**International Accountability Mechanism Benchmarking[[1]](#footnote-2)**

This benchmarking exercise analyzes the accountability mechanisms of seven international financial institutions (IFIs) and one export credit agency:

1. The African Development Bank‘s Independent Review Mechanism (“AfDB”),
2. The Asian Development Bank’s proposed accountability mechanism (“ADB”),[[2]](#footnote-3)
3. The European Bank for Reconstruction and Development’s Project Complaint Mechanism (“EBRD”),
4. The European Investment Bank’s Complaints Mechanism (“EIB”),
5. The Inter-American Development Bank’s Independent Consultation and Investigation Mechanism (“IADB”),
6. The U.S. Overseas Private Investment Corporation’s Office of Accountability (“OPIC”),
7. The World Bank’s Inspection Panel (“WB IP”), and
8. The International Finance Corporation’s / the Multilateral Investment Guarantee Agency’s Compliance Advisor Ombudsman (“CAO”).

The analysis is conducted against the underlying principles of accountability mechanisms: fairness, accessibility, independence, transparency, professionalism, and effectiveness.

Because the compliance mechanisms at the IFIs have largely been modeled after and then improved on the World Bank Inspection Panel, the design of the Inspection Panel warrants particular attention. A second type of mechanism, with compliance review, dispute resolution and advisory roles is the World Bank Group’s CAO. These two World Bank Group accountability mechanisms are described below to present a feel for the structure and operations of two different existing mechanisms. We note that while the Inspection Panel and CAO are two of the longer established mechanisms, the regional banks created their accountability mechanisms later and have each undergone a substantial subsequent review, sometimes improving on the design of the Inspection Panel and CAO. Nonetheless, the overall structure and functions of the Inspection Panel and CAO remain most instructive.

The mandate of the Panel is to address complaints from project-affected people alleging non-compliance with World Bank policies and procedures. The Panel has no jurisdiction to review a complaint unless the project at issue in the complaint was financed in whole or part by either the International Bank for Reconstruction and Development (IBRD) or the International Development Association (IDA). The Panel is comprised of three permanent members, each of whom serves for five years. To ensure independence, Panel members cannot have served the Bank in any capacity for the two years preceding their selection, nor can they ever subsequently work for the Bank again. The Panel also has a permanent staff Secretariat to support its activities.

Claims to the Panel can be filed by any affected party or parties (other than a single individual) in the borrower’s national territory. Claims must be in writing and must explain how the affected parties’ interests have been, or are likely to be, directly affected by “a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank.”[[3]](#footnote-4)The claimant must demonstrate that it has exhausted other remedies by first providing Bank staff reasonable opportunity to respond to the allegations. Upon receiving a complete request for inspection that is not clearly outside the scope of the Panel’s authority, the Panel registers the claim, notifies the claimant and the Board of Executive Directors, and forwards a copy of the claim to Bank Management, which has twenty-one days to respond. The Panel then has an additional twenty-one days to review Management’s response and to make a recommendation to the Board of Executive Directors regarding whether the claim warrants a full investigation.

The Board of Executive Directors has exclusive authority to authorize or deny a full investigation. While this led to significant politicization of the Panel process in the first few years, the Board has supported every Panel recommendation for an investigation since changes were made in 1999 after the Second Review of the Panel. Once an investigation is authorized, the Panel enjoys broad investigatory powers including access to all Bank staff. Members of the public may also provide the Panel with supplemental information relevant to the claim. After the investigation, the Panel issues a report evaluating the Bank’s compliance with its policies. Within six weeks of receiving this report, Bank Management must submit a report to the Board of Executive Directors with recommendations in response to the Panel’s findings. The Panel’s Report, Management’s response, and the Board’s decision are publicly released two weeks after Board consideration.

As of May 2011, the Inspection Panel had received 72 formal requests for inspection and had registered all but nine of them.  The Panel had found that the eligibility requirements were met and recommended an investigation in thirty-two claims, and the Board had approved investigations in twenty-eight of those requests.[[4]](#footnote-5) After findings of non-compliance, the Bank’s Board has taken a variety of measures depending on the type an extent of the violations found (sometimes minor, sometimes egregious), the type and stage of the project at issue (sometimes in project development and sometimes near completion), and the stakeholders involved (some borrowers/complainants have been more vocal than others).

As the first of the IFI accountability mechanisms, the Inspection Panel remains the only one without a dispute-resolution function at the corporate level. Each of the subsequently created mechanisms has dual, or even tripartite functions where advisory functions have been added. An example of a mechanism with three functions is the IFC and MIGA’s Compliance Advisor/Ombudsman (“CAO”), worthy of review as a final example.

The CAO was created in 1999 to address complaints relating to the World Bank Group’s private sector arms – the International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA). The CAO’s office has Advisory and Compliance functions, but it considers its Ombudsman function as its primary and most important responsibility. The Ombudsman function was designed to respond to complaints by persons who are affected by IFC/MIGA projects by “attempting to resolve fairly the issues raised, using a flexible, problem-solving approach.”[[5]](#footnote-6) Any individual, group, community, entity, or other party affected or likely to be affected by the social or environmental impacts of an IFC or MIGA project may make a complaint to the Ombudsman. Representatives of those affected by a project may also file a complaint with appropriate proof of representation. The CAO acknowledges receipt of all complaints and evaluates whether the complaint falls within its mandate, and, if it does, whether to accept or reject the complaint. A complaint must demonstrate that the affected party has been, or is likely to be, affected by actual or potential social or environmental impacts on the ground. The complaint must relate to an aspect of the planning, implementation, or impact of an IFC or MIGA project.

Once a complaint is accepted, the CAO immediately notifies the complainant, registers the complaint, refers the complaint to the relevant IFC or MIGA personnel with a request for information, and informs the project sponsor of the complaint. The CAO then undertakes an assessment to determine how it proposes to handle the complaint. During the assessment, the CAO will communicate with the claimant, the project sponsor, and the IFC to attempt to identify a process for resolving the dispute. The CAO’s proposal may include anything from convening informal consultations with IFC/MIGA or the project sponsor to organizing a more formal mediation process. Overall, the ombudsman’s office seeks to take a proactive and flexible approach where the “aim is to identify problems, recommend practical remedial action and address systemic issues that have contributed to the problems, rather than to find fault.”[[6]](#footnote-7) If at any time after completion of the assessment the CAO Ombudsman believes that resolution of the complaint is not possible, the complaint is automatically transferred to the compliance side of the CAO for an assessment of whether a Compliance audit is warranted.

In both its Ombudsman and Compliance roles, the CAO has broad investigatory powers, including authority to review IFC or MIGA files; meet with the affected people, IFC or MIGA staff, project sponsors, and host country government officials; conduct project site visits; hold public meetings in the project area; request written submissions from any source; and engage expert consultants to research or address specific issues. Compliance audit findings are sent to senior IFC/MIGA staff for comment and ultimately to the President of the World Bank Group for review. The CAO concludes the complaint process either when an agreement has been reached through the Ombudsman or when the IFC/MIGA are deemed to be in compliance with their policies. In this regard, the CAO will keep any compliance audit “open and monitor the situation” until it is satisfied that IFC/MIGA are moving back into compliance.[[7]](#footnote-8)The Compliance audits and monitoring status of any projects under review are made public.

As of the end of 2010, the CAO’s office had received 79 claims, involving 41 different projects. While some of these claims have resulted in long and complex involvement by the CAO, others have involved relatively short interventions.

With this background regarding the Inspection Panel and CAO in mind, we turn to a comparison of the policies of the IFI accountability mechanisms:

***Fairness and Accessibility***

A primary issue within the principles of fairness and accessibility of these mechanisms is who can bring a claim and under what conditions. There is a trend toward allowing individuals to bring claims. There is also a trend toward allowing foreign representation, with the majority of mechanisms not limiting foreign representation to instances in which local representation is not available. Almost all of the mechanisms allow requesters to file complaints in national or official languages, and a majority of the mechanisms allow the local languages of the claimants. A little less than half of the institutions (namely, EBRD, EIB, CAO, and the compliance review function of OPIC) do not require an allegation of direct harm.

With respect to time boundaries, the majority of mechanisms require complainants to file requests within one year after full dispersal of funds. However, the CAO is a positive outlier in that it does not have a time limit for filing and the WB IP is a negative outlier in that it only allows claims prior to 95% dispersal of the loan.

None of the institutions allows a claimant to file anonymously, but all of the mechanisms allow confidential requests. EIB is the only mechanism with a presumption of confidentiality, which can be waived by the requestor. EBRD, AfDB, and IADB are the only mechanisms that do not have express provisions for keeping outside information confidential.

The majority of mechanisms require good faith efforts to resolve the grievance prior to entering the accountability mechanism process. However, exceptions to this rule are EIB, CAO, and the compliance review function of OPIC, which do not require such an effort. For mechanisms with a good faith efforts requirement, the EBRD embodies the best practice of waiving the requirement if it would be dangerous or futile to pursue good faith efforts.

If requesters express interest in both a problem-solving and compliance review, three of the mechanisms are sequenced and present a barrier to access (i.e. you must start in problem-solving), while three are not (meaning a claimant may proceed straight to compliance review).

***Independence***

While all of the mechanisms embody language that reflects the importance of independence, their structures and the resulting levels of independence differ. For determinations of ***compliance*** with the IFIs policies and procedures, three of the mechanisms explicitly report to the IFI’s president or vice president (CAO, EIB, OPIC), four explicitly report to the board (ADB, EBRD, IADB, IP), while the AfDB splits reporting in a hybrid form, depending on the stage of the project (see Figure 1).

**Figure 1**

With regard to ***problem-solving***, the mechanisms that report to the president are the CAO, OPIC, EIB, EBRD, ADB and AfDB (depending on the stage of the project). Mechanisms that report to the board for problem-solving are the IADB and AfDB (again depending on the stage of the project).

The IAMs are structured in varying ways. All of the IAMs have a designated office, fully independent of Management, for the mechanism, except EBRD, which is housed within the Office of the Chief Compliance Officer. ADB has two designated offices: one for problem-solving and one for compliance review, each headed by its own director. AfDB, CAO, EBRD, and OPIC have one dedicated coordinator of the entire mechanism and all of its functions. IP and IADB have a dedicated administrative staff member, often called the Executive Secretary, in charge of managing the office of the mechanism, but they do not manage actual performance of problem-solving or compliance review.

The IP, IADB, ADB, and CAO each have at least one full-time person responsible for performing compliance reviews. ADB, AfDB, EBRD, IDB, and WBIP have a roster of experts or panelists who are called-upon, as needed, to conduct problem-solving and/ or compliance review. Additionally, most of the IAMs have other support staff members (“staff”) in charge of administrative tasks and/ or assisting in the problem-solving or compliance review processes.

For most mechanisms, the IFI’s president hires the director, administrator, or executive secretary of the IAM. However, an outlier is the IADB, which allocates hiring of the executive secretary to the Board. Most of the mechanisms have either president or board (or both) approval for hiring panelists and experts. EBRD, IP and ADB, demonstrate the best practice of requiring a transparent hiring process.

Many of the mechanisms have employment requirements for directors, staff and panelists in order to ensure independence. AfDB and the problem-solving office of ADB have the highest guarantees for the IAM director’s independence by requiring that the director has not worked for the institution for at least five years prior to employment at the IAM. The EBRD PCM Officer and IP secretariat staff and consultants must not have worked for the IFI for at least two years prior to employment at the mechanism. For panelists or experts, ADB has the strongest rule of a three-year ban on prior employment, while EBRD, AfDB, IP, and IADB have a two-year ban.

Regarding a post-employment ban on IAM staff, the EBRD PCM Officer requires a three-year cooling off period, and the CAO requires two. The best practice for panelist or expert subsequent employment prohibitions (as opposed to secretariat staff) is a complete ban on employment at the IFI, as seen with EBRD, ADB, and the IP. OPIC and EIB are outliers, with no bans on previous or subsequent employment at the IFI. Most of the mechanisms require staff or panelists to recuse themselves if they have a conflict of interest with a particular case.

**Figure 2, x-axis is number of years, where 10 indicates full ban.**

For OPIC, identification of the “decision-maker” is for compliance review is unclear. Under the Board resolution creating OPIC’s Office of Accountability, the Director of the mechanism has the authority to “draw independent conclusions and make recommendations to the President regarding OPIC compliance or future steps to resolve a conflict.” From this language, it could be interpreted that the Director is the decision-maker. However, according to OPIC’s website flowchart of the compliance review process, “[t}he Office of Accountability examines whether OPIC has complied with relevant policies in the course of design or implementation of an OPIC-supported project, with the objective of providing a basis for the President & CEO to determine whether there has been a failure to comply, and any preventative or corrective action should be taken.”[[8]](#footnote-9) This language implies that it is the President/CEO who makes compliance review assessments.

***Transparency***

All of the mechanisms have websites on which they publish their annual reports, but the level of information from site to site varies dramatically. All of the websites, except OPIC’s, have their policies and procedures available to the public on the website. OPIC does not have a full ‘policies and procedures’ document (as one does not exist), but rather only has the Board resolution creating the mechanism (which is only partially operationalized in practice) and information on various web pages.

Public registries on mechanism websites are a primary way of remaining transparent. All of the mechanisms, except EIB, have a public registry of all requests registered, but only OPIC and AfDB require a public registry for all claims submitted. The EBRD, WBIP, ADB, and IADB require public disclosure of compliance eligibility reports, while EBRD, CAO, and IADB require public disclosure of problem solving eligibility reports. All of the mechanisms require public disclosure of final compliance review reports, final problem solving reports, and the final decisions, except for the EIB, which only discloses summaries of such reports for cases where confidentiality has been waived. All of the mechanisms, except for EIB, require public disclosure of recommendations. Follow-up/monitoring reports (when applicable) are required to be made public for EBRD, IADB, CAO, and ADB, but not for the others. Only the WB IP requires public disclosure of investigators.

***Professionalism and Effectiveness***

Each mechanism, except the WB IP, has both a problem solving function and a compliance review function. Only EIB and CAO have an official advisory function. EIB is the only mechanism with the right to appeal, with a process for unsatisfied claimants to complain to the European Ombudsman. Most of the mechanisms have training procedures, but AfDB, EIB, and OPIC are lacking important provisions for training the institution’s staff about the mechanism. Most of the mechanisms require that information about the mechanism be distributed to project sponsors (except IADB, AfDB, and EIB).

The time limits and efficiency guidelines for the mechanisms and the different steps in the process vary. EBRD and ADB are most efficient with a 2-5 day decision about whether to register the complaint. The CAO and IADB determine eligibility and which function to use quickly (within 2-3 weeks of registration). Only ADB and EIB offer an estimated full process timeline of less than 6 months, but these overall time limits may be unattainable in many cases. All of the mechanisms, except OPIC, have a provision that allows for the extension of time limits that are in place.

For mechanisms that have both problem solving and compliance review functions, their rules of sequencing differ. Simultaneous use of both functions is permitted only at the EBRD, EIB, and OPIC. None of the institutions require the project to be suspended while the claim is brought, although some allow the mechanism to recommend that it be suspended (EBRD, AfDB, ADB, IADB).

Once the claim is accepted, the institutions’ procedures differ. Only the IADB allows the project sponsor to respond to the claim, and only EBRD has a provision that allows the claimants to respond to opposing party responses to the claim.

Other than IADB, which only allows review of records, all of the mechanisms allow site visits for eligibility determinations. All of the mechanisms allow site visits in the investigation phase, however, none of the mechanisms require site visits. Only WB IP has a provision to allow site visits to communicate outcomes to claimants, but the other mechanisms don’t prohibit such a visit.

Only EBRD, AfDB, and WB IP require management to create an action plan to address eligible claims. After the final report, all of the mechanisms allow monitoring at some level. Most of the mechanisms have the independent ability to undertake monitoring, but WB IP and IADB require the Board to request a monitoring process. EBRD and ADB are notable because they require that follow up and monitoring reporting be done in consultation with the claimants. There is a positive trend shown by EBRD, ADB, and IADB to require monitoring reports to be released on a specific time frame (annually by ADB; bi-annually for EBRD and IADB).

1. This annex is updated as of June, 2011. [↑](#footnote-ref-2)
2. Because the ADB is in the last stages of review of its Accountability Mechanism (“AM”), this paper draws on the ADB AM policy from the June 2011 ADB AM Working Paper. [↑](#footnote-ref-3)
3. Inspection Panel, *The Inspection Panel for the International Bank for Reconstruction and Development and International Development Association: Operating Procedures*, 34 ILM 510, 511 (1995). [↑](#footnote-ref-4)
4. *See* Inspection Panel, *Requests for Inspection*, available at http://www.worldbank.org/inspectionpanel. [↑](#footnote-ref-5)
5. *CAO Operational Guidelines* at 5 (April 2007) available at http://www.cao-ombudsman.org/html-english/documents/CAO\_OpGuide\_April07.pdf. [↑](#footnote-ref-6)
6. *Id.* at 11. [↑](#footnote-ref-7)
7. *Id.* at 25-26. [↑](#footnote-ref-8)
8. *See* OPIC Office of Accountability Compliance Review Chart, *available at* <http://www.opic.gov/sites/default/files/docs/complianceReviewChart.pdf>. [↑](#footnote-ref-9)