

# **Accountability Mechanisms in other Multilateral Financial Institutions<sup>1</sup>**

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## Chapter 4 Accountability Mechanisms in other Multilateral Financial Institutions

### ***Introduction***

It is evident that the World Bank with the adoption of a Resolution establishing the Inspection Panel <sup>i</sup> on 23 September 1993 followed by the installation of the Panel in the beginning of 1994, has ever since provided the role model for the other Multilateral Financial Institutions (MFI's). Many writing about the Inspection Panel have recognized its impacts on the operations of the World Bank: greater transparency and accountability and a voice given to affected people.<sup>ii</sup> The accountability mechanisms in the other Multilateral Financial Institutions (MFIs) that were established afterwards have both similarities and differences in their rationales and objectives. Nevertheless, the Inspection Panel is still criticized for weaknesses in its mandate, as I also described in the previous Chapter 3 (See also Part III Chapter 6 and Part III Chapter 7 the outcome of the survey). Eisuke Suzuki and Suresh Nanwani, who have been involved in the creation of the accountability mechanism of the ADB refer for example to the lack of a problem solving mechanism in the World Bank, the lack of “oversight over the implementation of remedial measures, and the ability to assess whether Management’s proposed remedial measures satisfy the concerns of the claimants and/or bring the project into compliance.”<sup>iii</sup>

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Thereupon Suzuki and Nanwani make a rather strong general and critical observation about the working of the inspection function: a function ‘falling into decay’.<sup>iv</sup> Suzuki and Nanwani:

“The net result of the inspection function is that the question of internal compliance or noncompliance has become the focus of the inspection process, and the real question of accountability toward people who are affected by MDBs’ projects has become sidelined. Once the inspection function accepts the complainants’ request for inspection and authorizes an inspection, the complainants themselves are left outside the system. The affected people who requested “inspection” will eventually be informed of the outcome of the inspection process only after the process is completed, with the possibility that their problem will remain unresolved.”

The two rightly point to a risk the mechanisms will downgrade and lose their original purpose and become an inward looking technical mechanism whereby the working procedures change from instruments used to reach a desired aim, into the aim itself. Still it is not too late. Representatives of civil society, Executive members of the Board of the MFIs (MDBs), members of parliaments and congress and, most of all, members of the mechanisms themselves could still defend the original design and meaning of the mechanism. Since the spring of 2004, members of the mechanisms of the MFI’s have met annually.

On May 21, 2004, members of the mechanisms or members of their staff of the following MFIs met in the World Bank for the first time in a closed session on the invitation of the Inspection Panel, initiated by the chair of the Panel Edith Brown-Weiss: Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), Inter-American Development Bank (IADB), International Finance Corporation (IFC), Japan Bank for International Cooperation (JBIC), Export Development Canada (EDC)<sup>v</sup> and North American Commission on Environmental Cooperation. Since then the experts meet yearly. In 2005 they met in Manila and in 2006 in Canada. The purpose of the meeting of principals is to exchange information based on experiences.

In this Chapter I will describe some of the already existing different mechanisms in the MFI’s or the creation process in the case of banks that are just about to begin with a mechanism or, as in the case of the Inter-American Development Bank, are revising their mechanism. In the case of the Inter-American Development Bank (IADB) I was asked to comment on their draft revised mechanism, the “Proposal for Enhancement to the Independent Investigation Mechanism.”<sup>vi</sup> My comment is included in this Chapter. I am aware that by the time of publication of this study on the different mechanisms, the IADB might have decided already on the new mandate and formula followed by the installation of the new compliance review panel. To understand the different mechanisms I visited in 2004 and 2005 The European Investment Bank in Luxembourg, The European Bank for Reconstruction and Development in London, the African Development Bank in Tunis, the Inter-American Development Bank in Washington DC and had regular contact with former officials of the Asian Development Bank.

The following coverage of different mechanisms is by no means complete. Every day after finalizing a Chapter, new information arrives. It may very well be an important new mechanism is missing. To the best of my knowledge I have tried to be as complete as possible. Some mechanisms I describe in full while others are just mentioned. The ADB accountability mechanism is described the most extensively, since I consider this at present as the best model.

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The first two described, the Compliance Advisor ombudsman of IFC and the Independent Evaluation Office of the IMF, are both mechanisms of the Bretton Woods Institutions.

### ***Ombudsman of IFC and MIGA (World Bank)***

In everyday business the Compliance Advisor Ombudsman (CAO) of IFC and MIGA<sup>vii</sup> is often called the IFC ombudsman<sup>viii</sup>. The administrative budget of the function is shared by the two members of the World Bank Group. In fiscal year 2003 80% of the budget was provided by IFC and the other 20% by MIGA with a total of \$1,866,446.<sup>ix</sup> The establishing of the mechanism took place in 1999 some years after the establishment of the Inspection Panel of the World Bank. The positioning of both mechanisms inside the World Bank has a somewhat complex nature. The activities of the two mechanisms have so far never geared to one another. According to its own Operational Guidelines<sup>x</sup> the ombudsman has three roles.

Firstly there is the ombudsman role:

“The ombudsman role responds directly to the concerns of persons affected by IFC or MIGA projects and who lodge a complaint with the CAO (complainants). CAO activities under the ombudsman role are always initiated in response to an external complaint. The focus of the ombudsman role is on helping resolve complaints, ideally by improving social and environmental outcomes on the ground. The CAO respects the confidentiality of the complainant, if so requested; and the principle of confidentiality applies to information provided to the CAO by any of the parties to a complaint.”<sup>xi</sup>

About the second role the following it is noted:

“The Compliance role may either respond to issues raised in a complaint to the ombudsman, if the CAO deems that an audit is appropriate or be initiated by the President, Senior Management of IFC or MIGA, or directly by the CAO. The emphasis is on enhancing material compliance. Audits are initiated only in response to concerns regarding the environmental or social impacts of specific projects, as opposed to random auditing. The CAO audits are independent of, but complementary to IFC’s and MIGA’s internal assurance efforts.”<sup>xii</sup>

And lastly there is the Advisory role of which it is noted:

“Unlike the ombudsman and Compliance roles, the Advisory role is not project specific. It is aimed at improving performance systemically. The CAO will not give project specific advice, as this could undermine the ability of the CAO to act as independent ombudsman or Compliance auditor. However, it can offer advice on emerging or strategic issues and trends, policies, processes, or matters of principle. Advice will often be based on the lessons learned from ombudsman or Compliance activities. A request for advice can be initiated by a number of different parties.”<sup>xiii</sup>

In most of the documents published by the CAO since it was established it is also often mentioned that “the independence and impartiality of the CAO foster the trust and confidence of the project’s sponsors, local communities, NGOs, and Civil society in general.”<sup>xiv</sup>

An important statement was made about the role of the CAO in the Annual Report of fiscal year 2004-2005, and I tend to agree with the mentioned importance of problem solving when a choice

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can be made between problem solving or reporting on compliance afterwards. Compliance review is thus often regarded as the ‘last resort’ after problem solving has failed. The CAO on this:

“In terms of the evolution of external accountability within Multilateral Financial Institutions, the ombudsman role is the most innovative of the CAO’s three roles. [...] Generally speaking, the focus of the ombudsman role is on what is going to happen in the future, rather than what has happened in the past. Instead of finding fault, the ombudsman’s aim is to identify problems, recommend practical remedial actions, and address systemic issues that have contributed to problems. [...] A key difference between the ombudsman function and many of the external accountability mechanisms is that our work does not necessarily end with the publication of a report. [...] The CAO can remain engaged if its role adds value and the parties request its participation. In some circumstances, the issues raised in the complaint may form the basis for a compliance audit or may be the subject of advice to IFC or MIGA management, in which case, the complainant is informed of how any remaining issues will be addressed.”<sup>xv</sup>

With the above statement, the CAO implicitly criticizes the mandate and functioning of the Inspection Panel that officially has no mandate to use problem solving methods. The Inspection Panel is supposed to investigate if management is or was in compliance with the World Bank policies during the design and implementation of World Bank financed projects.<sup>xvi</sup> Although in a few cases the work of the Inspection Panel became unintentionally of a problem solving nature while ‘investigating’ the eligibility of the request, as was described in Part II Chapter 3. Solving the problems during the eligibility phase was always welcomed by all parties involved.

The CAO instead, has three roles including a problem solving role, a compliance review role and an advisor role. Nevertheless, three roles in one function seems not a simple structure and bear the risk of confusion between the three roles. The CAO is aware of this, as is clear from statements such as:

“The advisory role continues to be the role that confuses internal and external stakeholders. The CAO’s terms of reference allow it to provide an independent channel of advice to the president and senior management. However, that advice cannot detract from, nor pose a conflict of interest with the ombudsman role, in particular, or with the compliance role. By drawing lessons to be learned and projecting them back into the institution, the advisory role can reinforce the effectiveness of IFC and MIGA. In 2002, the president clarified to IFC and MIGA that formal advice would stem from complaints to the ombudsman and from compliance audits and would address process and policy issues in a broader context than an individual context.”<sup>xvii</sup>

The confusion stemmed from the original scope of the Advisory role. In the first operational guidelines the third role was described as follows: “Overseeing audits of IFC’s and MIGA’s social and environmental performance, both overall and in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems (the compliance role).”<sup>xviii</sup> Four years later the revised operational guidelines were published, in which it was noted about the advisory role: “Providing a source of independent advice to the President and the management of IFC and MIGA. The CAO will provide advice in relation to broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues.”<sup>xix</sup> The difference

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with the original position is explained further on: “The CAO will not give project-specific advice. Any prior involvement in a project (irrespective of the nature of the involvement) has the potential to undermine the CAO as a wholly impartial and independent ombudsman or compliance auditor. Therefore, the CAO will refrain from attending project briefings or other project-related meetings. Requests fro project-specific advice will also be routinely declined, as will informal conversations about specific projects.”<sup>xx</sup> The difference between the two formulations gives the impression that a lot of internal and external confusion and difficulties arose. The conclusion of the CAO not to advise any longer on specific projects, I consider wise. Otherwise, it could be understood as that project-specific advice is part of the ombudsman function.

So the CAO recognized the risk of a conflict of interest between the advisory role and the other two roles. I could not find a similar statement on a possible conflict of interest between the first two roles: the ombudsman role and the compliance role. That to me includes also a risk of conflict of interest. Those experts that have been involved in a problem solving or mediation procedure should not also be involved in a compliance review investigation after the mediation failed. Whether the CAO’s internal procedures include a ‘Great Wall’ between staff members involved in the first phase or role and staff members involved in the second phase or role, is not clear. The Asian Development Bank is the only Multilateral Financial Institution so far that created both mechanisms, the problem solving mechanism and a compliance review panel in an entirely separate structure (see below).

The NGOs also have problems in understanding the roles and independence of the CAO. Their confusion has a somewhat contradictory tone. At one hand they criticize the CAO for taking a stand in favor of IFC at the other they criticize IFC for its ‘unsatisfactory response’<sup>xxi</sup> to the CAO’s findings. The following statement was recently made by the ‘Bretton Woods Project’:

“In its recently published annual report for 2004-2005, the Compliance Advisor ombudsman (CAO) received 14 complaints. Experience with high-profile and often contentious projects in Guatemala, DRC, Brazil, India, Kazakhstan and Georgia, as well as the IFC safeguard policy review reveal that despite the CAO’s best efforts to seek “rapid resolution of complaints and ensure public accountability of IFC and MIGA”, it is powerless to stop them from acting with impunity. These institutions have ridden roughshod over the CAO’s efforts by ignoring recommendations, contradictions findings and submitting inadequate or dismissive responses. On the other hand, questions regarding the CAO’s role have also been raised by affected communities and civil society groups, many of whom have been dissatisfied with the way in which it has dealt with their complaints. It has been criticized for failing to take claims seriously enough; for coming down in favour of the IFC and/or the company; and for not going far enough in its recommendations, despite its own clear findings to the contrary.”<sup>xxii</sup>

The statement might me based on a misconception about the independent role of the CAO that in some cases will disagree with the requesters and sometimes with IFC and MIGA.

Notwithstanding the NGO criticism the CAO has made some remarkable critical comments about the work of IFC and especially on Human Rights issues, as is clear from the following examples:

“In 2003, the CAO conducted a gap analyses with respect to some basic human rights instruments as well as the existing Safeguard Policies, which include some

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explicit and implicit references to human rights. The CAO also produced internal case studies on how three IFC projects might have been approached differently if human rights filter were to have been applied at the outset.”<sup>xxiii</sup>

In the summer of 2005, President Wolfowitz asked the CAO to do an audit (compliance Review) on MIGA’s due diligence in a copper-silver mine project in the Democratic Republic of Congo.<sup>xxiv</sup> The following findings are published by the CAO:

“CAO found that MIGA adequately followed its underwriting and risk management due diligence, but that these core business processes did not address whether the project might either influence the dynamics of conflict or whether security provision for the project could indirectly lead to adverse impacts on the local community. While MIGA’s initial adherence to its Environmental and Social Review Procedures (ESRPs) was adequate, CAO considers that its follow-through on some social aspects was weak. CAO found that weaknesses in the ESRP due diligence, and on conflict and security issues specifically, echo a number of concerns that were the subject of recommendations by CAO in its 2002 review of MIGA’s ESRPs. Regarding security and human rights, CAO found that MIGA did not fully understand the implications for its client of implementing the Voluntary Principles on Security and Human Rights (as required by the Management Response to the Extractive Industries Review), nor did it assess whether its client had the capacity to properly implement them.”<sup>xxv</sup>

### *Some Concluding Remarks*

The firm stand taken on human rights is remarkable given the difficulty for management of the World Bank to raise issues of human rights that result from the Articles of Agreement of the World Bank not allowing interference in national politics. (See for this also Part II Chapter 2 on the History of the World Bank and Part III Chapter 6). However, the lack of clarity or entanglement of the roles still needs further analysis.

### *IMF: Independent Evaluation Office*

The International Monetary Fund (IMF) established at the same time as the World Bank in 1945, has an ‘almost global membership’,<sup>xxvi</sup> of 184 countries. According to the IMF its main aim is: “to prevent crises in the system by encouraging countries to adopt sound economic policies; it is also—as its name suggests—a fund that can be tapped by members needing temporary financing to address balance of payments problems.”<sup>xxvii</sup> Since both the IMF and the World Bank have been created at the same time at Bretton Woods in 1945 (see Part II Chapter 2 on the World Bank and its History) both institutions, although in principal two different institutions, have a close relationship. The headquarters of the two institutions are neighbors in Washington DC with a corridor between the two buildings below street level and some of the Executive Directors of the World Bank are in the same time Executive Directors of the IMF. The division of work between the two is described as follows by the IMF:

“Each institution must focus on its areas of expertise. Thus, World Bank staff takes the lead in advising on the social policies involved in poverty reduction, including the necessary diagnostic work. The IMF advises governments in the areas of its

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traditional mandate, including promoting prudent macroeconomic policies. In areas where the World Bank and the IMF both have expertise—such as fiscal management, budget execution, budget transparency, and tax and customs administration—they coordinate closely.”<sup>xxviii</sup>

The IMF has no accountability mechanism, instead it established an Independent Evaluation Office (EVO)<sup>xxix</sup>, decided by the Board in April 2001 and established in the summer of the same year. According to a background paper issued for the discussion of the Board of the IMF “the motivation to develop the role of independent evaluation at the fund stemmed from a desire to enhance the Fund’s internal learning culture, foster a more broadly-based understanding of its mandate, and bolster the credibility of its work outside the institution.”<sup>xxx</sup> The Managing Director of the EVO assists the Board ‘in providing governance and oversight of the Fund.’<sup>xxxi</sup> The Board appoints the Director. In its nature is an evaluation function different from an accountability mechanism, and as such is not the subject of this study. Nevertheless, the EVO is not a ‘pure’ evaluation function inside the institution. The main purpose of the evaluation function is described as follows:

“The IEO's overarching mission is to improve the IMF's effectiveness by:

- Enhancing the learning culture of the IMF and enabling it to better absorb lessons for improvements in its future work.
- Helping build the IMF's external credibility by undertaking objective evaluations in a transparent manner.
- Providing independent feedback to the Executive Board in its governance and oversight responsibilities over the IMF.
- Promoting greater understanding of the work of the IMF.”<sup>xxxii</sup>

In discussions about the role of the EVO compared to the other accountability mechanisms and especially the Inspection Panel of the World Bank, some experts from the IMF expressed the view it would not make sense to create the same for the IMF. It was felt that the IMF does not execute projects such as the World Bank does. Others disagreed with that by saying that the economic measures of the IMF could also have negative impacts on the lives of people in the countries concerned. On the website of Bretton Woods Project the following is mentioned about the first days of establishing the function:

“It looks likely that the unit will be independent from the staff and management and report to the board, with a core staff and contracted experts for specific projects. Staff wants the new unit to be limited to ex-post evaluations rather than carrying out on-going assessment of programmes. They argue that the Bank's Operations Evaluation Department has too much influence in the Bank. Executive Directors have mixed opinions with some arguing that the Policy Development and Review Department already has a systematic evaluation function, although admitting that staff can be biased, whilst others want the unit to be able to carry out on-going evaluations. Thomas Bernes, Canadian ED who heads the Board's Evaluation Committee said that "most of the Board appreciates the need for a broad mandate."

NGOs are calling for the unit to be fully transparent and French NGOs, led by Agir Ici, are calling for an appeals mechanism to hear the complaints of people affected

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by IMF policies. It should enable people affected by adjustment programmes to file lawsuits against policies that violate their fundamental rights or when their environment is threatened, and subsequently to obtain reparations. To be effective such a mechanism should be supported by an independent evaluation unit and impact assessments carried out prior to implementation of adjustment programmes.”<sup>xxxiii</sup>

Also, the following interesting paragraph on consultation is mentioned in the background paper (see above) on the mandate: “In carrying out its mandate, EVO will be free to consult with whomever and whichever groups it deems necessary, both within and outside the fund.”<sup>xxxiv</sup> So with the IMF paper expectations arose that civil society would be listened to. The Board finally took the decision: “The Executive Board should undertake an independent external evaluation of EVO within 3 years of its launching.”<sup>xxxv</sup> It all gives at least the impression that EVO is more than just an internal evaluation function. The abovementioned paragraph on consultation with the outside world has since then been repeated, for example in the revised Terms of Reference of November 16, 2004.<sup>xxxvi</sup>

In August 2001, a year after the decision to establish the EVO, Angela Wood from the Bretton Woods Project, an NGO, wrote and signed on behalf of a group of experts and other NGOs to the IMF’s EVO a comment on the proposals of procedures and topics for evaluation. From the reaction it is clear the NGOs want to play a role:

“It is equally important that civil society’s views are considered, where appropriate, during evaluation. It will be necessary for the EVO to draw up clear guidelines as to when and how stakeholders will participate in the evaluations. [...] In the interest of equity and independence we believe that it is essential that civil society and other external stakeholders as well as IMF staff and the Board should have the opportunity to formally and publicly submit their comments on EVO Reports. [...] It is essential that the EVO staff include experts in social and environmental issues as well as macro-economic issues. We are concerned that to date we have only seen notice of job vacancies for economists. The added value of the EVO is that it should be able to analyse IMF programmes and operations from perspectives other than those commonly held by economists.”<sup>xxxvii</sup>

A remarkable note is made when the NGO experts make a positive observation about the EVO concerning the relations with the IMF legal office, which at the same time is a negative observation on the Inspection Panel’s relation with the Legal Counsel of the World Bank:

“The EVO is not dependent on the opinions of the IMF legal office when legal issues arise relating to such issues as the powers of the EVO and the interpretation of its procedures arise. The role that the General Council plays in the Inspection Panel process in the World Bank has been a serious problem for the Inspection Panel.”<sup>xxxviii xxxix</sup>

On November 18, 2005 a team of experts conducting an evaluation of IEO<sup>xl</sup> announce on the website of the IMF they ‘welcome input from all interested parties between November 18, 2005 and January 2006. It is not known yet when the outcome of this study is to be published. The procedure of the IMF on the foregoing is promising for those that believe the international institutions should be more transparent and accountable for their acts. What is missing is that the

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general public is hardly aware of the work of the ‘bastion’ IMF left aside from a knowledge that the public may comment on the work of the IMF.

### ***Islamic Development Bank***

One Multilateral Financial Institution, the Islamic Development Bank (IDB), I could only study via the information of the bank on its website. I regret that my attempts to contact experts in this bank only had success when I was about to deliver the study. In all the other publications concerning accountability mechanisms, I have also never found any reference to this bank. Examining the financial figures of loans and investment plus the growth over the years of member countries<sup>xli</sup> it is clear that the IDB, similar to the other MFI's, is an important financial institution for the countries where it operates. The net approvals of the IDB Group from its inception up to the end of February 2005 amounted \$ 38.3 billion.<sup>xlii</sup> Like the World Bank the IDB is composed of different entities: The Islamic Development Bank (IDB), the Islamic Research and Training Institute (IRTI), the Islamic Corporation for the Development of the Private Sector (ICD), and the Islamic Corporation for the Insurance of Investment and Export Credit (ICIEC).

The vision of the Bank according to their own information is<sup>xliii</sup>: “To be the leader in fostering socio-economic development in member countries and Muslim Communities in conformity with Shari’ah (Islamic law).” The structure of the bank and its mission statement with a focus on poverty alleviation is not that different from the other MFIs. Similar to the World Bank and other MFIs the IDB for example also classifies its member countries by their state of development into two groups: the least developed member countries (LDMCs) and Non-LDMC countries. The difference is that the IDB operations are based on “Islamic economics”<sup>xliiv</sup> and the ‘Shariah-compliant modes of financing’. Under the objectives is mentioned: “Promotion of Islamic financial industry and Institutions.” The Bank mentions its uniqueness because: “It uses financing modes that are Shari’ah- compatible for its operations’ and ‘Its membership comprises only the developing countries. Accordingly, the resources from the relatively better off member countries are used to assist those that are less well off, making the IDB Group a model institution for South-South cooperation.”<sup>xlv</sup>

The IDB definitely deserves a better study on how it works, what policies exist and what kind of accountability mechanisms they have to assure they fulfil their own mission while following Islamic law. I regret I was not able to further describe the developments of the IDB.

### ***Asian Development Bank (ADB)***

In December 1995, not that long after the World Bank, The ADB also established an independent inspection function. The structure and development of this function in the ADB makes it the best accountability mechanism to compare with the Inspection Panel of the World Bank. On its website the bank announced: “The inspection function policy establishes formal procedures for any community, organization, or other group affected by ADB's public sector project, to assert that the formulation or implementation of the project was inconsistent with ADB policies, to the material detriment of that group.”<sup>xlvi</sup> At first sight, the ADB mechanism and the World Bank Inspection Panel do not differ that much. The general approach is like that of the World Bank; mainly demand-driven, and the objective according to the ADB, is “to improve the quality and transparency of the Bank’s operations, as well as its accountability.”<sup>xlvii</sup> There are two stages, the

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eligibility stage and an investigation or inspection stage with almost comparable timeframes as those of the World Bank. Similar to the World Bank, Executive Directors can also file a request.

The same can be noted about the eligibility criteria; there is not much difference with the World Bank. In the case of the ADB a request for inspection also must assert that “(a) the bank has failed, in formulating, processing or implementing a project, to follow its operational policies or procedures, (b) this failure has had or is likely to have a direct and material adverse effect on the requester’s rights and interest; and (c) this failure was brought to the attention of the bank’s Management, which failed within a period of 45 days to demonstrate that the Bank had followed, or was taking adequate steps to follow, its operational policies and procedures.”<sup>xlviii</sup> The factors that make a request beyond the scope of the policy are also almost identical to those of the World Bank.<sup>xlix</sup>

The difference is to be found in the terms of institutional and procedural aspects. At this time there is not an independent Inspection Panel as in the case of the World Bank, and instead the ADB has an ‘Inspection Committee’. The ADB about this:

“Under the policy, a new standing committee of the Board, the Inspection Committee (the Committee), has been established to review requests for inspection and recommend to the Board whether an inspection is warranted. If the Board authorizes an inspection, the Committee will select a Panel of independent experts from an approved roster to conduct the inspection and to report its findings to the Committee. Based on the Panel’s report and Management’s response to that report, the Committee will make recommendations to the Board. The committee comprises six members of the Board, including four regional members (at least three of whom must be from borrowing member countries) and two non-regional members. [...] A roster of independent outside experts (the Roster), nominated by the President and approved by the Board, assist the Committee and the Board in implementing the Policy. [...] These experts remain on the Roster for five-year, non-renewable terms. Roster members must not have been employed by the Bank within two years preceding their appointment, and will be precluded from employment by the Bank for five years following the completion of their term.”<sup>1</sup>

Requesters first have to send a written complaint to the President, and Management will respond to the complaint. If they still are not satisfied they then can write to the Committee. Further according to the procedures: “(d)The Committee will ask Management to respond in writing to the request (except in cases considered clearly frivolous or clearly ineligible by the Committee; (e) the Committee will recommend to the Board whether an inspection is warranted, and the Board will take a decision on this recommendation; (f) if the Board authorizes an inspection, the Committee will select a panel of experts from the Roster to inspect the project and make a report to the Committee; (g) Management will respond in writing to the panel’s report; and (h) the Committee will make a recommendation to the Board on the panel’s report, and the Board will take a decision on this recommendation.”<sup>li</sup>

Without going further into a detailed description of the procedures of the first installed mechanism of 1994, it is worthwhile to notice that the role of the experts on the roster could not be compared to the role and mandate of the World Bank Inspection Panel. It is not as independent and it is not a permanent panel since the experts are chosen from a roster on a case by case basis. In the ADB’s mechanism it is the Committee, composed of six Board members that finally sends

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a report to the entire Board and decides on the steps to be taken by the Panel as is clear from the first case (see below).

### *First Case*

Only on July 10 2001 did the Board of the ADB for the first time approve an inspection of a project in Thailand<sup>lii</sup>, after the internal process in which management first was asked to respond was not satisfactory to the Requesters. A panel of 3 members chosen from the Roster was set up. The Bank received the request in April the same year. The members of the panel were immediately confronted with difficulties to put together a report. One of the three members of the first Inspection Panel of the ADB reported on the experience of this panel during a conference in Washington DC organized by the American University College of Law in cooperation with the Inspection Panel of the World Bank.<sup>liii</sup>

Mr. Wiert Wiertsema<sup>liv</sup> describes what happened. In brief:

“Once the Panel was established, it was agreed that it would meet with the BIC<sup>lv</sup> on August 27 and 28 to discuss the draft Terms of Reference of the Panel and to finalize its work plan and timetable.<sup>lvi</sup> [...] It was the intention to start the investigations with meetings with the Requesters and other stakeholders in Thailand, in order to obtain a good understanding of the concerns raised, [...] in accordance with the provisions of paragraph 52 of ADB’s Inspection Procedures, the BIC had requested consent of the Government of Thailand for a site visit of the Panel. Unfortunately, only on September 6, the BIC received a response from the Government of Thailand containing several conditions [...] including the requirement that the ADB would accept liability for any loss or damages claimed by the contractors as a result of the Panel’s visit. Due to this the Panel could not travel to Thailand. [...] It discussed with the BIC the serious consequences of the ensuing unequal access to the different stakeholders in this inspection.”<sup>lvii</sup>

According to Wiertsema the Committee tried again “to obtain consent to a visit of the site. Unfortunately, by October 10 another response from the Government of Thailand was received, reaffirming the conditions that prevented the Panel from visiting the country”<sup>lviii</sup> The Panel yet ‘was forced’ to work on the basis of the reports available. They then turned around the situation by inviting the requesters to come to Manila instead of visiting them at the project site, which was declined immediately by the requesters. Both the Committee (BIC)<sup>lix</sup> and the panel members knew this was a precarious situation that could undermine the spirit of the mechanism. In a sort of last attempt, “the chairperson of the BIC decided to throw in all his weight by undertaking a mission to Bangkok to discuss the lifting of the conditions imposed on the proposed visit of the Panel. Anticipating and actually trusting that the visit of Mr. Lockhart would result in a breakthrough, the Panel decided to commence interviews with ADB staff on November 2. On November 8, the Panel was briefed by the BIC that regrettably and despite the mission, reported that the Government of Thailand maintained its original position.”<sup>lx</sup>

The three panel members decided to suspend any further formal interviews. And regarding the requirements of the government of Thailand Wiertsema wrote: “The conditions imposed undermined the effectiveness and soundness of the inspection system, and ran counter to the basic spirit and objective for the establishment of such a system. The Panel felt that if the matter would

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not be dealt with seriously, it would create cynicism and cause harm to the efforts so far made by the Bank to have greater openness and participation of the people who are affected by Bank financed activities.”<sup>lxi</sup> The Committee then asked the three Panel members to prepare an interim report and told the three members: “The Committee will request the panel to resume the inspection at a convenient time. However, if the situation does not change within a reasonable time frame, the Committee will request the Panel to submit its final report.” Finally the Committee asked the panel to submit its final report and informed the requesters that the report ‘would not be disclosed.’<sup>lxii</sup>

This all was a great disappointment to the first ADB Panel. A final report was written in common with a separate memorandum to the Committee. In the memorandum several suggestions for future improvements of the mechanism were submitted. Most of it related to poor procedures and access to documentation, the prohibition to visit the project side, the lack of transparency, and most of all the lack of independence of the process. The dramatic experience of the first three Panel members without doubt caused heavy criticism from the outside world. A Newsletter of Friends of the Earth International stated:

“The first ever investigation of the ADB Inspection Panel ended in a complete failure when last month the Panel decided to suspend its inspection into the Samut Prakarn Wastewater Facility. [...] Thai authorities also prohibited panel members to visit the project site ‘For fear of civil disturbances’. It is likely that the Bank Inspection Committee will have to conclude the inspection process and ask the Panel to finalize the report. If so, the first ADB inspection case ever will have concluded without a field visit thus setting a discouraging precedent for the ADB’s Inspection Mechanism.”<sup>lxiii</sup>

The project was without a shadow of doubt a politically sensitive project. Walden Bello<sup>lxiv</sup> <sup>lxv</sup>:

“Notes taken by a participant at the most recent meeting of the ADB board on March 25 that were made available to the author reveals an institution that is deeply shaken and split by the report of an independent Inspection Panel on the project, which is located in Samut Prakan province. Foremost among the critics during the board meeting was, not unexpectedly, Alternate Director Ram Binid Bhattarai, who represents a group of countries that includes Thailand. Bhattarai attacked both the Inspection Panel and the BIC for “disregard of the Thai authorities and lack of respect for the sovereign rights of Thailand”. For Bhattarai, it was the BIC and Inspection Panel that were at fault for “politicizing the event,” with “premature releases of information to the press and welcoming flags in the Klong Dan community, [...]”

Bhattarai’s comments were, however, mild compared to those of Director Zhao Xiaoyu representing China, who began by saying that while the report might strike some as “a nice piece of steak, to me it is a lousy dish that is overcooked.” Asking what the bank had gotten after spending nearly \$2 million on the inspection process, Zhao answered: “We have produced a pile of groundless damaging paper. The Bank’s credibility is undermined, the staff demoralized, the Thai government is fed up, and a good environmental project is unduly held up for two years. [...] The effect on ADB, he predicted, would be like the impact on the World Bank of the full-scale inspection done on the bank’s controversial Western Poverty Project in China.”<sup>lxvi</sup>

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According to Bello, Zhao was supported by a group of countries including India, Bangladesh, the Philippines and Pakistan. Board members supporting the BIC report “were perhaps not as inflammatory in their comments but they were equally firm in their views. C. Alexander Severens, speaking for the United States, faulted the Thai government for obstructing a site visit, a move that eroded the credibility of the inspection process.”<sup>lxvii</sup>

A group of eleven NGOs from the USA, Pakistan, Sri Lanka, Japan, the Philippines, Cambodia and Australia published around the same time a substantive report with recommendations to the ADB for revising its Inspection Policy.<sup>lxviii</sup> The system, they argued, has many shortcomings. There is for example a lack of a permanent Inspection Panel which causes “logistical and substantial problems as follows: Although three or more members have been selected for an Inspection Panel, their availability is not guaranteed as members usually have full time jobs and other commitments. [...] During the set up of the Samut Prakarn Panel, the candidates that were first identified from the roster turned down the assignment due to time conflicts, conflicts of interests, and unwillingness to agree not to working for the bank for a certain period of time after serving on the Panel.”<sup>lxix</sup> They point at the lack of an independent secretariat since “its primary role is administrative assistance to the Bank Management” which creates a potential conflict of interest. The same could be the case for the Board Inspection Committee. The NGOs about this: “Their function on the Board Inspection Committee puts Board members in the position of approving loans on the one hand and making decisions on inspection cases on the other hand, making conflicts of interests likely to occur.”<sup>lxx</sup> Finally, the eleven NGOs also point at the lack of transparency: “The current Inspection Policy does not require the Bank to inform the public or provide updates on the status of Inspections and important events regarding Inspection cases.”<sup>lxxi</sup> In the course of 2002 the ADB received similar comments from other NGOs.

### *Consultation*

According to the ADB by then a process had begun already (in 1998) to review the original system. The ADB:

“At the time of approval of the ADB Inspection Function, the Board stipulated a review within 2 years from its approval of the initial roster of experts as panel members; the review would assess the operations of the Board Inspection Committee (BIC) and related inspection procedures, and review the Inspection Function’s application to ADB’s private sector operations.”<sup>lxxii</sup> The first review did not bring much about since the ADB had ‘limited experience with the inspection process, and few conclusions could be drawn regarding the existing system. Only two requests, both regarding the Korangi Wastewater Management Project in Pakistan had been filed by then, and BIC had deemed them both ineligible. Support for strong accountability mechanisms at ADB and other MDBs has continued throughout the past decade. In 2000, ADB’s donors recommended a strengthened and more independent inspection function, and that it should also have oversight of private sector projects.”<sup>lxxiii</sup>

The impression is given that the project and the work and problems of the ADB Inspection Panel in Thailand accelerated the process.

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The ADB began a public consultation to review the inspection function in the summer of 2002. An issue paper and drafts were posted on the website for comments. The Bank then held two rounds of public consultations in June and August 2002 in the cities of ten different ADB member countries. The first round was held in Tokyo, Manila, Frankfurt, Ottawa and Washington DC and the second round in Phnomk Penh, Katmandu, Beijing and Sydney. Between the first and the second rounds a special session was held in Karachi.<sup>lxxiv</sup> Two independent consultants were contracted: David Hunter and Lori Udall.<sup>lxxv</sup> Those two are remarkable. They both have been key figures in the establishment of the Inspection Panel at the World Bank (see Chapter 3 on the World Bank Inspection Panel and see Part IV for an interview with David Hunter on the establishing of the World Bank Inspection Panel). In the autumn internal consultations were held followed by an informal seminar of the Board of the ADB.

During the consultations four options with variants circulated:

“Option A: Maintain the existing Inspection Function with improvements in the system such as strengthening the secretariat and streamlining the procedures; B: Establish an independent Inspection Panel based on the World Bank panel with improvements, including an independent secretariat, an annual budget, and at least one full-time chairperson of the panel. C: Adopt a problem-solving approach, perhaps similar to the ombudsman’s role in IFC/MIGA’s CAO office. D: Establish a two-step approach with both a consultation and compliance review mechanism. This approach would (a) facilitate solving the problems of affected people at an early stage through consultation or some other form of dispute resolution; and (b) conduct a compliance review of those claims at the request of the claimants, irrespective of the problem, that raise potential policy violations.”<sup>lxxvi</sup>

Many NGOs commented on the draft proposals. One recommendation from Friends of the Earth Japan, the Japan Center for Sustainable Environment and Society Watch Japan mentions a list of clear concrete steps to be taken:

- An ‘Ombudsperson mechanism’ should be established. The mechanism will address the concerns of project-affected people;
- The Board Inspection Committee should be abolished;
- An independent permanent Inspection Panel should be established;
- The Inspection Panel and Ombudsperson mechanism will work independently, and requesters should be able to choose which mechanism they want to file their claim;
- The Inspection Panel should have its own Secretariat which is independent from the Management;
- Inspection process should not be lengthy or complicated. The complaint to the Management is unnecessary;
- If a request for inspection is not clearly ineligible, the Panel should conduct an initial investigation including a site visit;
- The 95% rule should be abolished;
- Requests for inspection/ombudsperson in local languages should be allowed;
- The loan agreement and other policies should include clauses to avoid backlashes against requesters. Requesters should be able to file a request anonymously;
- Every Panel’s decision should be disclosed, including notification of the receipt, initial investigation, final report and monitoring report;

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- It is necessary to monitor the implementation of the Board approved remedies. Management should report periodically to the Board and the Inspection Panel/Ombudsperson regarding the progress of implementation of the Board approved remedies;
- Both Inspection and Ombudsperson policies should be applied to private sector operations.<sup>lxxvii</sup>

### *A Compliance Review Panel*

The public consultation process finally lead to a new accountability mechanism, replacing the previous inspection function which was approved by the Board of the ADB on May 29, 2003. In the final report.<sup>lxxviii</sup> “The combined results of both internal and external consultations indicated, at the minimum, broad support for a compliance review panel that is an improved version of the WB panel. The term “compliance review” has been used, during the review, as well as in the earlier draft working papers, the final working paper, and this paper, instead of “inspection,” to avoid any negative associations in the use of the term “inspection.””<sup>lxxix</sup>

So the term “Inspection Panel” disappeared and thus far remains only for the system in the World Bank. As earlier described (Chapter 3 on the World Bank Inspection Panel) the word is received very negatively. Mr. Nanwani Senior Counsel, office of the General Counsel of the ADB said about the panel and the name:

“In the US judicial system it is much easier to have such systems. For us in Asia it is somewhat different to disclose information. In general people are shy away from direct confrontation. Inspection we are not accustomed to. It is difficult. It requires a whole lot of internationalization for both staff and countries. But as public institution we have to move into that direction. Otherwise we cannot satisfy all the donor countries that want to know how their taxpayers money is spent.”<sup>lxxx</sup>

A Major difference with the old system is the creation of two separate but complementary independent functions: a consultation phase with a Special Project Facilitator (SPF) and a compliance review phase with a Compliance Review Panel. Each function has its own procedures. It is remarkable how much of the recommendations of the Japanese group of NGOs can be traced back in the newly adopted system. The first ‘access’<sup>lxxxii</sup> to the ADB is the office of the Special Project Facilitator. “The SPF will be a special appointee at the equivalent level of director general appointed by the President, after consultation with the Board. The SPF will report directly to the President. As the SPF will be independent of the ODs<sup>lxxxii</sup> and have full control of the consultation phase, he/she will enhance the credibility of ADB in facilitating the resolution of problems in projects in which it is a principal interested party.”<sup>lxxxiii</sup> It should be regarded as a logic step. People first could and should try to solve their problems before beginning a more complex complaint procedure.

There is a remarkable note in the report about the scope of the consultation phase: “The scope of the consultation phase is broader than the current Inspection Function or the proposed compliance review phase. The consultation phase is outcome-driven, focusing not on the identification and allocation of blame, but on finding ways to address the problem of the project-affected people in ADB-assisted projects.”<sup>lxxxiv</sup> With this note the ADB takes a certain distance from the World Bank Inspection Panel that officially does not have a problem solving mandate. In the more recent years the World Bank Inspection Panel recognized the importance of a problem solving

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phase and took up this role, without having a mandate or procedures for it, as was my experience.<sup>lxxxv</sup>

The SPF of the ADB got a well described role ‘to assist project-affected people with specific problems caused by ADB-assisted projects. He or she can use all kinds of methods such as: “consensus-based methods with the consent and participation of all parties concerned, e.g., consultative dialogue, good offices, or mediation. [...] The SPF may suggest different approaches, including convening meetings with various stakeholders, organizing and facilitating consultation processes, or engaging in a fact-finding review of the situation.”<sup>lxxxvi</sup> It is clear to me that the ADB has put its efforts into the creation of a strong consultation phase and by doing so, the ADB shows it has more confidence in a positive approach than a rather legalistic approach that bears the risk of demoralizing the people involved.

On the question of who can file a request, the ADB followed essentially the same procedures as the World Bank. Complaints to the ADB may be filed “only by (i) any group of two or more people (such as an organization, association, society, or other grouping of individuals) in a borrowing country where the ADB-assisted project or located or in a member country adjacent to the borrowing country; (ii) a local representative of the affected group; or (iii) a non-local representative, in exceptional cases where local representation cannot be found and the SPF agrees.”<sup>lxxxvii</sup> This is almost exactly the same wording as noted in the resolution of the World Bank. But there is one remarkable difference with all the other MFIs. Eisuke Suzuki and Suresh Nanwani refer to the exception: “ADB’s Inspection Function, however, not only allowed affected parties residing “in the borrowing member country in which the relevant Bank project is being or will be implemented” to file a request, but extended the right to those “in a member country adjacent to such borrowing member country.” ADB is the only MDB that allows affected people in a neighboring country to file a complaint [...].”<sup>lxxxviii</sup>

Other similarities in the process also can be found in the procedures for the complainants that are expected to file a complaint in writing, preferably in English or any of the official ADB member countries languages. The complainants’ names will also be kept confidential if requested, similar to the World Bank procedures. It is not clear from the document who within the ADB are responsible for keeping the names confidential: the Special Project Facilitator or Management? In the case of the World Bank the confidentiality remains with the Inspection Panel, which to me is the most reasonable.

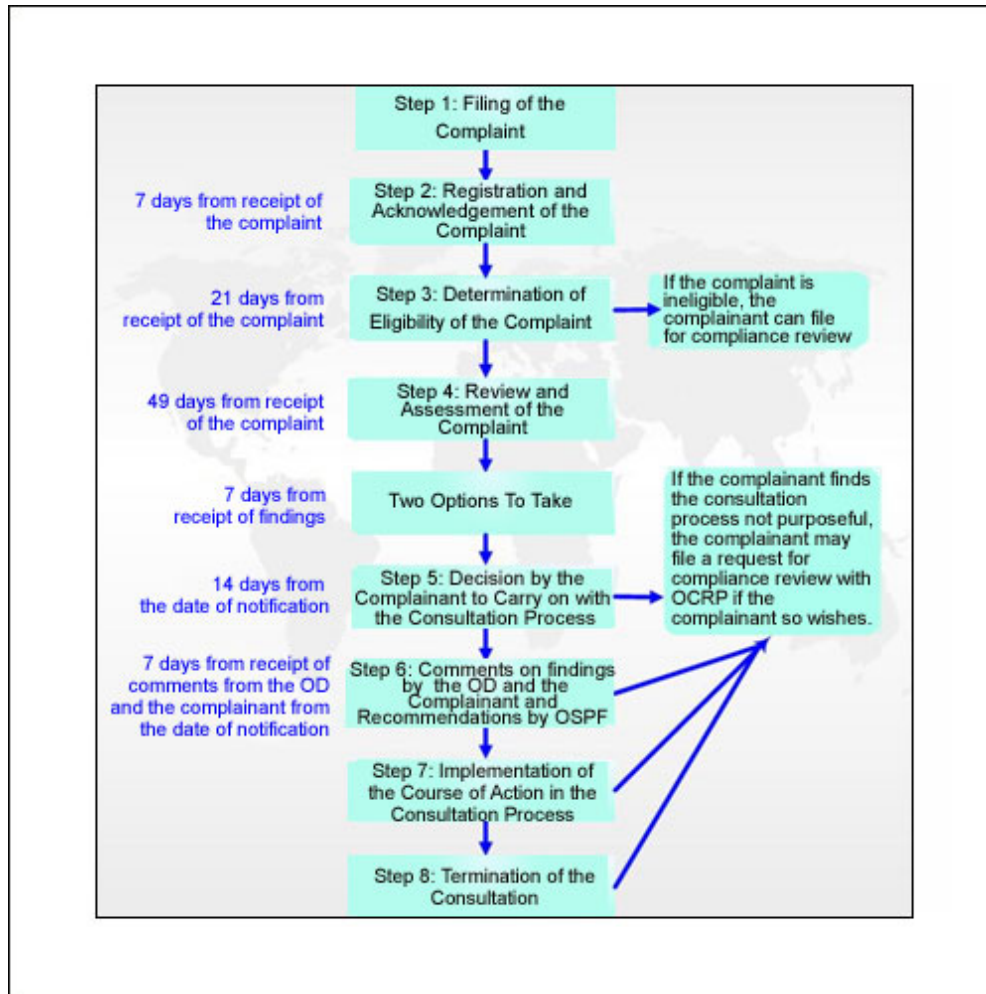
An interesting note is to be found in the paragraph describing which complainants will be excluded. Here we also can find similarities with the procedures of the World Bank. Cases about procurement and fraud are not within the mandate of the mechanism. The World Bank Inspection Panel will not accept ‘frivolous’ cases. The ADB will also not accept frivolous cases and then notably adds that it is also not acceptable if the case is ‘generated to gain competitive advantage.’ With this later addition the ADB expresses its understanding of the risk a complaint procedure could be used for total different purposes than the protection against possible harm for people in a project area. The mechanism could be used for political purposes, as well as for marketing reasons.

The process of consultation includes 8 steps (see also the figure below): 1] Filing of the complaint; 2]Registration and Acknowledgement of the Complaint; 3] Determination of the eligibility; Review and Assessment; 5] Decision by the Complainant to Carry on with the Consultation Process or to file a Request for Compliance Review; 6]Comments on the SPF’s

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Findings by the OD<sup>lxxxix</sup> and the Complainant and Recommendations by the SPF; 7] Implementation of the Course of Action in the Consultation process; 8] Termination of the Consultation Process.<sup>xc</sup>

### Consultation Process of ADB:



Source: From the ADB website.

By adopting the consultation process as such, the ADB chose a rather open procedure with a high degree of democratic norms, given the options for the complainants in the process, as is clear with for example the following descriptions of the different steps to be taken: "If the complaint is accepted, the SPF will undertake a review to determine how best to address the issues raised in it. The review will normally include site visits, interviews, and meetings with the complainant and the EA/DMC<sup>xcj</sup> government or the PPS,<sup>xcii</sup> as well as any other people the SPF believes would be useful.<sup>xciii</sup> [...] implementing the consultation process requires the consent of every party involved, including ADB, the complainant, and the EA/DMC government or the PPS. If consent does not exist, then the options available for dialogue and consultation will be necessarily reduced. If the consultation process is working, all parties will continue with the process until an agreement is reached."<sup>xciv</sup> For this latter step, step 7, there seems no time limit mentioned, which

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means that the SPF could take the time necessary to implement a serious consultation process. The ADB recognizes that the process not necessarily always will succeed: “In some circumstances, the consultation process may end with no resolution. The SPF may, for example, determine that no further consultation will be purposeful. In such circumstances the SPF will submit a report to the President summarizing the complaint, the steps to try to resolve the issues raised in the complaint, and a recommendation will be furnished to the complainant, the EA/DMC government or the PPS, and the Board for information.”<sup>xcv</sup>

The degree of transparency is also high. The report notes on this: “The SPF’s operations at all stages of the consultation phase will be as transparent as possible, subject to this paragraph, and consistent with relevant ADB policies and procedures and the need to ensure that any dialogue and consultation process is given the maximum opportunity for success.”<sup>xcvi</sup> [...] Any remedial actions that are adopted as a result of the consultation process will reflect an agreement among the relevant parties, subject to ADB’s procedures. The range of potential remedies is quite broad. Remedial actions, if any, will be specified in a written agreement or series of agreements made by the relevant stakeholders. Remedial actions involving a major change in the project will require approval by Management or the Board according to ADB’s procedures.”<sup>xcvii</sup> Finally, the SPF will also have the task to monitor the implementation of the agreements that resulted from the consultation process.

The tasks given to the Special Project Facilitator and the options he or she can use to come to a solution and/or to advise on what measures should be taken to satisfy the complainants, demonstrates that the ADB puts most of its efforts and confidence in a process that should end with positive solutions. Still, if all the above described efforts fail, the complainants have the right to go the Compliance Review Panel. Compliance Review Phase

The second phase is the Compliance Review Phase for which a Compliance Review Panel (CRP) of the three<sup>xcviii</sup> members is established. And again there are similarities with the structure of the World Bank Inspection Panel. The CRP has a full-time chair and two part-time members, appointed by the Board on the recommendation of the President. The same people that can ask for a consultation process also can request that the Compliance Review Panel do an investigation if the complainants are not satisfied with the proposed mediation procedures or in case the parties did not come to an agreement (see figure of the process above). Those that can file a complaint are: “(i) any group of two or more people (such as an organization, association, society, or other grouping of individuals) in a borrowing country where an ADB-assisted project is located or in a member country adjacent to the borrowing country(!); (ii) a local representative of the affected group; (iii) a non-local representative, in exceptional cases where local representation cannot be found and CRP agrees; or (iv) any one or more Board members of the Board of Directors.” The description of those that can file a claim is again similar to the description in the World Bank Resolution establishing the Panel, with one exception. In the case of the World Bank it is not possible to file a claim from the adjacent country.

As in the case of the World Bank, the independent Compliance Review Panel reports directly to the Board of the Bank or to the Board Compliance Review Committee, a committee of 6 Board members which has an oversight function. This committee has taken over the role of the former Bank Inspection Committee. The working of this committee reminds me of CODE (Committee on Development Effectiveness): a Committee with a group of Executive Directors/ Members of the Board in the World Bank. The Compliance Review Panel faces the same limitation as the Inspection Panel of the World Bank regarding the determination of harm. Harm can only be

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deduced from the activities executed by the Bank. The three members are appointed for five years and for one term as is similar for the members of the World Bank Inspection Panel.

The geographical background of the members of the Panel is also taken into account. In the case of the World Bank, two of the members appointed are selected from candidates coming from the so called Group I countries: countries that supply loans or donations to the World Bank (one for Europe one from North America has so far been the rule). One member is selected from the Group II countries: countries borrowing from the World Bank. In the case of the ADB it is somewhat different: “Two panel members will be from regional countries, with at least one from a DMC.”<sup>xcix</sup> The choice of the ADB makes sense; given it is a bank that operates in a specific region, whereas the World Bank operates on more than one continent. Also, the selection criteria for panel members are quite similar to those of the World Bank (see the Resolution in the Annex VIII).

### *Similarities and Differences with the World Bank Inspection Panel*

The procedures for the CRP at first glance is similar to the procedures of the World Bank Inspection Panel. A request first has to be determined eligible on the basis of some equal requirements. For example the requester has to specify it “is, or is likely to be, directly affected materially and adversely by the ADB-assisted project.”<sup>c</sup> The requesters have to present a description of the harm or expected harm, and that this “material harm is, or will be, the result of an act or omission of ADB’s failure to follow its operational policies and procedures.”<sup>ci</sup> The CRP is presumed not to investigate the borrowing country. And they cannot deal with requests that relate to activities for which the ADB has no responsibility. In the case of the World Bank the requesters are asked to show they first tried to communicate their problems to management of the Bank in order to solve the problems before filing a claim. In the case of the ADB the requesters have to show they first addressed the complaint to the Special Project Facilitator. After a complaint is declared eligible, the Panel is expected to conduct a “thorough and objective review of policy compliance.”<sup>cii</sup> The Panel is expected to engage during the compliance review “[...]with all stakeholders, including management and staff, the requester, the EA/DMC<sup>ciii</sup> government or the PPS,<sup>civ</sup> and the Board member representing the country concerned, in a thorough understanding of the issues.”<sup>cv</sup> This all is very similar to the processes in the World Bank.

The differences in the processes of the World Bank and the ADB, according to the Review of the Inspection Function are:

- The ADB Compliance Review Panel will issue a draft report to both Management and the Requesters for comments. The purpose of this is not further mentioned. One can assume it is to give an opportunity to both Management and the Requesters to change factual miss-conceptions or to add information. The World Bank Inspection Panel as far as I am aware never issued a draft report to Management or the Requesters. This internal procedure brought about a discussion, since Management on several occasions asked for the draft to correct facts, as they argued. The argument not to do so was, in the years I was a member of the Panel, that if a draft was delivered to management, the requesters should have the same right to see the draft and comment on it. This I still consider a fair judgment. It is both or none! And if issued to both, it should only lead to comments of a factual

nature. Finally, it is the Panel that will decide if the delivered comments are factual or interpretations, which in the latter case never should be accepted.

- The ADB Compliance Review Panel's mandate includes a post-compliance review and monitoring. Complaints still can be lodged after the completion of an ADB project as long as a project completion report has not yet been issued.<sup>cvi</sup> The issuing of a completion report in the ADB normally takes 1-2 years.<sup>cvi</sup> In the case of the World Bank a request can only be filed up to the point when 95% of the project budget has been spent. In the case of the ADB requesters have more opportunities to file a request, for example in circumstances where negative effects of a project only become evident after completion. This for example could, in certain situations, be the case with environmental impacts.

Although the ADB has established two different and separate functions it is still criticized. A respondent to the survey about the accountability mechanisms (See Part III) said: "However, such a mediation mechanism should be independent from Management, unlike the case of the ADB, where the SPF is to report to the President. Also I would recommend that the two functions are independent from each other, so that requesters / local communities can call on both functions at the same time. Again, this is unlike the ADB where complainants are required to go first to the SPF, while the CRP can be called upon only after the process with the SPF is exhausted. In my view a problem solving / mediation mechanism should also be instrumental in advising Management on how to implement recommendations from a compliance review process. It is very important that both functions are integrated into bank operations and procedures as a learning mechanism. The 'costs' of accountability mechanisms should be identified as investments in strengthening and eventually improving bank operations (similar to training, etc.)."

### *Some First Conclusions*

With the creation of two mechanisms independent from each other, an ombudsman function or facilitator and an accountability mechanism, the ADB is the first Multilateral Financial Institution creating both functions for the entire institution. By doing so, the Bank recognized the importance of the two phases. The first phase has in its nature a much more 'human face'. The Bank puts its efforts mostly on the notion one should first try to solve problems before making them an issue for a quasi legal judgment. The ADB process is more open and gives the requesters an equal position compared to the position of management. Besides, a request is still admissible for a short time after completion of a project. So the doors of the ADB are more open than the doors of the World Bank. For these reasons I consider the ADB model a vanguard amongst the accountability mechanisms.

## *Inter-American Development Bank*

On February 3, 2005, the IADB released a draft Consultation and Compliance Review Policy. The Bank then invited those interested to comment. As a former member of the World Bank Inspection Panel I was asked by officials of the IADB to comment on the draft new policy. The following description of the proposed IADB mechanism is based on what I wrote for the IADB.<sup>cvi</sup> The draft policy is the revision of an earlier and rather different mechanism established in 1994 and amended in 2001. The proposed mechanism reflects both the demand of civil society and governments and follows the experience of other Multilateral Financial Institutions, such as the World Bank. By proposing this new structure, the IADB recognizes the demands and by doing so I praised the IADB in my commentary. My comments were based on five years of experience with the accountability mechanism of the World Bank. My remarks here relate to (1) general issues, (2) progressive steps in the structure compared to other mechanisms, (3) questions and mandate issues I felt needed to be addressed. I have tried here for the most part to follow the order of that text.

### *Some General Comments*

1. The proposed mechanism is very interesting and well developed concerning its detailed descriptions of the structure of the mechanism and mandate of the different stakeholders. It is also clear that those drafting the proposal studied the other mechanisms and in particular the World Bank Inspection Panel.
2. The addition of a “Consultation Phase” is a bold step and goes perfectly together with the concept that people should first try to solve their problems and discuss them before the problems are submitted to the Compliance Review Panel<sup>cix</sup>; the last step to be taken, if necessary. In article B, paragraph 8 it is written: “The Mechanism process is not a legal proceeding but is an internal function of the Bank related to the accountability of the institution and the quality and effectiveness of its projects.” However the split between the Consultation phase and the Compliance Review Panel, gives the impression the last phase is a kind of arbitrage. While this in itself is not wrong, it should be considered non-judicial but semi-judicial, since the reporting of the Panel does not contain conclusions and measures but findings, as is also the case with the World Bank Inspection Panel Reports. The findings of the Panel together with the proposed measures of Management, finally lead to a decision by the Board of Directors. Thus the final decisions stay in the hands of the Executive Directors and as a consequence the mechanism can never be a legal proceeding<sup>cx</sup>. Nonetheless, this semi-judicial character can help clarify the structure and mandate of the mechanism and especially the division of responsibilities, reporting and independence.
3. The two phases are clearly different in their written structure and should be so in practice. The first phase is one of bringing parties together and the creation of trust and open, communication, taking every party seriously including those that lack the education to go through a consultation process, the negotiations between the stakeholders on the process to be followed and, finally, the process of moderation itself. With the likelihood that poor people will be involved in future cases, it is advisable for the Bank to consider creating a special fund or budget for so-called ‘participation funding’. Canadian expertise with the phenomena of participation funding might be very helpful<sup>cx</sup>. Negotiations between governments, a Multilateral Financial Institution and local

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communities are difficult and sensitive processes. Here the Bank should ask the support of experts.

The first phase of Consultation in the draft proposal is the clear responsibility of the appointed Executive Secretary, a member of staff of the Bank. The fact the first phase is put into the hands of a member of staff can be understood since the first phase is a problem solving phase from the heart of the organization itself. The strong responsibilities of the Executive Secretary are recorded in Articles E to H, paragraphs 56 to 74. In paragraph 58, for example, it is mentioned the Executive Secretary will “recommend a process”, followed by different articles, summing up all options in the process. In paragraph 60 it is stated “The entire process of assessing the Request and making a recommendation on how to proceed should be completed by the Executive Secretary”; in paragraph 65 “The procedure is established on a case-by-case basis by the Executive Secretary in consultation with the essential parties”; and in paragraph 68 the final reporting, with “quantitative evidence” to the President is the entire responsibility of the Executive Secretary. Consequently, his/her role is clear in this first important phase.

An Executive Secretary appointed with knowledge over and experience with social community work, could work very well for the institution and the people in the field.

### ***Risk of Conflict of Interest***

4. Accordingly the second phase should be a new and different component. In the proposed draft it is unfortunately unclear where the responsibility of the Executive Secretary ends and where the responsibility for the Compliance Review Panel begins. In Part II, Article D, paragraph 84 the Executive Secretary in the second phase gives “support” to the Chairperson of the Compliance Review panel. However, in paragraph 85 the Chairperson of the Review Panel will, according to the text, review the decision of the Executive Secretary. In both paragraphs concerning the procedure it is evident that their positions are to a certain point interwoven. The Executive Secretary, responsible in the first phase, is the advisor to the Review Panel in the second phase. Furthermore, the Executive Secretary is responsible for the daily running of the office and has to give assistance to the Panel in its work in the second phase. These two later functions bear the risk her/his work will be part of the ‘investigation’ of the Review Panel.

Why is it important to draw a clear line? The proposed structure could place the Executive Secretary in a situation of conflict of interest. Take the following example. In the first phase both the Executive Secretary and his staff and the contracted outside experts have gone through a lengthy process of moderation. They have worked hard and tried to bring parties together, create understanding and to come up with a solution to the problems. The Executive Secretary and the office staff became a committed party or players in the process. Nevertheless it failed. The dossier now, after all the hard work, goes to the Compliance Review Panel. In such a situation it is almost inhuman to expect the Executive Secretary to be impartial when advising the Panel in the next phase. A conflict between the two can be built-in, and may become inevitable.

A clear split between the two phases has been made by the Asian Development Bank and I assume this is so for the abovementioned reason. For the same reason I advised the Inter-American Development Bank to consider a clearer split of responsibilities between the two functions of the mechanism.

### *Progressive Steps*

There are a lot of progressive elements to be found in the proposed procedures. Several steps sometimes reflect missing elements in other mechanisms. The following positive examples I would like to mention:

5. In Article D, paragraph 14, under the many functions of the office and the Executive Secretary, a reference is made in sub-article L. to “a record of lessons learned in the Mechanism process”. If worked out in an analytical way, it will provide the Bank for the future with information about where things go wrong in projects. The question about the systemic reoccurrence of harm and problems that one can draw from the many investigation reports of the Inspection Panel of the World Bank was raised in that body a number of times. So far as my information is correct, there is not yet developed a system to record this.

6. The Public Registry (Article E, paragraph. 30), with an on-going status of processing is also a bold step. It provides an answer to the demand for transparency. The same can be said about the provision for information and reasons to be given to the requesters in case deadlines will not be met (Article G. par. 32). The more openness the better!

7. A noteworthy feature in the proposed policy is to be found in Article C, paragraph 41. In sub-paragraph G the requesters are asked what they “would like to see as a result of the Consultation Phase”.

The question is how it will work. At one hand it will create trust on the side of the requesters, since they are taken seriously and are provided with the opportunity to express their wishes. On the other, it might make the requesters ask for too much while thinking they have to negotiate and never will reach the point of obtaining what they asked for. In this latter situation, it could in the very beginning already block any negotiation. This could be an important consideration that needs further evaluation.

8. Article K, paragraph 73 is about monitoring of the implementation of the Agreed Actions. This is a strong tool. After all, there will have been a lot of effort to come to a solution or to resolve the problems. It consequently makes sense to monitor if the outcome of the process is implemented properly. This provision is not yet to be found in any of the other accountability mechanisms.

9. A very wise proposal is to be found in Article V, paragraph 123. Here it is clear the Bank considers the mechanism as an ongoing process of learning within the institution. The office and the chairperson of the Panel have to conduct an evaluation, review the effectiveness and submit suggestions for improvements in the Mechanism Policy. I would advise the IADB to make sure that a proper budget and work description is appropriated to the office of the Panel to fulfil this important task. Also, this work has to be done in an analytical way and may be partly coordinated with the collection of data for the ‘lessons learned’ (see paragraph 14).

### *Questions and Remarks on Structure and Mandate Issues*

The following issues were not addressed or give rise to further questions and critical commentary:

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10. In the draft text there is no reference to the subject of Outreach. The question is, how people in the member countries where Bank financed projects are implemented are to know about the right they have to express their concerns and ask for a problem solving mechanism or a report of the Panel. In the case of the World Bank there is a provision in the Resolution that established the Panel, saying Management should inform the public about the right they have to go to the Panel. This of course is not an easy task to expect from those that are entirely involved in the daily work of the projects. Put simply, it is asking Management to inform the people that in case they do not agree with the project these same managers are working on, they (the people) can go to the headquarters and file a Request. Still, this is what it should be; otherwise the IADB itself should organize from Washington DC an outreach campaign.

11. To create a climate in which management will understand their role in this new mechanism providing for transparency and involvement of the people, will take time. It will be helpful to organize training for managers and especially the country directors. It all will help create an atmosphere in which Management will begin to see democratic processes are not easy and that what they think is right can be judged by others differently. Nevertheless, at the end of the day Management will see the richness of the process. Most important is that all parties including the Executive Directors, the Executive Secretary and staff of the office, and the Compliance Review Panel adhere to the notion it is an ongoing and learning process. The process is not there specifically to 'blame and shame' any person, but to help the organization and those that benefit from it to learn the best by doing and correcting along the lines.

12. Article B, paragraph 20 is about the division of tasks between the full-time available Chairperson and the two other Panel members being on call. In the Compliance Review phase it is evident that the final report will be the work and opinion of three members. For that reason it is crucial that all three members can base their opinion on equal access to information. To guarantee this it is important to create an in-house information system to make sure the other two Panel members are regularly informed about what in general is happening in the Bank, that important mail addressed to the Panel is received by the Chairperson, that important meetings take place, and that the three of them should meet regularly. This is critical since two of the three are not supposed to live in Washington and may have less familiarity with the agenda of the Panel. Proper communication between the members is even more important if (see paragraph 29) the first Chairperson will chair the Panel for three years with a possible extension of another two years. Communication skills should therefore be one of the important assets when selecting a Chair.

13. Article F, paragraph 31, G refers to a specific situation in which case the coverage under the mechanism is excluded; namely when "ninety-five percent of the proceeds have been disbursed...". This limitation, although from a technical point of view understood, I consider a missing opportunity. The Asian Development Bank has a different approach on this in that people still can file a case up to two years after the full disbursement of the project loan.

### ***Part II of the Proposed Policy:***

14. Article C, paragraph 44, refers to the option for requesters to present new evidence. But then it is stated "However, such submission will be considered a new Request and start the Mechanism process again from the time the revised Request is received". I wonder if this isn't an unnecessary

complication of the process. An option is to specify a time period up to when additional information or evidence can be submitted. This can be determined by the stakeholders themselves taking part in the process. As long as information can arrive, it is evident this should be handed out to all parties which gives them an equal opportunity to react on it. But again it should be a matter of the parties involved to draw a line.

15. Article C, paragraph 46 refers to the confidentiality of the names of the requesters. The text does not make clear who will keep the names confidential. The Inspection Panel after consulting the President of the World Bank, created the opportunity for requesters to keep their names confidential. The only provision is that the Panel is informed that on its turn it will keep the names confidential. The reason is that in some countries the requesters do not trust the local personnel of the Bank office, or do not trust management. Those difficult circumstances are probably rare but should not be excluded. I strongly advised the IADB to consider a similar provision.

16. Article H, paragraph 104. Here one can find a rather pedantic text asking the Panel to “should keep in mind the fact that any policy or norm, no matter how carefully crafted, may contain aspects that are ambiguous, and subject to differing interpretations. If the Panel concludes that the Management of the bank has made a reasonable, good faith interpretation of the Bank’s Operational Policy, the Panel should give consideration to this fact before finding a violation of an Operational Policy”. This text to my opinion is superfluous given the documented selection criteria in Part I, Article D, and paragraph 17. The selection criteria are “integrity, independence from the Bank’s Management and ability to deal thoroughly, fairly and impartially with the requests brought to them”. I recommended removing this paragraph.

17. Article G, paragraph 100 is about attachments to the Panel Report. The proposal is to create the opportunity for borrowers/recipients to record their views and place them as an annex to the Panel’s final report. Recording the views of the borrower and any other stakeholder should be a normal part of the work of the Review Panel. It is something else to take the views of one stakeholder as an Annex. Their views should be reflected in the Report itself just as are the views of other stakeholders. The final report of the Compliance Review Panel should present its findings without any intermingling of other parties. Of course there is nothing that would stop the stakeholders from printing and publishing their own views and positions. The nature of a Compliance Review Panel or any other accountability mechanism is its independence.

18. Last but not least, in Article I, paragraph 111, a proposal is made to give Management the right to disagree with the findings and/or recommendations<sup>cxii</sup> of the Panel. Two things should be said about this. First of all, the provision creates the erroneous impression that if the Panel has a dispute with Management on the project and the implementation of the project it becomes powerless. It is crucial that every one in the Bank; the Executive Directors, Management and also the national authorities do understand what the position of the Compliance Review Panel is, once there is a case.

One cannot say it enough; it is not the Panel that has an inherently different view related to the project. The problems submitted to the Panel are based on a conflict between Management and the requesters and not a disagreement between Management and the Panel. The Panel is the ‘last resort’ where the stakeholders who disagree will receive an independent opinion. The Panel is a tool created by and for the Executive Directors. For the abovementioned reasons the World Bank Inspection Panel does not accept a written report of Management disputing the findings of the Panel. In the case of the World Bank, Management is expected to deliver a Report in which they

explain what actions they propose as an answers to the findings of not being in compliance (if any).

Secondly, one still can understand the need for Management to give their opinion. I mentioned before that although the Panel is not a legal mechanism; still a certain comparison with a legal system could be helpful to put the structure in perspective. In Part I D paragraph 17 selection criteria are mentioned. The selection criteria of Panel Members are “their integrity, independence from the Bank’s Management, and ability to deal thoroughly, fairly and impartially with the request brought to them.” To my opinion one could compare the report of the independent Review Panel with the work done in a judicial system. In the same way one could compare the response or disagreement of Management on the Panel report with the reply by rejoinder in a judicial system. However in a judicial system there are always at least two parties in a dispute or conflict. In the case of the Panel of the IADB and other Compliance Mechanisms of the Multilateral Financial Institutions, the same applies. The other party, namely the requesters, should have the same right as Management. The dilemma and danger is this might open a ‘Pandora’s box’. Handing out the final report to the requesters for a reaction definitely creates the risk the report will be published in the media before the Executive Directors have had a chance to decide on it. So here is a dilemma. I suggest the following: The Panel submits its last final draft to Management for checks on factual errors; such as statistics or data. The Panel then decides if the given information is factual or a matter of interpretation. What is accepted by the Panel can be taken into the Report.

While finalizing this study it is not yet decided what the final mechanism of the IADB will be. The process has begun in the beginning of 2005. Many other experts also reacted to the proposed. Since then one can notice a ‘deafening silence’ from the Banks side. Civil society, as I was informed, is asking the IADB if and when they will take the decision. The fact that about two years have passed, raises the question if any resistance against the original initiative has occurred inside the IADB. Some outside the Bank argue that the bank could wait for a crisis with the involvement of the IADB in major infrastructural projects most likely within the context of IIRSA: Integration in South America Initiative. This ‘Initiative for the integration of regional infrastructure and physical integration of the continent was founded in 2000 by the heads of state of 12 South American countries and has since developed a portfolio for 348 infrastructure projects requiring a total investment of \$38 billion in transportation, energy and communications.’<sup>cxiii</sup> One can predict that not all of those projects will go without problems and no harm done to local citizens. The introduction of a ‘Consultation and Compliance Review Policy’ will not only benefit the local people that are harmed or could be harmed, it also creates a protection for the IADB against a reputational crisis in the same way the World Bank was in during its involvement in Narmada dam project in the eighties.

## *European Bank for Reconstruction and Development*

The European Bank for Reconstruction and Development (EBRD) was established in 1991, after the Soviet Union disintegrated. In the original documents, the USSR was a shareholder. At the time of the fall of communism I was a member of the European Parliament and remember well the discussions about the establishment of the EBRD. It was a remarkable fast decision in which the United States and Canada were involved. Working in 27 countries from central Europe to central Asia, ownership of the EBRD is shared by 60 countries. The bank is also owned by the European Investment Bank and the European Communities, represented by the European Commission at the Board of Directors. According to its own website it invests mainly in private enterprises. The website also states: “The mandate of the EBRD stipulates that it must only work in countries that are committed to democratic principles. Respect for the environment is part of the strong corporate governance attached to all EBRD investments.”<sup>cxiv</sup> The bank also notes on its website that its mandate, in contrast with the other MFIs, is to work “predominantly in the private sector.”

The CEE Bankwatch network, an umbrella organization of NGOs from several East European countries that monitors the activities of International Financial Institutions in Eastern Europe, follows closely the EBRD. In June 2001 CEE Bankwatch published a document in which the EBRD was asked to establish an ‘appeals/compliance mechanism.’<sup>cxv</sup> They note: “Through a well-designed appeals/compliance mechanism, the EBRD can become more transparent and accountable to the people of Eastern Europe and of EBRD member states. Establishing such a mechanism will help the EBRD to apply its own policies more effectively. Social and environmental issues will be considered more carefully, and as a result, more appropriate and successful projects will be financed.”<sup>cxvi</sup> The NGO further argues there are four reasons underlying the necessity of such mechanism. First they note “It has been a constant struggle for NGOs and the public to get access to detailed information about projects at any stage of development or implementation.” Secondly, they find accountability at stake for both the people of Eastern Europe and “the taxpayers of the member nations who fund the EBRD.” Thirdly, they note on compliance “ [...] Project Sponsor compliance with EBRD policies and procedures is not closely monitored by the EBRD. CEE Bankwatch Network is aware of many instances in which Project Sponsors and even EBRD itself have failed to comply with EBRD policies and procedures.”<sup>cxvii</sup> The demand for the establishment of a mechanism went on and was mentioned in almost every document of CEE Bankwatch since then.

The EBRD took the demand seriously and organized sessions with representatives of the NGO community and private sector investors at the headquarters in London and elsewhere. On May 14, 2002, the Board of Directors in an executive session decided “ [...] it endorsed the principle of establishing a mechanism whereby local groups that may be directly and adversely affected by a Bank-financed project would be able to raise their complaints or grievances with an arm of the Bank that would be independent from project operations.”<sup>cxviii</sup> On October 16 of the same year the bank published a draft proposal for an “independent recourse mechanism” on its website.

At the same time the bank made clear: “It is well established under international law that IFI’s have special privileges and immunities designed to enable them to carry out their operational activities without interference from national laws and national courts. Like other IFIs, the EBRD is not regulated by any bodies other than those forming part of its governance structure. By and large, the EBRD is beyond the reach of administrative and judicial recourse mechanisms established under national legislation to the same extent as other IFIs, except where immunities

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are waived.”<sup>cxix</sup> Thus the bank recognizes its immunities and consequently mentions its responsibilities: “It is the exclusive duty and responsibility of the EBRD’s governance bodies to regulate its activities through the adoption of policies, procedures and rules and to monitor the Bank’s compliance with its regulatory framework. As administrators and officers of a public institution, they necessarily take account of the requirements and needs of the Bank’s stakeholders when making decisions. Where their decisions concern EBRD’s project operations, they consider the interests of the groups that are or might be affected by Bank-financed projects. However, in the current governance structure of the Bank, there is no formal mechanism that enables such groups to make their specific concerns known to the Bank’s decision-makers. Until 1993, this was also the case in other IFIs. Since that year, starting with the World Bank, most IFIs have established mechanisms designed to formalize the means of recourse of the groups affected by the projects that IFIs finance. Two different approaches have developed.”<sup>cxx</sup> With the latter, the EBRD refers to both the problem solving function and the compliance review function.

The EBRD then states “This mechanism is predicated on the idea that it may be most advantageous for all parties to resolve problems (without need to apportion blame or fault) early with the view to avoiding larger and more intractable problems at a later stage.”<sup>cxxi</sup> In a footnote the EBRD refers to the role of the IFC ombudsman. The EBRD then positions itself somewhat at a distance from the other mechanisms and moreover the World Bank Inspection Panel in noting about the status of the mechanism: “With a view to ensuring the independence of the mechanism, other IFIs have established permanent offices and/or panels to carry out the compliance review function and/or the problem-solving function. Such independence may however be ensured through other means of a less bureaucratic and costly nature, more suited to the institution’s specific mandate, organisation and resources. The EBRD needs a mechanism that is adapted to its focus on project finance and private sector development. While protecting the affected parties’ right to exercise recourse, the EBRD’s accountability mechanism should not impair its delivery capacity, in all its project operations, whether for the public or private sector clients.”<sup>cxxii</sup>

Concerning the status of the mechanism another rather striking note is made: “The EBRDs organisation also mandates that the allocation of powers among its Board of Governors, Board of Directors and President be maintained.”<sup>cxxiii</sup> This gives the impression the EBRD considers the mechanisms in the other institutions as interference in the powers of the Board of Governors, Board of Directors and President. By doing so the EBRD certainly on the one hand recognizes the influence an accountability mechanism can have on the institution, but on the other it does not recognize the fact the Inspection Panel was created by and for the Board of Directors of the World Bank that at the time were of the opinion they were in need of an independent body that could do an independent investigation, as I described in Part II Chapters 2 and 3.

The EBRD mechanism is called the Independent Recourse Mechanism (IRM). Its structure is such that the mechanism “would make full use of the EBRDs existing Office of the Chief Compliance Officer (CCO) as coordinator of its processes and initial assessor of complaints received from affected groups. The CCO is not involved in project operations and his (Sic!)<sup>cxxiv</sup> independence is further ensured through his direct reporting to the President and access to the Chairman of the Board’s Audit Committee.”<sup>cxxv</sup> “The CCO reports directly to the President and is independent of the Banking departments, the Environment Department and other departments or units involved in project operations. “When the IRM is involved in decisions concerning projects that have already gone to the Board, those complaints and the IRM’s assessment of those complaints go directly to the Board of Directors for consideration. The President transmits the document to the Board as the Chair of the Board, but does not otherwise comment on its content.”<sup>cxxvi</sup> The CCO’s other responsibilities include ensuring that the Banks processes follow

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the highest standards of integrity and conducting investigations into cases of alleged misconduct by Bank officials, employees or consultants.”<sup>cxvii</sup> And “The IRM also includes a problem-solving function to be used where complaints or grievances can also, or alternatively, benefit from problem-solving techniques to assist in trying to resolve the underlying issues. Those techniques may include independent fact-finding, mediation, conciliation, dialogue facilitation, investigation and reporting.”<sup>cxviii</sup>

The NGO community was immediately disappointed with the proposed structure of the mechanism. One wrote: “Friends of the Earth International feels strongly that there should be a clear distinction between a problem-solving role on the one hand and inspection and compliance review function on the other. Experience has shown that although complementary, these functions are fundamentally different in nature, objective and results. We suggest that the EBRD establish two separate windows that function independently from each other and have their own staff.”<sup>cxix</sup> Another critique of this NGO with respect to the mechanism pointed out “ [...] the lack of clear and established policies at the EBRD in other than environmental areas is of major concern. The EBRD should work towards establishing a suite of policy requirements to address critical social and economic issues, along the lines of the safeguard policies that have proven so important at the World Bank. These would include, among others, involuntary resettlement, forestry, indigenous peoples and project supervision. All of these are of great relevance to the EBRD’s mission.”<sup>cxx</sup>

The NGOs were not the only ones criticising the proposed mechanism. Two former chairmen of the World Bank Inspection Panel, Richard Bissell and Jim MacNeill wrote the following rather harsh letter to President Jean Lemierre:

“Dear President Lemierre,

When you requested public comment on the draft proposal for an “independent recourse mechanism” on 16 October 2002, we read the text with great interest, hopeful that one of the most important European institutions of finance was now ready to consider seriously its responsibilities to be accountable, transparent, and fully sensitive to the impacts of its financial activities on intended beneficiaries. As former Chairs of the World Bank Inspection Panel, we understand well the stakes involved, for the EBRD as an institution, for the Board, and for you as President.

We remember clearly the source of the mandate to the EBRD to undertake this initiative – the meeting of the G-8 in July 2000, when the global leadership called upon all the multilateral development banks to achieve “greater transparency, public participation and accountability, particularly including release of all country strategies and evaluation reports and increased effectiveness and accessibility of independent Inspection Panels in all institutions.”

We were concerned when the Economic Summit of 2001, held in Canada, came and went with no word from the EBRD. Surprisingly, the G-7 finance ministers were able to congratulate the IMF, not considered the most reformable of institutions, on its progress in establishing an independent Evaluation Office. The Ministers went on to reiterate their call to the EBRD and other RDBs to “establish or improve existing mechanisms, fully independent from staff responsible for project preparation, to ensure compliance of project proposals with policies and procedures prior to submission to the Board. We look forward to an assessment of

the measures taken so far and further proposals being presented by the World Bank and by the RDBs by Spring 2002; strengthen or establish inspection mechanisms reporting directly to the Board; adopt a more open policy on information disclosure by making draft and final key policy and strategy documents available to the public.” With the arrival of 2002, nevertheless, our hopes remained that the EBRD would demonstrate its willingness to join the rest of the international financial community in a clear commitment to accountability. That hope, unfortunately, has been dashed by the current draft.

The EBRD has chosen to make a proposal that fails almost all tests proposed by the world’s financial leaders, and reflecting little from the experiences of other financial institutions. The EBRD would be best served by withdrawing the current proposal and starting with a fresh draft, rather than tinkering with a proposal certain to fail and frustrate all stakeholders, internal and external. This may seem to be a harsh judgment, but in matters of international accountability, institutions rise and fall with their credibility, and our interest in strengthening the EBRD leads us to be very clear in stating our view of what is missing from the proposal of 16 October.

1. The mechanism fails the test of independence. This is an internal mechanism, managed by the President. The experience of other mechanisms has been that the perception and reality of independence is a *sine qua non*.
2. The mechanism covers only the EBRD’s environmental policy and procedures. While the drafters may say that there are no other policies for the mechanism to oversee, that situation in itself should be a warning sign to the Board that there is too little oversight at a policy level. At least the *de minimus* roster of policies present in other multilateral banks should be developed at the EBRD and placed under jurisdiction of a viable accountability mechanism.
3. The release of information regarding issues at the mechanism is both conditional and vague. The value of transparency has been demonstrated time and again at other financial institutions as a means of enhancing public trust in the bank and its inspection mechanisms. There is good reason for the G-8 to have placed “greater transparency” at the top of their criteria for inspection mechanisms in 2000. People kept in the dark have a right to be suspicious.
4. The people appointed to the mechanism must have visible autonomy and effectiveness. The Chief Compliance Officer is a staff member, with multiple other duties, and the use of a lengthy roster for expertise has been shown to be a disservice elsewhere to both the claimants and to the bank. A roster’s members have little incentive to become well-versed in the strategies and workings of the bank, and are thus unable to take the bank’s real interests into account, and also carry little knowledge over from claim to claim, making the process less effective for claimants. Appointed panels with a limited number of members, even if part-time, are able to meet accountability needs much more effectively than a long roster of specialized professionals.
5. The tone of the proposal is that the mechanism will be far more focused on “problem-solving” than on “compliance.” It makes sense for any institution to have a problem-solving ombudsman, but it should not be confused with

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the call of the G-8 for independent Inspection Panels. The litmus test for an effective ombudsman is far simpler. The existence of such an office would not obviate the need identified by the economic summits for a truly independent, transparent, and accountable inspection mechanism.”

Sincerely,

Richard E. Bissell and Jim MacNeill.”

The letter of the two former chairmen of the Inspection Panel received the attention of a member of the European Parliament, Ms. Elly Plooij-van Gorsel, who tabled a written question to the European Commission asking for a reaction of the Commission to the letter.<sup>cxxxii</sup> The answer of the European Commission was no more than that the Commission was aware of the consultations between management and the board of the EBRD on the creation of an accountability mechanism and that the question of the respected parliamentarian would be brought to the attention of the EBRD.

The comments of the different stakeholders were processed by management. In April 2004, a year later, the board of the EBRD approved the Rules of Procedure of the Independent Recourse Mechanism.<sup>cxxxii</sup> The latter document contains further details on procedures of the compliance review function and problem solving function, and the position of the CCO. A comparison of the two documents approved by the board in April 2003 and April 2004 does not reveal major differences. However the document of 2004 is more detailed. In the second document the following is noted about the problem solving function: “Terms of appointment of Problem-solving Facilitators. When performing IRM functions, Problem-solving Facilitators appointed from outside the Bank shall serve in their individual, personal capacity [...] Problem-solving Facilitators shall be required to act impartially and independently and shall not participate in a problem-solving Initiative in which they have or had a personal interest or significant involvement in any capacity, unless specifically authorized by the President.”<sup>cxxxiii</sup>

On the issue of the Chief Compliance Officer the bank responded to the concern raised about the independence of the CCO, by deciding the CCO could only declare a complaint eligible or non eligible together with an independent expert from outside. This structure is probably for the EBRD preferable to the structure of some of the other MFIs where outsiders, as members of the mechanisms but who know nothing about the bank from the inside, are the final arbiters. The criticism of outsiders that the bank limits itself ‘only’ to an environmental policy is refuted by experts in the bank saying the environmental policies include several social dimensions.

The procedures are similar to those of the World Bank with regard to who may file a complaint and the eligibility criteria of a complaint. As in the case of the Inspection Panel an “affected group”<sup>cxxxiv</sup>, defined as a group of two or more people, may file a complaint that may be submitted in their native language. It may also be an “Authorised Representative” if “there is no adequate or appropriate representation in the local community.”<sup>cxxxv</sup> A complaint will also only be eligible if “the Registered Complaint is from an affected Group and there is *prima facie* evidence that the project has, or is likely to have, a direct adverse and material effect on such group’s common interest” and “the Affected Group has initiated good faith efforts to resolve the issue with the Bank and other Relevant Parties and there is no reasonable prospect of resolving the issue through the continuation of such efforts.”<sup>cxxxvi</sup> And as in the case of the World Bank, the

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complainants may ask for confidentiality of their identities.<sup>cxxxvii</sup> There is a somewhat similar time frame for the mechanism to investigate if the complaint is eligible: 25 “Business Days.”

Nevertheless, the differences with the mechanism of the World Bank prevail. One can conclude that the EBRD in contrast with the World Bank and the Asian Development Bank has chosen for a mechanism that includes both the problem solving function and the compliance review function, interwoven with one another. The description of the position of the CCO has rather some similarities of the position of the Director in the African Development Bank (see above).

### *Some Remarks*

Since the EBRD mechanism has been in place, it has received 7 complaints, out of which 5 were declared ineligible.<sup>cxxxviii</sup> One concerning the Sakhalin II project was received on July 26, 2005 and another concerning the BTC Pipeline was received on August 16, 2005. In the case of Sakhalin, the complaint was declared eligible. While it was decided that there was no scope for a compliance review, it was considered that problem-solving may be appropriate. However, the implementation of this recommendation was suspended until such time that the Bank made a decision concerning the EIA. Since the EIA has been declared fit for purpose by the Bank in December 2005, the IRM has been monitoring the situation while the parties are seeking to resolve the issues amicably. Whether the chosen structure is finally weaker than the mechanisms in the other MFIs, is not yet clear. The choice for an emphasis on problem solving I still consider as a choice for a more positive approach. Nevertheless, the mix of problem solving and compliance review still bears a risk of a conflict of interest, as I previously explained in the case of the proposed mechanisms of the IADB and the AfDB.

### *European Investment Bank and Accountability<sup>cxxxix</sup>*

The European Investment Bank (EIB), the world’s largest international public lending institution<sup>cxli</sup> with a portfolio greater than that of the World Bank, consists of the EIB and the EIF (European Investment Fund). “The 27 Member States of the European Union are the shareholders of the EIB and they collectively determine the Bank’s policies and approve investments. Each Member State’s share in the Bank’s capital is based on its economic weight within the European Union. In the context of EU enlargement, the provisions of the EIB’s Statute have modified the Bank’s capital shares and governance.” [...] Fostering economic and social cohesion in the less favoured regions of the EU is the prime task assigned to the Bank by the Treaty establishing the European Community, and continues to be a core lending objective of the Bank.”<sup>cxlii</sup> Besides, the EIB is also active outside the EU, for example in the so-called ACP countries,<sup>cxliii</sup> the Mediterranean region, the ALA-countries<sup>cxliiii</sup> and Eastern Europe.

The EIB does not have an independent accountability mechanism that is similar or equal to those of other financial institutions discussed above. Consequently, the EIB is often criticized by the NGO community. In January 2000, the NGO CEE Bankwatch Network launched a campaign to reform the EIB. The CEE Bankwatch policy coordinator, Jozsef Feiler said: “The EIB is a public institution backed by public money and is supposed to support and follow EU policies, but in practice it has been allowed to decide for itself which policies to follow and which to ignore.”<sup>cxliv</sup>

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Soon afterwards, Members of the European Parliament raised questions, asking the Bank to establish an accountability mechanism similar to the other systems.<sup>cxlv</sup> In 2002 the EIB asked the 15<sup>cxlvi</sup> member states, which owned the bank at that time, for a substantial increase of its capital. Thirty NGOs from all over Europe asked the governments to link their replenishments to reforms, such as transparency in access to information, environmental standards, and more transparency in its development mandate outside the EU.

So far the EIB has been a Bank that does not get as much attention as, for example, the World Bank. Lawyers of the Legal Department of the EIB are of the opinion that it is, from a 'constitutional point of view', in a different position compared to the other Development Banks. "[...] the Banks remit and the basic principles governing its operations are embodied in various articles of the Treaty establishing the European Community and in it is the Bank's Statute, which is part of the treaty."<sup>cxlvii</sup> Thus the EIB is considered part of the EU framework and guided by the EU policies. According to the lawyers I consulted the differences with the World Bank are:

- The World Bank for the most part writes its own rules and policies whereas the EIB within the structure of the EU has its own legislating bodies such as the Council of the European Union, the European Commission (drafting) and the European Parliament. People in the European Union do not complain to the financiers of a project but to a company or the government that received a loan.
- European Union citizens do have direct access to the legal systems and national courts concerning those projects.
- Furthermore, these people can go to the European Court of Justice that has direct jurisdiction over such matters.
- European Community Law applies to the lenders of the EIB.
- European Union citizens, non-citizens residing in a member State and legal persons (such as NGO's) with a registered office in a Member State, have the opportunity to file a complaint to the European ombudsman<sup>cxlviii</sup>, representing people that are affected by a project financed by the EIB and the European Development Fund (EDF).
- The European ombudsman has the right to open an inquiry into possible maladministration on his/her own initiative if he/she is of the opinion that a project financed by the EU needs an investigation (including cases outside the EU).

In May 2005, I chaired a workshop on Accountability Mechanisms for Financial Institutions during a World Bank Conference in Amsterdam. The observations made above on the position of the EIB concerning accountability were discussed. Mr. La Marca, of the Legal Department of the EIB announced the establishment of a Compliance Office in the EIB. About the mandate and the independence of the function La Marca wrote:

"Apart of the name of the newly appointed Chief Compliance Office (CCO), Mr. Konstantin Andreopoulos, there is not much to say at this stage about its scope of activity and functioning. In particular, the issue of dealing with complaints, which I mentioned among the possible institutional alternatives to the establishment of a full Recourse Mechanism similar to those existing in other major IFIs, like the Investigation Panel of the World Bank, is not yet really decided. The complaint system at the EIB is presently substantially a two-levels mechanism: (i) the possibility of filing complaints which are dealt by or under the authority of the Secretary General (SG) by virtue of the Code of Good Administrative Behavior and (ii) the possibility of

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recourse to the ombudsman, normally after that the complaint with SG has not given the results wished by the complainant. I do not think that the creation of the CCO will really modify this system, apart the possibility to give the CCO the competence to deal with complaints instead of the SG. This aspect is still to be decided.”<sup>cxlix</sup> The answer of the information Officer of the EIB to Bankwatch was rather similar.<sup>cl</sup> The EIB’s Compliance Office will not deal with complaints from the public, and the complaints mechanism of the Bank for the public is delineated in the Bank’s Code of Good Administrative Behavior.

Nevertheless, the EIB began to change its language from that which previously always gave it the appearance of a closed bastion in the friendly little town Luxembourg, far away from places such as Washington where NGOs are used to demonstrating and where media like to follow those demonstrations and actions. Nearly unnoticed the EIB simultaneously started a revision of its public disclosure policy in June 2004. Between May 2005 and January 2006 a solid process of consultation took place, including meetings with NGOs, members of the European Parliament and public consultation meetings. On March 7 2006, the EIB published its newly drafted policy on the bank website, followed on April 12 with the publication of the public disclosure policy approved by the Board of Directors.<sup>cli</sup>

It is worthwhile to note the following on the new EIB disclosure policy. With regard to transparency the EIB states: “As an EU body, the EIB is committed to achieving the highest possible level of transparency in all its activities. The Public Disclosure Policy forms a crucial reference for implementing its transparency policy.”<sup>clii</sup> Concerning disclosure of information it pointed out: “The disclosure policy also operates within a framework established at an EU level covering human rights, democracy, and rule of law in countries and regions in which the Bank operates. On environmental issues it is guided by EU law and regulations, including those for assessing the impact of projects it supports, to help meet the challenges of achieving sustainable development. In its financing operations, the Bank recognizes the rights, interests and responsibilities of stakeholders to achieve sustainable outcomes.”<sup>cliii</sup> And “the EIB’s policy towards the formal process commonly known as “Environmental Impact Assessment” (EIA) is summarized in its Environmental Statement (2004). The Bank requires that all projects, irrespective of location, comply with the requirements (principles and practices) of the European Union’s EIA Directive (85/337, amended by 97/11 and 2003/35), in terms of the requirements for and scope and form of a formal EIA.”<sup>cliv</sup> Moreover, “The Public Disclosure Policy’s general principles apply to the EIB Group as a whole, which consists of the EIB and the European Investment Fund.

In the new information disclosure policy substantial progress appears to be made concerning transparency for the public, clear references to human rights and EIAs, and an appeal mechanism. Paragraph 5 states: “The Public Disclosure Policy is one of the policies and codes that have been drawn up to cover all aspects of EIB activities. Of particular relevance, when considering the Disclosure Policy, are the policies covering transparency, environmental and social issues, corporate responsibility, and governance, including those for anti-corruption and fraud.” What accountability in practise means for the EIB is stated in the next paragraph 6: “The EIB is a body of the European Union. Its statute defines the Bank’s role, scope of activities and governance structures and is a Protocol attached to the Treaty of Rome establishing the European Community. The Statute establishes the EU Member States as the EIB’s shareholders. The Member States nominate members for the Bank’s principal decision-making bodies: the Board of Governors, Board of Directors and the Management Committee. Through the governments of the EU Member States, the Bank is accountable to the citizens of the Union.” And Paragraph 7: “The Bank has an extensive control and accounting structure with an independent Audit Committee

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appointed by and reporting directly to the Board of Governors, as well as international external auditors, and the internal audit and evaluation functions under its Inspector General. The EIB Group's Chief Compliance Officer ensures the internal observance of the Bank's statutory provisions, applicable rules, Codes of Conduct and professional standards, to prevent risks that might arise through failures by the Bank, its decisionmaking bodies or members of staff, in the discharge of their obligations." The later is an internal mechanism to avoid risks.

However, an accountability mechanism comparable to the other MFI mechanism was not included. What was included is the following: "For cases where citizens or residents from non-EU countries wish to appeal against non-disclosure of EIB information, and whose cases are not being handled by the European ombudsman, appeal can be made to the Bank's Inspector General. In carrying out this task, the Inspector General acts independently from the Management of the Bank. His reports are sent to the independent EIB Audit Committee, at the same time as they are sent to Management."<sup>clv</sup> In a footnote the following notable remark is made: "As set out in the Bank's 'Statement on Governance', the Inspector General provides an independent recourse mechanism for investigating complaints that the European ombudsman considers to be outside his remit. The investigations will, according to an EIB official, *mutatis mutandis* follow those of the EU ombudsman.

In short and simple the procedures are as follows. Non-EU citizens first can lodge a claim or request with the Secretary General of the EIB in cases of problems. This step is necessary in order to try to solve the problems people have in the first place. The Secretary General will carry out his<sup>clvi</sup> own investigations. To do his job there are no hindrances for the Secretary General and his staff to go to the field and talk to the people. This first step can be compared somewhat to the eligibility criteria of the World Bank Inspection Panel. The Inspection Panel will not accept a claim, if people did not first try to solve the problems with management of the World Bank. Then, if the outcome of the conclusions and the proposed actions of the Secretary General are not satisfying the people in the project area, can lodge a claim with the European Ombudsman. The Ombudsman has the opportunity to do an investigation on his<sup>clvii</sup> own initiative and by doing so 'by-pass' the rule that only EU citizens and residents can lodge a claim with the EU Ombudsman. Thirdly, if the ombudsman feels he/she can not deal with the case (for example if it is outside EU law), people then have the right to bring their case to the EIB Inspector General. The Inspector General operates independent from management and reports to the independent audit committee whose members are appointed by and which reports directly to the Governors of the Bank. So finally there exists an appeal mechanism. The difference with the accountability mechanisms of the other MFIs is in the three steps approach. Experience will show if this process is more complicated and less result oriented than the Accountability Mechanisms of the other MFIs.

On November 30<sup>th</sup> 2006, CEE Bankwatch organized a Conference 'The Right to Appeal'. Officials from the EIB, the European Commission, the European Parliament, the European Ombudsman Office, officials of the World Bank, several experts from the NGO sector and two former members of the World Bank Inspection Panel (Mr. Bissell and I) discussed the options for the EIB. The officials of the EIB confirmed the different position of the EIB being settled within the European structure. "We do not think the EIB needs a similar mechanism such as the World Bank Inspection Panel."[...] "The EIB is different from the World Bank and is part of the democracy of Europe, which means it operates within the EU institutional and legal framework. The Board of Governors have the lead and are the ones that can delegate since the EIB is not under the Parliament nor the Council. In a way it is like a national bank owned by a government." And more over, the EIB has its Recourse Mechanism (see above). Most EIB officials, present at the conference, are convinced the EIB does better then the other MFIs. One EIB official said:

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“The World Bank discriminates since only two people can file a claim. With us a single person is recognized.”

Another issue that was mentioned several times by NGO speakers is that the European Ombudsman is overloaded with work while it has too little funding to take up all cases. As a consequence, if a case is accepted by the ombudsman it could take a year before a report is published. Nevertheless, the Secretary General of the EU Ombudsman office said he expected all cases (with of course natural limitations such as not being frivolous and subject to future resource constraints) received from outside the EU to be accepted by the Ombudsman. Furthermore, the Secretary General expressed the view the Ombudsman is willing to take a case after people showed they first tried to solve the problems with the EIB, but without success.

### *Some remarks*

The differences are evident. Progress has been made in the EIB. However, the issue of an accessible accountability mechanism will depend on the outcome of the first number of cases of the recourse mechanism under the Inspector General. This may never occur if the EU ombudsman handles all cases and the outcome is satisfying the complainants. What is the time-frame of the procedures to be followed by people that want to lodge a claim? The recourse mechanism has not yet been in action, since so far no requests arrived at that stage. How it finally will work can only be answered after a request arrives at that level.

### *African Development Bank*

The African Development Bank (AfDB) began to move towards governance reforms in 1995. The bank in an internal document concerning the establishment of an inspection function noted: ‘[...] the genesis of the proposal for the establishment of the Inspection Function lies in governance reforms that commenced in 1995 and that culminated in the adoption in 1999 of a new Vision, a Policy on Good Governance and the approval in June 2001 of a new organization structure of the services of the Bank as part of the operationalization of the Bank Group’s new Vision.’<sup>clviii</sup> The bank had been asked by some of its member countries to establish an inspection function and ‘In response, the Legal Department prepared in 2001 a Concept Paper on the Establishment of an Inspection Committee for consideration by the Bank’s Senior Management.’<sup>clix</sup>

Professor Daniel Bradlow<sup>clx</sup> was asked by management of the AfDB to study the different mechanisms in the other MFIs and come up with draft terms of reference. His study was delivered in the fall of 2003 as an internal memorandum to the Board<sup>clxi</sup> for an informal meeting of the Board on December 4, 2003. Bradlaw in his study compared the different mechanisms and working procedures such as the ‘very expensive’<sup>clxii</sup> structure of the Inspection Panel of the World Bank and the earlier mechanisms of the ADB and the IADB and the more ‘virtual panel’<sup>clxiii</sup> of the EBRD with a combined problem solving mechanism and a compliance review mechanism. Finally, he recommended the adoption of an independent combined compliance review and problem-solving mechanism.<sup>clxiv</sup>

Similar to the other MFI’s, the AfDB involved interested stakeholders in the review process and published the study of Bradlaw, together with management’s initial proposals, on the bank website, inviting NGOs to comment on the proposed mechanism. Notably, the AfDB ‘wrote to

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five (5) regional umbrella non-governmental organizations located on the African continent notifying them of the Study, attaching hard copies of the documents posted on the Bank Group's website and inviting them to submit their comments. These regional NGOs were also requested to confirm that they would be willing to serve as lead coordinators within the areas of operation for seminars and workshops to educate local communities on the workings of the mechanism once it becomes operational.<sup>clxv</sup> The bank then found that only one regional umbrella NGO was willing 'to act as a facilitator for the envisioned outreach exercise.'<sup>clxvi</sup> Also very few comments were received even though the initial period for comments was extended.<sup>clxvii</sup> This was a regrettable outcome, given that the AfDB through the invitation demonstrated its openness and readiness to work with the NGO community.

Finally in the summer of 2004, a resolution<sup>clxviii</sup> was tabled and adopted by the board of governors, creating an inspection function for the African Development Bank Group. Article 1 of the resolution notes: "There is established an independent compliance review and problem solving mechanism (hereinafter called the "Independent Review Mechanism") which shall have the powers and shall function as stated below." The AfDB mechanism has the most similarity to the proposed structure of the Inter American Development Bank (IADB) (see below). In both cases a director with a strong mandate will lead both the compliance review mechanism and the mediation or problem solving unit.

As described more extensively I consider the involvement in the two functions as rather complicated because the manager that has to execute those two tasks bears the risk of a conflict of interest. In article IV, paragraph 20 is noted: "If a request contains a bona fide allegation of harm arising from a Bank Group financed operation, and it appears to contain sufficient required information, the Director shall make a determination on whether the Request should either be registered for problem-solving exercise or, alternatively, for a compliance review." Then article VI, paragraph 36 notes: "The objective of a problem solving exercise is to restore an effective dialogue between the Requesters and any interested persons with a view to resolving the issue or issues underlying a request, without seeking to attribute blame or fault to any such party. A problem-solving exercise may be conducted only if the Request has been declared eligible in accordance with paragraph 20, but irrespective of whether a compliance review is conducted." In paragraph 43 is noted: "Where at the conclusion of a problem-solving exercise, whether or not successful, the Director determines, as provided in paragraph 44 below, that a compliance review is warranted, the Director may include in the Problem-Solving Report a recommendation that the project undergo a compliance review." And finally in paragraph 49: "The experts on the Panel shall each have one (1) vote and decisions of the Panel shall be taken by simple majority. The Director shall participate in all aspects of a compliance review undertaken by a Panel but shall have a vote only in the event of a deadlock in a Panel's deliberations." The latter paragraph shows clearly the director, who has a strong mandate and decision powers over the problem-solving function also has have a voice in the compliance review function. Thus, if the problem-solving function in which the director is active does not succeed, the director still has a vote in the compliance review phase.

In the AfDB model the ruling authority seems to be with the director. Paragraph 3.26 notes: "The Director would be a member, together with two experts from the Roster, of each compliance review panel constituted to undertake a compliance review. In response to concerns expressed by the Boards regarding potential conflicts of interest, while the Director would participate in all aspects of a compliance review panel's activities, he or she would only have a vote in the event of a deadlock in a Panel's deliberations." So the only way for the compliance review panel to have a finding independent of the view of the Director would be if the two panel review experts agree.

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Another difference with the Inspection Panel is the option the CRMU has to investigate a project until it is completed. In the Memorandum to the Boards of Directors is noted: “A project will be deemed to be completed 12 months after physical completion of the project or 12 months after final disbursement under the loan or grant agreement or the date of cancellation of the disbursement amount.”<sup>clxix</sup> Like the ADB, the AfDB allows an involvement of its mechanism after physical completion, what is a broader scope than the mandate of the World Bank Inspection Panel. Moreover, the CRMU can “monitor the implementation of recommendations that it makes.”<sup>clxx</sup>

A rather striking paragraph appears to indicate an overly cautious approach related to a concern about possible consequences of the establishment of the mechanism and its effects on the organization. The paragraph:

“Finally, the establishment of the mechanism as proposed would not adversely affect the status, immunities and privileges of the Bank Group. The mechanism would neither perform judicial functions nor be an internal dispute settlement mechanism like the Administrative Tribunal. Rather it would be an internal administrative body whose *raison d’être* is to safeguard the Bank Group’s immunities and privileges by making its operations more accountable to its member states and State participants.”

There appears not to be an explicit acknowledgement of the importance of making the operations accountable in such a way that the poor should benefit from the process. However there are also similarities with the Inspection Panel: A minimum of two people can lodge a claim; their case can be filed by foreign representatives in exceptional circumstances, cases concerning procurement or corruption will not be eligible and last but not least, the findings and recommendations are, as in the case of the World Bank, finally disclosed.

In the summer of 2005, Per Eldar Sovik was appointed as the director of the mechanism. Soon after in the autumn the Bank got ahead by starting a procedure to select three members for the ‘Roster of Experts’. It is an advantage for the ADB to establish the mechanism somewhat after most of the Multilateral Financial Institutions: the dialectics of progress. It also is encouraging to find a special requirement with the wording ‘lessons learnt’ under the role of the experts. It shows that the ADB has chosen a more positive approach instead of a somewhat legalistic approach as is the case in some of the other mechanisms.

## *Japan Bank for International Cooperation*

In October 2003 an interesting new mechanism, referred to as the ‘Objections Procedures’, was established by the Japan Bank for International Cooperation (JBIC) following a wide consultation procedure which included academics, industry circles, Japanese Government Ministries and NGOs<sup>clxxi</sup>. A ‘Study Group on Environmental Guidelines for Japan Bank for International Cooperation’, began its work in October 2000 and held its last meeting on July 25, 2001.<sup>clxxii</sup> The minutes of the study group, composed of many senior experts from academic and government institutions, have been made public via the internet.<sup>clxxiii</sup> According to the study group they spent “a considerable amount of time examining the possibility of incorporating procedures and standards established by the World Bank Group.”<sup>clxxiv</sup> The study group realized the operations of JBIC are rather different from those of the World Bank, which often in the early preparation stages works with governments and provides generous support.<sup>clxxv</sup>

In the Objection Procedures is mentioned the provision for a so called “Examiner for Environmental Guidelines [...] that is under direct control of the Governor and is independent of the Bank’s departments responsible for individual lending or investment projects.”<sup>clxxvi</sup> The description of the mandate of the Examiner and the procedures to file a request show some similarities with the other mechanisms such as: independence, time schedules for the mechanism to report, ‘freely access to the information necessary for his/her activities’<sup>clxxvii</sup> and the option to encourage dialogues between the parties concerned.<sup>clxxviii</sup> Objections can be submitted in any official language of recipient countries.<sup>clxxix</sup> Requesters may ask to keep their names confidential.

The difference is to be found in the reporting procedures. After finalizing his/her report the Examiner must immediately sent the report to the parties concerned so that they then may “submit to the Examiner their opinions on the contents of the report. The Examiner shall pay due respect to such opinions and if he/she deems that the opinions contain matters useful for the monitoring of the project in question, may transfer the opinions to the Operational Department.”<sup>clxxx</sup> The chosen option for the Examiner is in conformity with my own preference as described above on the model of the Inter-American Development Bank and in Chapter 6. As long as the Examiner is free to decide if the given opinions are relevant or not, his/her independence will remain. Even more importantly, the Examiner “can make recommendations regarding measures that JBIC should take based on its findings.”<sup>clxxxi</sup> This later option is not (yet) part of the mandate of the Inspection Panel.

There is also a minus. According to Matsumoto the Examiner cannot like the Inspection Panel “address the problems of compliance with a wide range of policies and procedures, the scope of the Objections Procedure is limited to the guidelines, excluding other important policies and procedures such as information disclosure policy, economic assessment of investment operations, or monitoring and evaluation.”<sup>clxxxii clxxxiii</sup>

The process further includes the following: “Within one (1) month after the submission of the Examiner’s report to the Governor, the Operational Department shall submit in writing to the Governor setting forth its opinions on the Examiner’s report and, in the case that the Examiner concluded in their report that the guidelines have not been complied with by the Bank, measures to be taken from then on for the Bank’s compliance with the Guidelines, as necessary.”<sup>clxxxiv</sup> It might be a matter of wording and translation technicalities but, in the case of the World Bank, Management is not supposed to give an opinion on the findings of the Panel. Instead management

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also has to respond to findings of the Inspection Panel in a manner such that it describes proposed actions to mitigate, correct, and improve a situation that was found not to be in compliance with bank policies. Similar to the procedure of the World Bank is the provision for publication of both reports.

An interesting aspect of this process is the expectation that the Examiner is to “take due care of the human rights and business interests of the Requester and other parties concerned, and not to behave in such a manner as to unduly injure the Requester and other parties concerned. [...] The examiner must listen to the opinions of the persons concerned in a well-balanced manner, and must conduct individual interviews in such a manner as not to diminish the people’s trust in the Examiner’s neutrality.”<sup>clxxxv</sup> I have not found in any other policy establishing an accountability mechanism a similar reference to the sensitive nature of the working methods of a member of the mechanism. On my question to the Examiner, Professor Kazuo Matsushita how many cases were received his answer was: “As for your specific question regarding the number of cases we received after the establishment of the JBIC mechanism on objection procedure, the answer is, fortunately, none so far.”<sup>clxxxvi</sup>

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<sup>i</sup> Resolution: No. IBRD 93-10/ No. IDA 93-6. See also Chapter 5.

<sup>ii</sup> See also Suzuki, Eisuke and Nanwani, Suresh, *Responsibility of International Organizations: the Accountability Mechanisms of Multilateral Development Banks*, Michigan Journal of International Law, Vol. 27, No. 1 Fall 2005, p. 219. See also Lessons learned, in *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel 247* (Dana Clark, Jonathan Fox & Kay Treakle eds., 2003), p. 247.

<sup>iii</sup> Suzuki and Nanwani cite from: Kay Treakle, Jonathan Fox & Dana Clark, lessons learned, in *Demanding Accountability: Civil Society Claims and the World Bank Inspection Panel 247* (Dana Clark, Jonathan Fox & Kay Treakle eds., 2003), p. 219.

<sup>iv</sup> My wording.

<sup>v</sup> The Export Credit agencies are a group that deserve more attention. This study does not deal with the Export Credit Agencies.

<sup>vi</sup> Document of the Inter-American development Bank, “*Proposal for enhancement to the Independent Investigation Mechanism: Draft Consultation and Compliance Review Policy*”, February 3, 2005.

<sup>vii</sup> MIGA: the Multilateral Investment Guarantee Agency is part of the World Bank Group.

<sup>viii</sup> From hereon the ombudsman.

<sup>ix</sup> Compliance Advisor ombudsman, Annual Report 2002-03, Publisher IFC/MIGA, p. 19.

<sup>x</sup> The first Guidelines were published in April 2000 and the revised Guidelines were published in May 2004. See [www.ifc.org/cao](http://www.ifc.org/cao)

<sup>xi</sup> *Compliance Advisor ombudsman Operational Guidelines*, Publisher IFC/MIGA, Washington DC, May 2004.

<sup>xii</sup> *Idem*.

<sup>xiii</sup> *Idem*.

<sup>xiv</sup> Compliance Advisor/ombudsman 2004-05 Annual Report, p. 5. See website [www.ifc.org/cao](http://www.ifc.org/cao)

<sup>xv</sup> *Idem*, p. 13.

<sup>xvi</sup> The mandate of the Inspection Panel covers IBRD and IDA of the World Bank Group. IFC is not part of the mandate, unless a project is also financed with IDA or IBRD money as was the case with the Chad-Cameroon pipeline.

<sup>xvii</sup> Compliance Advisor/ombudsman 2004-05 Annual Report, p. 15. See website [www.ifc.org/cao](http://www.ifc.org/cao)

<sup>xviii</sup> *CAO Operational Guidelines*, IFC/MIGA, April 2000, Washington DC.

<sup>xix</sup> *CAO Operational Guidelines*, IFC/MIGA, May 2004, Washington DC.

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- <sup>xx</sup> Idem. P. 36.
- <sup>xxi</sup> 'Internal accountability creates "institutional discomfort"', News/Bretton Woods Project, 23<sup>rd</sup> January 2006. See: <http://www.brettonwoodsproject.org/article.shtml?cmd%5b126%5d=x-126-507739>
- <sup>xxii</sup> Idem.
- <sup>xxiii</sup> Compliance Advisor/ombudsman 2003-04 Annual Report, p. 18.
- <sup>xxiv</sup> See website IFC.
- <sup>xxv</sup> Idem.
- <sup>xxvi</sup> See: [www.imf.org](http://www.imf.org)
- <sup>xxvii</sup> Idem.
- <sup>xxviii</sup> Website of the IMF: The IMF Role at glance.
- <sup>xxix</sup> Why it is called EVO is not clear since it is not a correct abbreviation of the function. Later it is called IEO what is the correct abbreviation. See footnote 14.
- <sup>xxx</sup> 'Making the IMF's Independent Evaluation Office (EVO) Operational: a Background Paper, August 7, 2000, website IMF: <http://www.imf.org/external/np/eval/evo/2000/Eng/evo.htm>
- <sup>xxxi</sup> Idem, p. 2.
- <sup>xxxii</sup> See IMF website: [www.imf.org](http://www.imf.org)
- <sup>xxxiii</sup> See: [http://brettonwoodsproject.org/article.shtml?cmd\[126\]=x-126-15590](http://brettonwoodsproject.org/article.shtml?cmd[126]=x-126-15590)
- <sup>xxxiv</sup> Idem, p. 7.
- <sup>xxxv</sup> Idem, p. 8.
- <sup>xxxvi</sup> *Terms of Reference for the Independent Evaluation Office of the International Monetary Fund, Revised November 16, 2004.* See IMF website.
- <sup>xxxvii</sup> 'Letter from the Bretton Woods Project in response to the IMF's Independent Evaluation Office proposals', see: <http://www.eurodad.org/articles/default.aspx?id=286&printfriendly=yes>
- <sup>xxxviii</sup> Idem.
- <sup>xxxix</sup> See for this also Chapter 4: The inception of the World Bank Inspection Panel.
- <sup>xl</sup> EVO at present is called EIO.
- <sup>xli</sup> Website of the IDB: *IDB in brief*. At present there are 56 countries with a membership in IDB.
- <sup>xlii</sup> Idem.
- <sup>xliii</sup> Idem.
- <sup>xliv</sup> 'Islamic economics is economics in the political context of Islam. Because the Qur'an spoke against usury in the context of early Muslim society, it generally entails trying to remove or redefine interest rates from financial institutions. In doing so, Islamic economists hope to produce a more 'Islamic society'. However, liberal movements within Islam may deny the need for this field, since they generally see Islam as compatible with modern secular institutions and law.' See: [http://en.wikipedia.org/wiki/Islamic\\_economics](http://en.wikipedia.org/wiki/Islamic_economics)
- <sup>xliv</sup> Website of the IDB.
- <sup>xlvi</sup> See: [www.adb.org](http://www.adb.org) and search for "inspection".
- <sup>xlvii</sup> The ADB's Inspection Policy, A guidebook, published by the Office of the Secretary, October 1996. See also Shihata, Ibrahim, *The World Bank Inspection Panel, Annex III*.
- <sup>xlviii</sup> Idem, p. 14-15.
- <sup>xliv</sup> Idem.
- <sup>l</sup> Idem, p. 12-13.
- <sup>li</sup> Idem, p. 16-17.
- <sup>lii</sup> Website of the ADB: 'The Samut Prakarn Wastewater Management Project was designed to improve the environment by collecting and treating residential, commercial and industrial wastewater from surrounding urban and industrial areas of Samut Prakarn Province.'
- <sup>liii</sup> A conference on 'Public Accessibility to International Financial Institutions: A Review of existing Mechanisms and Interim Experiences', April 11 2003, Washington DC.
- <sup>liv</sup> Wiertsema, W, 'The Asian Development Bank (ADB) Inspection of the Samut Prakarn Wastewater Management Project, Thailand.' A paper for the Conference
- <sup>lv</sup> BIC: Bank Inspection Committee.
- <sup>lvi</sup> Soon after that meeting in Manila I had a meeting with Mr. Wiertsema in Amsterdam in order to exchange experiences of working methods of the mechanisms and the necessary steps to be taken for a full

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investigation. Already then it came out to be very difficult for the 3 panel members to have access to documents on the project in the Bank.

<sup>lvii</sup> *Idem*, p. 2-3.

<sup>lviii</sup> *Idem*, p. 3.

<sup>lix</sup> BIC: Bank Inspection Committee. Terminology used by Wierstma for the Inspection Committee.

<sup>lx</sup> *Idem*.

<sup>lxi</sup> *Idem*.

<sup>lxii</sup> *Idem*, p. 4.

<sup>lxiii</sup> Newsletter from Friends of the Earth I received on 24 January 2002. See item 9 Asian Development Bank.

<sup>lxiv</sup> Walden Bello is Professor of Sociology and Public Administration at the University of the Philippines and Executive Director of the Bangkok-based research and advocacy organization Focus on the Global South.

<sup>lxv</sup> Bello, Walden, 'Controversial report poisons ADB board-management ties', Business World, 11 April 2002.

<sup>lxvi</sup> *Idem*.

<sup>lxvii</sup> *Idem*.

<sup>lxviii</sup> 'Strengthening Public Accountability, Revised Recommendations to the Asian development Bank (ADB) for revising its Inspection Policy', By: Bank Information Center (BIC) USA, Coalition in Reforms for Efficient and Equitable Development (CREED) Pakistan, Environmental Foundation Sri Lanka, Gama Surakeema Savidhana Sri Lanka, Internationa Rivers Network (IRN) USA, Mekong Watch Japan, NGO Forum on the ADB Philippines, Oxfam Mekong Initiative (OMI) Cambodia, Urban Resource Centre Pakistan, SUNGI Pakistan and Oxfam Community Aid Abroad Australia., March 2002.

<sup>lxix</sup> *Idem*, p. 18-19.

<sup>lxx</sup> *Idem*, p. 20.

<sup>lxxi</sup> *Idem*, p. 23.

<sup>lxxii</sup> *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*, the ADB, May 2003.

<sup>lxxiii</sup> *Idem*

<sup>lxxiv</sup> Asian Development Bank Working Paper: *Review of the Inspection Function: Establishment of a New Accountability Mechanism*, February 2003.

<sup>lxxv</sup> 'Review of the Inspection Function: Establishment of a new Accountability Mechanism', Working Paper (for consideration by the Board on or about 17 March 2003), ADB, February 2003.

<sup>lxxvi</sup> Asian Development Bank Working Paper: *Review of the Inspection Function: Establishment of a New Accountability Mechanism*, February 2003.

<sup>lxxvii</sup> 'Recommendations to Inspection Policy Review of the Asian development Bank', jointly prepared for submission at the ADB's Tokyo Consultation to Review the Inspection Function, June 11, 2002.

<sup>lxxviii</sup> 'Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism', Asian Development Bank, May 2003. Available at

[http://www.adb.org/Documents/Policies/ADB\\_Mechanism/default.asp](http://www.adb.org/Documents/Policies/ADB_Mechanism/default.asp)

Hereinafter 'Review of the Inspection Function.'

<sup>lxxix</sup> *Idem*, p. 8.

<sup>lxxx</sup> I met with Mr. Nanwani and Mr. Suzuki Director General of the Operations Evaluation Department of the ADB in April 2003 in Washington DC.

<sup>lxxxii</sup> My wording.

<sup>lxxxiii</sup> OD is Operational Department.

<sup>lxxxiv</sup> Review of the Inspection Function, paragraph 62, p. 15.

<sup>lxxxv</sup> Review of the Inspection function, p. 18.

<sup>lxxxvi</sup> As in a case in Mexico: Indigenous Community Biodiversity Project (COINBIO) (2004).

<sup>lxxxvii</sup> Review of the Inspection Function, paragraph 64, p. 16.

<sup>lxxxviii</sup> Review of the Inspection Function, p. 17.

<sup>lxxxviii</sup> Suzuki, E. and Nanwani, S. 'Responsibility of International Organizations: The accountability mechanisms of Multilateral Development Banks.' 27 Michigan Journal of International Law, February 6, 2006. p. 209.

<sup>lxxxix</sup> OD: Operations Department.

<sup>xc</sup> Review of the Inspection Function, pages 19-20-21.

<sup>xc</sup>i EA/DMC: Executing Agency/Developing Member Country.

<sup>xc</sup>ii PPS: Private Project Sponsor.

<sup>xc</sup>iii Review of the Inspection Function, p. 19.

<sup>xc</sup>iv Review of the Inspection Function, p. 21.

<sup>xc</sup>v Idem.

<sup>xc</sup>vi Idem.

<sup>xc</sup>vii Idem, p. 22.

<sup>xc</sup>viii The present Chairman is Mr. Augustinus Rumansare from Indonesia and the other two members are Mr. Vitus Fernando from Sri Lanka and Mr. Richard Bissell from the United States, who is a former member of the World Bank Inspection Panel.

<sup>xc</sup>ix Review of the Inspection Function, p. 22.

<sup>c</sup> Idem, p. 25.

<sup>ci</sup> Idem, p. 26.

<sup>cii</sup> Idem, p. 24.

<sup>ciii</sup> EA/DMC: Executing Agency/Developing Member Country.

<sup>civ</sup> PPS: Private Project Sponsor.

<sup>cv</sup> Review of the Inspection Function, p. 24.

<sup>cvi</sup> Idem, p. 18.

<sup>c</sup>vii Idem, p. 18 footnote 15.

<sup>c</sup>viii See the IADB website: [www.iadb.org](http://www.iadb.org) and search for Compliance Review Mechanism. My comments (my name is spelled marrtje van putten) are published together with the comments of other experts.

<sup>cix</sup> From hereon I will use mostly the word Panel when speaking about the Compliance Review Panel.

<sup>cx</sup> Wording of the Bank itself in the draft proposal.

<sup>cx</sup>i In Canada they have developed over the last decade special expertise in supporting minorities or affected people in areas of large infrastructural projects, to come forward and express their problems and wishes. In the Canadian Environmental Assessment Act there is a provision that a very small percentage of around 0,3% of the total project budget shall be set aside for this.

<sup>cx</sup>ii In the case of the Inspection Panel of the World Bank, their Reports contain officially only findings and no recommendations. In practice some of those findings can be read differently as recommendations. This provision is related to the final decision, which is taken by the Executive Directors.

<sup>cx</sup>iii Website Inter-American Development Bank. Search for IIRSA.

<sup>cx</sup>iv See website EBRD.

<sup>cx</sup>v CEE Bankwatch network, *Empowering People: The Need for an EBRD Appeals/Compliance Mechanism*, June 2001.

<sup>cx</sup>vi Idem, p. 3.

<sup>cx</sup>vii Idem, p. 3

<sup>cx</sup>viii Document of the European Bank for Reconstruction and Development, *Independent Recourse Mechanism*, as approved by the Board of Directors on 29 April 2003. From hereon: EBRD Independent Recourse Mechanism.

<sup>cx</sup>ix Idem, p. 2.

<sup>cx</sup>x Idem, p.2.

<sup>cx</sup>xi Idem, pp 2-3.

<sup>cx</sup>xii Idem, p. 3.

<sup>cx</sup>xiii Idem, p. 3.

<sup>cx</sup>xiv In the later document the bank corrected this and notes his/her.

<sup>cx</sup>xv Idem, p. 4.

<sup>cx</sup>xvi Information of Laura Campbell, Counsel in the Office of the General Counsel of the EBRD in an e-mail to me on June 1, 2006.

<sup>cx</sup>xvii Idem, p. 12

<sup>cx</sup>xviii Idem, p. 11.

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- <sup>cxxix</sup> *FoEI comments on the Proposal for an Independent Recourse Mechanism at the EBRD*, Friends of the Earth International, January 2003.
- <sup>cxxx</sup> *Idem*, p. 1.
- <sup>cxxxi</sup> See <http://www.plooi.nl/engels/parlvr/082.htm> Written Question P-0439/03. The answer of the European commission is only on the Dutch part of the website.
- <sup>cxxxii</sup> *Independent Recourse Mechanism, Rules of Procedure: As approved by the Board on 6 April 2004*. London, European Bank for Reconstruction and Development. Herein after: EBRD Rules of Procedures.
- <sup>cxxxiii</sup> EBRD Rules of Procedures, Part 7, par. 62, p.23
- <sup>cxxxiv</sup> EBRD Rules of Procedures, Part 2, par. 2, p. 4.
- <sup>cxxxv</sup> EBRD Rules of Procedures, Part 2, par. 8.d, p. 6.
- <sup>cxxxvi</sup> EBRD Rules of Procedures, Part 3, par. 18. b and c, p. 9.
- <sup>cxxxvii</sup> EBRD Rules of Procedures, Part 4, par. 21, p. 10.
- <sup>cxxxviii</sup> See website EBRD: IRM Home page.
- <sup>cxxxix</sup> The text on the EIB, I wrote in a paper for the ABCDE Conference of the World Bank held in Amsterdam 22-24 May.
- <sup>cxl</sup> Guardian Unlimited, Sunday, March 7, 2004. Website:  
<http://politics.guardian.co.uk/eu/story/0,9061,1163631,00.html>
- <sup>cxli</sup> Corporate Responsibility Report, European Investment Bank, 2005.
- <sup>cxlii</sup> African, Caribbean and Pacific States.
- <sup>cxliii</sup> Asian-Latin America Countries.
- <sup>cxliv</sup> *Idem*.
- <sup>cxlv</sup> Report of the European Parliament, Rapporteur: Ieke van den Burg 'On the European Investment Bank Annual report for 2001 (012256(INI), paragraph 20.
- <sup>cxlvi</sup> The EU was then still formed by 15 member states.
- <sup>cxlvii</sup> *Eligibility Guidelines- checking consistency of operations with EU objectives*, Publisher, Projects Directorate European Investment Bank, Luxembourg, May 2004.
- <sup>cxlviii</sup> For the competences of the European ombudsman see:  
<http://www.euro-ombudsman.eu.int/glance/nl/default.htm>
- <sup>cxlix</sup> An e-mail of Mr. La Marca to me soon after the World Bank Conference in the spring of 2005.
- <sup>cl</sup> Information of Bankwatch to me spring 2005.
- <sup>cli</sup> See: [www.eib.eu.int](http://www.eib.eu.int)
- <sup>clii</sup> The EU Public Disclosure Policy, p. 6. See EIB website.
- <sup>cliii</sup> *Idem*, p. 6.
- <sup>cliv</sup> *Idem*, p. 13.
- <sup>clv</sup> *Idem*, p. 18.
- <sup>clvi</sup> At present the Secretary General is a male.
- <sup>clvii</sup> *Idem*.
- <sup>clviii</sup> African Development Fund ADF/BD/WP/2004/60 Bank Memorandum to the Board of Directors, June 3, 2004, p. 1. From hereon Memorandum to the Board June 3, 2004.
- <sup>clix</sup> *Idem*
- <sup>clx</sup> Professor Daniel D. Bradlow, Professor of Law & Director, International legal studies Program, American University, Washington College of Law, Washington DC, USA.
- <sup>clxi</sup> Study on an inspection Function for the African Development Bank Group: Memorandum of Secretary General Cheikh I. Fall to the Board of Directors for an informal meeting on December 2003.
- <sup>clxii</sup> *Idem*, p. 53
- <sup>clxiii</sup> *Idem*, p. 53
- <sup>clxiv</sup> Memorandum to the Board June 3, 2004.
- <sup>clxv</sup> *Idem*, p. 3.
- <sup>clxvi</sup> *Idem*
- <sup>clxvii</sup> *Idem*
- <sup>clxviii</sup> African Development Bank, Resolution B/BD/2004/ [ ] –F/BD/2004/ [ ], adopted by the Board of Directors in 2004. From hereon the resolution.
- <sup>clxix</sup> Memorandum to the Board June 3, 2004.p. 7.

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- <sup>clxx</sup> Memorandum to the Board, Annex IV: Compliance Review and Mediation Unit of the Independent Review Mechanism, Operating Rules and Procedures, p. 2.
- <sup>clxxi</sup> See JBICs Objection Procedure: <http://www.jbic.go.jp/english/environ/pdf/objection.pdf> Hereinafter the Objection Procedures.
- <sup>clxxii</sup> Recommendations for the Japan Bank for International Cooperation's Environmental Guidelines, September 9, 2001. See: <http://www.s.g-egl-jbic.org>
- <sup>clxxiii</sup> *Idem*.
- <sup>clxxiv</sup> *Idem*, p. 5.
- <sup>clxxv</sup> *Idem*, p. 5.
- <sup>clxxvi</sup> The Objection Procedures, preamble, p. 1.
- <sup>clxxvii</sup> *Idem*, p. 5.
- <sup>clxxviii</sup> *Idem*, p. 5.
- <sup>clxxix</sup> Matsumoto p. 2.
- <sup>clxxx</sup> The Objection Procedures p. 14.
- <sup>clxxxi</sup> Matsumoto p. 2.
- <sup>clxxxii</sup> *Idem*, p. 3.
- <sup>clxxxiii</sup> Matsumoto's references to monitoring and evaluation are not clear since the World Bank Inspection has (not yet) a formal mandate to monitor the implementation of necessary actions after findings of non-compliance and evaluation as such is not part of the mandate of the Inspection Panel: it is part of the Operations Evaluations Department of the Bank.
- <sup>clxxxiv</sup> The Objection Procedures p. 14.
- <sup>clxxxv</sup> *Idem*, pages 5-12.
- <sup>clxxxvi</sup> Mr. Kazuo Matsushita in an e-mail to me on April 21, 2006.