

**ENVIRONMENT STRATEGY 2010**

**Environmental and Social Conflict Resolution Mechanisms**

# Environmental and Social Conflict Resolution Mechanisms

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## ACRONYMS

ADR	Alternative Dispute Resolution
ADB	Asian Development Bank
AfDB	African Development Bank
CAO	Office of the Compliance Advisor/Ombudsman of the IFC
CDA	Community Development Agreement
CODE	Executive Director's Committee on Development Effectiveness
CRM	Conflict Resolution Mechanisms
CSR	Corporate Social Responsibility
DR	Dispute Resolution
DRB	Dispute Review Board
DRM	Dispute Resolution Mechanism
ESCR	Environmental and Social Conflict Resolution
ESCRM	Environmental and Social Conflict Resolution Mechanism (s)
GRM	Grievance Redress Mechanism
IBRD	International Bank for Reconstruction and Development
IEG	Independent Evaluation Group
IFC	International Finance Corporation
IP	Inspection Panel
Keystone	The Keystone Center
MIGA	Multilateral Investment Guarantee Agency
PBESDRM	Project Based Environmental and Social Dispute Resolution Mechanisms
POC	Point of Contact
TTL	Task Team Leader
WB	World Bank
WBG	World Bank Group

## Executive Summary

The World Bank currently lacks a formal conflict resolution mechanism (CRM). As a result, when conflicts arise in the context of Bank-supported projects, interventions by Bank staff tend to be ad hoc and thus, vary from one situation to the other. This lack of a coherent approach to conflict management does not only result in uneven treatment of affected communities, but also threatens the social and environmental sustainability of Bank-supported projects. A host of domestic and international organizations, including other organizations of the World Bank Group, have embraced reforms to create and enhance conflict resolution and accountability mechanisms. The Bank, once the leader in setting standards and policies, is trailing them.

The Bank is currently in the process of developing its 2010 Environmental Strategy, which will guide the Bank's efforts to address current and future environmental challenges. This opens a window of opportunity to revise and improve the Bank's policies and procedures, including the possibility of adopting a Bank-wide environmental and social conflict resolution mechanism.

This analytical work revisits the Bank experience in conflict resolution to understand more fully the approaches that have been taken in the past and actions that can be taken to strengthen them. It aims to answer two fundamental questions:

- a. Are the Bank's current CRM consistent with international best practices for environmental conciliation, mediation and other dispute resolution mechanisms?
- b. What are the main shortcomings in both the design and implementation of the Bank's approach to dispute resolution and how can those shortcomings be corrected?

The approach taken in this analytical work consisted of reviewing a limited number of World Bank cases, surveying Bank managers and experts in the field, reviewing the experiences of other relevant domestic and international organizations, and incorporating the findings of relevant analytical work.

Based on the reviewed cases, the Bank's approach to conflict management would seem to suffer from several weaknesses, notably: (i) little uniformity of approach; (ii) over-reliance on country clients' conflict resolution mechanisms; (iii) little or no systematic pre-project conflict assessment; (iv) uneven interactions with project-affected communities; (v) uneven informal and formal grievance mechanisms; (vi) uneven coordination and communication with country clients; (vii) no systematic conflict-related data collection and management; and (viii) uneven individual and institutional expertise.

While the reviewed cases were limited in number, their findings seem to echo opinions expressed by IEG and the Bank Management, and were generally confirmed by interviewed Bank staff. Based on these findings, as well as on the experiences of other agencies and the opinions of experts, this analytical work recommends the establishment of a Bank-wide environmental and social conflict resolution mechanism that builds on the following pillars:

1. **Strengthen the Bank's core data and information systems.** This should be done by: (i) building and maintaining an accurate statistical data base and full reporting capability for all environmental grievances, conflicts, and disputes; (ii) requiring clear narrative administrative records for all ADR and ECR complaints, disputes, and conflict negotiations for every project; (iii) ensuring that the narrative records are

available for an internal analysis of continuing institutional accountability and compliance issues, trends and opportunities for improvement; (iv) providing an annual scorecard to the Bank's President providing a full profile of individual environmental complaints, grievances, and disputes as well as more general accountability and compliance issues and trends; and (v) using the scorecard to help set annual conflict management and compliance goals and strategies for the coming year.

2. **Strengthen the Bank's grievance and complaint handling procedures** by: (i) creating a defined ladder or "escalator" of embedded formal and informal grievance processing procedures at the project and regional levels; and (ii) ensuring clear but reasonable time limits at each stage of the escalator.
3. **Strengthen grievance prevention and grievance handling at the project level** by: (i) embedding consistent conflict assessment procedures in all projects; (ii) based on the assessment, during the project identification, preparation and appraisal phases, and as a condition of approval, organizing and implementing specific stakeholder engagement strategies to build relationships with potentially affected communities, anticipate and proactively address coming conflicts, and ensure understanding of, and agreement with, GRMs; (iii) creating and publicizing a single point of contact (POC) for every project so that concerned or aggrieved communities and individuals have a specific person to communicate and coordinate with; and (iv) training all key project managers and POCs in negotiation, the use of mediative and facilitative problem solving strategies for conflict anticipation, and mechanisms for conflict management and conflict resolution.
4. **Strengthen the bank's technical ADR/ECR resources** by: (i) creating an ECR/ADR "center of excellence" inside the Bank that can lend specialized technical and professional conflict resolution assistance; and (ii) utilizing adjunct, independent and impartial facilitators, mediators, technical experts and fact-finders where circumstances warrant it, especially persons skilled and respected in the countries and cultures of country client projects.
5. **Create a clear locus of responsibility within the Bank** by establishing the appropriate procedural firewalls and organizationally anchoring the new ECR/ADR system with either the Inspection Panel, IFC's CAO, an expanded role for an existing ombuds service inside the Bank, or the new "center for excellence". In any case, the IP will serve as the final arbiter of disputes.
6. **Strengthen country clients' grievance redress mechanisms** by (i) undertaking a systematic study and analysis of country client GRMs to better understand which methods have proven either more or less effective over time; and (ii) encouraging the

greatest possible systematic coordination with country clients GRMs and, where appropriate, with the representatives of the judicial systems of project host countries.

7. **Pursue an implementation strategy that builds consensus for changes** by (i) initiating a one-time well-structured and well-facilitated multi-stakeholder dialogue to review, amend and advance the findings and recommendations of this report; (ii) requesting the Bank's President to appoint a small, nimble, influential, and temporary working group to fully champion, author, and implement the new ADR/ECR system for resolving conflicts and ensuring continuing compliance and accountability; (iii) organizing, undertaking and evaluating a pilot ECR program in each region, recognizing the need for regional variation and adaptation; (iv) conducting periodic external reviews and critiques of the conflict resolution and compliance systems, once it has been installed.

The establishment and continuous operation of a widely-known, transparent, and efficient ESCRM would significantly contribute to enhance the environmental and social sustainability of Bank-supported projects. Among other benefits, the proposed mechanism would help the Bank to develop the ability to:

- Address the concerns of individuals or groups affected by Bank-supported projects soon after those concerns become apparent.
- Enhance public awareness of projects and their objectives and increase stakeholder involvement in projects.
- Reduce delays in project implementation by dealing with foreseeable challenges related to citizen complaints early in a project's life cycle.
- Provide practical suggestions to project staffs, thereby allowing them to be more accountable, transparent, and responsive to beneficiaries.
- Decrease the likelihood of fraud and corruption.
- Enhance the social and environmental outcomes of Bank-supported projects.
- Contribute to the attainment of the Bank's poverty alleviation goals.

## Chapter 1. Introduction:

2. The Bank has some experience with the use of Alternative Dispute Resolution (ADR)<sup>1</sup> techniques to respond to environment, natural resources, and social conflicts associated with Bank-supported investment projects. However, its experience is limited and often applied on an ad hoc basis. As a result, communities tend to receive uneven treatment from the Bank and it is likely that many conflicts unnecessarily escalate to the Inspection Panel or into the host country's court system.
3. This analytical work revisits the Bank experience to understand more fully the approaches that have been taken in the past and actions that can be taken to strengthen them. By analyzing the methods that have been applied by the Bank and related organizations, this analytical work suggests procedures that would resolve environmental and social disputes the Bank may face during the processing and implementation of Bank-financed projects and activities.<sup>2</sup> The analytic work presented herein takes a fresh look at environmental and social dispute resolution techniques used by the Bank and others that will lead to a strengthening of the World Bank's environmental policy approach in the face of the Bank's challenges in the early 21st century.
4. This analytic work examines options for enhancing environmental conflict resolution mechanisms (CRM) by using state-of-the-art approaches. The overarching objective is to evaluate those options and put forward a proposal that can be considered by the Bank for establishing a specific and transparent project-based environmental and social dispute resolution mechanism (PBESDRM), one that can help resolve the grievances of parties adversely affected by projects supported by Bank financing in a timely, effective and efficient manner.
5. The 2001 World Bank Environment Strategy emphasized the linkage between poverty and the environment, as well as the presence of opportunities to mainstream environmental considerations into Bank operations. The objectives of the Strategy were to: (i) enhance the quality of life; (ii) improve the quality of growth; and (iii) protect the quality of the global and regional commons. Elements within the "toolkit" to be used to attain these objectives included: (i) strengthening analytic and advisory activities; (ii) addressing environmental priorities through project and program design; and (iii) improving the safeguards system.

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<sup>1</sup> A glossary terms used to discuss environmental conflicts and their handling is attached at Annex 1.

<sup>2</sup> It is not the purpose of this paper to address or attempt to address the role, mandate and performance of the Inspection Panel in dealing with compliance with the World Bank Safeguard Policies.

6. In 2009, the Board of Executive Directors' Committee on Development Effectiveness (CODE) requested an update in order to fully achieve the goals set forth in the 2001 Environment Strategy. The Concept Note for the updated Environment Strategy includes, as a starting point, the hypothesis that the aforementioned three objectives of the 2001 Strategy remain valid. The design process for developing an up-to-date strategy includes validation of this hypothesis through consultations and analytic work. An important goal of the consultations is to learn from the Bank's past experiences so that the environmental sustainability of the Bank's work can be enhanced. Feedback received to date indicates that the adoption of consistent CRM across the Bank could significantly contribute to advance the Bank's mission.
7. This analytical work, conducted between May and October of 2010, reviews the CRMs that have been used by the IBRD (typically on an ad hoc basis) for resolving environmental and socially-related conflicts that arise in the course of undertaking global development projects. It focuses on answering the following questions:
  - a. Are the Bank's current CRM consistent with international best practices for environmental conciliation, mediation and other dispute resolution mechanisms?
  - b. What are the main shortcomings in both the design and implementation of the Bank's approach to dispute resolution and how can those shortcomings be corrected?
8. The analytical work's methodology consisted of: (i) reviewing specific World Bank cases; (ii) conducting a survey among Bank managers; (iii) interviewing other experts in the field; (iv) examining the work of other development banks and public agencies with significant CRM expertise; and (v) summing up other relevant studies, including the findings of the recently completed evaluation of the Independent Evaluation Group (IEG) on the implementation of the Bank's safeguard policies. Based on its main findings, this analytical work makes recommendations that would potentially benefit the identification, management and resolution of environmental and social grievances.
9. This document contains five sections: the second chapter reviews the Environmental and Social Conflict Resolution (ESCR) in a World Bank context. The third section identifies challenges and opportunities for the use of CRMs at the Bank. The fourth chapter formulates a proposed Environmental and Social CRM for the Bank. A first CRM proposal was discussed with a focus group of experienced Bank staff on September 9, 2010, which made significant contributions to improve the proposal, as reflected in this document. The fifth section presents conclusions and recommendations.
10. This document was funded by resources provided by the regional Safeguard Advisories of Africa and South Asia and by resources from the preparation of the 2010 Environment Strategy.

## **Chapter 2. Environmental Conflict Resolution in a World Bank Context**

### **I. The Emerging Field of Environmental and Social Conflict Resolution (ESCR)**

11. The causes for environmental and social conflicts are varied and complex. These often involve divided opinions about costs and benefits, cultural clashes, uncertain or contested science, conflicting development goals, strong and competing ideological beliefs, multiple international, national, or local governmental jurisdictions, and unknown and sometimes unforeseen impacts on future unborn generations, among other elements. In general terms, the concerns of stakeholders or rights-holders that have the potential to evolve into social and environmental conflicts, can be grouped under four main questions:
  - a. How should a particular environmental resource be managed into the future?
  - b. Who bears responsibility for something that has allegedly gone wrong environmentally or socially and how should that problem be properly remedied?
  - c. Will a proposed project, policy, or rule prove potentially deleterious to human or environmental health, to cultural continuity, or to long term social progress?
  - d. When substantial changes to the built or natural environments take place, or when unique environmental, economic, social or cultural burdens are imposed for dispersed benefits, how should communities be compensated or receive special benefits?
12. While the fields of Alternative Dispute Resolution (ADR) in general, and ESCR more specifically, are still developing, consensus-based problem solving procedures have an ever increasing role to play in matters of development, public health, natural resource management, agriculture, urban and regional planning, and energy development. Over the last 25 years, considerable practical experimentation, along with a rich academic, legal and popular literature, has emerged dealing with out-of-court conflict resolution. Within the larger body of ADR efforts, great attention has been given to the specialized challenges of reaching agreement when environmental and social issues or other public policy issues are at stake. These challenges are often framed within a consensus-seeking exercise or taken up in the context of resolving specific grievances or disputes.
13. Like litigation, ESCR is not a single immutable procedure. In actual practice, it consists of many different applications and technical processes, including: (i) traditional pre-trial settlement meetings; (ii) facilitated environmental “summits”; (iii) special committees and advisory boards; and (iv) regulatory negotiations, some of which may be conducted under

specific legal regimes, like the United States' Federal Advisory Committee Act ("FACA"). Currently, there is no single model of mediation or facilitation that prevails among practitioners or that is appropriate for all environmental cases. Approaches that have proved effective range from highly "evaluative" efforts to highly "facilitative" interventions, and from a focus on broadly defined problems with multiple issues, to single-issue matters that are more distributive and allocational in nature (Riskin, 2001).

14. Past experiences and research suggest that the use of strategies based on 'joint gains' problem solving, mediation, facilitation, and consensus building has significant potential for the Bank. While these approaches are not a panacea, significant disputes involving public health, public lands, and natural resources have been successfully mediated or facilitated since the early 1970s. This includes 'upstream' cases when rules, policies and procedures are being made and 'downstream' issues when parties are involved in enforcement and compliance (Bingham, 1986).
15. However different they may be from each other, all ESCR processes share certain common characteristics that are relevant to the Bank. They are all attempts at strategic or tactical cooperation in the face of real or suspected environmental problems. They all aspire to some form of optimization, meaning, they constitute a search for Pareto-preferential outcomes, in which no group or individual can be further benefited without adversely affecting other group or individual, that can maximize mutual gains. They all aspire to reduce the transactional costs of unfettered conflict. And finally, all forms of ESCR aspire to practical outcomes that improve relationships and prevent unnecessary further conflict (Debono, 1990; Heifetz, 1994; Schumacher, 1978; Roberts, 2000).

## **II. ESCR at the World Bank**

16. The Bank is trailing other WBG organizations and international financial institutions in the adoption of institutionalized CRMs. The Bank's Independent Evaluation Group (IEG) recently completed an in-depth, forward-looking analysis of the effectiveness of WBG and clients' safeguard policy frameworks, IFC's and MIGA's performance standards, as well as the emerging experience of the World Bank's pilots in the use of country systems for environmental and social safeguards. The report finds that, even though careful attention to complaints, disputes and grievances can increase responsiveness to project-impacted stakeholders, the Bank does not have a fully effective system for receiving or resolving complaints from project-affected persons. The report notes that the Bank continues to deal with such issues on an ad hoc basis, while the IFC and other international financial institutions have embraced reforms to increase accountability and create mediation mechanisms (IEG, 2010).
17. The World Bank is currently developing its 2010 Environment Strategy. As a part of the process, consultations were held across the six regions where the Bank operates, donor

countries, and with the private sector. In addition, a dedicated website was created to welcome comments on the Bank's performance in achieving the goals set forth in the 2001 Environment Strategy and to receive recommendations on the way forward. During these consultations, participants emphasized the Bank's need to adopt flexible and specialized conflict resolution mechanisms. In addition, feedback elicited during consultations suggests that the Bank is likely to operate in increasingly conflict-prone contexts as a result of the anticipated effects of climate change and heightened social tensions.

### **III. Grievance Handling, Sustainability, and Systemic Reform**

18. The World Bank is committed to promoting environmentally and socially sustainable development with the ultimate goal of reducing poverty. As the recent IEG report indicates, both managers and staff support the Bank's sustainability and safeguards policies, which are considered among the Bank's policies and procedures that help deliver high quality results to clients (IEG, 2010).
19. Other public, private and international organizations that are also committed to sustainable development have adopted mechanisms that aim to balance conflict resolution with greater organizational accountability.<sup>3</sup> The distinction between these two aspects is crucial and, depending on the organization, may be addressed by the same or different units. CRMs, whether formal or informal, aspire to lead to the fair, efficient and timely resolution of complaints, grievances, and disputes. Such conflicts may arise when groups or individuals are affected (or perceive they will be affected) even when the Bank and its client countries comply with all the existing safeguards policies. In contrast, accountability mechanisms deal with situations where communities were affected mainly due to the lack of compliance with existing policies.
20. The Inspection Panel (IP) constitutes the Bank's main accountability mechanism and has had an increasing role in resolving conflicts. Through the Panel, two or more people who are affected by a Bank-financed project can seek redress and, simultaneously, have some level of assurance that systemic compliance issues get addressed. The existence of the Panel acknowledges that large institutions like World Bank often have significant, sometimes negative impacts on populations, that checks and balances are required, that affected populations need voice in matters that affect them, and that the Bank itself must continue to learn, adapt and stay responsive to the increasing complexity of its own work in diverse parts of the world.
21. Both IEG and the Bank Management believe that there would be value in establishing a CRM in the Bank that is separate, but complementary, to the IP (IEG, 2010). The IP is a

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<sup>3</sup> See Annex 4.

“back end” system, which comes into action when something has gone wrong. Since its inception in 1993, through June 30, 2009, the IP logged 58 cases (Inspection Panel, 2009). This number is low, considering that the Bank may have around 1,800 Category A or B projects in preparation or underway at any one moment. While there has been no formal analysis of this situation, it is possible that many disputes were either effectively dealt with informally or more formally at the project or region levels, found other forums for resolutions such as client country Grievance Redress Mechanisms (GRMs), or simply went unresolved. The adoption of a CRM by the Bank would help to ensure that all conflicts not related to compliance issues are adequately identified, managed and resolved. The CRM would have the potential of responding more promptly to stakeholder concerns and could even assist in conflicts that are not necessarily with the Bank, but between clients and project-affected people, but that could be potentially brought for resolution to the Bank.

#### **IV. Analysis of Selected World Bank Cases**

##### ***Background and Criteria for Analyzing the Cases***

22. The first step of this analytical work’s methodology consisted of reviewing a limited number of Bank cases to understand what mechanisms are usually established to minimize and resolve potential conflicts, as well as to illustrate the way in which the Bank responded after conflicts arose. A total of eight cases were selected, namely: (i) The West Africa Gasoline Project; (ii) The Mumbai Urban Transport Project; (iii) The Bumbuna Hydroelectric Project; (iv) The India Coastal Zone Management Project; (v) The Matanza Riachuelo Water Quality Project; (vi) The Brazil Susteneval Project; (vii) The Pakistan Municipal Services Improvement Project; and (viii) Pakistan Earthquake Relief. For each of these projects, information was assembled and reviewed, relying mostly on documents publicly available at the Bank’s website. In some cases, the information was complemented with additional documents and materials provided by Bank staff. When possible, telephone interviews were conducted with individuals that were intimately familiar with the projects.
23. Though limited in sample size, these cases nonetheless offered a diverse look at how project grievances and conflicts are currently managed at the Bank. Like most Bank projects, each case entails complex social, political, environmental and technical histories, long chronologies, and many aspects and components which are not readily accessible by all stakeholders and which can be looked at from different angles. While these cases may not be representative of the Bank’s approach to conflict resolution, they do provide insights about the existing Project Based Environmental and Social Dispute Resolution Mechanisms (PBESDRMs), grievance mechanisms, and stakeholder relationships.
24. The eight cases were reviewed based on key elements of a robust and mature ESCR or ADR system. In particular, five elements were identified as being especially important and indicative to higher or lower functioning GRMs and provided a framework for case

interrogation (Table 1). While these five are by no means the only attributes of a good PBESDRM system, they are particularly relevant in obtaining insights and developing recommendations on how the Bank can develop more constructive relationships working with project stakeholders and adopting pro-active effective problem solving approaches. The elements focus on processes rather than outcomes, as the analysis assessed whether an adequate CRM was in place. Full analyses of the eight cases are included in Annex 2.

**Table 1. Criteria for Bank Case Reviews**

<b>Key Component of a Robust System</b>	<b>Research Questions</b>
Assessment	<i>Is there evidence that up-front conflict assessment activities, either formal or informal, took place?</i>
Compacts, Contracts or Agreements with Stakeholders	<i>Is there evidence that key environmental, social, and community stakeholders were identified, that their issues were identified, and that agreements were made with them to try to address their concerns early on?</i>
Negotiation Opportunities that are Created or Used During the Project's Life Cycle	<i>Is there evidence that negotiation opportunities, either formal or informal, were created and used during the project cycle?</i>
Resources Available and Used for Anticipating and Addressing Conflicts	<i>Is there evidence that specific human and financial resources were available and used to address impending or anticipated conflicts?</i>
Informal or Formal Grievance Mechanisms	<i>Is there evidence that informal or formal grievance mechanisms short of intervention by the Inspection Panel were established, understood by stakeholders, and used?</i>

### **Findings of the Analysis of Bank Cases**

25. The analysis of the eight cases mentioned above leads to the following conclusions:

- a. **Little Uniformity of Approach.** While different projects generate different sorts of environmental complaints, the majority of cases examined do not seem to suggest an early, uniform or reasonably consistent philosophy of managing grievances at the Bank's operational, regional or corporate levels. In fact, if these cases are representative of a larger universe of projects, the current lack of early and clear procedures across different regions would virtually guarantee pre-mature escalation of some matters to the Inspection Panel or client country GRMs without availing possible solutions that could have been forged at the project or regional level had better problem identification and problem-solving methods been in place. It should be noted that some regions and countries seem to be more sensitive and responsive to

complaints than others and do appear to have at least some active grievance mechanisms in place.

- b. **Over-reliance on Country Clients' GRMs.** The analysis suggests that some matters might have been resolved at operational project levels had country clients actually had effective GRMs in place, or used them. Even recognizing the different and sometimes disparate levels of civil society and jurisprudence development in different nations, it is not fully clear from the cases which countries did or did not have effective GRMs in place prior to project approval. Regardless, the Bank's responses to country clients seem not to be uniform and do not seem to emphasize the need for early resolution and creative problem solving.
- c. **Little or No Systematic Pre-Project Conflict Assessment.** While the Bank does considerable technical, social, and financial diligence before and during implementation, most of the cases do not show evidence of systematic conflict scoping processes that would anticipate future project-related disputes and build GRMs or other ESCR processes into either the Bank's toolbox or the toolbox of the client countries.
- d. **Uneven interactions with Project-Affected Communities.** The Bank appears to be quite attuned to consultation processes that are needed for purposes of Environmental Assessments, including the social components of EAs. There is a solid record of many instances where numerous meetings were organized with affected stakeholders, consultations were undertaken, and conflicts were resolved informally. In some instances, these were recorded in the minutes of meetings. However, there is little evidence of signed agreements, community compacts, community development agreements, or negotiated settlements. It is unclear whether the lack of evidence is due to the inexistence of such instruments, or whether these exist but are part of classified documents that were not available during the preparation of this work.
- e. **Uneven Informal and Formal Grievance Mechanisms.** A prominent feature is the seeming lack of actual complaint handling procedures in project documents. While GRMs were identified in some cases, missing were formal complaint receiving systems and procedures (receipt, registration, acknowledgement, grounds for acceptance or rejection, time periods for resolution, etc.) as well as the informal windows of opportunity such procedural events create. As indicated before, this does not mean such procedures do not exist, but only that in many cases there is scant evidence of those in the materials available to the public (and thus, for this analytical work). Even where there are project-level grievance mechanisms in place, there is a lack of a comprehensive conflict management framework that includes systematic

conflict assessment, prevention, management, and resolution approaches during the life cycle of the project.

- f. **Uneven Coordination and Communication with Country Clients.** Some of the examined cases suggest a lack of early coordination and communication with the GRMs and/or legal representatives of the client countries. It is clear that unforeseen political events beyond the control of Bank managers often arise, but several cases suggest that much tighter communication and coordination may have helped reduce or remediate some of the problems that arose.
  
- g. **No Systematic Data.** An evident gap, and one that should be filled in the short term, is the lack of a solid data base that can provide capable snapshots of environmental conflicts from the project and operational levels up to the region and then on up to World Bank as an entire organization. While the Inspection Panel keeps good data on its case work, there is a dearth of other such evidence at the general project level.
  
- h. **Uneven Individual vs. Institutional Expertise.** The case analysis, including telephone interviews, revealed that the Bank already has on its management teams significant individual conflict management talents and skills. However, the analysis also found that individuals who have been sensitized, trained or schooled in the crafts of negotiation, mediation, facilitation, and conflict assessment and analysis seemed to be more the exception than the norm.

### **Chapter 3. Challenges, Choices and Opportunities for Environment and Social CRM at the Bank**

26. The analysis of a sample of Bank cases indicates that there are ample opportunities to strengthen the Bank's CRMs. While the reviewed cases were limited in number, their findings seem to echo opinions expressed by IEG and the Bank Management, and were generally confirmed by interviewed Bank staff. As discussed in the previous chapter, areas that could be enhanced include: (i) the adoption of a uniform approach in the Bank's current environmental conflict management system; (ii) conducting assessments of the reliability of country clients' grievance redress mechanisms; (iii) preparation of systematic pre-project conflict assessments; (iv) strengthening capacities and frameworks within the Bank for an even interaction with project-affected communities and a uniform use of informal and formal grievance handling at the project level; and (v) improving the allocation and availability of individual and institutional expertise for conflict resolution. The analysis of Bank cases indicates that capable and committed Bank task teams are doing many good things to prevent, manage or resolve conflicts. However, there is no coherent organizational policy on conflict resolution to guide their actions and ensure consistency across the Bank.
27. The analysis also reveals significant gaps that hinder the Bank's capacity to prevent, manage and resolve conflicts. A crucial tool that is missing is an information system that collects routine centralized data about the full universe of grievances, disputes, conflicts, and their outcomes. Also missing are systematic project conflict assessment procedures that could help the Bank to better establish and navigate relationships with stakeholders. The state-of-the-art stakeholder engagement processes that other institutions, agencies and organizations have adopted constitute valuable examples that the Bank could consider to develop such procedures. In the absence of Bank-specific PBESDRM, most conflicts arising from Bank-supported projects are handled by the client countries' GRM, which vary significantly from one country to another, or by the Bank's Inspection Panel. This situation leads to uneven interactions with project affected communities.
28. This chapter discusses the challenges, choices and opportunities for environment and social CRMs at the Bank. The discussion is based on the notion that the installation of any new or additional improvements will need to build on the Bank's declared values and existing policies and mechanisms, including its environmental and social safeguard policies. Any additions or improvements must fully balance the early resolution of individual disputes, grievances and complaints with wider Bank compliance, accountability and justice needs. The discussion also recognizes that, while ADR should be an indispensable element of the Bank's approach to resolving conflicts, it is not by itself a panacea. Non-judicial problem solving procedures like mediation, facilitation, and stakeholder engagement must be part of, and nested in, a logical grievance management system.

## I. Balancing Potentially Competing Goals

29. The World Bank faces a number of strategic decisions for the adoption of ESCR and ADR procedures and particular attention will need to be given to the trade-offs between different strategic options. For example, should the Bank create more formal procedures or focus more on informal processes? Should ESCR and ADR be embedded inside projects or should the associated capabilities be centralized? Should the Bank use internal resources to resolve conflicts or should it rely on independent third parties? Should these processes be linked to the Inspection Panel or should they be kept separate? Time, cost and quality are central variables in the assessment of alternatives and the trade-offs involved.<sup>4</sup>
30. Recognizing that there is no perfect or ideal system, the Bank faces the opportunity to adopt an ESCR that that reduces unnecessary environmental conflicts and that incorporates the features needed to meet a variety of internal and external needs. A key challenge in designing a mechanism that can work efficiently and effectively for the Bank is to incorporate the needs of different stakeholders, as well as the organizational structure and aspirations of different Bank units (Slaikeu and Hasson, 1998; Constantino and Merchant, 1996; Ury et al, 1988; and IFC, 2008). Some principles that have been suggested for non-judicial mechanisms such as ADR and ESCR and that can support the development of the Bank's Environmental and Social Conflict Resolution Mechanism (ESCRM) are the following: (Ruggie, 2010; Keystone 2010):
- a. **Legitimacy.** ADR, ESCRM, GRMs and other adjunctive and non-judicial mechanisms must have clear, transparent, and sufficiently independent governance structures to ensure that no party to a particular conflict can interfere with the fair conduct of that process.
  - b. **Access.** A mechanism must be publicized to those who may wish to access it and provide adequate assistance for aggrieved parties who may face barriers to access, including language, literacy, awareness, finance, distance or fear of reprisal.
  - c. **Predictability.** A mechanism must provide a clear and known procedure with a time frame for each stage and clarity on the types of process and outcome it can and cannot offer, as well as a means for monitoring the implementation of any outcome.
  - d. **Equity.** A mechanism must ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair and equitable terms.

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<sup>4</sup> Annex 3 includes a tensions and trade-offs between different options in greater detail.

- e. **Rights Compatible.** A mechanism must ensure that its outcomes and remedies accord with internationally recognized human rights standards.
- f. **Transparent.** A mechanism must provide sufficient transparency of process and outcome to meet the public interest concerns at stake and should presume transparency wherever possible. Non-state mechanisms in particular should be transparent about the receipt of complaints and key elements of their outcomes. The mechanism must be transparent, not just to grievants, but to borrowers, potential community users, stakeholders, rights holders, and to Bank personnel at all levels.
- g. **Aligned with Values.** Any new improvements to the dispute resolution and alternative dispute resolution systems need to build on the declared values of the World Bank, including its environmental and social safeguard policies.
- h. **Balancing Individual Disputes and Systemic Reform.** New additions and improvements must fully balance the early resolution of individual disputes, grievances and complaints and, simultaneously ensure that wider Bank compliance, accountability and justice needs continue to be served well.
- i. **Integrity.** Conflict anticipation and prevention methods as well as GRMs that are employed need to be put in place before projects are approved so that they are part and parcel of projects, not afterthoughts or discretionary additions.
- j. **Stakeholder Participation.** At the operational and project levels, the Bank must seek participation in and concurrence with ESCRM by stakeholders who are potential users of it.
- k. **Progression.** To truly be systematic, the new additions or improvements need a clear progression (“escalator”) of levels at which a given complaint or grievance is handled, including elapsed time standards after which a complaint or dispute bumps up, grievance eligibility standards; and formal registration, receipt and acknowledgment of complaints.
- l. **Traceability.** Additional improvements to the Bank’s capabilities need to include accurate record keeping of all complaints, their status, and their dispositions, both within the project and cumulatively across the Bank’s regions.
- m. **Coordination within and outside the Bank.** Any new improvements must encourage multiple methods of informal problem solving available at the project or operations level, including the use of traditional and customary dispute resolution systems in the countries and cultures the Bank operates in. These also need to be present and coordinated at the regional and corporate levels.

- n. **Finality.** The system must at the highest rung of the ladder lead to finality and closure beyond which there is no appeal, as it does now with the IP.

## II. Strategic Choices

31. Following is a brief description of strategic choices the Bank faces in establishing an ESCR. In most cases, there are trade-offs between available alternatives, including considerations of costs, efficiency and effectiveness. The paragraphs below outline some of the key features of the ESCR that is proposed in this analytical work.

- a. **Inside or Outside?** One approach is to embed all formal and informal ESCR/ADR grievance redress mechanisms inside the Bank with clear upward reporting chains and progressively stronger levels of authority. The alternative approach is to create an approach that takes grievance redress mechanisms farther away from the Bank's central authorities. The proposed ESCR embodies elements of both.
- b. **Centralized or Decentralized?** One approach might be to create a more centralized authority within the Bank to handle environmental and social grievances and complaints whenever and wherever they emerge. This might mean, for example, registering complaints not at the operations level but with an independent or quasi-independent body that, short of the Inspection Panel, has fact-finding, advisory and ESCR/ADR capabilities. The other approach is to decentralize these functions at various appropriate operational, regional, or corporate levels. The proposed ESCR would utilize aspects of both.
- c. **Formal or Informal?** A system can lean towards higher or lower levels of formality and informality. Greater formality would call for increased procedural clarity and certainty. Greater informality would call out for less. The proposed ESCR would embrace both.
- d. **Build Anew or Couple to Existing Structures?** A system can either be additive to existing entities and integrated with them or independent of them with logical connective tissues linking them. In the case of World Bank, there are five options to consider:
  - i. ***Embed specific procedures in a progression of Bank project, regional and corporate levels.*** The Bank could simply create and install a new set of procedures and require that these processes be used as part of the conventional flow of business.
  - ii. ***Create a new technical assistance capacity ("Center for Excellence").*** In addition, or even as a possible substitute to the above, the Bank could

consolidate its DR and ADR mechanisms in a single new office that doesn't duplicate functions now being performed by the Inspection Panel.

- iii. ***Consolidate the ESCR functions with the office of the Inspection Panel.*** While appropriate “firewalls” and procedural guarantees would need to be put in place, the ultimate function of putting ESCR processes in place could be brought together.
- iv. ***Expand CAO's jurisdiction.*** The Office of the Compliance Advisor/Ombudsman of the IFC (CAO), which is ultimately part of the World Bank Group, has an effective and timely set of mechanisms. Were IFC willing and able, their ombuds, advisory and compliance mandates could be expanded to cover environmental conflicts arising from Bank cases.
- v. ***Couple these functions to another existing ombuds function in the Bank.*** The Bank has other mediation, ombuds and mediative capacities to which this could be added on.

## **Chapter 4. Towards a Bank's Environmental and Social Conflict Resolution Mechanism**

32. This chapter discusses a proposed Environmental and Social Conflict Resolution Mechanism (ESCRM) for the Bank. This system builds on a framework that follows the natural cycle of a World Bank project, beginning with Project Identification and ending when the project is fully closed. The system would help to carefully measure performance, in this instance, the actual number and disposition of all complaints; to initiate stronger front-end procedures that help anticipate, prevent or avoid unnecessary problems; to take additional concrete actions that move towards zero unmanaged and unattended disputes with the communities and stakeholders affected by the projects it engages in; and to continue and strengthen the tradition of the Inspection Panel in ensuring institutional compliance and accountability.

### **III. Main Features of the Proposed ESCRM**

33. Specifically, the ESCRM should be developed based on the following seven pillars: (i) strengthening the Bank's core data and information systems; (ii) strengthening the Bank's grievance and complaint handling procedures; (iii) strengthening grievance prevention and grievance handling at the project level; (iv) strengthening the Bank's technical ADR/ESCR resources; (v) creating a clear locus of responsibility within the Bank; (vi) strengthening country clients' GRMs; and (vii) pursuing an implementation strategy that builds consensus for changes. These pillars are further described below.

#### ***1. Strengthening the Bank's core data and information systems.***

- a. **Build and maintain an accurate statistical database and full reporting capability for all environmental and social grievances, conflicts, and disputes.** The Bank needs to gather basic and continuous data on the occurrence, nature and disposition of complaints, regardless of whether those complaints come from individuals or communities and regardless of whether they come before the purview of the IP. Managing a conflict resolution system without such data would be analogous to a court system that didn't know how many lawsuits were filed, how long they took in the court system, and how they were finally disposed of. More specifically:
  - i. After fully determining the Bank's data requirements, design a uniform data collection system that, at a minimum, stores the following information in a sortable and monitorable database: name(s) and contact information; nature of complaint (create a typology that can be coded); dates received; venues and approaches used; nature of final disposition; date of final disposition.

- ii. Ensure that all project managers, TTLs and others are trained to use it and hold them accountable for quarterly and annual reports.
  - iii. Develop an annual “scorecard” that tracks the number of grievances, conflicts, and disputes across all projects and regions and makes comparisons to previous years.
- b. **Require clear narrative administrative records for all ADR and ESCR complaints, disputes, and conflict negotiations for every project.** While it is inevitable that some conflicts will escalate, either to the Inspection Panel or into the court system of the client country, it is important that project personnel and/or regional units maintain a log or journal of interactions with complainants, disputants or grievants. This log should keep accurate records of public meetings, stakeholder interactions, and negotiations, successful, partially successful, or unsuccessful with both communities and individuals. More specifically:
- i. A record of both formal complaint handling and informal attempts at negotiated problem solving should be kept at the project, region, and corporate level.
  - ii. Records are for administrative purpose and should be written in objective language, i.e. “Met today with X to discuss his complaint about his bicycle which he says was damaged by a World Bank jeep. Inspected the bicycle and agreed to reimburse him after speaking with the driver.”
  - iii. Ensure that all contacts and actions are logged so that a full chronology of a complaint can be understood.
  - iv. Logs, diaries and narrative records should be preserved as part of the permanent records of the project.
- c. **Ensure that the narrative records are available for an internal analysis of continuing institutional accountability and compliance issues, trends and opportunities for improvement.** The early resolution of complaints and grievances is an institutionally important and valuable asset to the Bank but it could also mask larger issues of accountability and non-compliance. Records need to be available to understand trends, systemic flaws or larger injustices that may occur locally and/or regionally within or across projects. It is through such a system that the Bank’s environmental and social safeguard policies can be enforced and improved. More specifically:
- i. Establish simple protocols by which World Bank officials at the corporate level can secure access to all project logs.

- ii. Establish simple protocols that provide assurance that information from project logs is used only for the intended purposes of auditing for potential Bank non-compliance, accountability or failure to implement environmental and social safeguards.
- d. **Provide an annual scorecard to the Bank’s President and Management providing a full profile of individual environmental complaints, grievances, and disputes as well as more general accountability and compliance issues and trends.** The Bank’s President, Board, and Senior Executives need to understand and monitor the breadth, depth and pervasiveness (or lack of pervasiveness) of the environmental and social conflicts generated by Bank projects. The IP’s reports suggest roughly three to four cases formally come before the Panel each year, but this might only be the tip of an unknown iceberg. Over time, a scorecard will verify this, refute it or provide alternative understandings of what is taking place. More specifically:
- i. The specific components of the scorecard warrant further study and discussion but should include accurate information on numbers of complaints, how they were handled at different levels of the “escalator” (as described in further detail below), and their dispositions.
  - ii. If feasible, the scorecard could include information on how much time was required, by whom, and what levels of stakeholder satisfaction were achieved.
- e. **Use the scorecard to help set annual conflict management and compliance goals and strategies for the coming year.** This is valuable information internally and externally. It can be used to further improve the Bank’s annual goal setting and conflict management strategy-making and to help different parts of the Bank coordinate and communicate. More specifically:
- i. The data provided by the scorecard should be used to help further target and refine the procedural uses of ADR and ESCR efforts.
  - ii. Different levels of data will have relevance to different parts of the Bank. Some may be used to improve performance at the project level. Other data may be useful to the Bank’s regions, its legal departments, or to the Inspection Panel.
  - iii. The rolled up scorecard can also be used to monitor actual performance against plans. This could involve convening managers annually to review regional and collective performance, special meetings with stakeholders, or information sharing meetings with other development institutions.

## *2. Strengthening the Bank's grievance and complaint handling procedures*

- a. **Create a defined ladder or “escalator” of embedded formal and informal grievance processing procedures at the project and regional levels.** The Bank should create a well defined and well understood ladder of procedures by which disputes can be addressed and potentially resolved at progressively higher levels. Once in place, this will create a clear set of procedures and events for disputants. Every rung on the ladder, floor on the escalator, or “event” on the pathway will offer fresh opportunities for problem solving and DR. More specifically:
- i. The ladder must be unambiguous both to prospective stakeholders and complaint holders, as well as to the Bank's operational, regional and corporate staff.
  - ii. The ladder should include a defined and publicized complaint filing system. Individuals or communities with grievances should be required to lodge their grievances and complaints at the project level but should also be encouraged (but not required) to talk informally with project managers prior to filing a formal complaint.
  - iii. As is done by ADB and IFC<sup>5</sup>, every opportunity for assisted or unassisted informal negotiation and problem solving should be actively pursued before a complaint formally escalates to the next stage. At any time during the trajectory of a complaint, the complainants and the Bank may avail themselves of the technical problem solving services offered by the Center for Excellence described below.
  - iv. When written complaints are submitted, they should include:
    1. How the requester is, or is likely to be, directly affected materially and adversely by the assisted project.
    2. The direct and material harm claimed and how it is, or will be, the result of an act or omission of the Bank's alleged failure to follow its operational policies and procedures in the course of the formulation, processing, or implementation of the Bank-assisted project.
    3. A description of the rights and interests that have been, or are likely to be, directly affected materially and adversely by the Bank-assisted project.

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<sup>5</sup> See Annex 4.

4. Identification of the requester and contact information, along with the reasons for any request for confidentiality.
  5. If there is any representative, identification of the people affected by the project and evidence of authority to represent them.
  6. A brief description of the Bank-assisted project, including the name and location.
  7. The desired outcome or remedies that people affected by a project believe the Bank should provide.
  8. An explanation of the results of the requester's efforts to address the complaint first to the Project's Point of Contact (POC), and then to the Regional POC.
  9. If a Regional POC has rejected the complaint as ineligible, an explanation of why the request is nonetheless eligible for compliance review.
  10. An explanation of why any of the above information cannot be provided.
  11. Any other directly relevant matters or facts with supporting documents.
- v. Where complainants or disputants are unable by virtue of language, literacy, or accessibility to actually formulate and file written complaints, a staff member from the independent body discussed below should be made available to provide assistance. This person should then be recessed from any further formal involvement by the body.
- b. **Ensure clear but reasonable time limits at each stage of the escalator.** So that conflicts don't languish (and sometimes thereby escalate), it is important to have defined time limits for managing a complaint or grievance once it is properly received and acknowledged. At each stage, there needs to be a "ticking clock" which can only be altered by mutual agreement of the Bank and parties bringing their complaints forward. More specifically:
- i. Once received, a complaint should have a defined number of days, probably no more than 50 working days, to act on the complaint and make a formal decision. This period of time can again be used to try to negotiate informal solutions.
  - ii. The period of time for taking action could only be extended by mutual agreement between the complainant(s) and an official project representative.

- iii. If a complaint cannot be resolved to the mutual satisfaction of the Bank and the complainant(s), the complaint should automatically bump up the escalator to the next floor which is the regional level. A designated regional representative would have an additional time period (no more than 30 working days) to try and achieve resolution.
- iv. If a complaint or dispute cannot be resolved at the regional level within that time frame, it should automatically bump up to one of the entities described below.
- v. If the Bank's representative and the complainant(s) agree that a dispute cannot be resolved at their level within the timeframe, they may bump it to the next level before the time period ends.

### ***3. Strengthen grievance prevention and grievance handling at the project level***

- a. **Embed consistent conflict assessment procedures in all projects.** Conflict assessment is designed to anticipate and identify conflicts that might arise, the principal issues that must be addressed in order to avert conflict, individuals and groups that have a stake in decision-making, strategies recognized by stakeholders for peacefully addressing conflict, a willingness among stakeholders to explore cooperative solutions, and, finally, a strategy for proactively resolving conflicts. More specifically:
  - i. Install a standard assessment template and procedure for the conduct of conflict or situation assessments. Require that they be done for all Category A and B.
  - ii. Link the conflict assessment so that it becomes a part of all project appraisals, social and environmental assessments, and approvals. For Category B projects, conduct the assessment in conjunction with the Environmental Assessment. For Category A projects, consider utilizing the services of the Center for Excellence or a separate, stand-alone and independently done assessment.
  - iii. Pay particular attention to indigenous and culturally sensitive conflict management and resolution protocols. Indigenous cultures often use traditional conflict resolution procedures and protocols that can be adopted or adapted to Bank-supported project needs.
  - iv. As part of the conflict assessment, identify areas where the benefits and costs of projects are not evenly distributed, i.e., benefits are regional but costs are local; or benefits accrue to some groups or individuals more than others, etc.
  - v. Use the assessment tool and procedure to fully explore the legal, political, economic, cultural, demographic, technological, and ecological contexts in

which the project is occurring, including whether and how the context is changing, and the kinds of conflicts, disputes and grievances that can be anticipated.

- vi. The assessment tool should conclude with recommended actions for preventing, managing and responding to conflicts.

b. **Based on the assessment, during the project identification, preparation and appraisal phases, and as a condition of approval, organize and implement specific stakeholder engagement strategies to build relationships with potentially affected communities, anticipate and proactively address coming conflicts, and ensure understanding of, and agreement with, GRMs.**

Properly done, an assessment at the start of a project helps inform and tailor a conflict management and grievance mechanism plan for a project. It also sets the stage for bringing together an assembly of stakeholders in the form of a well composed advisory group, roundtable, partnering process, committee of stakeholders, or a “dialogue” that anticipates conflicts and seeks to negotiate front-end solutions and communication strategies. In some instances, and based on the assessment, a stakeholder group can be organized for one or two meetings at the beginning of a project or it may become a standing advisory body for the life of the project, or even in some cases, a mediative body for resolving matters that arise between the Bank, the communities, and the client country. More specifically:

- i. Use systematic and robust stakeholder advisory groups and dialogues to develop project-tailored communication strategies and DRMs. These can take the form of specific partnering processes, roundtables, working groups composed of stakeholder representatives, or project focused policy dialogues.
- ii. Use these forums to explore potential community development agreements (CDAs) and/or other social contracts that can be incorporated into the overall project plan.
- iii. In appropriate project situations, develop specific charters signed by all stakeholders.
- iv. Work with stakeholders to develop clear and realistic outcome metrics and timelines that can be measured and monitored. These can include measureable outcomes, a plan and timeline for achieving stated goals, and an “all-party” monitoring and adaptive management framework for implementing and modifying the plan.

- v. Use the stakeholder dialogues to build capacity by providing third-party training and consultation for communities, project managers, task teams, and NGOs that are expected to be involved in a long term project.
  - vi. Work with stakeholders to develop clear and realistic steps and timelines for handling future grievances that may arise.<sup>6</sup>
  - vii. Provide funding mechanisms such as escrow or compensation funds that can be tapped to resolve disputes that occur during construction, operations and management, and after project completion.<sup>7</sup>
- c. **Create and publicize a single Point of Contact (POC) for every project so that concerned or aggrieved communities and individuals have a specific person to communicate and coordinate with.** One part of implementing a new ADR/ESCR system rests on a good design and systematic procedures. A second important part rests with clear communication as regards to who is the POC. This needs to be understood by both the communities of stakeholders as well as by the Bank. More specifically:
- i. For each project, designate and advertise a specific person who will be the key individual to receive and respond to complaints, grievances, or disputes.
  - ii. Ensure that this individual has sufficient authority and resources to settle disputes at the project level.
  - iii. This person needs to fully understand the complaint processing procedures (the ladder or escalator) and is versed in ADR and ESCR resources. This person may also need to be able to interact and coordinate with the country client's GRM system.
  - iv. It will be this POC's responsibility to keep accurate records, both narrative and statistical on the interactions with grievants and complainants.
- d. **Train all key project managers and POCs in negotiation, the use of mediative and facilitative problem solving strategies for conflict anticipation, and mechanisms for conflict management and conflict resolution.** There is a well

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<sup>6</sup> Wherever possible and not incompatible with the Bank's procedures, utilize culturally-specific DR mechanisms, protocols and locally respected and skilled mediators teamed with Bank mediators to respond to conflicts.

<sup>7</sup> Flexible funds that are not vulnerable to fraud or misuse can be critical to the success of conflict resolution functions, from the inception of projects to their closure. Whatever the mechanism, it must be designed to address unintended consequences and unrealized expectations and promises that may arise after the Bank completes its work.

understood body of negotiation principles and practices routinely taught in law schools, business schools, in the social sciences, and in corporations, community organizations, and NGOs. Bank personnel, especially those who are expected to interact with stakeholders during the life of a project, must be trained in state-of-the-art practices. This will help prevent, manage, and resolve many issues at various stages of the project. More specifically:

- i. Create a standard training package that teaches project level, regional POCs, and other senior Bank managers:
  1. The new ESCR/ADR policies of the Bank.
  2. State-of-the art negotiation skills.
  3. How to organize and/or conduct conflict assessments.
  4. How to organize and manage stakeholder groups.
  5. The wise and effective use of mediators, facilitators and ombudsmen from the body described in the next pillar.
- ii. Provide specialized trainings to Bank units and groups on request.
- iii. Build capacity within stakeholder communities to constructively engage with the Bank and resolve problems.

#### ***4. Strengthen the Bank's technical ADR/ESCR resources.***

- a. **Create an ESCR/ADR “Center of Excellence” inside the Bank that can lend specialized technical and professional conflict resolution assistance.** Most complex organizations, including most of those that are described in Annex 4, maintain an office, institute or program that is solely focused on ADR, ESCR and grievance management. Likewise, the Bank needs a “Center of Excellence,” a single office charged with supporting project field efforts and regions with training, facilitation, grievance mechanism design, and the organization and implementation of mediations on specific projects. Such an office has analogs at ADB, IFC and other development banks. More specifically:
  - i. Create a new and independent Center of Excellence within the Bank and model it on selected attributes of ADB's Accountability Mechanism, IFC's CAO, and/or some of the attributes of the federal, corporate and NGO entities mentioned in Annex 4.

- ii. Staff the new body with people well experienced in the use and application of DR, GMs, ADR and ESCR for the kinds of conflicts that arise in development projects.
  - iii. Ensure that the new body has specific capabilities in:
    - 1. Complaint handling
    - 2. Mediation, conciliation and facilitation
    - 3. Fact finding
    - 4. Training and consultation
    - 5. Culturally competent conflict resolution protocols.
  - iv. Develop within the center the ability to utilize the culturally and socially appropriate dispute resolution procedures of different country clients.
- b. **Utilize adjunct, independent and impartial facilitators, mediators, technical experts and fact-finders where circumstances warrant it, especially persons skilled and respected in the countries and cultures of country client projects.** Under the auspices of the aforementioned Center of Excellence, screen, train and maintain an independent roster of neutral mediators, facilitators and technical experts who can be used when requested by project managers, regional managers, or by the Bank's corporate leaders. More specifically:
- i. Through the Center of Excellence, create on a region-by-region basis a roster of credible ADR/ESCR specialists who can serve as independent mediators and facilitators.
  - ii. Ensure cultural and national diversity.
  - iii. Similar to the U.S. Environmental Protection Agency and the U.S. Institute for Environmental Conflict Resolution (see Annex 4), create systematic rules and procedures by which qualified outside experts can gain entry to the roster.

## 5. Create a clear locus of responsibility within the Bank

- a. **With appropriate procedural firewalls built in, organizationally anchor the new ESCR/ADR system with either the Inspection Panel, IFC's CAO, an expanded role for an existing ombuds service inside the Bank, or the new "Center for Excellence". In any case, the IP will serve as the final arbiter of disputes.** A new and more effective complainant and grievance system needs a World Bank "home". The Bank has any number of specialized dispute resolution offices but for the kinds of environmental and social challenges posed by some development projects, four options for organizational anchoring should be considered: (i) make the system a part of the IP; (ii) contract with IFC's CAO to perform these functions; (iii) utilize existing ombuds systems inside the Bank; or (iv) expand the center for excellence's functions beyond the technical assistance suggested in the previous paragraphs and give it the authorities and funding that would be required of a new entity. More specifically:
- i. Overall responsibility, management, coordination and jurisdiction for the new ADR/ESCR system should be handled in one of four ways:
    1. Organizationally locate it with the Inspection Panel.
    2. Organizationally contract with the CAO to perform the ADR/ESCR functions.
    3. Organizationally expand the role of an existing WB ombuds to handle PESBDRMs.
    4. Organizationally locate responsibility with the new Center of Excellence.
  - ii. Regardless of where it is located, appropriate firewalls must be created so that confidential information acquired in ADR and ESCR processes are not then used when complaints are heard for purposes of final fact finding by the Inspection Panel. IP procedures should be heard *de novo*.
  - iii. Ensure that the administrative review of trends conducted as part of the process recommended above to strengthen the Bank's data and information systems are conducted separately from a determination of any one case or complaint. The goal is not to reopen old cases but to determine if there are systemic failures of the Bank's safeguard policies and to ensure there is no failure of larger justice accountabilities.

## *6. Strengthen country clients' grievance redress mechanisms*

- a. **Undertake a systematic study and analysis of country client GRMs to better understand which methods have proven either more or less effective over time.** It is unclear how effective different country clients' GRMs might be and what institutional arrangements have proven to be more or less durable and predictable over time. Country clients' GRMs need to be studied and analyzed to help ensure more effective use. More specifically:
  - i. Conduct a robust inventory and analysis of country clients' GRMs to better understand which countries have had greater or lesser successes in creating and using formal or informal complaint handling systems. The study should include each country's actual track records.
  - ii. Where certain countries with larger number of Bank-supported projects have persistently been unable to create or utilize effective GRMs, ensure that the study captures the probable causes of failure.
- b. **Encourage the greatest possible systematic coordination with country clients' GRMs and, where appropriate, with the representatives of the judicial systems of client countries.** Predicated on the analysis and wherever possible, the Bank should carefully coordinate and not duplicate effective country clients' GRMs. Conversely, where country clients do not have effective GRMs, the Bank should ensure complainants are not "whipsawed" between systems and should, further, help countries develop model methodologies. More specifically:
  - i. Through the above study, or as a separate exercise, it will prove useful to host specific regional or country-by-country meetings to help fit the Bank's new ADR/ESCR system with the mutual needs of the countries and the Bank.
  - ii. Coordination with country GRMs will require tailoring of the ADR/ESCR methods based on the strengths and weaknesses of each country's systems and track records.

## *7. Pursue an implementation strategy that builds consensus for changes*

- a. **Initiate a one-time well-structured and well-facilitated multi-stakeholder dialogue to review, amend and advance the results of this study.** The recommendations presented in this analytical work are based on an analysis of a limited number of cases from Bank-supported projects and a desk review of the GRMs adopted by other agencies and development organizations. Thus, they would

benefit significantly from an inclusive discussion, both internally with the departments that might have a stake in or be affected by the new ADR and ESCR approaches outlined here, and externally with client countries, NGOs, and development partners. More specifically:

- i. Before finalizing a new ADR/ESCRM for the Bank, assemble a group of internal and external stakeholders to review this study and any proposed actions that might be result. This is both in keeping with the values of the Bank and the spirit of ADR and ESCR.
  - ii. Ensure that the stakeholders assembled include a diversity of individuals and organizations who can speak from real-life experience, who are critical of the Bank, as well as other ADR/ESCR experts.
- b. **Request the Bank’s President to appoint a small, nimble, influential, and temporary working group to fully champion, author, and implement the new ADR/ESCRM for resolving conflicts and ensuring continuing compliance and accountability.** Because changes of the sort described in this analytical work often threaten status quo interests, we recommend that the Office of the President be the initial impetus for setting prospective changes in motion, in this case through the appointment of a high-level Bank working group. More specifically:
- i. Brief Bank President Zoellick to enlist his views and potential support for the recommendations in this report.
  - ii. Encourage him to form a high level group to help vet, improve and potentially champion the changes described here.
  - iii. Capture best practices.
- c. **Organize, undertake and evaluate a pilot ESCR program in each region, recognizing the need for regional variation and adaptation.** Before fully finalizing a new ADR/ESCRM, it would be useful to test drive and evaluate pilot programs in some or all of the Bank’s regions. This will allow considerable fine-tuning before a full-fledged system is adopted. More specifically:
- i. All new ADR and ESCR improvements should be viewed as “works in progress.” With the encouragement of the group identified above and before finalizing and codifying any new system, initiate several pilot programs in different regions to test their efficacy.
  - ii. Ensure that evaluations are conducted by independent individuals or groups with expertise in the evaluation and analysis of ADR/ESCR efforts.

- d. **Once installed, conduct periodic external reviews and critiques of the conflict resolution and compliance systems.** As the Bank does with other important rules, procedures and environmental and social safeguards, periodic external reviews should be conducted to ensure effectiveness and to reduce the risks of unintended consequences or not fully understand cascading impacts, especially in the national and cultural settings in which projects take place. More specifically:
  - i. Consistent with other World Bank periodic reviews of its environmental and social safeguard policies, ensure that the new mechanism is reviewed periodically.
  - ii. Ensure that such reviews are conducted by independent individuals or groups with expertise in the evaluation and analysis of ADR/ESCR efforts and that they are fully transparent to key stakeholders.

#### **IV. Costing the ESCR**

34. It is difficult to place precise financial estimates on the cost of establishing and operating the ESCR outlined in the previous section given the number of strategic decisions that still need to be made. However, it is reasonable to assume that the proposed ESCR would require, at a minimum, the following resources:
- a. Professional Staff. This will likely include a senior conflict resolution expert and leader and, initially, one or more associates who can help with establishing: (i) policies and procedures; (ii) internal management systems and proper reporting mechanisms; (iii) outreach, consultation, education and interface with critical offices and divisions within the Bank and with international NGOs; (iv) an initial in-flow of cases; and (v) handling of actual cases.
  - b. Administrative and Support Staff. This would require sufficient support to accomplish the above during startup.
  - c. Resources to retain outside, qualified independent mediators as may be needed.
35. The mechanisms of the IFC and the Asian Development Bank (ADB) are valid references to estimate the resources needed for the proposed ESCR. The IFC's CAO funds all assessments of complaints, compliance investigations, and advisory work from its own operating budget. In the event of an unexpected volume of complaints, a large-scale mediation effort, or other ombudsman-related activity, the CAO may draw on a contingency fund of \$800,000. For specific mediation activities organized or managed by CAO, parties may contribute funds to a separate account managed by CAO. Where parties are not in a

position to contribute, CAO can draw on its contingency fund. In FY2008, CAO had an operating budget of \$2,721,367 and used \$287,715 from the contingency fund.

36. ADB's Accountability Mechanism has two distinct budgets, one for the consultative work done by the Office of the Special Project Facilitator (OSPF), the other for the Compliance Review Panel (CRP). In 2009, costs of the OSPF were \$292,559, out of which \$162,922 were used to cover complaint-related expenses, \$41,227 for outreach and training, \$54,697 for studies and follow-up activities regarding project grievance mechanisms, and \$33,713 to support, assess, and upgrade OSPF's systems. The CRP incurred a cost of \$1.198 million, \$469,436 in direct CRP costs and \$728,419 in associated costs. It is unclear from their Annual Reports if this does or does not include salaries and benefits.

## **Chapter 5. Conclusions and Recommendations**

37. The establishment and continuous operation of a widely-known, transparent, and efficient ESCRМ would significantly contribute to enhance the environmental and social sustainability of Bank-supported projects. This analytical work has identified a number of shortcomings in the way the Bank prevents, manages and resolves conflicts. Based on those findings, as well as the mechanisms already in place in a number of other organizations and agencies, the analytical work proposes the adoption of an ESCRМ for the Bank. Among other benefits, the proposed mechanism would help the Bank to develop the ability to:
- Address the concerns of individuals or groups affected by Bank-supported projects soon after those concerns become apparent.
  - Enhance public awareness of projects and their objectives and increase stakeholder involvement in projects.
  - Reduce delays in project implementation by dealing with foreseeable challenges related to citizen complaints early in a project's life cycle.
  - Provide practical suggestions to project staffs, thereby allowing them to be more accountable, transparent, and responsive to beneficiaries.
  - Decrease the likelihood of fraud and corruption.
  - Enhance the social and environmental outcomes of Bank-supported projects.
  - Contribute to the attainment of the Bank's poverty alleviation goals.
38. A well functioning World Bank dispute resolution procedure would be one that can receive and help resolve complaints in a manner that is transparent, impartial, objective and constructive. An effective dispute resolution process would be easily accessed and understood by project-affected people beginning at the earliest stages of project planning and implementation. In addition, an effective procedure would be one that includes a predictable framework through which specific complaints and other concerns of affected parties can be addressed, and that also allows actions taken in response to complaints to be monitored efficiently and reported back to concerned parties in a timely manner.

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## Annex 1. Glossary

**ADR** is an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution. Some also use the term ADR to include approaches that enable participants to prevent or manage their own disputes without outside assistance.

**Arbitration** A quasi-judicial process in which a third party (Arbitrator) hears both sides of a dispute and makes a decision. The decision is usually binding, unless both sides agree to participate in non-binding arbitration, which is advisory in nature. The arbitrator will likely be a retired judge, an experienced lawyer, or an expert on a particular issue relevant to the dispute.

**Assessment** Conflict assessment is a process of examining an extant or potential conflict prior to organizing an actual ADR process. It generally involves a series of interviews with actual or prospective protagonists and can culminate in a recommendation for a stakeholder process or an ADR procedure.

**Collaborative practice** is a facilitative approach to resolving disputes, where the participants and other experts such as lawyers sign an agreement to focus on negotiation and settlement rather than litigation. It is essentially focused on a collaborative and interest based negotiation. All participants are members of a problem solving team who agree to disclose all information and also agree to negotiate in a constructive manner (often by agreeing to communication and other protocols). In most collaborative models, participants wishing to engage in the collaborative process are supported by a lawyer. The participants must also be prepared to participate actively in a process of open negotiations, aimed exclusively at settlement.

**Conference/Conferencing** is a general term, which refers to meetings conducted by a conference chair or convener in which the participants and/or their advocates discuss issues in dispute. Conferences are often used by organizations with a regulatory or statutory responsibility and the conference chair or convener may provide advice on the issues in dispute or possible options for its resolution. The term conference is often used to refer to processes in courts, tribunals and regulatory agencies that are similar to conciliation and may sometimes be referred to as 'conciliation conferences'.

**Conciliation** is the intervention of a third party who can communicate individually with disputants using "shuttle diplomacy", in order to identify common concerns and potential conflict resolution options. An advantage of this approach is that it can lead to a resolution without the need for direct communication among the disputing parties.

**Conflict scoping** is a general term describing efforts to identify potential future disputes and to set in place methods for either preventing them or creating anticipatory structures for resolving them when they do arise at a later date. Conflict "assessments" are one means for doing this.

**Consensus building** is a process where participants to a dispute, with the assistance of a facilitator, identify the facts and stakeholders, settle on the issues for discussion and consider options. This allows participants to build rapport through discussions that assist in developing better communication, relationships and agreed understanding of the issues.

**Dispute resolution** refers to all processes that are used to resolve disputes, whether within or outside court proceedings. Dispute resolution processes may be facilitative, advisory or determinative (see descriptions elsewhere in this glossary). Dispute resolution processes other than formal judicial determination are often referred to as ADR.

**Dispute resolution practitioner** is an impartial person who assists those in dispute to resolve the issues between them. A practitioner may work privately as a statutory officer or through engagement by a dispute resolution organisation. A sole practitioner is a sole trader or other individual operating alone and directly engaged by clients.

**Dispute Review Boards** are standing project bodies designed to achieve the “real time” prevention of disputes that may arise in the context of a project or program. Most often they are composed of one or more independent neutrals who are prepared to step in to resolve grievances, complaints or problems. Their power derives from contractual arrangements agreed to in advance by the parties.

**Expert appraisal** is a process in which a dispute resolution practitioner, chosen on the basis of their expert knowledge of the subject matter (the expert appraiser), investigates the dispute. The appraiser then provides advice on the facts and possible and desirable outcomes and the means whereby these may be achieved.

**Expert determination** is a process in which the participants to a dispute present arguments and evidence to a dispute resolution practitioner, who is chosen on the basis of their specialist qualification or experience in the subject matter of the dispute (the expert) and who makes a determination.

**Facilitated negotiation** is a process in which the participants to a dispute, who have identified the issues to be negotiated, utilize the assistance of a dispute resolution practitioner (the facilitator), to negotiate the outcome. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.

**Facilitation** is a process in which the participants (usually a group), with the assistance of a dispute resolution practitioner (the facilitator), identify problems to be solved, tasks to be accomplished or disputed issues to be resolved. Facilitation may conclude there, or it may continue to assist the participants to develop options, consider alternatives and endeavour to reach an agreement. The facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.

**Facilitative dispute** resolution processes are processes in which a dispute resolution practitioner assists the participants to a dispute to identify the disputed issues, develop options, consider

alternatives and endeavour to reach an agreement about some issues or the whole dispute. Examples of facilitative processes are mediation, facilitation and facilitated negotiation.

**Fact finding** is a process in which the participants to a dispute present arguments and evidence to a dispute resolution practitioner (the investigator) who makes a determination as to the facts of the dispute, but who does not make any finding or recommendations as to outcomes for resolution. See also investigation.

**Indigenous dispute resolution** refers to wide range of processes used to resolve dispute involving Indigenous people, including the various processes described in this glossary. Other examples include elder arbitration, agreement-making and consensus-building. In the Australian context the term Indigenous (capital I) refers specifically to the Aboriginal and Torres Strait Islander peoples.

**Indirect negotiation** is a process in which the participants to a dispute use representatives (for example, lawyers or agents) to identify issues to be negotiated, develop options, consider alternatives and endeavour to negotiate an agreement. The representatives act on behalf of the participants, and may have authority to reach agreements on their own behalf. In some cases the process may involve the assistance of a dispute resolution practitioner (the facilitator) but the facilitator has no advisory or determinative role on the content of the matters discussed or the outcome of the process, but may advise on or determine the process of facilitation.

**Joint fact-finding** is an approach that encourages the stakeholders and project proponents to jointly frame the questions to be investigated, the methods, resources and people to be used to conduct the investigation, and the way that information generated from the investigation will be used by the stakeholders.

**Joint Gains** Sometimes called “mutual gains,” is a central concept in negotiation theory. It represents both an aspirational outcome and a set of strategies. It is often mischaracterized as “win-win” implying that both parties acquire everything they seek and placed in counterpoint to “win-lose” where one side win everything and the other nothing. The joint gains concept is actually more nuanced and suggests both sides explore a potential trade zone and find mutual gains even if not all of what they sought was acquired. Joint gains negotiation strategies stand in contrast to “positional” bargaining strategies in which each side seeks only to maximize its own gains rather than finding common solutions to each other’s needs or problems.

**Mediation** is the process in which an impartial third party (Mediator) intervenes to help people communicate with one another in order to reach a mutually acceptable resolution. Advantages are its cost effectiveness and timeliness, in addition to the disputing parties having control of the outcome for settlement. With mediation, there is potential for long lasting agreements because the parties take a major role in resolving their dispute. Mediation practitioners have different philosophies and, in some cases, are grouped into “schools.”

**Facilitative Mediation** emphasizes a strong focus on managing a fair process but staying passive on the substance under discussion. Practitioners of **Evaluative Mediation** play more activist roles as regards the substance of the issues under discussion and will offer opinions and judgments that can be strongly influential of outcomes. **Transformative Mediation** de-

emphasizes problem solving and focuses on repairing relationships. Each school of practice has relevance depending on the circumstances.

**Ombudsman (Ombuds).** An Ombuds is an independent and impartial neutral who has been designated by an organization to investigate complaints – either within the organization or against the organization. The purpose of the Ombuds role is to provide resources and information to help parties identify options available as a means to prevent or resolve disputes.

**Negotiation** is discussed as essentially any form of communication among two or more individuals for the purpose of directly addressing a dispute without an intermediary or third party.

**Partnering** involves the development of a charter based on the participants' need to act in good faith and with fair dealing with one another. The partnering process focuses on the definition of mutual objectives, improved communication, the identification of likely problems and development of formal problem-solving and dispute resolution strategies.

**Settlement Conferences** are generally used to resolve cases pending before the courts. A process in which the parties and their attorneys meet with a judge or an experienced lawyer, who will discuss the potential outcome of their case, the costs of litigation, and possible options for resolving the case.

**Shuttle mediation** is a process in which the participants to a dispute, with the assistance of a dispute resolution practitioner (the mediator), identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement without being brought together. The mediator has no advisory or determinative role on the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted. The mediator may move between participants who are located in different rooms, or meet different participants at different times for all or part of the process.

**Stakeholder** is a person or group who may potentially be affected by a decision. In some instances, stakeholders are also “rights” holders. In other instances, they may be influential groups or thought leaders whose cooperation is deemed important to the success of a project.

**Stakeholder process** refers to any of a number formats (roundtables, partnering efforts, working groups, special committees, etc.) in which the proponent of a project or program agrees to meet with various stakeholders, usually with an independent facilitator or mediator.

## Annex 2. Case Studies

### I. West Africa Gas Pipeline Project <sup>8</sup>

1. **Introduction and Background** The West Africa Gas Pipeline Project is intended to replace expensive sources of energy in Ghana, Togo and Benin with less expensive natural gas from Nigeria. This change in energy sources is aimed at decreasing energy production costs and diversifying the fuel supply for the power sector. Flowing from these benefits, the project is intended to expand investment in local industries and reduce costs of their inputs. Finally, the benefits of these cost savings are intended to increase economic activity, increase economic competitiveness and improve trade.

The project includes:

- a. A pipeline system to transport natural gas from Nigeria to Ghana, Togo, and Benin
- b. Purchase contracts
- c. Transport agreements
- d. Sales agreements
- e. Contracts for design, engineering, construction, ownership, operation and maintenance, oversight, and political risk mitigation

On April 25, 2008, the Inspection Panel submitted an investigation report (42644-GH)

On June 30, 2008, management produced a detailed Management Action Plan (MAP) that responds to the Inspection Panel's report. The MAP focused on these elements:

- i. Social impact assessment and mitigation measures
- ii. Environmental assessment and mitigation measures, and
- iii. Project supervision.

2. **Comments on informal grievance mechanisms put in place or used** The chronology of the Inspection Panel's involvement points out how formal and informal dispute resolution strategies can be linked effectively. In 2006 and 2007, the Inspection Panel's involvement included these steps:

- a. Request for inspection
- b. Management response

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<sup>8</sup> Prepared by Michael Hughes

- c. Panel visit
- d. Requesters indicate willingness to wait for further developments
- e. Supplemental response
- f. Panel follows up on management response
- g. Requesters ask for clarification on unresolved issues
- h. Panel visit
- i. Panel unable to verify progress and notes conflicting assertions from Requesters and Management
- j. Panel recommends investigation

The communication between the panel and both the requesters and management demonstrates that the possibility of a formal investigation propels parties to work informally in hopes of resolving problems before a formal investigation takes place. The back and forth prior to the Panel's recommendation for investigation demonstrates the usefulness of linking formal and informal dispute resolution approaches.

The following is taken directly from the 2008 Inspection Report:

“On April 25, 2008, the Inspection Panel submitted its Investigation Report No. 42644-GH on the West African Gas Pipeline (WAGP) Project to the Board of Executive Directors. On June 30, 2008, Management submitted its Report and a detailed Management Action Plan (MAP), developed in response to the Inspection Panel's Investigation Report (see Table I , Para 24). The MAP acknowledged gaps in three key areas: (a) Social Impact Assessment and Mitigation Measures; (b) Environmental Assessment and Mitigation Measures; and (c) Project Supervision.

On August 5, 2008, the Executive Directors discussed the above reports and endorsed the MAP proposed by Management. The Board also asked that Management report on the progress in implementing this action plan in six months. This Progress Report is being submitted to the Board in response to that request.

Since the approval of the MAP in August 2008, significant progress has been made in addressing the issues and implementing specific measures. Key accomplishments include:

- i. Commissioning of the pipeline, injection facility, and receipt station, and line packing to enable commencement of free-flow gas from Nigeria to Ghana in December 2008. Ghana's Volta River Authority (VRA) is currently not consuming the free-flow gas on account of the

favorable oil prices in the international market, and hence there is no gas flowing at present;

- ii. Completion of the process of additional payment for land, crops, and trees in Nigeria;
- iii. Completion of the first phase of verification of Project Affected Persons (socioeconomic information), and ongoing progress on the final phase, which is expected to be completed by end-March 2009, The collected information will be used to redesign the Community Development Program (CDP) and livelihood restoration strategy;
- iv. Completion of the Emergency Response Plans (ERPs) and safety training;
- v. Dissemination of summaries of the Environment Management Plan (EMP), Resettlement Action Plan (RAP), and Emergency Response Plans. translated into Yoruba dialect and discussed with village leaders and affected people; and
- vi. Strengthening of supervision activity through undertaking of five field visits, one supervision mission, and one visit by the Environment and Social Advisory Panel (ESAP) during the past six months.

In this case, the formal process was able to move important questions forward after the informal processes listed above failed to bring requesters and management into agreement.

3. **Comments on any compacts, contracts or agreements with stakeholders** After the Inspection Panel, implementation of the Management Action Plan included improvements in communication and the institution of a grievance mechanism. The changes were not only in process; additional payments have been made since the plan took effect. The process for additional compensation in Nigeria focused on land, crops and tree compensation payments. This work was completed in the fall of 2008. Twenty-three communities and 1,940 households with verified property claims received a total of \$1.79 million US. Monthly visits by Bank staff to the project site began in July 2008. Twenty-five inter-village consultations accompanied the compensation in September 2008.
4. **Comments on negotiation opportunities created or used during the project's life cycle** The West African Gas Pipeline Company has adopted a new Complaints Resolution Process that includes opportunities to register complaints and mediate disputes. Local leaders and traditional ways of settling differences are part of the process. The multi-layer system includes creating a help desk where a grievant can register a complaint. The progress report indicated that this system has taken in 118 complaints, 88 of which have already been resolved.

5. **Comments on resources available and used for negotiating actual solutions** The West Africa Pipeline Company has eleven community and government relations staff that are responsible for social environmental and social safeguards.
6. **Conclusion** The West Africa Pipeline project is useful in two ways. It points out the nuanced role of Inspection Panels in formal and informal dispute resolution. It also points to the way the kind of successful mediation and conflict resolution strategies that if anticipated and built into a project design can effectively channel grievances before conflict escalates.

## II. Mumbai Urban Transport Project<sup>9</sup>

1. **Introduction and Background** The Mumbai Urban Transport Project (MUTP) is a series of exceedingly complex and challenging projects formulated by the [Mumbai Metropolitan Region Development Authority](#) aimed at bringing about a more sustainable Mumbai through major improvements in traffic and transport. The [Mumbai](#) metropolitan region is one of the most densely populated and congested mega-cities in the world. In its entirety, MUTP envisages a major overhaul of suburban railways, local bus transport systems, roads, bridges, pedestrian subways and traffic management systems. The projects also involve complex issues of resettlement, environmental effects on communities, and alterations to commutes into central Bombay. The scale and breadth of the project is enormous. It involves different funding partners, challenging construction schedules, numerous contractors and consultants, and multiple municipal, regional, state and national jurisdictions.

The initial MUTP was approved in 2002 and a loan restructuring approved in 2008. Most components progressed satisfactorily except for road construction which experienced long delays, problems of interagency coordination, and challenges centered on the resettlement and rehabilitation of 18,000 households and shops. After an Inspection Panel investigation, remedial action plans were put in place in March 28, 2006. Since then the quality of resettlement and rehabilitation under the project appears to have improved. As of February 1, 2010, resettlement is 96 percent complete. Of the two major link roads included in the project, the widening of Jogeswari-Vikhroli-Link-Road is almost completed but the creation of Santacruz-Chembur-Link-Road is still encountering important difficulties that leave uncertainty as to its successful completion in a reasonable time.

A second phase of the Mumbai Urban Transport Project (MUTP-2) has been initiated to improve the passenger carrying capacity, operational efficiency, comfort levels, and the institutional capacity of the entities involved in suburban rail system of Mumbai Metropolitan area. There are several components to the second project including a rolling stock fleet increase, the conversion of power supply from direct current to alternating

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<sup>9</sup> Prepared by Peter Adler

current (including improvements to signals and telecoms), upgrading maintenance facilities and stabling lines, and strengthening general technical assistance.

The MUTP has been the subject of considerable activity by the Inspection Panel. The Panel received four requests for investigation reports from several hundred residents and shopkeepers in 2004. In 2006, The Panel received additional requests from merchant associations (representing 218 private and commercial land owners who have shops in Adi Shankaracharya Marg, IIT Market, Powai) and from non-governmental organizations (the Hanuman Welfare Society, the Gazi Nagar Sudhar Samiti and the Jai Hanuman Rahiwasi Sewa Sangh).

In its investigations, the IP identified significant compliance failures regarding resettlement leading the Bank to suspend disbursements until certain key actions were taken. This, in turn, led to a series of corrective measures and important progress reports to ensure the compliance measures that had been found lacking.

2. **Method** All documents on the MUTP project website <sup>10</sup> and that portion of the Inspection Panel's website pertaining to MUTRP <sup>11</sup> were reviewed, some with greater depth than others. Unpublished project planning reports were also examined. <sup>12</sup> Additionally, telephone interviews were conducted with (Names to be added)

3. **Analysis**

- a. **Assessment.** Documents available to us show that considerable up-front planning took place in regards to anticipated environmental and social impacts. Advanced planning in the form of Resettlement Implementation Plans (RIPS) was done for the anticipated 19,000 affected households (100,000+ people) who would be directly affected. Planning documents also note that noise, dust, debris, vehicular problems, and oily waste were anticipated, all of which could range from minor nuisance to major disruptive impacts. Planning documents suggest some community participation was planned but it is not clear if this was actually done, or how extensive and effective it might have been. Reports also note that "significant progress has been made in effectively involving NGOs in making the entire process participatory since 1995" but does not offer any additional information to document or substantiate what was done.

The documents we reviewed also do not suggest that a formal conflict assessment exercise was done, either by the Bank or by independent consultants. Many other excellent social and environmental plans were made at the onset of the project however Inspection Panel reports suggest complaints were lodged later in the life of the project alleging inadequate or incomplete initial base line surveys.

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<sup>10</sup> <http://search.worldbank.org/projects?qterm=Mumbai%20Urban%20Transport%20Project>

<sup>11</sup> <http://web.worldbank.org/external/default/main?pagePK=64131629&piPK=>

<sup>12</sup> "Borrower's project Implementation Plan." Provided to us electronically by Rahul Kanakia.

- b. Compacts, contracts or agreements with stakeholders. From our review, we are unable to find records of specific agreements that might have been forged with stakeholder groups or communities affected by the project. We presume records exist of individual settlements that were reached but did not have access to these. We know that it was part of the borrower's plan to train and motivate communities to avoid environmental problems. We also know that project management reports were routinely created but cannot tell if these reflect data about agreements reached.
- c. Negotiation opportunities created or used during the project's life cycle. Project descriptions and Inspection Panel reports do not indicate if, when or how negotiations, formal or informal, have taken place. We assume they have but cannot back-track through public reports to understand the more detailed negotiation history that might have taken place.
- d. Resources available and used for anticipating and addressing conflicts. The records suggest that considerable money was available for resettlement and mitigation of social and environmental problems. However, there is no indication from the records available to us as to whether resources were available or drawn upon to effectuate actual solutions. This does not mean they weren't and we assume they were; rather it means we are not able to substantiate such.
- e. Informal and formal grievance mechanisms. Project descriptions and Inspection Panel reports tell us that two committees were established to redress conflicts, one being a "Field Level Committee." The committee seems to have been comprised of project managers, NGOs, and project implementing agencies. The documents available to us do not indicate how many grievances might have been brought before this committee, what dispositions took place, or whether in fact they were resolved. If off-line unofficial negotiations or discussions took place, there is no record. However, Inspection Panel reports suggest that stakeholder grievances developed and accumulated, among these being issues over the resettlement of medium- and large-size shopkeepers, the management of post-resettlement activities (such as registration of housing cooperative societies, transfer of maintenance funds, adequate water supply and transport facilities, environmental management of resettlement sites, and institutional capacity).

Project descriptions and Inspection Panel reports tell us that a second, presumably more formal, grievance mechanism was also established called the "Grievance Redressal Committee," again comprised of project officials and NGOs. The procedures of this committee, and how they might have differed from the Field Level Committee, aren't clear. Nor are we able to understand exactly how many grievances were heard and what their dispositions were.

Additionally, an "Independent Monitoring Panel" was established by Government of Maharashtra. Their role appears to have ensured that policies related to social and environmental issues were complied with. It is not clear precisely what was monitored and whether resettlement and others issues came before them.

- f. Negotiation opportunities created or used during the project’s life cycle. Project descriptions and Inspection Panel reports do not indicate if, when or how negotiations, formal or informal, have taken place. We assume they have but cannot back-track through public reports to understand the more detailed negotiation history that might have taken place.
4. **Other Observations** Politically, socially, environmentally, financially and culturally MUTP is an extraordinarily complex project. We assume it to be one of the more challenging projects for both the borrowers and the World Bank, one that despite all its complexity has huge potential to help create a more sustainable Mumbai region. We make the following further observations:
    - a. Unlike some of the other country settings we examined in relation to World Bank projects, India has a highly developed and largely Western-adapted judicial and litigation system. It is not surprising that in a project of this magnitude and in a country with a strong Western-style judicial and litigation tradition, that grievances and complaints would come forward.
    - b. World Bank and the borrower appear to have properly anticipated that conflicts, grievances, and disputes would arise. The project seems to have had in place numerous grievance mechanisms. However, there is no real record of how many individual or community cases actually arose or what happened to those. We also cannot tell how effective project managers and the different jurisdictional agencies involved might have handled formal or informal negotiations.

### III. **Bumbuna Hydroelectric Project – Sierra Leone**<sup>13</sup>

1. **Introduction and Background** The Bumbuna Hydroelectric Project (BHP) is designed to expand the capacity of the country of Sierra Leone to supply electricity services at least-cost and in an environmentally and socially sustainable manner. Increased capacity will enable Sierra Leone to overcome one of its principal constraints on growth – the price and availability of electricity. Sierra Leone, according to Bank documents, is “one of a small number of countries in West Africa with some of the highest costs of electricity generation and delivery in the world.” “Even with varying degrees of subsidies,” the Bank contends, “these costs translate into very high tariffs relative to regional and global benchmarks.” Unreliable service and poor quality of supply “translate into major competitive problems for commercial and industrial enterprises.”

Larger development goals identified by the Bank include a) improving private sector-led economic development that is linked to indigenous participation; b) improving the quality of life for all Sierra Leoneans; c) creating a well educated, enlightened, tolerant, secure, stable and well-managed society based on democratic values; d) ensuring the sustainable

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<sup>13</sup> Prepared by Todd Bryan

exploitation and effective utilization of the country's natural resources; and e) becoming a science and technology-driven nation.

To address the issue, the government of Sierra Leone and the World Bank have constructed and commissioned the BHP consisting of an 88-meter high and 440-meter long rockfill dam, an above-ground powerhouse with two 25 megawatt turbo-generator units, a 30-kilometer long reservoir and catchment area behind the dam, and a 200-kilometer transmission line connecting the powerhouse with the capital city of Freetown.

According to Bank documents, the World Bank is involved in the project to a) act as a catalyst for resource mobilization and donor coordination; b) promote public-private partnerships in developing and operating infrastructure projects; c) develop customized risk mitigation instruments under the Partial Risk Guarantee (PRG) to facilitate implementation of major infrastructure projects; and d) ensure application of appropriate environmental and social safeguards to mitigate the impact on the population and environment.

While the country as a whole will benefit from the BHP, the principal beneficiary is the capital city of Freetown on the West Coast of Sierra Leone. The project site, however, is approximately 200 kilometers upstream from Freetown, near the community of Bumbuna. It is there that the dam, powerhouse, and reservoir have been constructed and it is between Bumbuna and Freetown that an above-ground transmission line has been installed.

The potential for conflict in such a situation is high since there appears to be an inherent disparity in the distribution of benefits and costs, with the benefits going primarily to Freetown while the costs are borne locally. The BHP is an example of a facility siting dilemma wherein civil society generally agrees that the facility provides a larger public benefit by being built yet few are willing to bear the full burden of having it sited in their communities or neighborhoods, even when the location of the facility is determined by physical conditions and constraints.

2. **Method** All relevant documents on the World Bank website were reviewed, some with greater depth than others. In addition, interviews were held with Yves Prevost, TTL, Maria Cruz, Ph.D., Lead Social Scientist, and Alberto Ninio, Lead Counsel.

3. **Analysis**

a. **Assessment**: While environmental and social impact assessments were conducted at the outset of the project, documents available on the Bank's website do not reflect evidence that a formal conflict assessment exercise was conducted, either by the Bank or by independent consultants. The environmental and social assessments that were completed by Bank project managers contain elements that can be used in a formal conflict assessment however it is not evident that such elements were used to conduct an assessment. A formal assessment would be conducted through stakeholder interviews and the review of documents produced by stakeholders and could be used to identify the following:

- i. Description of stakeholder populations that will be impacted
- ii. Issues and concerns among stakeholders with the proposed project
- iii. Differing or divergent perspectives on the issues
- iv. Underlying interests that may or may not be in conflict
- v. Likely courses of action by stakeholders to satisfy those interests
- vi. Recommendations for action to anticipate and address potential conflicts

4. **Compacts, contracts or agreements with stakeholders** Compacts, contracts or agreements with stakeholders include such things as social contracts, community development agreements, partnerships, co-management agreements, and all-party monitoring procedures that are negotiated with stakeholders prior to project implementation.

There is no evidence from Bank documents that such mechanisms exist in the BHP although the number and type of amenities that address impacts affecting stakeholders suggests that they may (see resources below). Such mechanisms can go a long way towards proactively addressing conflicts that can be anticipated through a thorough and accurate assessment.

5. **Negotiation opportunities created or used during the project's lifecycle** There is no evidence from Bank documents of specific opportunities for formal negotiations between BHP project managers and stakeholders throughout the project's lifecycle. Such mechanisms may exist through formal channels that are not publicly documented or through channels that were established informally by project managers. The description of resources available for addressing conflict (below) contains numerous opportunities for negotiation. It is not obvious, however, that they were used in that way. If so, those mechanisms should be identified through interviews with TTLs and project team members.

6. **Resources available and used for anticipating and addressing conflicts** An approach to facility siting dilemmas such as BHP is to find appropriate ways to more equitably distribute the benefits and costs in all phases of the project. This can often be achieved by engaging communities in dialogues designed to identify ways to appropriately compensate locals for the burden they are asked to bear for the greater good. It appears from Bank documents that the BHP Public-Private Partnership (PPP) has done a commendable job of developing compensatory and capacity building mechanisms designed not only to make the communities whole following the construction and commissioning of the BHP but to genuinely improve peoples' lives. These include the following:

- a. Environmental Management Plan (EMP)

- b. Resettlement Action Plans (RAP) for the dam/reservoir and the transmission line and implementation teams
- c. Bumbuna Project Implementation Unit (PUI)
- d. Dam Review Panel of Experts (DRP)
- e. Environmental and Social Advisory Panel of Experts (ESAP)
- f. Communication Action Plan (CAP)
- g. Capacity building for relevant ministries and agencies for sustainable implementation of the projects safeguard measures.

Key outcome indicators proposed for the project as it relates to the dam and reservoir area and surroundings and the transmission line corridor include the following:

- i. A biodiversity index established prior to construction – will be used to monitor and maintain biodiversity over the course of the project
- ii. 60% increase of the targeted watershed area under improved agricultural conservation by the end of the project
- iii. Sustainable fisheries practices in 60% of the reservoir and downstream
- iv. 100% of affected persons resettled by the end of the project
- v. 80% increase in income of involved households with new income generating activities
- vi. Development of the Bumbuna Watershed Management Plan (BWMP)
- vii. Environmental and Social Management Unit established in the Ministry of Energy and Power
- viii. Bumbuna Conservation Area established
- ix. Environmental management monitoring system developed

Various organizations and entities are being established along with existing NGOs, agencies, and ministries to complete not only the hydroelectric and transmission line infrastructure components of the BHP but also the environmental management and mitigation, resettlement, watershed management, benefit sharing, land acquisition, compensation and rehabilitation components.

While the functions of these organizations and entities are not explicitly defined as conflict resolution mechanisms, they have the affect of proactively reducing conflict by addressing it before it becomes intractable. They therefore fall into the category of conflict prevention and management strategies. Nevertheless, thoughtful conflict

management and resolution strategies as projects are being scoped, while they are being planned, during construction and operation, and after completion will add considerably to project success and viability. General strategies for integrating conflict resolution mechanisms into project planning, design, construction, operation, and closure are summarized below.

7. **Formal and/or informal grievance mechanisms** No formal or informal grievances are evident from Bank documents that were reviewed for the project. In addition, Bank staff members familiar with the project note that the BHP, and similar projects, could benefit from grievance mechanisms that extend beyond the Bank's formal involvement in the project.
8. **Other Observations** Interviewees strongly suggested that conflicts associated with the BHP project or that affected the BHP project were best managed through informal networking and relationship building work by WB professional staff who spent time understanding and interacting with the local people. Major and minor conflicts surrounding the BHP project were managed through adaptive and flexible mechanisms that could be mobilized quickly. As such, interviewees recommend that WB dispute resolution mechanisms be developed that are unique to each situation, are adaptive to changing and evolving conditions, and recognize the importance of cultivating and maintaining strong working relationships and active informal networks.

#### IV. **India Integrated Coastal Zone Management Project**<sup>14</sup>

1. **Introduction** The World Bank is working to help the India Ministry of Environment and Forests to manage the country's vast coastal areas and to balance the competing demands of economic development; residential, commercial and industrial uses; and environmental protection. Development pressure, flooding during storm events, sea-level rise, illegal development, loss of biodiversity, inconsistencies in land regulation have prompted a move toward a nationwide coastal management system that will conserve ecosystems in the coastal zone while promoting economic development and poverty reduction in the coastal areas.

In 2004, an expert committee examined environmental law, marine biodiversity and geology, economics and socio-economics, engineering and planning and other topics and recommended integrated coastal zone management. A supporting recommendation focused on the need for capacity building.

The coastal zone management project includes four major elements:

- a. National-level capacity building
- b. Piloting coastal zone management approaches in Gujarat

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<sup>14</sup> Prepared by Mike Hughes

- c. Piloting coastal zone management in Orissa
- d. Piloting coastal zone management in West Bengal

The national level component includes:

- a. Mapping and delineation
- b. Capacity building at the ministry level and nationwide training
- c. Creating the National Centre for Sustainable Coastal Zone Management

The three regional pilots will focus on capacity building for these efforts:

- a. Data collection and planning
- b. Project management
- c. Investment prioritization

2. **Assessment** Although this is a capacity building rather than an infrastructure or construction project, the World Bank conducted an environmental and social assessment in the same way that the agency would have for an infrastructure investment. The environmental and social assessment indicated that there were four cases of potential displacement and explored the possibility that vendors or residents could be eligible for resettlement assistance.
3. **Informal grievance mechanisms put in place or used** The assessment recognized the likelihood of conflict among stakeholders competing for the use of (or protection of) coastal resources and pointed the way toward integrated policies that would balance the competing interests. Further, the assessment indicated that the capacity building work would include the capacity to engage stakeholders. The assessment doesn't go so far as to recommend formal mechanisms for involving a designated set of key stakeholders but stops at the point of recommending this set of skills as one element of the capacity building work.

The resettlement plan goes into greater detail and indicates that the integrated coastal zone management system should “help create two-way channels of communications between stakeholder groups at various levels and the project authorities to help in the design and implementation of the ICZMP; help develop the strategic communication capabilities of agencies engaged in implementing the program at the national, state and local levels; help incorporate processes and mechanisms that enhance public disclosure and transparency within the ICMP project design and implementation activities.”

4. **Formal grievance mechanisms put in place or used** It's when the project turns to the resettlement potential that the project moves from questions of informal stakeholder engagement into formal mechanisms. The World Bank included a full resettlement

policy report and plan despite the fact that no resettlement is anticipated. From the report:

“The project does not involve land acquisition, and it is unlikely that during the project implementation period any need for land acquisition will arise. However, as such possibility cannot be absolutely ruled out, every quarterly implementation progress report will have a section either (i) certifying that no private land is proposed to be acquired in the project, or (ii) if any parcel of land is proposed to be acquired, a proposed plan to acquire land and a request for no-objection from the World Bank on the proposed plan.”

5. **Compacts, contracts or agreements with stakeholders** Although stakeholder consultation appears to have been an integral part of the project, we found no evidence that formal compacts, contracts or agreements were created.
6. **Negotiation opportunities created or used during the project’s life cycle** We assume opportunities for negotiation were created and used, we did not find evidence of such in the materials we reviewed.
7. **Resources available and used for negotiating actual solutions** In the materials we reviewed, we did not find evidence of resources used for effectuating negotiated solutions.
8. **Conclusion** This is a national and regional effort to build internal capacity so that the agencies responsible for coastal zone management will be more effective in carrying out their mandate. The project aims at improving analysis and decision making in order to improve habitat conservation, resource utilization, disaster preparedness, land use planning and economic development. Given these objectives, there is little reason to believe that the project itself could result in resettlement or displacement. Nonetheless, the World Bank put a resettlement process in place to address the possibility. The Bank outlined this plan in a formal process for resettlement-related grievances.

## V. **Matanza-Riachuelo Basin Sustainable Development Project**<sup>15</sup>

1. **Introduction** The World Bank has provided a loan of \$840 million to Argentina to address water pollution in the Matanza-Riachuelo River. The project in the Buenos Aires region will significantly improve the sewer system, reduce industrial discharge into the river, support changes in land use planning and decision making and strengthen the regional water authority. Construction has yet to begin. In early 2011, the basin authority will select contractors and then will begin the construction.
2. **Comments on any assessment done** The assessment for this project focused on the water quality problems that will be rectified by the construction of a sewage treatment

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<sup>15</sup> Prepared by Mike Hughes

and disposal system. The assessment did not extend to the potential for construction-related disruptions and the conflicts or grievances that could rise from project construction and implementation.

3. **Comments on informal grievance mechanisms put in place or used** Discussion with Bank personnel indicated that the implementing agency is expected to develop and implement a communication strategy that will disseminate project-related information to the public and to stakeholders and will collect input from affected members of the public. At the point of the interview for this project, that communication strategy was not in place.
4. **Comments on formal grievance mechanisms put in place or used** We find no clear indications that a formal grievance mechanism is expected.
5. **Comments on any compacts, contracts or agreements with stakeholders** It is unclear from our review whether formal contracts or compacts with stakeholder are a part of the project plan.
6. **Comments on negotiation opportunities created or used during the project's life cycle** Project documents seem to focus on the significant, positive impacts expected from the project, specifically the changes in the water quality and the reduction in pollution in the river. The project analysis did not pursue the possibility of project-related conflicts or grievances and does not include opportunities for those who might be negatively impacted by the project to engage with the Bank to negotiate a solution to the problem.
7. **Comments on resources available and used for negotiating actual solutions** From our review, the project's communication strategy appears to be the only mechanism for elevating potential project issues.
8. **Observations** The most important dispute prevention and resolution element of the World Bank's Matanza-Riachuelo project will be carried out through ACUMAR, the regional basin authority. In many ways, the success of the project from a dispute prevention and resolution standpoint will depend on ACUMAR's ability and willingness to anticipate problems, communicate with stakeholders in advance of each phase of the construction, conduct the work in ways that minimize disruption and meet the needs of the community. The World Bank's project review pointed toward the importance of the regional authority's communication strategy. The project would be well served by having that strategy in place and underway as soon as possible.

In addition, oversight from Argentina's Supreme Court and through the federal judiciary oversight by a coalition of 5 nongovernmental organizations creates additional venues for dispute anticipation, prevention and resolution. The Mendoza case has raised the profile of this project; the judiciary and the NGOs should be using that visibility to open lines of communication with stakeholders. As with the basin authority, the success of the project from a dispute resolution standpoint will depend in large part on whether the federal judiciary and the NGOs charged with oversight do an effective job in anticipating

problems before they occur and in effectively channeling community and stakeholder concerns to the regional authority.

It is inevitable for a project of this type that the disruptions that come with a construction project of this magnitude in a major metropolitan area will create new and perhaps unforeseen problems. Construction has yet to begin, so it's not clear precisely how things will change as the project moves into the construction phase. In early 2011, the basin authority will select contractors and then will begin the construction.

## **VI. Brasilia Environmentally Sustainable Project (*Programa Brasília Sustentável*)**<sup>16</sup>

- 1. Introduction and Background** The Brasilia Sustentavel Project seeks to improve the living conditions of the inhabitants of Vila Estrutural in the Federal District of Brazil. The specific project objective as stated in the Loan Agreement is: *“to ensure the supply of quality water resources to meet the demands of the Borrower’s metropolitan area by improving environmental planning and management activities. These activities will be further enhanced by the carrying out of poverty reduction strategies in certain urban areas and the rehabilitation of the environment around key river basins.”* World Bank’s specific role is to provide loan guarantees in an amount that was initially forecast to be U.S. \$57.6 million.

As envisioned, the project had four original components: Component 1 (US \$7.6 million) supports institutional strengthening and technical assistance for the enhancement of the technical and institutional environment. Component 2 (US \$31.4 million) aimed to reduce poverty and promote social inclusion in localities presenting critical social conditions, coupled with actions to abate water resource pollution loads. Component 3 (US \$71.5 million) involves activities to abate and manage water resource pollution loads and improve the quality of life in the communities of Aguas Lindas and Vicente Pires, as well as protect the Brasflia National Park through solid waste disposal activities. Component 4 (US \$ 3.9 million) was to support the appropriate technical, administrative and financial management conditions to ensure an effective project implementation and achievement of its development objectives.

The initial project appraisal laid out the economic, financial, technical, environmental, and social case for the project and appropriate plans for each. It anticipated the need for resettling approximately 900 households and commercial properties from environmentally restricted areas or areas required for the right-of-way for new housing and other infrastructure. The borrower, Government of the Federal District (GDF), laid out a Resettlement Action Plan which included input and consultation from affected communities. Bank staff reviewed the process and the plan and found them satisfactory as regards the Bank’s Policy on Involuntary Resettlement (OP 4.12).

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<sup>16</sup> Prepared by Peter Adler

The Resettlement Action Plan appeared to offer two permanent resettlement options: (1) receiving a new housing unit within the upgraded Vila Estrutural; or (2) moving to a larger serviced plot in rural Monjolo. Seventy families opted for relocation to Monjolo while the remainder elected relocation to the to-be-upgraded Vila Estrutural. Relocation began in earnest in May 2008. 23 families requested relocation to Monjolo sooner than the timetable envisioned by GDF so that they could secure their property rights and develop their land. An additional group of about 70 households living in the right-of-way had to be relocated due to the unexpectedly rapid implementation of the civil works.

Temporary housing was required because of the accelerated relocation, delays in the contracting of the permanent housing, and because of a court injunction stopping construction of permanent housing pending issuance of the appropriate environmental license in Monjolo. GDF offered all households three options for temporary relocation until the new housing could be completed: (1) temporary housing in Monjolo; (2) temporary housing in Vila Estrutural, or (3) a housing rental allowance. Twenty-three opted for the first, thirty-two for the second, and leaving four hold-outs who initially declined to sign a compensation agreement.

In August 2008, due to risks from the construction works and the early onset of seasonal rains, GDF was forced to move the four hold-outs on an emergency basis, in order to protect them from potential safety hazards. However, the short deadline for relocation given to the four households in the eviction notices was considered inadequate by the Bank. Following Bank intervention on this issue, GDF immediately engaged all four households in a process of consultation and negotiation on the terms of resettlement. As a result of this effort, all four signed resettlement agreements at the end of September 2008, accepting the compensation as well as a housing rental allowance until their new houses were available. At that time, they also signed a note stating that GDF could inform the Bank that they were satisfied with such agreement.

The families opting for temporary relocation in Vila Estrutural moved to their new, permanent housing in June 2009. Those families appear to have been in temporary quarters for more than a year. Due to delays in the implementation of the Project, a group of individuals which were formerly residents of Vila Estrutural and that should have been relocated/resettled to Núcleo Rural Monjolo in accordance with the Project initiated a lawsuit against the Bank and against GDF asserting claims for indemnification for damages. These matters appear to be in current litigation in Brazil's courts.

2. **Method** Documents on the project website were reviewed along with the initial project appraisal document developed in July, 2005. Additionally, telephone discussions were held with Sameh Wahba, Senior Urban Specialist, and Alberto Aninio, Lead Counsel of the Environment and International Law section.
3. **Assessment** The original appraisal document shows considerable careful forward planning, especially on the acknowledged and foreseen issue of social inclusion, poverty reduction, and resettlement. Environmental appraisals in keeping with the Bank's safeguard policies were done. The project purposefully sought to develop alternatives for improving local governance and social services. Stakeholder consultation was done

through what is described as a “well attended Public Consultation meeting” on 11, February 2005. Issues raised at that meeting were lodged in the Environmental Assessment and the project’s responses were then put into the project appraisal. The meeting appears to have discussed issues related to the Bank’s safeguard policies, the project phases contemplated, and some of the communities and stakeholders that might be impacted. Resettlement principles, plans and policies were also a part of the EA.

The documents we reviewed are not clear as to the depth and breadth of the assessment and other related stakeholder consultations, nor is it clear whether that was a “one-of” consultation or when, how and where further engagements were planned. There is no narrative or administrative record that we reviewed. It is clear from the project appraisal document however, that the 700 waste pickers from the Jockey landfill were viewed as a key stakeholder group and that further engagement with them was contemplated.

4. **Compacts, contracts or agreements with stakeholders** Project appraisal documents suggest that resettlement was contemplated early along with different approaches for managing that process. One approach contemplated the work to be done in Vila Estutural which would require the displacement of about 1,000 families. The other contemplated relocation of 700 waste pickers. A framework with accompanying principles for resettlement was established and was discussed at several community consultations as well as civil society members involved with the Brasilia National Park. The documents that were reviewed do not tell us specifically what agreements with stakeholders might have actually been made. We assume that they were but cannot verify that from our review.
5. **Negotiation opportunities created or used during the project’s life cycle** Commitments to initiate negotiations were clearly stated in the project appraisal document. This project had many embedded structural opportunities to negotiate with stakeholders, communities and individuals. Negotiations were clearly contemplated on resettlement matters but is not clear if there were matters around which negotiations were anticipated or conducted.
6. **Resources available and used for anticipating and addressing conflicts** References in the project appraisal document suggest that project managers were clearly prepared to provide different forms of compensation for resettlement. This means that funds were actually budgeted for these purposes. The dispositions of the negotiations are not readily available.<sup>17</sup>
7. **Informal and formal grievance mechanisms** Grievance processing was clearly contemplated at the beginning of the project. The nature of the mechanisms that were anticipated isn’t fully clear. We can’t tell whether those were intended to be informal or formal, nor are we able to find a record of what might have taken place and what outcomes ensued. We can assume because litigation in the Brazil Courts ensued that the mechanisms didn’t fully alleviate whatever problem arose.

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<sup>17</sup> This suggests the need for keeping an administrative record of negotiations, if that is not already being done.

8. **Other Observations** The Brasilia Environmentally Sustainable Project appears to have gone through significant early, and presumably effective, environmental and social planning. The project appraisal document is impressive in its scope and depth. We observe that, like the India Mumbai Urban Transport Project, Brazil presents a more robust and active litigation setting in which people have recourse to courts when they are aggrieved.

## **VII. Punjab Municipal Services Improvement Project – Pakistan**<sup>18</sup>

1. **Introduction and Background** The Punjab Municipal Services Improvement Project (PMSIP) is designed to improve the management and service delivery capacity of Punjab province's 144 Thesil Municipal Administrations (TMAs). TMAs are local government administrations that were established in 2001 pursuant to the Pakistan government's Devolution of Power Program, a bold attempt to improve the delivery of government services to urban areas by devolving power to local authorities. To facilitate the orderly change, the Punjab province initiated the Punjab Local Government Ordinance (PLGO) that provided a broad framework for devolution and a comprehensive list of regulations that define the responsibilities and authorities of various levels of government.

The Punjab program gives TMAs authority for a range of municipal services and changes the role of the provincial government to that of monitoring the TMAs in the delivery of services. This arrangement allows the provincial government to observe the capacity of TMAs to deliver services and exposes the differences in capacity and incentives among the TMAs. In their short period of existence, many of the TMAs are struggling to merely keep services going and do not have the capacity and resources to improve services. In the meantime, provincial governments have continued to play a role in the delivery of services by influencing the operations of the TMAs. As such, provincial governments have not invested in capacity building and incentivizing TMAs and have been slow to develop an effective monitoring system to evaluate TMA financial and service performance and outcomes.

After observing the TMAs for a number of years, the World Bank determined that assistance in the form of performance-based capacity building within the TMAs will provide the best opportunity for the improved delivery of services. Specifically, the Bank will assist the provincial government of Punjab and TMAs with "implementing the performance management concept [of the PLGO] in their operations." TMAs will be invited to participate in the project based on their performance since devolution. Continued eligibility will be based on sustained performance in meeting targets mutually agreed upon by the TMA and the Bank.

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<sup>18</sup> Prepared by Todd Bryan

Larger development goals identified by the Bank include a) supporting Pakistan’s recent emphasis on the role of cities as “engines of economic growth” and the removal of constraints to their development and b) realizing the benefits of the devolution process by “enhancing local capacity and fiscal choice.”

The Punjab project will specifically establish a performance-based municipal investment program to support a broad range of urban services and institutional capacity building at both the provincial and TMA levels. Pursuant to Bank documents, eligible TMAs will be able to “tap both capacity and investment grants, while the project would finance capacity building activities at the provincial level.” The project will be administered by the Punjab Municipal Development Fund Company (PMDFC), a WB-established not-for-profit government sponsored company whose autonomous, public-private, board of directors represents the provincial urban development sector.

Specific project development objectives include the following:

- a. Improve the viability and effectiveness of urban services provided by participating TMAs
- b. To make such improvements sustainable and replicable in other TMAs
- c. Development of a performance monitoring framework and evidence-based performance indicators
- d. Development of TMA Performance Improvement Plans

Since the inception of the project, PMDFC has taken on the role of providing financial grants, technical assistance, and training to TMAs for urban infrastructure investments and “institutional strengthening” that relies on transparent and measurable eligibility criteria. Among those criteria are the ability of projects to:

- i. Ensure that investments are commensurate with service demands
- ii. Earn stipulated economic and financial returns
- iii. Be institutionally viable so that grantees are capable of implementing the management arrangements to do so
- iv. Be environmentally and socially acceptable and involve the informed participation of the appropriate stakeholders wherever possible
- v. Ensure that any adverse environmental and social impacts are minimized and/or mitigated

Typical municipal service improvement projects funded by PMDFC include the following:

- 1) Water supply

- 2) Sewerage
- 3) Sanitation
- 4) Solid waste management
- 5) Urban roads
- 6) Storm-water drains
- 7) Street lighting
- 8) Bus terminals

2. **Method** All relevant documents on the World Bank website were reviewed, some with greater depth than others. A Keystone Center team member interviewed Sanjay Agarwal, World Bank Social Development Specialist. An interview with the project TTL, Shahnaz Arshad, has not yet occurred.

3. **Analysis** As part of its commitment to measured performance, the PMDFC has developed an Environmental and Social Framework (ESF) that includes both proactive and reactive conflict management and dispute resolution mechanisms. Among proactive mechanisms are assurances that Bank operational policies and procedures are followed, including, among other things, strategies for community consultation that better ensure that infrastructure investments are socially appropriate, populations displaced by a project benefit from the project, living standards are improved or, at a minimum, restored, and that institutional capacity exists or is built to follow through with such commitments.

The PMSIP is designed to effectively manage conflict by a) focusing on capacity building, b) emphasizing performance-based incentives that are evidence-based rather than subjectively evaluated, and c) developing agreements on evaluation criteria between PMDFC and the TMA rather than being imposed. These mechanisms go a long way towards reducing confusion and ambiguities associated with performance measures and creating a greater sense of ownership, transparency, and accountability in the PMSIP.

4. **Conflict Assessment** While environmental and social impact assessments are an integral part of PMDFC municipal services projects, documents available on the Bank's website do not reflect evidence that a formal conflict assessment exercise was conducted, either by the Bank or by independent consultants. The environmental and social assessments that were completed by Bank project managers contain elements that can be used in a formal conflict assessment however it is not evident that such elements were used to conduct an assessment. A formal assessment would be conducted through stakeholder interviews and the review of documents produced by stakeholders and could be used to identify the following:

- a. Description of stakeholder populations that will be impacted
- b. Issues and concerns among stakeholders with proposed projects

- c. Differing or divergent perspectives on the issues
- d. Underlying interests that may or may not be in conflict
- e. Likely courses of action by stakeholders to satisfy those interests
- f. Recommendations for action to anticipate and address potential conflicts

5. **Compacts, contracts or agreements with stakeholders** Compacts, contracts or agreements with stakeholders include such things as social contracts, community development agreements, partnerships, co-management agreements, and all-party monitoring procedures that are negotiated with stakeholders prior to project implementation.

There is not clear evidence that agreements with stakeholders were developed for municipal services projects. However, the PMDFC ESF contains numerous references to opportunities to directly involve stakeholders in such projects, including the following policy:

“All proposed sub-projects... are likely to have significant social consequences of one sort or another, including land acquisition and resettlement. PMDFC recognizes the importance of developing opportunities for local involvement and participation in these schemes and the need to develop organizational capacity in both the implementing agencies and the community-based organizations to ensure appropriateness, viability and local ownership. Plans for ensuring effective operation and maintenance will be developed in cooperation with concerned and affected stakeholders.”

In addition, the ESF contains provisions requiring public consultation and participation in all sub-projects involving resettlement prior to the preparation of Resettlement Action Plans. While the ESF (section 2.16) states that potentially affected parties (PAPs) will be “informed of project objectives, likely impacts and essential provisions of Resettlement Policy” (implying one-way communication), the methods for doing so include opportunities for two-way engagement with PAPs including public meetings; focus groups; planning, implementation and monitoring committees; and grievance redress processes.

6. **Negotiation opportunities created or used during the project’s lifecycle** Section 1.2 of ESF establishes overall policy guidance and commitments towards environmental soundness and social relevance and acceptability for each of its urban infrastructure projects. In the statement the PMDFC commits each project to, among other things...

“Providing opportunities and avenues for informed stakeholder consultation, and, where appropriate, their participation in decision-making in project preparation, implementation and evaluation, in order to foster greater ownership and sustainability.”

This statement sets the stage, in our view, for consultative and collaborative decision-making processes that can, along with adequate conflict assessment procedures, anticipate and address conflicts before they escalate towards grievance mechanisms. The statement also sets the stage for more specific methods to implement appropriate participatory decision-making procedures.

Unfortunately, while the ESF policy commits the PMDFC to participatory decision-making, where appropriate, it appears to lack specific mechanisms to effectively implement the policy. Instead, the ESF relies on public consultation and participation procedures (section 2.16) and grievance redress mechanisms (section 2.15). Neither, in our analysis of documents, meets the standard of participatory *decision-making*, which focuses on the principles of negotiation and consensus.

Two sub-projects reinforce this point. In the executive summaries of the Ahmed Pur Sial and Sambrial sewerage system projects, project managers followed extensive public consultation procedures. In both projects, public consultation occurred from the inception of the project through project planning. The procedure is described below:

“The first consultations were held with the objectives of involving people in the discussion of the terms of reference for the environmental assessment. Later on public consultations took place to discuss the analysis of alternatives. Finally, consultations were made to discuss the Environmental & Social Management Plan (EMP). In addition, local residents, shop keepers, vendors, hospital owners, teachers, pedestrians, mosques, businessmen and government officials from various departments were visited to solicit views on the proposed sub-project and incorporate their concerns, demands and needs into the EMP.”

It is important to note that the consultation procedures for both projects resulted in a consensus among stakeholders that the proposed sub-project would contribute to reducing disease, odor, and water contamination, and satisfying local people. It appears from this response that project managers met or exceeded stakeholder expectations for public engagement and, further, that controversy and conflict surrounding the projects was relatively minor. This is not always the case and project managers need to anticipate and respond to stakeholder expectations for meaningful levels of involvement.

7. **Resources available and used for anticipating and addressing conflicts** The ESF acknowledges that while urban infrastructure projects benefit a large portion of the population, they often have negative local impacts. Such facility siting projects, create a dilemma for decision makers since the benefits and costs are often unevenly distributed. An approach to facility siting dilemmas such as PMDFC is involved with is to find appropriate ways to more equitably distribute the benefits and costs in all phases of the project. This often can be achieved by engaging locals in negotiations designed to identify ways to appropriately compensate them for the burden they are asked to bear for the greater good. It appears from Bank documents that the PMDFC and TMAs are engaged with locals in developing compensatory mechanisms designed not only to make locals whole following the construction of municipal improvement projects but, when possible, to genuinely improve their lives.

Other mechanisms such as incentives, loans, capacity building etc. were not apparent from Bank documents.

8. **Formal and/or informal grievance mechanisms** The ESF contains a Grievance Redress Mechanism to address involuntary resettlement and land acquisition issues under Bank policy. Bank policy calls for requirements to “ensure that populations displaced by a project also benefit from the project and that standards of living are improved, or at a minimum, restored.” The ESF also recognizes that despite the best efforts to satisfy the policy, grievances will arise between TMAs and displaced residents.

The ESF (section 2.15) authorizes the establishment of a Grievance Resolution Committee (GRC) in each TMA that can be accessed by stakeholders who have been unable to resolve involuntary resettle and land acquisition disputes with the local TMA. GRCs shall consist of a panel of three members to be selected by the Insaf Committee(s) of the Union Council(s) from the residents of the Union Council(s) who are “publicly known to be persons of integrity, good judgment and command respect.”

The charge to the GRCs is to “conduct... proceedings in an informal manner... with the object to bring an amicable settlement between the parties.” If an amicable settlement cannot be reached, however, the GRC can then make a decision. It appears from the ESF that the GRCs initially act as *mediators* between TMAs and aggrieved parties to help them reach an agreement. They do not appear to play the role of an *arbitrator or citizen jury*. However, if the parties cannot reach agreement with the GRC’s assistance, the GRC can change hats and can then play the role of *arbitrator or citizen jury*. This hybridized “med-arb” strategy is recognized as an appropriate albeit infrequent dispute resolution mechanism.

GRC proceedings are admissible in court and aggrieved parties can petition the court system if they are not satisfied with the decision of the GRC. Interestingly, the GRC policy contains a provision denying “legal practitioners” from taking part in GRC proceedings on behalf of any party.

Review of two sub-projects falling under the ESF (Ahmed Pur Sial and Sambrial sewerage projects) reveals that the grievance redress mechanism described above is expanded to include all project-related environmental, socio-economic and health and safety issues.

9. **Other Observations** ESF section 4.3 addresses capacity building within the PMDFC and grantee local governments and TMAs “in order to ensure that the ESF is effectively operationalized.” To our knowledge, however, the ESF does not contain references to capacity building within the PMDFC or TMAs for developing specialized expertise in the areas of conflict assessment, collaborative planning and decision making, negotiation and mediation necessary to effectively implement the policy.

ESF capacity building includes formal training in the management of environmental and social issues and in various disciplines in the implementation of sub-projects including municipal finance, urban planning, social and environmental assessment, participatory

methodologies, project management and engineering, and public health. While capacity building in participatory methodologies overlaps with conflict management and dispute resolution, they are in many ways very different disciplines.<sup>19</sup>

## VIII. Pakistan Earthquake Relief Project

1. **Introduction and Background** On October 5, 2005, a magnitude 7.6 earthquake struck Pakistan, Afghanistan and India. The epicenter of the quake was located along a fault 100 kilometers north-northeast of Islamabad and running along the Indian subcontinent. More than 1000 aftershocks were recorded in the India-Pakistan Kashmir region ranging from magnitude 5.0 to 6.0.

Kashmir and the eastern districts of the North West Frontier Province (NWFP) were the hardest hit by the quake in terms of the lives lost, injuries sustained, and destruction of infrastructure, property and economic assets. The overall loss of public and private assets in the most affected districts was estimated at US\$2.3 billion and the resulting loss of income was estimated at US\$576 million, according to World Bank documents.

In addition, more than 73,000 people died in the quake and 70,000 were injured or disabled. Over 2.8 million people were left without shelter and 2.3 million were left without adequate food. Vulnerable groups living in remote mountain areas with limited income and service provision bore the brunt of the earthquake's impact. Women and children made up a large share of the victims, as many women were caught in houses and children in school buildings when the earthquake occurred. Limited and constrained access to remote and rugged areas also hampered rescue efforts.

The World Bank responded with a financing package of US\$475 million. Other international aid organizations, including the United Nations, contributed technical assistance and disaster relief aid to both local and national efforts. The UN Secretary-General hosted a Ministerial-level international donor conference in Geneva on October 26, 2005 and on November 19, 2005 more than 85 multilateral, governmental, and non-governmental organizations met in Islamabad to commit financial and in-kind support of the Government of Pakistan's relief program. The conference produced commitments of US\$5.9 billion in grant support and concessional loans.

Large donors included the Asian Development Bank, World Bank, International Monetary Fund, Islamic Development Bank, Japan, Saudi Arabia, and the United States. These donors concentrated their efforts on infrastructure, agriculture, communications, and livelihoods. Large donors also committed to assist with vulnerable groups, including women, children, victims disabled by the earthquake and with efforts to build capacity within institutions implementing reconstruction and rehabilitation efforts.

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<sup>19</sup> Prepared by Todd Bryan

In addition to the commitments of large donors, the World Bank's International Development Association (IDA) committed US\$400 million in Emergency Recover Credits (ERC) to support and complement large donor projects and capacity building efforts. According to Bank documents, the IDA recognizes Pakistan's social and economic vulnerability to natural disasters and the dire need to strengthen the country's approach to hazard risk management. It is within the IDA that dispute resolution and grievance mechanisms are located.

According to World Bank documents, the objectives of the ERC are to support the Government of Pakistan's efforts to do the following:

- a. reduce the immediate suffering from the effects of the earthquake and restore livelihoods destroyed by the quake
  - b. restore basic services to the affected population and rebuild infrastructure
  - c. start the recovery and reconstruction process
2. **Method.** All relevant documents on the World Bank website were reviewed, some with greater depth than others. An interview with the project TTL has not yet occurred.
  3. **Analysis** The ERC was premised on the need to rebuild houses, restore livelihoods through income transfers to the most impacted households, finance critical imports, and augment capacity building. In each of these areas, IDA has developed specific grievance mechanisms. Each is discussed briefly below.

### **Housing:**

Housing assistance includes the promotion of hazard-resistant construction standards and design, rebuilding houses in-situ, ensuring owner-driven reconstruction with technical assistance, training and supervision, utilization of readily accessible materials and familiar building methods, limited resettlement, strategic urban re-planning, uniform assistance, coordination and leveraging of multiple reconstruction initiatives and standards, and the linking of housing to livelihoods and infrastructure rehabilitation.

IDA financing for the housing sector included a) housing grants for reconstruction of destroyed homes with the installation of earthquake design standards and b) technical assistance and capacity building to support the Earthquake Reconstruction and Rehabilitation Authority (ERRA) and provincial and local governments in project management, evaluation and compliance with the WB social and environmental framework, and development of a grievance redress mechanism.

### **Livelihood Support:**

Assistance for livelihood support focused on two objectives: a) protecting the most vulnerable households in the short term through cash grants and b) rejuvenating economic activity by reviving small businesses and replacing lost agricultural assets. Eligibility is extended to households that, according to Bank documents, "have experienced damage to their primary

housing unit, shop or business, have suffered the death of an adult household member, or have lost major livestock.” Preference is given to households with a high proportion of dependents, such as the disabled, elderly, children, and injured.

In order to quickly mobilize the program, households eligible for the first round of assistance were identified from existing government records. Thereafter, eligible households were identified through open community meetings managed by Union Council level committees. Grievances and appeals are handled by district level officials, with monitoring and oversight provided by provincial and federal governments.

### **Import Financing:**

Earthquake assistance was expected to greatly increase the need for imported fuel, steel, cement and related commodities and services, estimated at approximately US\$1 billion over a two-and-a-half-year reconstruction period. Imports at that level of investment threaten to further upset Pakistan’s balance of payment and reduce its official foreign exchange reserves. The Government of Pakistan requested assistance in the form of quick disbursements to partially finance imports of items required for reconstruction and rehabilitation. These imports are expected to keep the supplies and prices of these commodities at adequate and appropriate levels. No grievance redress mechanisms were listed in this segment.

### **Capacity Building:**

The Bank acknowledges that the magnitude of the earthquake has tested the capacity of the Government of Pakistan to respond to reconstruction and recovery demands placed on it. Moreover, the Bank recognizes that the all levels of government need to effectively plan, implement and supervise reconstruction activities now and in the future. Earthquake assistance in capacity building includes the following:

- ③ provision of human resources and consultancy inputs at the federal, provincial and district levels
- ③ continuous social impact assessments and third party evaluations – which has the potential to identify and address complaints and grievances
- ③ design and delivery of training programs on financial management and streamlined implementation processes
- ③ the provision of information technology connectivity and the establishment and/or improvement of management information systems (MIS)
- ③ facility upgrades including infrastructure, office supplies and needed vehicles, and developing a communication strategy
- ③ improved approach to hazard risk management and disaster prevention

In addition to the primary funding responsibilities of IDA, funds are also available through IDA to fill financing gaps in other assistance programs including social protection, health, education,

agriculture, and roads, water supply and other infrastructure. IDA funds in this area are used for community-based psycho-social support and medical care, placement and follow up care, and temporary employment. No explicit grievance mechanisms were apparent.

**Implementation:**

To effectively and efficiently implement the program and disperse aid, the Bank will work with federal and provincial/state governments and the ADB to develop an organizational structure that will complement the existing “devolved” government structure in the region, from centralized strategic planning at the federal level to detailed planning, approval and execution at the lowest level of authority. Among the stated principles underlying the structure are to a) strengthen the local and regional ownership in the decision making and implementation process and b) establish transparent procedures and allow third party monitoring. These principles are highlighted because, while they are not explicitly identified as such, they are nevertheless consistent with best practices in conflict management.

**Environmental and Social Safeguards:**

An Environmental and Social Screening Framework (ESSAF) was implemented to undertake environmental impact assessments (EIAs) for all earthquake rehabilitation and reconstruction efforts so as to ensure that adverse impacts are minimized and mitigated. In addition, a continuous social impact assessment (CSIA) will be undertaken to identify and monitor community perceptions, grievances, and feedback. The CSIA will also track the overall impact of the recovery program and help initiate mitigation measures.

### **Annex 3. Literature Review and Interviews with Conflict Resolution Experts**

Over the last three decades an extensive body of knowledge has emerged about both ADR and ECR. Some of this knowledge, information and data lodges in quantitative or qualitative research. Other pieces can be found in the written debates and reflective experiences of seasoned practitioners.

#### **I. Evidence regarding ADR and ECR Effectiveness**

1. **ADR Court-Based Research.** ADR in court related settings has been the source of considerable research.<sup>20</sup> Some of it has been admittedly partisan research undertaken by ADR/ECR cheerleaders and missionaries. However, more disinterested and scholarly empirical research has also been done, often focusing on one or more of the following questions:
  - a. Are ADR processes perceived to be fair by those who are affected or governed by ADR rules?
  - b. Are ADR processes efficient? Is there a reasonable relationship between costs of use, time of use, amount of use and production of outcomes?
  - c. Is the amount of ADR process and the use of the legal system appropriate for societal needs?
  - d. Do differences in process (method used, forum in which the dispute takes place, use of independent arbitrators or mediators) make a difference?
  - e. How do claimants, disputants or transaction makers choose particular processes?
  - f. How do the requirements and resources required affect their use and outcomes?
  - g. What are the effects of substantive resource allocation rules as incentives for the use and outcomes of ADR processes?
  - h. How are process effects measured and which measurements produce the most accurate results?

The authors of these questions examined not just ADR, but other civil procedure innovations as well.<sup>21</sup> They note that some of the most exhaustive studies of ADR have failed to conclusively demonstrate that court-based ADR processes save money or time in large part because different

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<sup>20</sup> National Center for State Courts offers a good compendium of ADR resources at <http://www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=ADRMEd#1524>.

<sup>21</sup> See “process, People, Power and Policy: Empirical Studies of Civil Procedure and Courts” by Carrie Menkel-Meadow, Professor of Law, Georgetown University and Bryant Garth, Dean, Southwestern Law School, Legal Studies Research paper Series, Paper No. 2010-5, University of California – Irvine.

ADR programs have different purposes and designs that might emphasize one or more program goals. However, repeated studies have demonstrated conclusively high satisfaction rates by the users of ADR, higher in comparison than formal court or tribunal proceedings.<sup>22</sup>

Depending on program intents and designs, other studies have compared litigation and ADR processes and have found ADR to be an efficient and effective procedural solution to the problems of time and cost savings in the justice system without sacrificing the quality of “macrojustice” principles and precepts. Designed and executed well, ADR processes can in fact save time and money while increasing satisfaction. Clarity of program intent, design and execution are the keys.<sup>23</sup>

Several studies take this farther. They suggest that key “events” on what we call the “escalator” or ladder to finality (trial) are often influential of how and when complaints resolve. In effect, events “trigger” windows of opportunity for negotiations.

In an analysis of cases from the Hawaii state trial courts, researchers Barkai, Kent and Martin found that some of those triggering events and created windows on civil dockets included:

- i. Face to face negotiations between lawyers
- ii. Face to face negotiations with lawyers and clients
- iii. Telephone negotiations between lawyer
- iv. Communications with insurance agents
- v. The use of court annexed arbitration
- vi. Judicial settlement conference
- vii. Motions for summary judgment
- viii. Impending or actual mediation conferences

A recent survey of nearly 500 chief legal officers and corporate general counsel gives mediation further high marks as a means for reducing costs and delays and effectuating resolutions, depending on the timing.<sup>24</sup> Other studies on procedural justice again suggest that the creation of

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<sup>22</sup>One of the very best roundups of court-based and court-annexed ADR systems is “Bibliographic Summary of Cost, Pace, and Satisfaction Studies of Court-Related Mediation Programs,” 2<sup>nd</sup> Edition, by Jennifer E. Shack, Director of Research, Resolution Systems Institute, March 2007 available at <http://courtdr.org/files/MedStudyBiblio2ndEd2.pdf>

<sup>23</sup> See “Dispute Resolution and the Vanishing Trial: Comparing Federal Government Litigation and ADR Outcomes” by Lisa Bingham, J.D.; Indiana University, Tima Nabatchi, PhD., Syracuse University; Jeffrey Senger, J.D., U.S. Department of Justice; and Michael Jackman, M.P.A., Indiana University. Copy available at <http://ssrn.com/abstract=1127878>.

<sup>24</sup> “Civil Litigation Survey of Chief Legal Officers and General Counsel Belonging to the Association of Corporate Counsel,” Institute for the Advancement of the American Legal System, University of Denver, 2010.

formal events and deadlines and the timing of those events can be influential of both formal and informal resolution.<sup>25</sup>

2. **Partnering Research.** Frank Carr with the Center for Public Resources defines partnering as a “management best practice” aimed at preventing or mitigating commercial conflicts, most often on construction cases. Partnering processes may involve a structured kick-off workshop analyzing coming construction conflicts, periodic partnering meetings, a project completion event to garner lessons learned, or a celebratory gathering to honor contributions from all partners. Partnering emerged in the late 1980s as part of the Total Quality Management (TQM) movement. U.S. Army Corps of Engineers, one of the early pioneers with partnering, reported an 85% reduction in construction claims and litigation.<sup>26</sup>
3. **USIECR Research.** The following research and study data gathered by the U.S. Institute for Environmental Conflict Resolution (U.S. Institute) makes a compelling case for the cost-effectiveness of ECR. The U.S. Institute encourages detailed review of each study to understand the specific context, strengths and limitations of reported findings but draws the following conclusions:
  - a. 150 different statutes are the subject of environmental and natural resource related dockets at the U.S. Department of Justice.
  - b. 7,500 active cases and matters are on docket at the Environmental and Natural Resource Division of the U.S. Department of Justice.
  - c. More than 400 environmental conflict resolution (ECR) cases are undertaken annually by federal agencies.
  - d. On average, 20 months are shortened from average case durations when ECR is substituted for litigation, according to a national survey of natural resource attorneys.
  - e. \$168,000 is saved per client on average when ECR is substituted for litigation, according to a national survey of natural resource attorneys.
  - f. There is an 80% settlement rate typical of ECR based on empirical studies published over the past three decades.

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<sup>25</sup> See “Settling Civil Lawsuits in Hawaii” by John Barkai, JD, Richardson School of Law; Elizabeth Kent, Director of the State Judiciary’s Center for Alternative Dispute Resolution; and Pamela Martin, J.D., Research Analyst, State Judiciary’s Center for Alternative Dispute Resolution in *Hawaii Bar Journal*, Vol. 10, No. 13, 2007. Also, MacCoun, R. J., Lind, E. A., & Tyler, T. R. (1992). “Alternative dispute resolution in trial and appellate courts (pp. 95-118)” in D. K. Kagehiro & W. S. Laufer (Eds.), *The handbook of psychology and law*, New York: Springer Verlag. Also, MacCoun, R. J. (2005). “Voice, control, and belonging: The double-edged sword of procedural fairness” in *Annual Review of Law and Social Science*, Vol. 1, [http://conium.org/~maccoun/MacCoun\\_ARLSS2005.pdf](http://conium.org/~maccoun/MacCoun_ARLSS2005.pdf).

<sup>26</sup> See Harmon, “Resolution of Construction Disputes: A Review of Current Methodologies” in *Leadership & Management in Engineering*, Oct 2003. Also, Frank Carr, “Partnering: Aligning Interests, Collaboration and Achieving Common Goals”, Center for Public Resources.

- g. 75% of ECR participants report that their first choice would be to use ECR again for similar issues according to a multi-agency study of ECR.
- h. “Billions saved annually when ECR maximizes the benefits of collaboration (e.g., timely progression of projects, reduced monitoring, improved working relationships).”

Additional research gathered by USIECR documents other more specific benefits including:

- i. Budget savings by state agencies
- ii. Party savings by reducing attorney costs
- iii. Savings in monitoring and mitigation
- iv. Improved communication and a reduction of hostilities, even when matters do not settle

ECR received high marks from users and documented aggregate cost and time savings from agencies and organizations that include ECR programs in their portfolio of grievance and dispute resolution mechanisms.<sup>27</sup>

## **II. Views from Other ECR Experts**

As part our task and methodology, we held discussions with a number of experts with international reputations in the field of ECR specifically, and ADR more generally. Most have some prior connection to or involvement with World Bank. Among those interviewed were:

1. Suzanne Ornstein, Director, Washington Office, U.S. Institute for Environmental Conflict Resolution
2. Glenn Sigurdson, Esq., Mediator, Arbitrator and Adjunct Professor, Learning Strategies Group, Simon Fraser University, Vancouver, Canada
3. Lawrence Susskind, PhD, Professor of Planning, MIT and Founder of the Consensus Building Institute
4. Susan Carpenter, PhD, Mediator, Facilitator, System Design Consultant

Detailed notes from our discussions with the above are included at Annex 3 .We also interviewed two other experts who preferred not to be cited or named but whose views we include in the following summary.

## **III. Commonalities from Research and Practice**

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<sup>27</sup> See [http://www.ecr.gov/pdf/ecr\\_cost\\_effect.pdf](http://www.ecr.gov/pdf/ecr_cost_effect.pdf) for details on USIECR’s research summary.

While orientations, background, and practice philosophies inevitably differ, we believe certain shared assumptions emerge from (and cut through) much of the literature as well as the views of the discussants we met and spoke with. While simple and platitudinous sounding on paper, these are important if in fact World Bank seeks to change its orientation and practices of managing environmental and social project-generated grievances.

1. **Conflict is Predictable.** Many large and complex institutions tend to regard conflict as a sign of failure, weakness, or malfunction. Conflict is often viewed as an aberration and in some cases, something to be ignored or suppressed. Most seasoned ECR practitioners hold an opposite view. They view conflict as normal and inevitable whenever the forces of change and the forces of status quo are placed in tension.
2. **Better and Worse Conflict Cycles.** Conflict has “virtuous” and “vicious” cycles depending on the way it is managed. Conflict by itself is not unusual nor an inherent sign of human error or system failure. However, persistent, unmanaged, and high cost conflict is an indicator of systemic or organizational problems, and sometimes of institutional failure. Clashes over divergent interests, frustrations over cultural or physical dislocations, anger over changes, or aggravation and annoyance over delays are natural aspects of the programs and projects underway at World Bank. The way these inevitable conflicts are anticipated, addressed, managed or resolved, and the outcomes achieved, are the real indicators of institutional success or failure.
3. **Alternative Strategies.** When conflict surfaces, institutions no less than individuals instinctually tend to rely on “power” strategies and tactics first, “rights” strategies second, and “interest” based strategies and tactics third. Distressed or immature conflict management systems that have high volumes or levels of conflicts unintentionally promote this sequence. More effective and mature systems invert this sequence. They seek to:
  - a. First reconcile divergent or competing interests at the earliest possible stage and prevent unnecessary escalation.
  - b. Second, adjudicate the rights against the facts if reconciliation of interests is not possible.
  - c. Third, and as a last resort, encourage or utilize power strategies only as a last resort, not the first.
4. **Front End Complaint Management.** USIECR research, as well as ADR and legal system research, strongly suggests that good social, political and jurisprudential process built on dialogue and solution-seeking is a way of preventing unnecessary conflicts from escalating or reducing and resolving them when they manifest.
5. **Mainstreaming Front End Stakeholder Engagement.** Lessons learned (many of them, the hard way) from other organizations and institutions suggest that the application of good process should not be done as an afterthought or to help institutions “game” people on decisions that have already been made. To do it right requires intentionality, reconnaissance, design, a willingness to listen, and a willingness to allow stakeholders to negotiate “how” questions when projects have already been determined are set in motion.

6. **Organizing Stakeholder Processes.** For ADR/ECR to succeed, participation by those who hold a problem (“stakeholders” and “rights-holders”) is needed if success is to be reached. The inclusion of the fullest possible diversity of voices and viewpoints needed to practically work on a particular conflict, issue, or problem must be achieved knowing full well that (a) this will sometimes require converting hundreds or even thousands of different groups and people into meaningful representation and (b) some persons or factions may choose to stand off from a process.
7. **The Relationship between Stakeholder Process and Grievance Mechanisms.** Bank, Borrower, and the communities that are impacted by projects all need to be educated to both the conflicts that are anticipated and the mechanisms that will be available through a project cycle. The purpose is to negotiate understanding as to how future grievances will be handled and to ensure the fullest possible consent to them.
8. **Implementing Stakeholder Processes.** The theory, research and practice of ECR suggests that good social processes like mediation and facilitation are predicated on fair decision rules that do not tilt the playing field or the marketplace of ideas in favor of one party or another, that proceedings and outcomes should, to the greatest extent possible, be transparent so that tradeoffs are understandable to those who are affected by decisions but not present for deliberations, and that stakeholders should, to the greatest extent possible, build in planned adaptability of decisions so that they are reflexive to new information, changed conditions, or unexpected future challenges.<sup>28</sup>
9. **Negotiation versus “Decide and Defend.”** Command and control decision-making is often a serious flaw in strategies aimed at siting or managing large projects with wide spread impacts. This makes project leadership potentially more challenging but potentially more productive. Negotiation is preferable to unfettered and endless fighting, knowing that opportunities for negotiation are usually created by strong backstops of decisional finality. “Negotiation” is the central key in designing ADR and ECR systems. Windows for productive negotiations open and close in the life cycle of a project. However, the social, political, and financial costs of moving to the next window often rise. To accomplish this, good DR systems create an escalator of windows.
10. **The High Value of Communication.** Both the literature and distilled practice of ADR and ECR places great emphasis on interpersonal communication that people authentically need and want to be heard. ADR and ECR require opportunities for dialogue, idea exchange, information, respectful questioning, and mutual listening.
11. **Multiple Rather than Single System Strands.** The creation of specific ECR and ADR dispute resolution mechanisms is more robust when it sets procedures in place to anticipate, incentivize, promote, and choreograph continuing opportunities for successful negotiations. Whenever and wherever possible, systems should intentionally keep the

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<sup>28</sup> Adler, P. “The End of Mediation: A Ramble on Why the Field Will Fail and Mediators Will Thrive over the Next Two Decades!” at <http://www.mediate.com/articles/adlerTheEnd.cfm>

focus on negotiating interest-based solutions. Any “ladder” of escalating DRMs should wherever possible build in “loop-backs” to interest-based negotiation.

12. **Joint Fact Gathering**. High quality information – technical, legal, economic, cultural and scientific – needs to be an important part of any ADR process. This requires mutually identifying questions of interests rather than assuming stakeholders simply need to be educated. A corollary to this is that lay publics are far more capable of absorbing factual information than experts give them credit for.

## IV. Interviews with Environmental Conflict Resolution Experts

### I. Suzanne Ornstein, Director, Washington DC Office, U.S. Institute for Environmental Conflict Resolution (USIECR).

Ms. Ornstein is the Washington DC representative of USIECR, a federal institute that provides independent and impartial ADR assistance to U.S. federal agencies and the communities and individuals that are affected by them on environmental and social matters. The Institute offers an extensive range of ADR services: assessment, mediation, and facilitation. It utilizes the services of a qualified roster of outside conflict resolution experts and also serves as a “center of excellence” in developing new practices, setting standards, and assisting with the development of the field of ECR.

Suzanne reports that USIECR worked closely with the U.S. White House’s Council on Environmental Quality (2005 CEQ-OMB Policy Memo on ECR) to develop a set of basic cross-cutting “Principles for Agency Engagement in Environmental Conflict Resolution and Collaborative Problem Solving.” These are:

1. **Informed Commitment.** Confirm willingness and availability of appropriate agency leadership and staff at all levels to commit to principles of engagement; ensure commitment to participate in good faith with open mindset to new perspectives.
2. **Balanced, Voluntary Representation.** Ensure balanced inclusion of affected/concerned interests; all parties should be willing and able to participate and select their own representatives.
3. **Group Autonomy.** Engage with all participants in developing and governing process; including choice of consensus-based decision rules; seek assistance as needed from impartial facilitator/mediator selected by and accountable to all parties.
4. **Informed Process.** Seek agreement on how to share, test and apply relevant information (scientific, cultural, technical, etc.) among participants; ensure relevant information is accessible and understandable by all participants.
5. **Accountability.** Participate in the process directly, fully, and in good faith; be accountable to all participants, as well as agency representatives and the public.
6. **Openness.** Ensure all participants and public are fully informed in a timely manner of the purpose and objectives of process; communicate agency authorities, requirements and constraints; uphold confidentiality rules and agreements as required for particular proceedings.
7. **Timeliness.** Ensure timely decisions and outcomes.
8. **Implementation.** Ensure decisions are implementable consistent with federal law and policy; parties should commit to identify roles and responsibilities necessary to implement agreement; parties should agree in advance on the consequences of a party

being unable to provide necessary resources or implement agreement; ensure parties will take steps to implement and obtain resources necessary to agreement

In 2008, USIECR also convened an Ad Hoc Working Group on Collaboration and Consensus on Public Issues ([www.pubcollab.net](http://www.pubcollab.net)). This group further elaborated the above CEQ-OMB memo with the following additional guidance:

- a. **Direct interaction and communication.** Opportunities for constructive interaction are at the core of collaboration and dispute resolution. While communications and internet technologies help reach large numbers of people, they are usually best used to augment face-to-face dialogue and problem solving.
- b. **Diversity of views.** Inclusive approaches to participation make sure all points of view among those affected are welcome and encouraged. Extra effort is frequently needed to ensure that sufficiently diverse views are represented, giving everyone the confidence that the major perspectives will be thoroughly discussed.
- c. **“Done with, not done to.”** Collaboration creates forums where parties can work together voluntarily and have a voice in shaping the process itself. Suspicion and conflict are reduced if the structure and goals are transparent and not open to manipulation by one interest.
- d. **Timely information.** Timely information that is accessible, both in terms of availability and understanding, helps ensure that all parties are empowered to be full participants and that factual issues are resolved in ways that are expeditious and clear to all.
- e. **Mutually beneficial results.** Participants in any effort ask the basic question: does this outcome help achieve my goals? Collaborative efforts consciously work to ensure that the results are beneficial for all.
- f. **Focus on results and action.** A good collaborative process keeps participants focused on achieving sustainable results – whether that result is improved relationships or actions that resolve problems. Clarity about the purpose of the effort is critical to matching the process to the desired results.

## II. **Glenn Sigurdson, Esq, Mediator, Arbitrator and Adjunct Professor, Learning Strategies Group, Simon Fraser University, Vancouver Canada.**

Mr. Sigurdson is one of the founders of the environmental mediation movement in Canada and works in partnership with many Canadian corporations, government agencies, and Third Nation tribes. He is the co-author of *Building Consensus for a Sustainable Future* (with Cormick, Dale, Emond, and Stuart). Sigurdson and his colleagues believe ten key principles must underlie stakeholder engagement done in the context of sustainability projects and programs.

Principle 1. Purpose-Driven. People need a reason to participate in a process.

- Principle 2. Inclusive, Not Exclusive. All parties with a significant interest in the issues should be involved in the consensus process.
- Principle 3. Voluntary Participation. The parties who are affected or interested in a process participate voluntarily.
- Principle 4. Self-Design. The parties themselves must design the consensus process.
- Principle 5. Flexibility. Flexibility should be designed into the process.
- Principle 6. Equal Opportunity. All parties have equal access to relevant information and the opportunity to participate effectively throughout the process.
- Principle 7. Respect for Diverse Interests. Acceptance of the diverse values, interests, and knowledge of the parties involved in the consensus process is essential.
- Principle 8. Accountability. The participants are accountable both to their constituencies and to the process that they have agreed to establish.
- Principle 9. Time Limits. Realistic deadlines are necessary throughout the process.
- Principle 10. Implementation. Commitments to implementation and effective monitoring are essential parts of any agreement.

Glenn's organization holds that in matters of public sustainability questions, ECR and ADR processes cannot be imposed. Rather voluntary opportunities for negotiation must be created, made widely and repeatedly available, incentivized, and reinforced as transitory windows of opportunity open or close in the course of a project, program or initiative.

In a recent conversation, Glenn offered the following further context on the document. "The thirteen multi-stakeholder Round Tables of Canada, and the Canadian Council of the Ministers of the Environment were developed through a national negotiation process under the leadership of a National Task Force." Glenn was both a member and a trainer.

"While others have evolved similar principles and articulated them in different ways, what distinguishes this work is the manner in which it was created, and the range and depth of perspective that was reflected from across the country in the consensus achieved. The challenges of sustainability will always present unique factors, and particular characteristics. Any process designed to respond to them will need to be specially shaped to meet the particular circumstances and players. The Principles offer guidance as to the characteristics any process designed to achieve consensus should reflect. "

These principles are the foundation of much of Glenn's personal approach and practice. What gave the Principles credibility and legitimacy was that they were the product of a national

process of negotiation involving multi- stakeholder roundtables developed in each province and territory, and nationally. This broad based endorsement is on the front cover of the 20 some page booklet that resulted. 25,000 copies of this found their way into circulation in the following years and attached to many international agreements.

Glenn says: “Much earlier than in the US we were struggling in Canada with the connection between sustainability and process – beyond efforts to define the term and develop policy prescriptions. What is reflected above is only the statement of the Principle, but there is explanatory text with each in the booklet that forms a very important part of the work product. This was the first widely accessible effort, I believe, to translate sustainability from a concept to tools for action at the ground level.”

### **III. Lawrence Susskind, PhD, Professor of Planning, MIT and Founder of the Consensus Building Institute.**

Professor Susskind is the author of numerous books on planning and public policy and one of the leading thinkers in the field of ECR. The Consensus Building Institute (CBI) has considerable experience resolving disputes that arise from international investments. In our interviews and documents review, we note the following CBI recommendations.

1. **Convener.** Setting an appropriate convening and public engagement framework must be done with great care, especially as regards who should act as the “convener”. It is often wiser for entities like the Bank to not serve as the convener but rather to use trusted others.
2. **Assessment.** Before a stakeholder group is actually convened, stakeholder relationships and interest groups must be carefully and thoroughly mapped.
3. **Grievances.** Enough time must be allowed for those in a grievance system or stakeholder process to learn the complexities of the situation including who participates and how, who represents whom, and how the community handles disputes.
4. **Timing.** Schedules and deadlines for stakeholder engagement need to be timed in a manner that appropriately coincides with the actual investment.
5. **Goals.** Clear institution goals, intentions and responsibilities for stakeholder engagement must be discussed in advance of a project, not when grievances start to arise.
6. **Coaching and Consultation.** World Bank and the organizations they loan to, as well as the affected communities must go through a “joint learning curve.” This required mutual skill building for all involved entities who are prospectively part of assessing, designing, convening, and participating in a well-tailored stakeholder engagement.

Professor Susskind also remarked that The Organization for Economic Cooperation and Development (OECD) is trying to hold multinational corporations to appropriately high standards of corporate social responsibility (CSR). OECD member states include thirty of the major economies of the world. His blog site notes that ten years ago they adopted guidelines

regarding human rights, environmental protection, the rights of workers and child protection. Now they are in the throes of a ten year review.

Every member country has appointed an NCP -- a National Contact Point -- to investigate claims that multinational corporations headquartered in their country, or their subsidiaries wherever they might be located, have violated the guidelines. The NCPs have investigated as best they can (often with very limited staff and budget). The assumption is that being called out by a national government will push multinationals to correct whatever guideline infractions they or their subsidiaries may have committed. Unfortunately, it has been hard for the NCPs to complete many of the needed investigations, particularly those filed by unions or NGOs in far off corners of the world.

On some occasions, NCPs have not found sufficient evidence that the guidelines have been violated, but there are clearly circumstances that needed attention. At a recent meeting of all the NCPs and some of their constituent organizations (including their Trade Union Advisory Group, their Business and Industry Advisory Group, and OECDWatch) the NCPs were reminded that their goal should be to rectify inappropriate practices, not just determine whether the guidelines have been violated. More generally, the NCPs were urged to step back from their adjudicatory (or investigatory) efforts and build their problem-solving capabilities. In particular, they were urged to take their mediation mandate seriously.

He also argues that in too many situations, mediation is viewed as the last step in adjudication (i.e. when impasse has been reached), rather than as the first step in a collaborative effort to head off a problem or work out a creative solution. When a complaint is filed, an NCP must determine whether the charges should be taken seriously. It sometimes does this by asking its national embassy to "make inquiries" about the reputation of the company against whom a complaint has been filed. Then, it might follow up with a call to the company and ask for "its version" of the story. In short, the NCP tries to determine whether the company has, in fact, violated the OECD corporate social responsibility guidelines. They proceed this way because their primary goal is to determine the legitimacy of the claims that are brought. If, however, the NCP's goal were to correct inappropriate practices or implement appropriate remedies, it might, instead, select a qualified mediator -- located in the place where the infraction presumably occurred -- to meet informally with the relevant parties and see what might be worked out. The more informal the interaction, the less likely the parties are to overstate their claims or react defensively. If such problem-solving fails, the NCP can always revert to its investigatory role.

Susskind asks: if you were a company accused of violating OECD guidelines, wouldn't you prefer to meet privately with a neutral party (who would keep what you said confidential) than to have to defend yourself in a public way as an official investigation gets underway? From the standpoint of preserving your corporate image, mediation is certainly preferable. If you were a trade union or an environmental NGO concerned about the actions of a company in your area, wouldn't you prefer to have a professional mediator bring everyone together to respond to your concerns than to wait a year or longer while an invisible agency (often in another part of the world) determines whether OECD guidelines have been violated and then writes a report? Adjudication in the absence of enforcement (and that is the situation globally) won't guarantee change. Mediation leading to voluntary agreements will almost always guarantee compliance with whatever has been worked out.

Mediation as problem-solving requires three things: (1) a willingness on the part of all the relevant stakeholders to work together to resolve the problem or deal with the situation; (2) the availability of a trusted "neutral" with sufficient knowledge and skill to manage difficult conversations; and (3) an agreement on procedural ground rules (i.e., confidentiality, timetable, agenda, good faith effort, etc.). OECD and its NCPs are seriously considering emphasizing problem-solving mediation in the years ahead.”

#### **IV. Susan Carpenter, Mediator, Facilitator, System Design Consultant and author of *Managing Public Disputes* (Jossey-Bass).**

Susan Carpenter is a distinguished mediator, trainer and writer, and was founding director of the Program for Community Problem Solving in Washington, D.C. Ms. Carpenter has argued about the importance of having a credible dispute resolution system along side a credible ADR/ECR system. The two must weave together. There are times when people and communities need to avail themselves of formal proceedings to protect their rights and to enforce laws or policies. These are also opportunities to expose people to collaborative approaches so that they can use these models when appropriate.

Recently, she and another experienced colleague, Ms. Susan Podziba, prepared a small unpublished working paper examining lessons and best practices from public policy mediators. Ms. Carpenter independently reinforced the same arguments made by Ms. Ornstein, Professor Susskind, and Mr. Sigurdson. They described these as now standard and accepted “practice markers” for ECR practitioners and differentiate some of these from the practice of mediation in other court and tribunal settings.

1. **Conduct an assessment prior to convening parties.** By listening to representatives from each party describe a conflict from their perspective prior to convening all parties, we find out how individuals and their respective groups are affected by a situation, what issue they think are important, and why these issues are important. We discuss who else is affected and how and explore the possibility of bringing parties together for the purpose of resolving the conflict. The assessment provides the basis for determining whether to bring parties together and if so, what specific elements need to be included in a process to promote productive discussions.
2. **Tailor a mediation process that works for the parties.** Working with parties to create a pathway to agreements that reflects the culture, context, external constraints, and sound negotiation practices enhances the likelihood of success. The goal is to develop a process that matches the problem. In public policy work, mediators discuss process options for structuring the process with the parties. Topics covered may include how best to describe the presenting issue, how many groups need to be represented, who might best represent each group, what information from which sources will need to be available for informed discussion, what would a logical set of process steps look like and how long might each step take, how long should each meeting last, who should staff the process, and what ground rules would be useful.

3. **Consider how best to prepare parties for mediation.** Preparing participants to engage in a constructive manner facilitates productive discussions. Preparation may include explaining to participants how the process will unfold including  
  
the creation of groundrules and a charter or protocols, creating an expectation of productive exchanges, initiating discussions concerning personal assumptions and perceived views of the other parties, identifying informational needs, assigning participants tasks to do before they come to the table, and sometimes offering formal training sessions prior to substantive discussions.
4. **Engage parties primarily in face-to-face discussions; use caucuses sparingly.** Engaging parties in constructive face-to-face discussions promotes a greater understanding of issues and interests than caucus-based mediations, and therefore, enables unique solutions to emerge from the interactions of the interested parties. Public policy mediation is rooted in the wisdom, fears, and hopes of the negotiators and the people they represent. Their interactions loosen otherwise tightly held assumptions, thereby creating opportunities for new thought and creativity.
5. **Provide adequate time for mutual learning and information sharing.** Public policy mediation allocates substantial time early in its process for all parties to identify and understand the issues and interests involved as well as to discuss the history, context and technical issues associated with creating a solution. This information sharing is a prerequisite for generating workable options and reaching lasting agreements. A considerable amount of time at the table may be devoted to this component of the negotiation.
6. **Expand where possible the range of workable options.** Pushing for a range of workable options is critical for achieving durable agreements. Mediators work hard to expand the range of options before parties begin drafting agreements. By investing time with the parties to understand the full range of interests represented by each participating group at the table, mediators are in a better position to help parties generate additional options where possible. Mediators may also bring in outside experts to suggest alternatives as well as research what other parties have done to reach agreements on similar issues.
7. **Attempt to build or maintain sound relationships among parties.** Monitoring relationships to avoid deepening divisions among participants and building the desire to listen and work with one another is critical. In situations where trust is low, specific activities such as groundrules that pertain to responsible behavior may be suggested or physical activities such as field trips that engage parties socially may be used to strengthen relationships.
8. **Be familiar with the subject being mediated.** Public policy mediators do not need to be experts in the substantive area that they are working, but they do need to have enough familiarity with the topic that they can facilitate discussions with some sense of whether the group is on track or not. Mediators will read background materials and frequently receive briefings from knowledgeable people. In cases that involve highly technical

material, the mediator may invite one or more resource people to participate in the discussions for a portion or the entire duration of a process.

9. **Track and intervene on multiple levels during and between sessions.** During negotiation sessions public policy mediators track and intervene on substantive issues, monitor the emotional comfort of each negotiator, listen for the creative thought which is occurring, determine which issues are of key importance to which negotiators, reduce conflicts to their component parts, and help parties create options to satisfy conflicting interests. Between sessions, mediators track tasks, design future agendas, oversee technical and other small group work, arrange for requested resources, and oversee communications occurring among parties, with their constituency groups, the broader public, and the media.
10. **Use resource people to expedite and enhance the discussions.** Public policy mediation frequently includes resource people for substantive support. For example, a mediator, with the concurrence of parties, may seek a financial expert. For a banking regulatory negotiation or a registered forester for a timber harvest dispute. In more complex cases, a team of resource people may be invited to serve the negotiating group by providing technical information to the negotiators. Parties will make greater progress when needed technical support is available during and between negotiation sessions.”

## V. **Other Interviews**

We interviewed two other ECR experts who shared views similar to those above but who preferred not to be identified in this report as they have been or are currently engaged in WBG projects.

## **Annex 4. Conflict Resolution Systems in Use by Other Institutions, Agencies and Corporations**

This chapter provides a non-exhaustive sample of pertinent programs, projects and initiatives that may have relevance to the World Bank's next generation of environmental conflict prevention, conflict management, and conflict resolution efforts. We offer brief snapshots of various international, national, corporate and NGO entities followed by an in-depth description of the IFC and ADB systems.

### **I. A Sample of Other Institutions and Organizations**

1. **International Finance Corporation (IFC)** The Office of the Compliance Advisor/Ombudsman (CAO) is an independent recourse mechanism for projects supported by the [International Finance Corporation \(IFC\)](#) and [Multilateral Investment Guarantee Agency \(MIGA\)](#), the private sector lending arms of the World Bank Group. CAO was established in 1999 and reports directly to the President of the World Bank Group. The office seeks to address the concerns of individuals or communities affected by IFC/MIGA projects, enhance the social and environmental outcomes of IFC/MIGA projects; and foster greater public accountability on IFC and MIGA.

CAOs perform three functions. In their "Ombudsman" role, CAO responds to complaints by people affected by the social and environmental impacts of IFC/MIGA projects. CAO Ombudsman works with stakeholders to resolve grievances using flexible problem-solving approaches such as alternative dispute resolution, conflict assessment, conflict management, mediation, and facilitation. In their "Compliance" role, CAO oversees audits of IFC and MIGA's social and environmental performance, particularly in relation to sensitive projects to ensure compliance with relevant policies, guidelines, procedures, and systems. In their "Advisor" role, CAO offers independent advice to the President of the World Bank Group and the management of IFC and MIGA. CAO advice focuses on broader social and environmental concerns, policies, procedures, strategic issues, and trends.

2. **The Asian Development Bank (ADB)** The ADB installed a new Accountability Mechanism on 12 December 2003 effectively replacing the Inspection Function that had been used since 1995. The accountability mechanism covers ADB's public and private sector operations and has two key components: (a) a problem-solving role (consultation phase) handled by the Special Project Facilitator (SPF) and (b) an investigative role (compliance review phase) handled by the Compliance Review Panel (CRP). Although the SPF and CRP are parts of the same mechanism, they function independently. The SPF reports to the ADB President, and CRP reports to the ADB Board of Directors. The mechanism is designed to assist people who are or might be adversely affected by ADB-assisted projects. Complaints may be filed by (a) any group of two or more persons in a borrowing country where the ADB-assisted project is located, or in a member country

adjacent to the borrowing country; (b) a local representative of the affected persons; (c) a nonlocal representative where, in exceptional cases, representation cannot be found and SPF agrees for complaints at the consultation phase or where the CRP agrees for complaints at the compliance review phase. The system uses various forms of consultation, and consensus seeking. Complainants must first address their concerns to the ADB operations department, as the consultation phase does not replace the existing project administration and problem-solving functions of ADB's operations departments.

3. **African Development Bank (AfDB)** African Development Bank (AfDB) maintains an Independent Review Mechanism (IRM) which seeks to provide people adversely affected by a project financed by the Bank Group with an independent mechanism through which they can request the Bank Group to comply with its own policies and procedures. The IRM comprises Compliance Review and Mediation (problem solving) for public and private sector projects. For public sector efforts, the mechanism can review compliance with all Bank Group operational policies and procedures. For the private sector projects compliance reviews are only undertaken for social and environment policies. This unit is headed by a Director assisted by a Principal Compliance Officer and secretarial services. The Director reports administratively to the President and functionally to the Boards of Directors for projects approved by the Boards and to the President for projects not yet approved by the Boards. IRM also maintains a roster of 3 external experts and consultants are hired from time to time to assist CRMU and Compliance Review Panels with investigations and fact finding missions.
4. **U.S. National Institutes of Health (NIH)** The NIH Office of the Ombudsman, Center for Cooperative Resolution, is a neutral, independent, and confidential resource providing informal assistance to NIH scientists, administrators, and support staff in addressing work-related issues. The Ombudsman, who directs the Center, serves as a focal point for conflict resolution at NIH by (1) providing confidential, informal assistance to employees and managers in resolving work-related concerns, and (2) developing and coordinating effective dispute resolution processes and procedures. The Center offers a variety of services and programs to address likely sources of conflict such as performance appraisals, harassment, mentoring relationships, and scientific collaboration. It utilizes mediation, facilitation, consultation, dispute systems design, training, partnering, and peer review.
5. **U.S. Army Corp of Engineers** Army Corps of Engineers (ACOE) is a major developer and constructor of federal facilities. ACOE has long recognized the value of and need for collaboration and public participation in the implementation of its work. To assist the Corps in implementing its collaborative approach, the Institute for Water Resources has created a specific "center of expertise" on conflict resolution and public participation called the Conflict-resolution & Public-participation Center. CPC's mission is to help Corps staff anticipate, prevent, and manage water conflicts, ensuring that the interests of the public are addressed in Corps decision making. The center achieves this mission by developing and expanding the application of collaborative tools to improve water resources decision making. Key Center tasks include training, research, and application of collaborative process techniques and modeling tools. Their techniques include collaborative process design (e.g. how to engage different stakeholders during different

parts of the planning and decision-making process, meeting formats and structures), conflict assessment and resolution techniques, special decision-making methods, collaborative modeling visualization tools, and the publication of primers on the use of technical tools for collaborative evaluation of results and tradeoffs. ACOE helped pioneer the use of a specific pre-construction “Partnering” methods which has been widely adopted in the construction industry and which has been proven to reduce litigation on major projects.

6. **U.S. Environmental Protection Agency** The Environmental Protection Agency (EPA) is the premier agency dealing with environmental compliance and enforcement of the nation’s environmental laws. Within EPA, the Conflict Prevention and Resolution Center (CPRC) uses three primary techniques to help the agency manage the inevitable conflicts that occur around environmental protection: [consensus building](#), [conflict prevention](#), and [alternative dispute resolution \(ADR\)](#). CPRC asserts that their processes result in faster resolution of issues, more creative, satisfying and enduring solutions, reduced transaction costs, improved working relationships; and increased stakeholder support for Agency programs. The Center offers training and consultation and facilitates the use of independent mediators and facilitators for specific issues that arise.
7. **U.S. Department of the Interior** The Department of Interior is the largest land management office in the U.S. Government encompassing National Parks and Indian lands. The Office of Collaborative Action and Dispute Resolution (CADR) is located within the Office of the Secretary under the Assistant Secretary for Policy, Management and Budget (PMB). The [CADR](#) office promotes, coordinates and facilitates greater use of alternative dispute resolution and consensus-building processes throughout the bureaus and offices of the U.S. Department of the Interior. It emphasizes consensus-building processes to prevent, manage and resolve conflicts that may arise in any area of the Department’s work. CADR is also responsible for assisting with and reporting on the Department’s experiences with negotiated rulemaking consistent with the [Negotiated Rulemaking Act of 1990](#). The CADR office works in collaboration with the members of the Interior Dispute Resolution Council ([IDRC](#)) comprised of designated representatives from each Bureau, other offices within PMB, and the Office of the Solicitor. It further serves as the Department’s clearinghouse for information and resources on alternative dispute resolution processes, conflict management systems, and negotiated rulemaking. CADR staff keeps abreast of the field and shares that information within the different agencies encompassed within the Department. The Secretary of Interior reports to the President of the United States.
8. **U.S. Institute for Environmental Conflict Resolution** The U.S. Institute for Environmental Conflict Resolution (USIECR) is an independent and impartial U.S. federal program that helps people find workable solutions to tough environmental conflicts in the U.S. The institute offers its assistance to federal agencies, non-profit groups and communities that are involved in conflicts stemming from proposed or actual federal actions. They offer a full range of assessment, mediation, facilitation services and utilize the services of a qualified roster of outside conflict resolution experts.

9. **Chevron Corporation** Chevron is an energy company. It explores, develops and delivers oil and gas products. On its website, Chevron writes: “Constructive dialogue with our stakeholders helps us identify, understand and manage issues and make informed decisions that contribute to our business success. Stakeholder engagement is integrated into our business processes and systems. During 2007, we engaged with a wide range of stakeholders — including stockholders, governments, communities, external experts and nongovernmental organizations.”

The company’s Environmental, Social and Health Impact Assessment (ESHIA) process was originally deployed as a corporate process in early 2007. It requires that all new capital projects are evaluated for potential environmental, social and health impacts. Chevron uses ESHIA to anticipate and plan the way in which significant impacts are mitigated and benefits are enhanced during the planning, construction, operation and decommissioning of a project. Stakeholder engagement is central to the ESHIA process throughout the life of a project. By early 2008, ESHIA was being applied to nearly 20 capital projects worldwide, including the Piceance Basin project in western Colorado.

Chevron also has its own version of “environmental and social safeguards,” strict policies and internal approval processes to guide decision making and reporting on political contributions and lobbying. It publically discloses payments made to governments and revenues received by governments. In 2007, Chevron continued to participate in the Extractive Industries Transparency Initiative (EITI).

10. **DuPont** DuPont is the world’s second largest chemical company and is engaged in a variety of science focused businesses, including among others, lycra, Kevlar, Teflon, paints, and polymers.<sup>29</sup> Because many of its businesses and operations attract controversy, DuPont has a variety of approaches and practices to stakeholder engagement. At the policy level, they have made extensive use of stakeholder advisory boards, which Keystone has helped organize and facilitate.

One was the “Bio-Tech Advisory Board” which gathered together a diverse, international group of thinkers (including many of DuPont’s critics) and, after meeting over several years, produced successive policy guidance reports for DuPont’s Board of Directors. The Bio-Tech Advisory Board shaped a set of Bioethics Guiding Principles, a roadmap for implementing the principles, and proposed metrics for evaluation performance. The report is available at [http://www2.dupont.com/Biotechnology/en\\_US/assets/images/advisory/Bioethics\\_2007.pdf](http://www2.dupont.com/Biotechnology/en_US/assets/images/advisory/Bioethics_2007.pdf). A similar high level stakeholder advisory board was assembled to help guide its emerging health businesses. Monsanto corporation has conducted similar efforts to help guide its work on genetically modified crops.

11. **The Conference Board** The Conference Board (TCB) is a global, independent business membership and research association that offers practical knowledge and guidance to

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<sup>29</sup> Disclosure: DuPont Corporation is a member of The Keystone Center’s Board of Trustees. See <http://www.keystone.org/about-us/board-trustees>. Facilitators from Keystone serve, help, organize and facilitate both of the boards mentioned here.

leading businesses. The Conference Board does not engage in advocacy but seeks to provide objective, independent source of economic and business knowledge. The Board conducts research, convenes business forums, and maintains an extensive network that allows peer-to-peer learning.

TCB has commissioned a number of benchmark reports examining corporate stakeholder engagement experiences. One of these reported on the views and experiences of corporate managers at 700 companies.<sup>30</sup> The report finds that:

- a. Strategic community involvement and global giving practices are replacing traditional philanthropy
- b. Social, environmental, and sustainability reporting initiatives are gaining momentum
- c. More companies understand the value of *engaging* their stakeholders—including NGOs—rather than simply *managing* them

The report includes case studies from American Express, Schmalbach-Lubeca AG, BT Group, and Ford Motor Company, survey respondent profiles, a glossary of resources and terms, and selected Web resources.

12. **Newmont Mining** In 2007 and after considerable turmoil at different mining sites, Newmont Mining commissioned an independent “global review and evaluation of the company's policies and practices relating to existing and potential opposition from local communities and to our company's operations and the steps taken to reduce such opposition.” The Community Relations Review was undertaken by independent assessors with input from an Advisory Panel comprised of independent sustainability experts and leaders of prominent civil society organizations and advocacy groups.

Intensive studies of Newmont’s community relationships at five mine sites, including the Ahafo Mine in Ghana, provided the basis for a set of findings and recommendations regarding how Newmont currently manages its engagements with communities. The entire CRR and supporting documents are publicly available on the company’s web site at [www.newmont.com](http://www.newmont.com). The Ahafo site review can be found at [www.NewmontGhana.com](http://www.NewmontGhana.com). The resulting products offer a more robust and independent analysis of how Newmont manages its community relationships as a company.

13. **The Caux Roundtable (Canada)** Similar in some ways to The Conference Board, The Caux Round Table (CRT) is an international network of experienced business leaders, who work with business and political leaders to design intellectual strategies, management tools and practices that strengthen private enterprise and public governance for the improvement of the global community. Constructive stakeholder engagement, transparency, and creative problem solving, are woven into and throughout CRT’s

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<sup>30</sup> See “Corporate Citizenship in the New Century: Accountability, Transparency, and Global Stakeholder Engagement” by Sophia A. Muirhead, Charles J. Bennett, Ronald E. Berenbeim, Amy Kao, and David J. Vidal at <http://www.conference-board.org/publications/publicationdetail.cfm?publicationid=574>.

guidance documents. For example, in their principles for responsible businesses, CRT emphasizes an overt duty to contribute value to society through the wealth and employment it creates, not just to shareholders, but to stakeholders, and services it provides to consumers. CRT has issued parallel “principles” documents for government, NGOs and communities.<sup>31</sup>

14. **The San Juan Dispute Center (Puerto Rico)** The San Juan Dispute Resolution Center in Puerto Rico serves as a clearinghouse and directs people and communities with disputes to appropriate fora. The Center, which has been operating since 1983, acts as a switchboard for complaints, providing advice to users and referrals to other agencies and courts, as well as mediation services for appropriate disputes. The Center provides more than 2000 referrals each year, and use of the Center has increased regularly since its founding. The Center claims to have had a significant impact on reducing court backlogs. The concept of using an independent mediation center to assess cases, provide advice, make referrals, and mediate appropriate disputes is attractive for reaching poor and uneducated populations who may otherwise feel intimidated.<sup>32</sup>
15. **FECOFUN (Nepal)** Federation of Community Forest Users, Nepal is a large NGO made up of forest users from all parts of the country linked into an extensive network. Since its inception in July 1995, it has grown into a social movement organization with about 8 million people all of whom are forest users. It is a national federation of forest users across Nepal dedicated to promoting and protecting users’ rights. The memberships of FECOFUN are categorized into two types according to user-groups’ involvement in natural resource management and use rights. Community Forest User Groups (CFUGs) organized under the Forest Act-1993 of Nepal (provision relating to formation of CFUGs) and any other user groups that based on forest resources at grassroots level are qualified to become elementary member. The structure of this Federation is comprised of three tiers -- Village or Range post, District, and Central level committees. FECOFUN now has a cadre of trained facilitators and mediators who are helping to resolve forestry, land use, and water disputes in remote areas.
16. **India Institute of Arbitration and Mediation** IIAM promotes the amicable and fair settlement of disputes and aspires to provide a triple level solution for total management of disputes. They provide facilities for alternative dispute resolution (ADR), which includes international and domestic commercial arbitration, mediation/ conciliation and negotiation. They offer a panel of arbitrators and mediators, who are known for their integrity, impartiality and expertise for arbitration and mediation/ conciliation, for effective resolution of disputes outside court. And they conduct training, academic programs and workshops on ADR and dispute prevention management, including accreditation for mediators and arbitrators and certifications for legal auditors. Currently, IIAM is developing a series of country-wide community mediation centers and clinics.

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<sup>31</sup> See <http://www.cauxroundtable.org/>.

<sup>32</sup> See “Alternative Dispute Resolution Practitioner’s Guide, Center for Democracy and Governance, March, 1998, Technical Publication Series, Bureau for Global Programs, Field Support, and Research, U.S. Agency for International Development, Washington, D.C. 20523-3100

17. **The Mekong River Commission** Stakeholder participation is an integral part of Integrated Water Resources Management (IWRM), which the Mekong River Commission (MRC) adopted in its Strategic Plan 2006-2010. Stakeholder participation is particularly important for the Basin Development Plan (BDP), the umbrella program of the MRC for promoting its joint planning function as an inter-governmental river basin organization for sustainable development of the Lower Mekong Basin (LMB). The Lower Mekong Basin consists of the lower part of the basin included within the four MRC Member Countries – Cambodia, Lao PDR, Thailand, and Vietnam. The Mekong River Basin (MRB) consists of Yunnan and Guangxi provinces in China, Myanmar, Lao PDR, Thailand, Cambodia and Vietnam. Under the 1995 Mekong Agreement the Joint Committee (JC) is responsible for formulating a BDP, for promoting, supporting, and coordinating the development of the full potential of sustainable benefits to all Member Countries, and for preventing wasteful use of the Mekong River Basin waters, with emphasis and preference on joint and/or basin-wide development projects. The BDP Phase 1 2000-2006 (BDP1) implemented a series of multi-stakeholder participatory planning forums at national, trans-national and sub-area levels through different BDP working groups. Members of these working groups consisted of a wide range of representatives from various state and local agencies. Principles of stakeholder participation in the BDP process were also developed during BDP1. BDP Phase 2, 2007-2010 (BDP2) aims to produce a rolling Basin Development Plan for the LMB based on IWRM, which will build upon the participatory planning process of BDP1. Additional information is available at <http://www.mrcmekong.org/download/Papers/SPCP-Final-July-2009-Final.pdf>.

## II. In-Depth Review of ADB and IFC Systems

1. **The Asian Development Bank's Accountability Mechanism.** People who are aggrieved, feel aggrieved, or are otherwise adversely affected by ADB-assisted projects can seek to resolve their concerns, first at the project or operational level, then through consensus-based problem solving mechanisms or through compliance review. ADB's system divides these two functions into (a) a problem-solving role (consultation phase) handled by the Special Project Facilitator (SPF) and (b) an investigative role (compliance review phase) handled by the Compliance Review Panel (CRP). It is important to note that, although the CRP will investigate based on the same fact situation, its focus is quite different from that of the SPF. While the SPF attempts to mediate a complaint, the CRP is solely interested to review whether ADB complied with its operational policies and procedures and whether this has, or may cause harm. Even a finding of non-compliance and the recommendation of remedial action may not necessarily resolve the original complaint.

As noted earlier, complaints are excluded if they are not related to ADB's actions or omissions in the course of formulating, processing, or implementing ADB-assisted projects, or are about allegations of fraud or corruption, or procurement of goods and services, including consultant services. Complaints are also excluded if a project completion report has been issued for the subject project, or if the complaint concerns the adequacy or suitability of ADB's existing policies and procedures, matters that are within the jurisdiction of ADB's Appeals Committee or Administrative Tribunal or that relate to

ADB personnel matters, matters regarding ADB's non-operational housekeeping functions, such as finance and administration, or matters that are frivolous, trivial, or generated to gain competitive advantage. Matters already considered under the previous Inspection Function or by the Compliance Review Panel (unless there is new evidence) are also excluded, as are complaints regarding private sector projects for which concept clearance was given before Board approval of the mechanism in 2003.

**Managing Complaints at the Project Level** Before a complaint is accepted by the SPF, complainants are expected to make a "good faith effort" to first address their concerns to the Operations Department, as the consultation phase does not replace existing project administration and problem-solving functions.

When operational staff members learn about a problem they usually start discussing it with the concerned government agencies to try to find a solution. In keeping with ADB's Safeguard Policy Statement, all ADB projects that entail significant impacts on the environment, resettlement or indigenous peoples must have a grievance redress mechanism (GRM) built into them. These mechanisms are intended to respond to problems that may develop in such projects and if possible resolve them early and before they escalate.

Under their mandate to provide generic advice on problem solving to the operations departments, the SPF has been identifying best practices and developing guidelines for project GRMs and has assisted with specific projects in Indonesia (the earthquake and tsunami emergency support project) and in Sri Lanka (road projects).

**Special Project Facilitator (SPF)** If they are not resolved at the project level, the SPF manages initial complaint consultations and seeks to use problem solving procedures such as mediation, facilitation and consultation to resolve matters as immediately as possible. SPF provides a venue and process for people affected by projects to find satisfactory solutions to problems caused by ADB-assisted projects. The consultation phase aspires to find consensus among stakeholders regarding the nature and formulation of the complaint, an acceptable method for resolution, and a time frame for resolution, using a flexible, problem-solving approach that may include convening meetings with various stakeholders, organizing consultation processes, and engaging in a fact-finding review of the situation.

A complaint filed with SPF must specify the following:

- a. How the complainant is, or is likely to be, directly affected materially and adversely by an ADB-assisted project.
- b. The direct and material harm claimed and how it is, or will be, the result of an act or omission of ADB in the course of the formulation, processing, or implementation of the ADB-assisted project.
- c. A description of the rights and interests that have been, or are likely to be, directly affected materially and adversely by the ADB-assisted project.

- d. The identification of the complainant (s) and any representatives, their contact information, and if there is a request that the complainant's identity be kept confidential, the reasons for such a request.
- e. If there is any representative, identification of the people affected by the project and evidence of authority to represent them.
- f. A brief description of the ADB-assisted project, including the name and location if available.
- g. The desired outcome or remedies that people affected by the project believe ADB should provide or help obtain through the Special Project Facilitator.
- h. A description of the complainant's good faith efforts to previously address the problems at the concerned operations level.
- i. An explanation of why any of the above information cannot be provided.
- j. Any other relevant matters or facts with supporting documents.

Once received and accepted, the SPF normally uses an 8-step process:

- i. Filing of the complaint. A complaint is filed with the SPF in writing.
- ii. Registration and acknowledgement of the complaint. The SPF registers and acknowledges the complaint.
- iii. Determination of eligibility of the complaint. The SPF determines eligibility based on a desk study and/or site visit and informs the complainant. If the complaint is found to be ineligible, the SPF informs the complainant that a request for compliance review may be filed.
- iv. Review and assessment of the complaint. If the complaint is found eligible, the SPF prepares a Review and Assessment Report (RAR), based on site visits and interviews with complainants, the host government, concerned ADB staff and other relevant stakeholders. In the RAR the SPF assesses the problem, determines who the parties to the problem are, what remedies the complainant seeks, and how best a mechanism to resolve the problem can be worked out.
- v. Decision by the complainant to carry on with the consultation process. The complainant is given the option (i) to carry on with the consultation process, or (ii) to abandon the process and, if the complainant so wishes, file a request for compliance review. If the complainant chooses to abandon the consultation process, the SPF closes the case.
- vi. Comments on findings by the operations department and complainant, and recommendations by the Special Project Facilitator. If the complainant decides to continue the consultation process, the SPF requests comments on the RAR

from the complainant and the operations department and then makes a recommendation to ADB's President on whether or not to continue the consultation process and work out the proposed course of action to solve the problem.

- vii. Implementation of the course of action in the consultation process. If the continuation of the process is approved, the SPF will implement a tailored course of action to solve the problem, in consultation with the stakeholders. The object of the process is to find a flexible, informal, and cost-effective way to address the issues raised in the complaint, using processes such as consultative dialogue, creating a forum using the SPF's good offices, or establishing a mediation mechanism. If the complainant finds the process not purposeful, the complainant may file a request for compliance review. If the complainant finds the process purposeful but has serious concerns on compliance issues, the complainant may file a request for compliance review while carrying on with the implementation of the course of action.
- viii. Termination of the consultation process. Parties can walk away from the process if there is no consensus on the course of action or if its implementation is not working.

There are time frames for each of the steps in the consultation process. Overall, the process is expected to take about 3 months from filing to the beginning of the course of action under step 7. Step 7 will take varying lengths of time depending on the agreed course of action. The process may take longer than indicated if there is need for translation or if extra time is needed to provide information or file documents.

A broad range of potential resolutions and outcomes is possible, depending on the individual case. Because, the consultation phase is a problem-solving process, not a decision-making procedure, and there is no formal appeals process. However, complainants have the option of filing a request for compliance review at several stages of the consultation process, as noted above. The SPF also monitors implementation of any agreements and reports annually to the President, with a copy to ADB's Board of Directors, on the status of implementation. The SPF's monitoring reports are sent to the complainants and posted on the SPF's website. However, the SPF has no powers of enforcement. Enforcement is dependent on the voluntary actions of parties.

**Compliance Review Panel** Affected persons who have pursued solutions through the consultation phase (or in certain instances, ADB Board members who are bringing special cases involving allegations of serious violations of ADB's operational policies and procedures) may request an investigation by the CRP on complaints of direct, material harm allegedly caused by ADB's failure to comply with its own policies, or procedures.

The complainants, except for members of the Board of Directors, have to pursue their complaints with the SPF first. A "complainant" under the consultation phase becomes a "requesting party" or "requester" when the matter is referred to the CRP. If a complaint is found by SPF to be ineligible, or if the complainants find the consultation not purposeful,

or if the consultation is at an advanced stage and there are concerns on compliance issues, the complainants may then file a request for compliance review.

A request for compliance review must be in writing and specifically addressed to the "Secretary, Compliance Review Panel". CRP will register a request that has gone through the consultation process by the SPF. Affected persons who believe that ADB has violated its operational policies and procedures must have initiated a complaint with the SPF through the consultation phase as a pre-condition to requesting a compliance review by the CRP.

Contents of a request for compliance review must include the following:

- a. How the requester is, or is likely to be, directly affected materially and adversely by the ADB-assisted project.
- b. The direct and material harm claimed and how it is, or will be, the result of an act or omission of ADB's alleged failure to follow its operational policies and procedures in the course of the formulation, processing, or implementation of the ADB-assisted project.
- c. A description of the rights and interests that have been, or are likely to be, directly affected materially and adversely by the ADB-assisted project.
- d. Identification of the requester and contact information, along with the reasons for any request for confidentiality.
- e. If there is any representative, identification of the people affected by the project and evidence of authority to represent them.
- f. A brief description of the ADB-assisted project, including the name and location.
- g. The desired outcome or remedies that people affected by the project believe ADB should provide.
- h. An explanation of the results of the requester's efforts to address the complaint first to the Special Project Facilitator (or if the Special Project Facilitator has rejected the complaint as ineligible an explanation of why the request is nonetheless eligible for compliance review).
- i. An explanation of why any of the above information cannot be provided.
- j. Any other directly relevant matters or facts with supporting documents.

After registering the complaint, CRP will examine the eligibility of the request and will inform the requester of its decision.

The CRP is an independent, three-member external body reporting directly to the ADB Board of Directors. It has two regional members and one non-regional. The CRP

investigates whether any harm that is or may be suffered by people in the area covered by an ADB-financed project was caused by any noncompliance with ADB operational policies and procedures. CRP determines whether a request is eligible and if so, it may then be authorized by the Board to carry out an investigation. If there is a finding of noncompliance with ADB's operational policies and procedures, CRP may then recommend remedial action to the Board to ensure compliance. The Office of the Compliance Review Panel (OCRCP) supports the CRP in the conduct of its activities.

The CRP, assisted by the OCRCP, will then monitor remedial actions for implementation of those recommendations for a period of up to 5 years. In summary, the compliance review involves ten steps as follows:

- i. Submission of the request for compliance review. A request for compliance review is filed in writing with the CRP and addressed to Secretary, CRP.
- ii. Registration and acknowledgement of the request. OCRCP registers and acknowledges the request. The registration will be made available to public through CRP website.
- iii. Determination of eligibility of the request. CRP determines the eligibility of the request and informs the requesters of its decision. The CRP undertakes desk study and may consult stakeholders during the determination of eligibility of the request. If CRP determines that the request is ineligible, it will inform the Board and the requesters. If the CRP determines that request is eligible; CRP will recommend to the Board the conduct of a compliance review.
- iv. Board authorization of the compliance review. The Board may authorize the compliance review on a no-objection basis.
- v. Conduct of compliance review. As soon as the Board authorizes the compliance review, CRP will begin its review and consult stakeholders, including the Management and staff, requesters, the project executing agency, the government, or the private sector proponent, and the member of the Board of Directors representing the host country concerned. The CRP may also carry out site visit if the host government has no objection.
- vi. Preparation of compliance review draft report. Upon completion of the compliance review, CRP will prepare a draft report based on its findings and include recommendations to the Management to bring the project back to compliance.
- vii. Management's and the requester's response on the compliance review draft report. Both Management and requester will be given 30 days to comment on CRP's draft report.
- viii. Issuance of CRP final report on compliance review. After receiving and considering the comments from the requesters and Management, CRP will

prepare the final report, including recommendations on how to bring the project into compliance and or to mitigate harm, and submit it to the Board.

- ix. Board decision. The Board will consider the report and make final decision regarding any recommendations on how to bring the project into compliance and or to mitigate harm.
- x. Annual monitoring. Following Board approval of the recommendations, the CRP will monitor implementation of the recommendations and report progress annually to the Board for a period of five years.

A broad range of potential resolutions and outcomes exists, depending on the individual case. The Panel may (1) recommend changes in the implementation of a project in order to bring it into compliance with the Bank's operational policies and procedures and (2) propose remedial actions to mitigate harm. The CRP will be responsible for monitoring the implementation of the Board-approved remedial actions and reporting the annual monitoring report to the Board, Management and Requesters. Decisions cannot be appealed.

ADB's approach to accountability and compliance offers a number of systemic and operational innovations that World Bank may be interested in emulating. Their CRP is analogous to WB's Inspection Panel but the use of a SPF provides the kind of systematic, early and flexible ADR and ECR capabilities that are needed. Like IFC's CAO system, it creates a locus in the organization for direct help, training, and consultation. Unlike the IFC/MIGA CAO, the ADB Accountability Mechanism is bifurcated into two separate offices, one, dealing with problem-solving, reporting to the President; the other, dealing with compliance, reporting to the Board. Also, ADB's AM does not have clear powers to launch an independent investigation into ADB's compliance. Less clear is how ADB actually manages grievance mechanisms inside its projects before matters come to the SPF. Keystone understands that a general review of the accountability mechanism is underway. The review website is at <http://www.adb.org/AM-REview/>

- 2. **International Finance Corporation's Office of the Compliance Advisor/Ombudsman (CAO)**. The Office of the Compliance Advisor/Ombudsman (CAO) serves as an independent recourse mechanism for projects supported by the [International Finance Corporation \(IFC\)](#) and [Multilateral Investment Guarantee Agency \(MIGA\)](#), the private sector lending arms of the World Bank Group. CAO reports directly to the President of the World Bank Group. The office seeks to address the concerns of individuals or communities affected by IFC/MIGA projects, enhance the social and environmental outcomes of IFC/MIGA projects; and foster greater public accountability on IFC and MIGA. CAO performs three functions. As an "Ombudsman," CAO works with stakeholders to resolve grievances using flexible problem-solving approaches such as mediation and facilitation. In their "Compliance" role, CAO oversees audits of IFC and MIGA's social and environmental performance, particularly in relation to sensitive projects to ensure compliance with relevant policies, guidelines, procedures, and systems. As "Advisors" CAO offers independent advice to the President of the World Bank Group and the management of IFC and MIGA.

**Ombudsman Role** In their Ombuds role, CAO provides a process which seeks to find mutually satisfactory solutions. The aim is to identify problems, recommend practical remedial actions, and address systemic issues that have contributed to the problems, rather than to find fault. The CAO Ombudsman may receive and deal with complaints from individuals, group(s) of people, or organization(s) that believe they are, or may be, affected by the social and environmental impacts of IFC/MIGA projects. Complaints may relate to any aspect of the planning, implementation, or impact of IFC/MIGA projects, including but not limited to:

- a. Processes followed in preparation of a project.
- b. The adequacy of measures for the mitigation of social and environmental impacts of the project.
- c. Arrangements for involvement of affected communities, minorities, and vulnerable groups in the project.
- d. The manner in which the project is implemented.

The grounds on which a complaint may be made have been broadly defined to encourage those with concerns about a project to seek redress. If complaints raise issues of policy and do not relate to a specific project, the CAO may deal with the issues raised by the complaint in its advisory role. If, any time after completion of an assessment, the CAO Ombudsman believes that resolution of the complaint is unlikely to be possible or that it would be an inefficient use of resources, the complainant will be advised of the reasons for the decision to conclude the ombudsman process. The case will then be transferred to CAO Compliance for appraisal.

Any individual, group, community, entity, or other party that believes it is affected—or potentially affected—by the social and/or environmental impacts of an IFC/MIGA project may make a complaint to the CAO Ombudsman. The CAO Ombudsman has discretion to determine whether to proceed with assessment and is guided by set criteria. Complaints may be made on behalf of those who believe they are affected by a project. If a complaint is made through a representative, the representative must clearly identify the people on whose behalf the complaint is made and provide explicit evidence of authority to represent them. If prospective complainants are from outside the country where the project is located, complaints should be lodged jointly with a local entity. The CAO Ombudsman will seek proof that the organization(s) or individual(s) representing the affected people has/have the authority to do so.

Complaints are submitted in writing and may be presented in any language. The CAO will attempt to respond in the language of the complaint. Complaints must be sent by mail/post, fax, or electronic mail or delivered to the Office of the CAO in Washington, DC. While there are no strict format requirements, written complaints need to include the following:

- i. The complainant's name, address, and other contact information.

- ii. If the person lodging the complaint is doing so as a representative of an affected person or community, the identity of those on whose behalf the complaint is made.
- iii. Whether the complainant wishes that the identity of the complainants or any information communicated as part of the complaint be kept confidential (stating reasons).
- iv. The identity and nature of the project.
- v. A statement of the way in which the complainant believes it has been, or is likely to be, affected by social or environmental impacts of the project.
- vi. What has been done by the complainant or affected parties to attempt to resolve the problem, including specifically any contact with IFC/MIGA personnel, the sponsor, or host government.
- vii. What aspects of a problem remain unsettled.
- viii. Where noncompliance with IFC/MIGA environmental and social policies, guidelines, or procedures is thought to have occurred, which policies, guidelines, or procedures are thought to have been violated. (There is no requirement for a complainant to specify particular policies, guidelines, or procedures, but some may wish to do so).
- ix. A clear statement of results that the complainant views as the most desirable outcome of the process.
- x. Any other relevant facts any supporting documents.

The CAO will keep the identity of complainants confidential if requested to do so, but anonymous complaints will not be accepted. Material may also be submitted on a confidential basis to support a complaint and will not be released without the consent of the party/parties that submitted it.

Complaints are tracked using internal systems and the timeline for handling the complaint can be discussed and modified by agreement between the CAO and the parties. Normal process is as follows:

- 1) Acknowledgement of receipt.
- 2) Assessment of eligibility and decision whether to proceed (no more than 15 working days).
- 3) Assessment of potential for achieving resolution of the complaint (no more than 120 working days).

- 4) If continuation of CAO ombudsman process, then implementation of MOU through facilitation/mediation, joint-fact-finding, or other agreed resolution process, leading to a settlement agreement or other mutually agreed and appropriate goal.
- 5) Monitoring and follow-up.
- 6) Conclusion.

Mechanically, the CAO Ombudsman and the stakeholders may use any of the following problem solving approaches to address issues:

*Facilitation and information sharing.* In many cases, the complaint will raise questions of fact regarding current or anticipated impacts of an investment. The CAO Ombudsman may be able to help complainants obtain information or clarifications that result in resolution from the perspective of complainants.

*Joint fact-finding.* Joint fact-finding is an approach that encourages the complainant, sponsor, and other stakeholders to jointly agree on the questions to be investigated, the methods and resource people to be used to conduct the investigation, and the way that information generated from the investigation will be used by the stakeholders.

*Dialogue and negotiation.* Where communication among stakeholders has been limited or disrupted, the CAO Ombudsman may encourage the complainant, the sponsor, and other stakeholders to engage directly in dialogue and negotiation to address and resolve the issues raised in the complaint. The CAO Ombudsman may offer training and/or expertise to assist the stakeholders in this process.

*Conciliation and mediation.* Sometimes more formal problem-solving intervention by the CAO Ombudsman may be appropriate. This may take several forms, including simple conciliation proceedings conducted by the CAO Ombudsman and/or third-party mediation by specialists. Conciliation and mediation will be pursued only if it is acceptable to all parties.

The major objective of all of these problem-solving approaches is to address the issues raised in the complaint, and any other significant issues relevant to the complaint identified during the assessment or the problem-solving process, in a way that is acceptable to the parties affected. Agreements developed through these processes may include proposals for future action, such as a program of remedial action to be adopted by IFC/MIGA or the sponsor. In pursuit of settlement, the CAO Ombudsman will not support agreements that would be coercive to one or more parties, are contrary to IFC/MIGA policies, or that would violate domestic laws of the parties or international law. The CAO Ombudsman may conclude and close a complaint if a satisfactory settlement has been reached. The CAO Ombudsman will facilitate documentation of agreements and decisions. The CAO will notify the President and Board of the World Bank Group and the public of the outcome.

**Compliance Review Role** Through its Compliance Review review, CAO oversees project-level audits of the social and environmental performance of IFC/MIGA. The purposes of CAO audits are to ensure compliance with policies, standards, guidelines, procedures, and conditions for

IFC/MIGA involvement and, through this, to improve social and environmental performance. The focus of compliance auditing is on IFC and MIGA, and how IFC/MIGA assures itself and others of proper project performance. In many cases, however, it will be necessary to review the actions of the project sponsors and verify outcomes in the field, in assessing the performance of the project and implementation of measures to meet the relevant requirements.

The working definition of compliance auditing adopted by CAO Compliance is as follows: “A compliance audit is a systematic, documented verification process of objectively obtaining and evaluating evidence to determine whether environmental and social activities, conditions, management systems, or related information are in conformance with the audit criteria. The audit criteria include IFC/MIGA policies, performance standards, guidelines, procedures and requirements whose violation might lead to adverse social or environmental consequences.”

Audit criteria may have their origin, or arise from, the environmental and social assessments or plans, host country legal and regulatory requirements (including international legal obligations), and the environmental, social, health, or safety provisions of the World Bank Group, IFC/MIGA, or other conditions for IFC/MIGA involvement. An audit will typically be based on a review of documents, interviews, observation of activities and conditions, or other appropriate means. Verification of evidence is an important part of the audit process.

Compliance audits may be initiated in response to any of the following circumstances:

- a. A request from senior management of IFC/MIGA or the President of the World Bank Group.
- b. A complaint transferred from the CAO Ombudsman where no resolution was possible.
- c. At the discretion of the CAO Vice President.

Requests for compliance audits from senior management or the President must be made to the CAO in writing.

The CAO’s authorities are limited to project-level compliance audits, not institutional or programmatic-level audits. This approach ensures minimal overlap with the activities of environmental, social, and evaluation staff within IFC/MIGA or the audit work of the World Bank’s Internal Audit Department. When concerns arise relating to the application of a policy, guideline, or procedure that may adversely affect social and environmental outcomes, these concerns can be addressed under the advisory role of the Office of the Compliance Advisor/Ombudsman.

Before undertaking a compliance audit, CAO Compliance will initiate an appraisal to determine whether a compliance audit is appropriate and should take place at all. The purpose of the appraisal process is to ensure that compliance audits are initiated only for those projects that raise substantial concerns regarding social or environmental outcomes. Appraisals are thus limited to the issues raised in the requests for a compliance audit, or for cases referred by the CAO Ombudsman, and focus on issues related to the complaint. CAO Compliance may seek clarifications during the appraisal, but will not accept an expansion of the scope defined in the

request, or expansion away from issues related to the complaint as identified during the assessment by the CAO Ombudsman. The time frame for appraisal is limited to 45 working days from the date CAO Compliance receives the case.

In the event that CAO Compliance determines that the issues do not meet the appraisal criteria, the CAO closes the case. To ensure thorough compliance auditing, it is inadvisable to prescriptively limit the conditions under which a compliance audit should take place. However, to guide the appraisal process, the CAO applies several basic criteria. These are framed as a series of questions to test the value of undertaking a compliance audit, and whether IFC/MIGA readily can document compliance:

- i. Is there evidence of potentially significant adverse social and environmental outcome(s) now or in the future?
- ii. Are there indications that a policy or other audit criteria may not have been adhered to or improperly applied?
- iii. Is there evidence that indicates that IFC/MIGA's provisions, whether or not complied with, have failed to provide an adequate level of protection?
- iv. In the context of compliance auditing within IFC/MIGA, the issue is whether:
  - o The actual social or environmental outcomes are consistent with or contrary to the desired effect of the policy provisions.
  - o The failure to address social or environmental issues as part of the review process resulted in outcomes that are contrary or deleterious to the desired effect of the policy provisions.

CAO compliance appraisals or audits will consider how IFC/MIGA assured itself/themselves of compliance with national law, along with other audit criteria. The CAO has no authority with respect to judicial processes. The CAO is not an appeals court or a legal enforcement mechanism, nor is the CAO a substitute for international courts systems or court systems in host countries.

In conducting the appraisal, CAO Compliance will hold discussions with the IFC/MIGA project team and other relevant parties to understand the validity of the concerns, which criteria IFC/MIGA used to assure itself/themselves of project performance, how IFC/MIGA assured itself/themselves of compliance with these criteria, and generally whether an audit is the appropriate response.

Once an appraisal is concluded, the Executive Vice President of IFC/MIGA, the President and the Board of the World Bank Group will be advised in writing, as will the relevant departmental directors or managers associated with the project. If an appraisal results from a complaint to the CAO Ombudsman, the complainant will also be advised in writing, and a summary of the results will be made public. In the cases where the CAO Vice President initiates an audit, a memorandum explaining the rationale for the proposal to audit is submitted to the Executive

Vice President of IFC/MIGA. The final decision to conduct an audit will be taken in consultation with the Executive Vice President(s), but at the discretion of the CAO Vice President.

For every audit, a terms of reference (TOR) is prepared and submitted to the management of IFC/MIGA. A copy of the TOR is also sent to the heads of all departments associated with the project. The TOR specifies:

- 1) The objectives and scope of the audit.
- 2) The specific audit criteria identified during appraisal.
- 3) A brief description of the project to be audited.
- 4) The approach to the audit, methods, and specific consultant tasks.
- 5) A schedule for the audit tasks, identifying the time frame and reporting requirements.
- 6) Guidance on the structure and format of reports to be submitted.

CAO staff are responsible for managing the entire audit process, determining the knowledge and skills required to undertake the audit, and hiring specialist expertise as appropriate. The key considerations in hiring external experts for audit teams are competence, independence, and impartiality. The auditors have a contractual obligation not to discuss the audit process or related findings without CAO approval.

The general approach can be adapted depending on the specific circumstances of the project being audited. In general, the audit process includes:

**Step 1** Appraisal (45 working days).

**Step 2** Developing terms of reference.

**Step 3** Orienting the audit team, conducting an initial review of documents, and preparing audit protocols.

**Step 4** Conducting on-site verification visits.

**Step 5** Reporting.

**Step 6** Monitoring and closure.

Throughout, the CAO is bound by the disclosure policies of IFC and MIGA, which require the confidentiality of certain business information. Within these constraints, there is a strong presumption in favor of disclosure in relation to all CAO activities, including reports and findings following compliance audits. The belief is that public disclosure of these reports generates public accountability for IFC and MIGA.

Audit reports are prepared under the direction of CAO Compliance. Reports typically include:

- An executive summary of the findings.
- A brief description of the project.
- A description of the underlying concerns that gave rise to the audit.
- The objectives and scope of the audit.
- The criteria against which the audit was conducted.
- The findings of the audit with respect to noncompliance and any adverse social and environmental outcomes, including the extent to which these are verifiable.

Draft audits are circulated to senior management of IFC/MIGA and all relevant departments for factual review and comment. After receiving comments from IFC/MIGA on the consultation draft, CAO Compliance finalizes the report. The final report is submitted to the senior management of IFC/MIGA for a response and a notification is posted on the CAO's Web site. IFC/MIGA has 15 days to submit written responses to the CAO. The audit report and any response from IFC/MIGA are then be forwarded to the Office of the President of the World Bank Group. The Office of the President has no editorial input to the content of the audit report but may take the opportunity to discuss the audit findings with the CAO. Once the President is satisfied with the response by senior management of IFC/MIGA, the Office of the President will provide clearance for the audit report and the response. The President retains discretion over clearance. After clearance, CAO Compliance shares the audit report and the senior management responses with the World Bank Group Board and discloses both documents on the CAO Web site. In cases where IFC, MIGA, and/or project sponsors are in compliance, CAO Compliance closes the audit. In cases where IFC/MIGA is or are found to be out of compliance, CAO Compliance keeps the audit open and monitors the situation, until actions taken by IFC/MIGA assure the CAO that IFC/MIGA will move back in to compliance. The CAO will then close the audit. The CAO makes public the current status of all CAO compliance cases.

**Advisory Role** The CAO's general terms of reference define the scope of the CAO advisory role to include advice to IFC and MIGA management and to the President of the World Bank Group on broader environmental and social issues related to policies, standards, procedures, guidelines, resources, and systems established to ensure adequate review and monitoring of IFC and MIGA projects. A number of principles underpin the CAO advisory role:

- a. The CAO's advice aims to improve performance systemically.
- b. The CAO does not give project-specific advice, but can offer generic advice on emerging or strategic issues and trends, policies, processes, matters of principle, and the like.
- c. The provision of advice will be based on careful consideration of basic screening criteria:
  - Whenever advice originates with the CAO, the advice will be derived from lessons learned from either the CAO ombudsman or CAO compliance roles.

- Advice is always given formally in writing, and disclosure of the advice is at the discretion of the CAO.
- Advisory activities must be consistent with, supportive of, and not prejudicial to the activities of the CAO ombudsman and compliance roles.

These principles are designed to ensure that the advisory role is supportive of the CAO ombudsman and compliance roles, and that the limited resources of the CAO are applied to the advisory role only where appropriate.

Advice can be initiated by or requested as follows:

- i. A request from senior management of IFC/MIGA, the President, or the Board of the World Bank Group.
- ii. A request from any other department within IFC/MIGA: operational and other departments may also request advice from the CAO, either directly or through their respective senior management teams.
- iii. At the instigation of the CAO Vice President: during the course of the CAO's Ombudsman or Compliance activities, systemic concerns may arise that may warrant advice (for example, regarding the application of a policy or guideline).

Requests for advice may begin with informal discussions but should be presented to the CAO in writing. Each request for advice is subject to an appraisal process to determine whether it should be acted upon. A decision is normally made within 10 working days of formal receipt of the request.

The specific objectives of advice depend on the nature of the request, but will typically include either:

- 1) Bringing about systemic improvements in environmental or social performance of IFC/MIGA by addressing deficiencies in systems, policies, guidelines, or procedures, or their interpretation or application.
- 2) Helping IFC/MIGA understand how their environmental or social obligations may be met more effectively.
- 3) Advancing the boundaries of environmentally or socially responsible behavior on the part of either IFC or MIGA by advising on emerging, strategic, or systemic issues or trends or processes.

Scope also depends on the nature of the request. In general, the CAO will work iteratively with the initiator of the request to determine the scope of the advice. These understandings are summarized in a memo. If more complex advisory activities are envisaged, a detailed Terms of Reference (TOR) or approach paper is produced that clearly outlines the scope. Such TORs or approach papers may be subject to internal and/or external comment before being finalized, at

the discretion of the CAO. TORs and approach papers typically are developed iteratively between the requestor and the CAO, but the CAO has ultimate responsibility for their content.

The appraisal process is designed to ensure that advisory activities are undertaken after adequate consideration of the following factors:

- In giving advice, will the CAO be operating consistently with its mandate?
- Will the advice address strategic issues, trends, systemic issues, policies, guidelines, or procedures?
- Will the advice address matters that are not adequately dealt with by existing forms of institutional guidance or advice?
- Will the advice avoid addressing issues that relate to an individual project?
- Are there adequate resources (staff and financial) to respond effectively to the advisory request; and if not, will sufficient additional resources be allocated to the activity?

In appraising requests for advice, discussions may take place with the requestor and others to better understand the origin of their concerns and to explore whether an advisory activity by the CAO is appropriate. Once a decision is reached, the initiator of the request will be advised in writing. Time lines for the advice are specified in writing where possible. If the CAO declines to give advice, reasons are stated. If advisory requests are accepted, the President and IFC/MIGA senior management will be informed in writing.

Independence is key to the provision of impartial and objective advice and requires that potential or actual conflicts of interest be avoided. If IFC/MIGA staff or interested and affected parties do not believe in the independence of external experts, they will derive little confidence from the resulting advice. In practice, this would mean that external experts should declare any past or current involvement with IFC or MIGA, to enable the CAO to determine any conflicts of interest on a case-by-case basis. In exceptional circumstances, the contractual arrangement between consultants and the CAO may impose time-bound restrictions on their future involvement with IFC or MIGA. IFC and MIGA staff will not participate in advisory activities, so as to ensure that the advice remains truly independent. Some advisory activities will be undertaken internally, while others will involve the use of consultants. Advisory activities that are handled exclusively by CAO staff may either be led by the Compliance Advisor/Ombudsman himself or herself, or by ombudsman or compliance staff. If external consultant support is required, the advisory activity will be led by CAO staff, which will have responsibility for the advisory process and products. All external experts involved in advisory activities will be expected to sign binding confidentiality agreements before commencing their work.

As a matter of principle, the Office of the Compliance Advisor/Ombudsman strives for maximum transparency across its three roles. However, this principle must also be balanced against the requirement, as stated in the terms of reference, to avoid project-specific advice. As a result, the CAO will not release any project-specific information related to its advisory activities.

In practice, this means that in cases in which advice stems from ombudsman activities or compliance audits on projects that have already been subject to some level of external disclosure by the CAO (and advice has originated with the CAO), the specific projects that triggered the advice may be referred to in publicly disclosed documents. In cases in which advice is publicly disclosed and has been based on lessons learned from a number of IFC/MIGA projects, the individual projects will generally not be identified in the advisory review or briefing report.

The CAO is bound by the disclosure policies of IFC and MIGA. In exceptional circumstances, the CAO may accept an advisory role where, at the beginning, there is agreement that the final advisory memoranda or reports may not be disclosed. However, the CAO may exercise discretion as to whether or not to accept an advisory request under such constraints. In general, the presumption is in favor of disclosure: if not immediately, then within a reasonable time frame.

All advice will take the form of an advisory memorandum or report. The time frame is agreed at the outset and confirmed in writing in either the terms of reference or approach paper or in a memorandum to the initiator of a request for advice. The target audiences for the advice will also be agreed in advance, both for internal and external audiences. Advisory memoranda or reports will be copied to the President of the World Bank Group and IFC/MIGA senior management, irrespective of who originated the request for advice. They may also be disclosed at the discretion of the CAO.

Whenever appropriate, advisory reports will first be sent to the President and copied to senior management and all relevant departments. Notification of submission to the President is then posted on the CAO's Web site. Once the report has been reviewed by (and, as appropriate, discussed with) the President, the report is disclosed on the CAO's Web site.

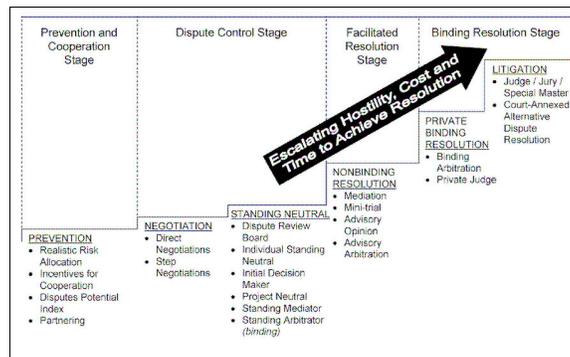
Advisory recommendations are integrated into the CAO's ongoing monitoring and evaluation activities. The CAO monitors FC's and MIGA's implementation of advisory recommendations and report to the President of the World Bank Group on an annual basis.

## Annex 5. Frameworks for Recommendations

The recommendations of this analytical work build on the preceding observations of World Bank practices and the principles, concepts, and strategic options described in the text of the report.

### Framework 1

This initial framework portrays the general concept of a hierarchical escalator system. It is only one portrayal, and there are many others in the ADR literatures.<sup>33</sup>

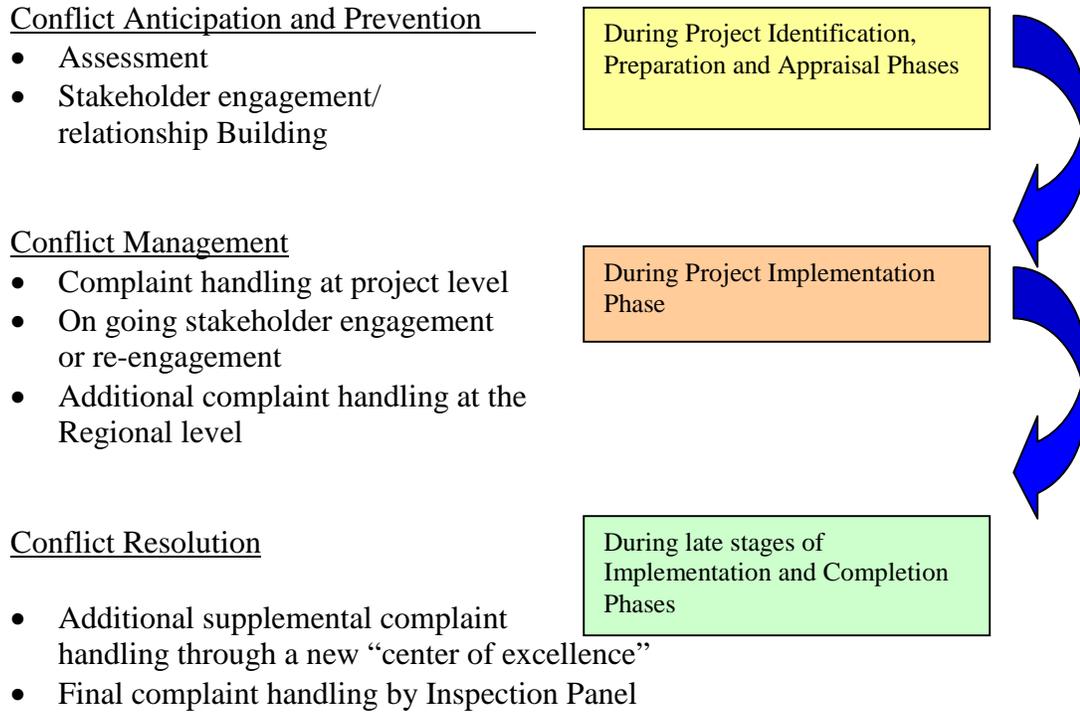


<sup>33</sup> “Partnering: Aligning Interests, Collaboration, and Achieving Common Goals by Frank Carr, Center for Public Resources at

<http://www.cpradr.org/Portals/0/0/Docs/CPR%20Partnering%20in%20Construction%20Disputes.pdf>

## Framework 2

This second framework conceptually adapts the first framework to the stages and steps of World Bank's project cycle:



### Framework 3

This framework further elaborates some of the possible fits between project stages and the strategies and recommendations described in this report.

	Identification	Preparation	Appraisal	Approval	Implementation	Completion	Evaluation
<b>Conflict Assessment</b>	X	X	X				
<b>Conflict Planning</b>	X	X	X				
<b>Stakeholder Advisory Body</b>		X	X				
<b>Partnering</b>		X	X				
<b>Capacity Building</b>	X	X	X				
<b>Negotiation and Informal Grievance Mechanism</b>					X	X	
<b>Formal Grievance Mechanism</b>					X	X	
<b>Ombudsman (Internal)</b>					X	X	
<b>Ombudsman (External)</b>					X	X	
<b>Dispute Resolution Boards</b>					X	X	

**Framework 4**

This framework summarizes in table form the specific escalator recommendations discussed in Chapter 4.

Steps	Project Phase	ECR Mechanism/	Flow	Specific Actions	Who	Role of WB Center of Excellence
1	Completed during project <i>Identification</i> and <i>Preparation</i> phases	Assessment	Required as a condition of project approval	Systematic interviews with potentially involved or affected stakeholder representatives.	Project Manager or TTL	Advise and assist if requested by PM or TTL. Possibly, done by Center but costs to be embedded in Project.
2	Done during project <i>Preparation</i> , <i>Appraisal</i> and <i>Approval</i> phases	Stakeholder Engagement	Required as a condition of project Approval	Build relationships with potentially affected communities;  Anticipate and proactively address coming conflicts; and  Ensure understanding of and agreement with grievance redress mechanisms	Project Manager or TTL	Advise and assist if requested by PM or TTL. Possibly, done by Center but costs to be embedded in Project
3	Done throughout <i>Implementation</i> and into <i>Completion</i>	Possible Stakeholder re-engagement  Complaint Lodged	Locus of activity is at the Project or Operations Level.  Needs to complete in 30 working days unless deadline extended by mutual agreement	Informal discussion, with or without 3 <sup>rd</sup> party help from center, is encouraged but not required prior to filing.  Written complaint filed w/ POC (copy concurrently filed w/ region and "Center")  Receipt  Registration  Acknowledgement  Determination of eligibility  Presentation/Hearing  Written decision  Complainant has 30 days in which to appeal to region	Project POC with decision-making authority.	Advise and assist POC if requested by complainant or Project POC
4		Complaint Appealed	Locus of activity is now at Regional Level	Informal discussion, with or without 3 <sup>rd</sup> party help from Center, is encouraged but not required prior to filing.  Written appeal from project level filed with region (copy concurrently filed w/ project and "Center")  Receipt  Registration  Acknowledgement  Determination of eligibility  Presentation/Hearing  Written decision  Complainant has 30 days in which to reject regional decision	Regional manager with decision-making authority.	Advise and assist if requested by Regional POC. Possibly, done by Center but costs to be embedded in Project
5		Complaint Appealed	Joint request for voluntary assistance from center of excellence	Any of a number of non-binding processes: mediation, facilitation, joint fact-finding, etc.  Center will work to resolve matters by mutual agreement but either stakeholder or Bank can stop the process at any time.	Center	
		No			Inspection Panel	

