Development Effectiveness (CODE) for the External Review of the Inspection Panel's Toolkit (the External Review). It is designed to produce an evidence-based report that provides CODE with both sufficient factual information and detailed enough findings that it has a credible and convincing basis for whatever decisions it may choose to make in regard to the Inspection Panel's (IPN) toolkit.
 - a) The Terms of the External Review
2. Pursuant to Paragraph 4 of the Terms of Reference (ToR) prepared by the Committee on Development Effectiveness (CODE), has 5 objectives. They are to:
 - a) "obtain a qualitative assessment of, and findings related to, the benefits and disadvantages; financial and operational costs; and risks to the World Bank, as well as potential impacts on project affected communities, of including the following to the Panel's toolkit, including potential options to do so:
 - i. monitoring the implementation of management's action plans;
 - ii. dispute resolution;
 - iii. advisory services.
 - b) Assess the time-limit on the eligibility of requests in respect of the Panel Resolution, particularly for projects supported by guarantees.
 - c) Assess the extension of Panel case eligibility to Bank-Executed Trust Funds (BETFs).
 - d) Determine whether accountability gaps may exist in the context of Bank co-financing operations as a result of differences between the respective institutions' accountability mechanisms.
 - e) Assess the need and possible measures to improve communications with requesters regarding investigation findings."
3. Pursuant to Paragraph 5 of the ToR, the external reviewer, in addition to the IPN's mandate as spelled out in the original Resolution and the 1996 and 1999 Clarifications, should pay attention to the following information:
 - a) The Panel's updated Operating Procedures (April 2014);
 - b) The Panel's "Piloting a New Approach to Support Early Solutions in the Inspection Panel Process";
 - c) The Panel's pilot on sharing the "Table of Findings" of its Investigation Reports with Requesters;
 - d) The Panel's "Emerging Lessons" series;
 - e) The World Bank Grievance Redress Service (GRS);

- f) The Bank’s current safeguard policies and the Bank’s new Environmental and Social Framework;
 - g) The relationship with the IFC’s CAO in the context of IDA financing for IFC and MIGA via the Private Sector Window;
 - h) Comparative Study of Functions and Trends in IFI Accountability Mechanisms Report to the Inspection Panel; and
 - i) Relevant external literature and research on the structures, functions and experiences of other IAMs.
4. The reviewer, in preparing the External Review, will also consult with a balanced group of representatives from all stakeholder groups. These include, pursuant to paragraph 6 of the ToR: “World Bank Executive Directors; the Inspection Panel Chair and members; OPCS and WBG Management; the World Bank Group Senior Vice President and General Counsel; IFC/MIGA Compliance Advisor Ombudsman (CAO); and the management and accountability mechanisms of other relevant IFIs, in particular with respect to experience with use of the aforementioned functions and the governance arrangements for these functions; and external stakeholders with relevant expertise and experience (e.g., academics, former members of the Panel or other MDB accountability mechanisms, civil society, etc.)”

Ensuring the Quality and Credibility of the External Review

5. In order to produce a report that satisfies all the ToR requirements, the external reviewer must pay attention to both the contents of the External Review and the process by which it is prepared. Each of these aspects are discussed below.

The Content of the External Review

6. The report must provide CODE with a full and easily understandable assessment of each of the issues raised by the 5 objectives set out in Paragraph 4 of the ToR. In doing so, the reviewer will also discuss how the CAO and the independent accountability mechanisms (IAMs) at other multilateral development banks (MDBs) deal with these issues and will provide an assessment of the efficacy of their approaches to these issues. For the purposes of this External Review, the other MDBs are the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, European Investment Bank, and the Inter-American Development Bank.
7. The Review must also provide CODE with all the information that it needs to make an informed decision about what changes if any, it wants to make to the IPN toolkit. This includes an understanding of the cost-effectiveness of these potential changes.
8. In order to ensure that the report satisfies these requirements, the Review will be based on a study of the following resources:
- a) *Primary World Bank sources* -- Documents discussing the mandate, functioning, operating procedures, governance arrangements, case load, case histories, budgets, staffing and hiring practices of the IPN and the CAO; documents relating to the functioning of the Grievance Redress Mechanism and other accountability mechanisms in the Bank; documents relating to the existing safeguard policies and the new Environmental and Social Framework; relevant documents relating to Bank Executed Trust Funds.

- b) *Primary sources from IAMs at other MDBs* -- documents discussing the mandates, functioning, organizational structures, governance arrangements, staffing and hiring practices, budgets, jurisdiction, operating procedures, and information on the case load and case histories of the IAMs at the other MDBs;
 - c) *Secondary sources* -- reports from non-World Bank sources (NGOs, newspapers) on the operations of the IAMs, including the IPN and the CAO; and academic articles on the IPN, the CAO and the IAMs at the other MDBs.
9. As indicated in Paragraph 6 of the ToR, the information learned from these documentary sources should be supplemented by interviews. These interviews should serve one or more of the following objectives: confirm information learned from the documentary sources referred to above; provide additional factual information; provide information on the experiences of the various IAM stakeholders in dealing with the IAMs, including the IPN.
10. The external reviewer will conduct interviews with people who have experience working with or at the IPN or the other IAMs. The following is a representative, but not necessarily comprehensive list of possible interviewees. It should be noted that although it is anticipated that not all people listed below, in fact, will be interviewed, the reviewer will use his best efforts to ensure that collectively the actual group of interviewees provide a fair and balanced reflection of the views of all the stakeholders in the IPN.
- a) **World Bank**
 - i. Members of CODE and other interested Board members,
 - ii. former Board members with a particular interest in the IPN
 - iii. current IPN members and Executive Secretary
 - iv. former IPN members (for example: Edward Ayensu, Richard Bissell, Edith Brown Weiss, Zainab el-Bakri, Alf Jerve, Werner Kiene, Roberto Lenton, Alvaro Umana-Quesada, Eime Watanabe),
 - v. IPN former Exec Secs (Eduardo Abbott, Peter Lallas)
 - vi. Current Management -- CEO, Senior VP and General Counsel, Africa VP, OPCS, Gender General Practice, Gender Global Theme Department, task team leaders of relevant IPN cases (for example the cases in which the IPN piloted its new approach for supporting early solutions and sharing the table of findings of its investigation reports and cases relevant to specific issues arising from the objectives stipulated in paragraph 4 of the ToR)
 - vii. Former Legal Department -- former general counsels (Ko yung Tung, Ann-Marie Leroy, Roberto Danino) Charles Di Leva, David Freestone, Alberto Ninio, Salman Salman
 - b) **Representatives of World Bank member states**—It will be particularly useful to learn the views of relevant officials from the borrower institutions and governments in those member states which are the home states for IPN cases of particular relevance to this External Review (for example the cases in which the IPN piloted its new approach for supporting early solutions and sharing the table of findings of its investigation reports and cases relevant to specific issues arising from the objectives stipulated in paragraph 4 of the ToR) .
 - c) **CAO** (current and former officials) – for example: Osvaldo Gratacos, Meg Taylor, Gina Barbieri, Daniel Adler, Rachel Kyte
 - d) **Other IAMs** (current and former officials) -- ADB (officials from Office of Special Project Facilitator and Office of Compliance Review Panel and Suresh Nanwani), AfDB (IRM/CRMU- for example: Sherif Arifat, Arntraud Hartmann,

- Per Sovik), AIIB (Hamid Sharif, MD, Compliance, Effectiveness and Integrity Unit), EBRD (Susan Wildau), EIB (representative of complaints mechanism), MICI—IDB (Victoria Marquez, Gaston Ain, Arantxa Villanueva, Ana-Mita Betancourt, and representative of External Consultative Group),
- e) **CSOs working on bringing cases to IAMs** -- for example: representatives from Accountability Counsel; Bank Information Center; Center for International Environmental Law; Human Rights Watch; Inclusive Development International; SOMO; Urgawald
 - f) **Claimants**—Uganda (Ntenga Moses—Joy for Children and Bujagali claimants), Kenya power, India. Other claimants to be added based on relevance of cases ((for example the cases in which the IPN piloted its new approach for supporting early solutions and sharing the table of findings of its investigation reports and cases relevant to specific issues arising from the objectives stipulated in paragraph 4 of the ToR)
 - g) **Academics**— for example: Laurence Boisson de Chazourne, Ciao Borges, Gráinne de Búrca, Angelina Fischer, Jonathan Fox, David Hunter, Benedict Kingsbury, Andria Naude Fourie, Jan Wouters.
 - h) **Other Experts** — Lori Udall.

Process of Preparation of Report

11. The external reviewer intends to collect as many of the primary and secondary documents, identified in Section II.A above, on the IPN, the CAO and the other IAMs as possible. Based on these documents, he plans to prepare specific questions for particular officials at the various IAMs and MDBs that are designed to either confirm or clarify the information he has learned from these documents. He will also prepare a set of questions that he will use in his interviews with the representatives of all the other groups of stakeholders identified in Section II.A above. The external reviewer maintains that, given their different areas of interest, concern and expertise, the contributions of a balanced and diverse group of representatives from each category of stakeholder in the IPN will enrich the report.
12. The external reviewer will make clear to all interviewees that purpose of the Review is to present an evidence-based assessment and findings to CODE on the issues set out in paragraph 4 of the ToR and that it will not contain any recommendations. Thus, the Review will merely provide CODE with a balanced and objective report that CODE can utilize in deciding what, if any, adjustments it thinks should be make to the IPN's toolkit.

Proposed Time Line for Project:

1. Meeting with CODE to endorse approach paper. This meeting could take place over video-conference/skype anytime between 17-31 January 2018.
2. Preparatory research and preparation of questions for interviews. This work can be completed between 17 January and 8 February.
3. Interviews in Washington DC (World Bank (including IFC) officials, IDB (i.e. MICI) officials, IPN members and staff, former Bank and IPN staff based in Washington, other Washington-based experts on the IPN. These interviews would take place over 2 weeks during 8-23 February 2018.
4. Interviews with officials at other MDBs and other stakeholders who are not based in Washington DC. These interviews will be over skype and telephone: interviews will take place during February and first half of March 2018.

5. Preparation of first draft report: Mid-March – late April, 2018
6. 30 April 2018—The draft report submitted to CODE.
7. May, 2018—The external reviewer can be available to meet with CODE to discuss the draft report.
8. June 2018 complete report and submit to CODE and, if appropriate, the Board.

ANNEX 3
List of Interviews

Interviewees	Job Title	Type of Institution
Martin Amar	Advisor to Executive Director, EDS04	WBG EDS
Jeffrey K. Baker	Senior Advisor to Executive Director, EDS01	WBG EDS
Karen Mathiasen	Senior Advisor to Executive Director, EDS01	WBG EDS
Charles de Lucca(met twice)	Advisor to Executive Director, EDS01	WBG EDS
Andrei Lushin	Executive Director, EDS23	WBG EDS
Ekaterina Sycheva	Advisor to Executive Director, EDS23	WBG EDS
Fernando Jimenez Latorre	Executive Director, EDS18	WBG EDS
Rafael C. Hernandez	Consultant, EDS18/Advisor to ED	WBG EDS
Jaime Roberto Diaz Palacios	Senior Advisor to Executive Director, EDS18	WBG EDS
Marianne Krey-Jacobsen	Advisor to Executive Director, EDS20	WBG EDS
Franciscus August Godts	Executive Director, EDS10	WBG EDS
Peter Marcel Y. Van der Stoelen	Senior Advisor to Executive Director, EDS10	WBG EDS
Aparna Subramani	Executive Director, EDS12	WBG EDS
Turki Dhaifallah Almutairi	Alternate Executive Director, EDS22	WBG EDS
Aftab Ahmed Qureshi	Senior Advisor to Executive Director, EDS22	WBG EDS
Yvonne M. Tsikata	Vice President and Corporate Secretary, SECVP	WBG Management
Marta Maria Garcia Jauregui	Director, SECPO	WBG Management
Juergen Karl Zattler	Executive Director, EDS05	WBG EDS
Eva Johanna Brueggemann	Advisor to Executive Director, EDS05	WBG EDS
Elizabeth Afua Laura Mensah	Associate Operations Officer, IFC/MIGA-CAO	IAM
Daniel Adler	Governance Specialist, IFC-MIGA-CAO	IAM
Eva Friederike Magdalene Heiss	Senior Specialist, IDB-MICI	IAM
Victoria Marquez	Director, IDB-MICI	IAM
Gastón Oscar Aín Bilbao	Coordinator--Consultation Phase, IDB-MICI	IAM
Maria Aranzazu Villanueva Hermida	Coordinator--Compliance Review Phase, IDB-MICI	IAM
Sandie Okoro	Senior Vice President and General Counsel, LEGVP	WBG Management
Irina L. Kichigina	Deputy Gen. Counsel, Operations, LEGVP	WBG Management
Alessandra J. Iorio	Chief Counsel, LEGOP	WBG Management
Jonathan Mills Lindsay	Lead Counsel, LEGEN	WBG Management

Victor Bundi Mosoti	Chief Counsel, LEGEN	WBG Management
Laura Tuck	Vice President, GGSVP	WBG Management
Anna Bjerde	Director, Strategy and Operations, GGSVP	WBG Management
Yingming Yang	Executive Director, EDS17	WBG EDS
Wensong Guo	Advisor to Executive Director, EDS17	WBG EDS
Minwen Zhang	Alternate Executive Director , ED17	WBG EDS
Bongi Kunene	Executive Director, EDS25	WBG EDS
Cleo Rose Innes	Senior Advisor to Executive Director, EDS25	WBG EDS
Fidel Ogar Odey	Senior Advisor to Executive Director, EDS25	WBG EDS
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ANNEX 4

Comparison of IAM Mandates and Governance

IAM	Mandate	Governance
WB (Inspection Panel)	Compliance Review	Reports to the Board
IFC/MIGA (CAO)	Compliance Review Dispute Resolution Advisory services Monitoring	Reports to the President
EBRD (PCM)	Compliance Review Dispute Resolution Advisory services Monitoring	Experts reports to Board. Project Complaints Officer (PCM) reports to Chief Compliance Officer and EBRD President.
ADB (AM)	Compliance Review (CRP) Dispute Resolution (OSPF) Advisory services Monitoring	SPF reports to ADB President. CRP reports to the Compliance Review Committee(BCRC)of the Board.
EIB (CM)	Compliance review (maladministration) Dispute Resolution Advisory services Monitoring	CM reports to VP of EIB.
AfDB (IRM)	Compliance Review (Experts) Dispute Resolution Advisory services Monitoring	Reports to Board. For administrative matters, it reports to the President.
IDB (MICI)	Compliance Review Dispute Resolution Advisory services Monitoring	Reports to the Board.

ANNEX 5
Comparison of IAM Staffing and Budgets

	WB (Inspection Panel)	IFC/MIGA (CAO)	EBRD (PCM)	ADB (AM)	EIB (CM)	AfDB (IRM)	IDB (MICI)
Staffing	3 Panel Members supported by Secretariat. 8 Staff member Secretariat, and headed by Executive Secretary.	14 Staff members. Office headed by CAO VP. 3 compliance officers	Maximum 10 Roster of Experts. PCM officer is a full time employee of Bank. PCM Officer advises management, receives requests for investigations for compliance reviews and dispute resolution, decides on which Experts will be responsible for case.	Two separate offices: CRP= compliance review. 3 panel members (1 works full time at ADB). 4 Admin staff members. SPF= dispute resolution. 4 staff members. 1 Complaints Receiving Officer.	16 Staff members. Includes Head of CM office, 6 compliance officers, 2 dispute resolution specialists, and 7 admin support staff.	8 permanent staff members, headed by CRMU. 3 Roster experts. Director & CRMU staff support Experts.	8 permanent staff members, headed by Director. 14 member part-time Roster of Experts for doing compliance reviews.
Annual Budget	FY2017: US\$3,704,000. Spent US\$3,272,220.	FY2017: US\$5,375,718	FY2016: GBP 324,667 (excl. staff salaries & benefits).	FY2016: US\$2,353,000 Spent US\$2,733,000	Budget amount is publicly unavailable.	FY2016: US\$831,548	FY2016: US\$2,740,000
Average Budget	FY2013-2016: US\$ 3,363,917.60	US\$4,802,457.40	N.A	FY2013-2016: OSPF:US\$3,232,813. CRP: US\$1,312,974.25	N.A	FY2012-2016: US\$592,347.11	FY2012-2016: US\$2,497,135.00
Cases	11 cases handled	51 cases managed, of which 12 were new complaints.	25 cases handled, 5 closed and 19 on-going.	2016: 3 complaints received, 1 found ineligible. Since 2004 - 2016 a total of 65 complaints received, 25 found eligible.	2016: handled 122 cases, closing 63 and leaving 59 outstanding at the end of the year	14 cases registered, 17 requests denied registration.	25 cases handled, 11 new cases and 14 closed.
Average Case	FY2017-2013: Eligibility Review:4.4 Compliance Review:3.4 Pilot Approach: 0.6	FY2017-2013: Dispute resolution: 13.2 Monitoring Dispute resolution: 4.4 Compliance appraisal: 10.4 Investigation 9 Monitoring 7.4	FY2016-2015: Problem solving: 1; Compliance-eligibility review: 3.5; Compliance-compliance review: 8; Compliance-monitoring: 4.5	FY2016-2013: OSPF - eligibility review: 4; problem solving: 1 CRP - eligibility review: 1.50; compliance review: 1.25; monitoring: 2.75	N.A	FY2016-2012 Problem solving: 2.4 Monitoring 1.8. Compliance: 0.8; Compliance (monitoring) 1.8	Problem Solving: 3.8 Monitoring: 1.4 Compliance: 8

ANNEX 6

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OP 4.09 Pest Management;

OP 4.10 Indigenous Peoples;

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