

6 March 2019

*Via Electronic Mail*

Sarah Hanes  
Principal, Project Complaint Mechanism (PCM)  
European Bank for Reconstruction and Development (EBRD)  
One Exchange Square  
London EC2A 2JN  
United Kingdom  
Email: pcm@ebrd.com, pcmreview2019@ebrd.com

**Re: Comments for the review of the draft Project Accountability Policy**

Dear Ms. Hanes:

Please accept this joint submission in response to the recently released drafts of the Project Accountability Policy (Policy) and the Guidance on Case Handling under the EBRD Project Accountability Policy (Guidance) for the Independent Project Accountability Mechanism (IPAM). As organizations and practitioners who work with individuals and communities affected by projects supported by the EBRD and other development finance institutions, we appreciate the opportunity to provide feedback at this stage of the review process. We also wish to thank the Board and President Chakrabarti for recognizing the need for reform and supporting the process from its earliest stages, including approving interim measures to improve the Board's oversight of the cases handled by the PCM.<sup>1</sup> Moreover, many of the issues we have raised in the last two years related to the mechanism's independence and structure have been successfully addressed in this draft.

Over the past two years, several of the undersigned organizations have engaged with EBRD leadership and Management, as well as PCM staff, about concerns regarding the PCM's structural and procedural shortcomings. We commend the EBRD for devoting attention and resources to improving the PCM, and we are encouraged to see that many of our recommendations – including those found in the civil society submission dated 16 April 2018,<sup>2</sup> which were based on best practice at other independent accountability mechanisms (IAMs) – were integrated into the draft Policy and Guidance.

The draft Policy proposes a substantial and welcomed restructuring of the mechanism and improves on many of the issues of independence and predictability that hindered the PCM. However, the draft Policy does not yet rectify all of the shortcomings of the EBRD's

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<sup>1</sup> Noting the Board's continued engagement on this matter during multiple Board-civil society sessions since November 2016 and President Chakrabarti's commitment to meaningful reform during the civil society town hall meetings at the 2017 and 2018 EBRD Annual Meetings.

<sup>2</sup> Comments for the review of the Project Complaint Mechanism Rules of Procedure, 16 April 2018, <https://www.accountabilitycounsel.org/wp-content/uploads/2018/05/4-16-18-april-2018-pcm-submission.pdf>.

accountability framework and, furthermore, introduces some rollbacks of the PCM's Rules of Procedure that civil society organizations consider best practice. We believe that there are some simple and practical changes that could ensure a more robust and effective mechanism. Among the most important improvements that we propose are:

- Protecting the safety of IPAM's users by establishing procedures for **identifying and mitigating the risk of reprisals** against complainants<sup>3</sup> and others involved in the complaint process (p. 5);
- Eliminating unreasonable barriers to access by removing the bar against complaints that may be associated with **parallel proceedings**, in recognition that IPAM is the only forum that assesses the EBRD's compliance with its own policies (pp. 5-6);
- Ensuring accountability throughout the entire project cycle by revising eligibility requirements to allow for **pre-approval and post-exit complaints** (pp. 6-7);
- Effectively promoting awareness of the mechanism by requiring **client disclosure of IPAM's existence** to local communities (pp. 3-4); and
- Effectuating accountability by authorizing IPAM to **monitor a case until all instances of non-compliance have been remedied** (pp. 9-10).

These and additional recommendations elaborated below would bring IPAM in line with IAM best practice in terms of mandate, structure, information disclosure, the complaint process, compliance review, and the advisory function.<sup>4</sup>

### *1. Mandate*

**Remedy** – One of the core mandates of an IAM must be to facilitate remedy for communities negatively affected by a development finance institution's operations. Unfortunately, the draft Policy obscures its remedial mandate by indirectly referencing IPAM's role in "resolv[ing]" issues<sup>5</sup> or "address[ing]" harms.<sup>6</sup> Even the Policy's sparse references to "remedial changes" or "actions" do not make clear that the communities' grievances are what are being remedied. The Policy should be revised to include clearer language around IPAM's objective in identifying and redressing harm for affected communities.

A remedy-focused mandate must be further effectuated by removing the language in paragraph 2.27(a) that prohibits Compliance Review Reports from recommending compensation. This is best practice at institutions such as the European Investment Bank (EIB)<sup>7</sup> and the Dutch Development Bank (FMO),<sup>8</sup> which place no such limitations on their IAM recommendations.

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<sup>3</sup> For the purposes of uniformity, this submission uses the terms "complaint" and "complainant" in place of the terms "Request" and "Requester" that are used in the draft Policy.

<sup>4</sup> The order of these recommendations follows the format of the civil society submission dated 16 April 2018. They are not necessarily listed according to importance or priority.

<sup>5</sup> Project Accountability Policy, para. 1.1(a), p. 5.

<sup>6</sup> *Id.* at para. 2.24(a), p. 14.

<sup>7</sup> EIB Group Complaints Mechanism Procedures, para. 2.4.6, p. 8.

<sup>8</sup> Independent Complaints Mechanism FMO, para. 3.2.14, p. 10.

The EBRD's policies require that the Bank ensure that its clients comply with its environmental and social standards, whether that is undertaking an impact assessment or providing compensation to those who have been resettled as a result of the project. This revision would also align the Policy with the UN Guiding Principles on Business and Human Rights<sup>9</sup> and the IAM Network's own guidance on citizen-driven accountability,<sup>10</sup> which posit that affected communities should have access to effective remedy that may include financial compensation. The draft Environmental and Social Policy (ESP) has numerous provisions on compensation for affected communities.<sup>11</sup> When those provisions are violated, recommending that the Bank ensure its client provide compensation may be the most, or even only, logical remedy for such non-compliance.

*Recommendation: Include in section 1 language that, regardless of the function chosen, the objective is to provide access to remedy for those who have been harmed by EBRD-financed activities and help identify improvements in EBRD policy and practice to prevent similar harm from occurring in the future.*

## **2. Structure**

**Seniority of IPAM Head** – The draft Policy makes a number of important improvements to enhance the independence of the EBRD's accountability mechanism, including a direct reporting line to the Board, a process for selecting the IPAM Head that includes external stakeholder participation, and full-time IPAM staff selected by the IPAM Head. However, the draft Policy does not make clear with what level of seniority the IPAM Head is vested. The level of the IPAM Head should reflect the significance of the mechanism's role within the institution and position the IPAM Head to promote holistic institutional learning, enabling the Head to engage with counterparts at the senior-most levels in order to resolve problems. For instance, the Inter-American Development Bank (IDB) specifies that the director of its Independent Consultation and Investigation Mechanism is an executive-level position,<sup>12</sup> and the head of the International Finance Corporation's (IFC) Compliance Advisor/Ombudsman (CAO) is a Vice President-level position.<sup>13</sup>

*Recommendation: In paragraph 3.18, specify the level of seniority of the IPAM Head.*

## **3. Information Disclosure**

**Client Disclosure of IPAM Information** – Access to information is access to accountability. Communities cannot seek redress, and IPAM cannot fulfill its mandate, if communities do not know about the mechanism's existence. We commend the EBRD for continuing the mechanism's

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<sup>9</sup> UN Guiding Principles on Business and Human Rights, sec. III.A, p. 27.

<sup>10</sup> Kristen Lewis, *Citizen-Driven Accountability for Sustainable Development*, sec. 2.2, p. 12 (2012), available at <https://www.opic.gov/sites/default/files/files/citizen-driven-accountability.pdf>.

<sup>11</sup> E.g., Draft Environmental and Social Policy, Performance Requirement 1, para. 3, n. 24, p. 15; Performance Requirement 5, para. 4, p. 39.

<sup>12</sup> Policy of the Independent Consultation and Investigation Mechanism of the IDB, para. 53(c), p. 21.

<sup>13</sup> Office of the Compliance Advisor/Ombudsman (CAO) Terms of Reference, p. 2.

outreach mandate in the draft Policy and requiring EBRD cooperation in publicizing the role of IPAM. However, the party that is often best situated to effectively publicize the mechanism – the client – has no outreach responsibilities under the draft Policy, nor under the current or draft Public Information Policy. The Policy can efficiently maximize awareness of IPAM by requiring clients to disseminate information about IPAM to local communities, as the Asian Development Bank’s (ADB) Accountability Mechanism Policy does.<sup>14</sup> The U.S. Overseas Private Investment Corporation also follows this practice. This can be accomplished by including this responsibility in financing agreements, similar to how the draft Policy ensures clients cooperate with IPAM in the sharing of project-related information.<sup>15</sup>

*Recommendation: In paragraph 3.5, the financial agreements between the Bank and the clients should also require the client to disclose to project-affected people the availability of IPAM.*

**Confidentiality of Documents Not in the Public Domain** – Paragraph 3.4 affords broad confidentiality to “all documents and information not in the public domain,” which threatens to undermine IPAM’s compliance review capabilities. IPAM must be able to substantiate the findings in its Compliance Review Reports to bolster its recommendations and fulfill its institutional learning mandate. Furthermore, disclosure may facilitate more productive and fruitful dispute resolution<sup>16</sup> processes.

Safeguarding the confidentiality of proprietary information can be accomplished through other practices that would still enable IPAM to fully disclose its findings; however, these practices must be employed under very narrow circumstances and must not be at the expense of achieving accountability and remedy for complainants. The IAM Network’s own good practice guide identifies established good practice as: “the IAM exercises judgment in the use of non-public information obtained from the [international financial institution] or the client, executing agency, etc. in its published compliance reports.”<sup>17</sup>

*Recommendation: Include language in paragraph 3.4 that allows IPAM to use its judgment to refer to non-public information in its compliance reports and dispute resolution processes.*

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<sup>14</sup> Accountability Mechanism Policy, para. 211, p. 40.

<sup>15</sup> Project Accountability Policy, para. 3.5, p. 18 (“Financing agreements between the Bank and the Clients will include requirements for the Clients to disclose Project-related information to IPAM in connection with a Case, upon reasonable request by the Bank and subject to any applicable laws and regulations.”).

<sup>16</sup> This submission uses the term “dispute resolution” in place of the term “problem solving” that is used in the draft Policy. “Dispute resolution” is a more descriptive term that denotes an independent process facilitated by the mechanism that brings relevant parties together voluntarily to reach a mutually agreeable solution to the complainant’s grievances.

<sup>17</sup> *IAMnet Good Practice Note: IAMs’ Access to and Use of Project Information*, sec. 3, p. 5 (2018), available at [http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/83b3ad8e5957d8534825837d0006d015/\\$file/2.%20iamnet%20good%20practice%20note%20on%20access%20to%20%26%20use%20of%20project%20information\\_november%202018%20-%20revised.pdf](http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/83b3ad8e5957d8534825837d0006d015/$file/2.%20iamnet%20good%20practice%20note%20on%20access%20to%20%26%20use%20of%20project%20information_november%202018%20-%20revised.pdf).

#### **4. Complaint Process**

**Reprisals** – A major barrier to accessing the mechanism in practice is fear of and actual reprisals against potential complainants and others associated with complainants. The draft Policy provides no information on how IPAM will mitigate and respond to the risk of and actual reprisals.

An institution-wide commitment is necessary to effectively address the risk of reprisals, and we urge the EBRD to make such a commitment in a separate policy. However, IAMs have a crucial and distinct role to play in safeguarding against reprisals. An IAM has a responsibility to establish protocols for protecting its users and others involved in the complaint process. An IAM policy should include procedures for preventing and addressing reprisals against complainants and others associated with complainants, including members of their households and others in the community. These procedures should include provisions related to confidentiality, risk assessments, preventative measures, and monitoring, as detailed in the recently published *Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit*.<sup>18</sup>

By detailing its anti-reprisal procedures directly within its own policy, an IAM also ensures they will be seen by affected communities. It is important for communities to be able to review the mechanism’s approach to reprisals without having to locate and cross-reference multiple policies, some of which will not be as widely translated as the IPAM Policy. Because communities will be consulting the IPAM Policy when contemplating a complaint, they should be able to consult it for information on reprisals as well.

*Recommendation: Include in paragraph 2.5 or elsewhere in the Policy IPAM’s approach for assessing and addressing security risks to those associated with the complaint process. The details of such an approach could be elaborated in protocol or guidance developed later.*

**Parallel Proceedings** – Given the imperfect nature of the existing avenues for redress, complainants must be allowed to seek remedy through multiple forums, or “parallel proceedings,” based on the particulars of their situation. Unfortunately, the draft Policy has a very restrictive limitation on complainants’ ability to pursue redress through additional forums, whether they be courts or other accountability mechanisms.<sup>19</sup> The prohibition on complaints that “relate[] to matters” that are the subject of a case in another forum is overly broad. That would require IPAM to dismiss a complaint if there are any other complaints at any other forums that touch on the same project, even if the complainants or standards applied are different.

This limitation, which applies regardless of whether complainants are seeking compliance review or dispute resolution, is a dismaying departure from the current PCM Rules of Procedure, which

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<sup>18</sup> Tove Holmström, *Guide for Independent Accountability Mechanisms on Measures to Address the Risk of Reprisals in Complaint Management: A Practical Toolkit* (2019), available at [http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/\\$file/guide\\_f\\_or\\_iams\\_on\\_measures\\_to\\_address\\_the\\_risk\\_of\\_reprisals\\_in\\_complaints\\_management\\_february\\_2019.pdf](http://independentaccountabilitymechanism.net/ocrp002p.nsf/0/ce43d67170fcd8f3482583a20026ab13/$file/guide_f_or_iams_on_measures_to_address_the_risk_of_reprisals_in_complaints_management_february_2019.pdf).

<sup>19</sup> Project Accountability Policy, para. 2.4(c)-(d), p. 9.

place no parallel proceedings limitations on compliance reviews and only instruct the PCM to consider, on a case-by-case basis, whether a dispute resolution initiative may “duplicate, interfere with or be impeded by” parallel proceedings.<sup>20</sup>

The PCM’s current approach is more effective and intuitive. Compliance review is focused on the EBRD’s compliance with its own standards; no other forum is suited to address accountability with non-compliance. Thus, that the same project is subject to review by another mechanism against another set of standards should not preclude the EBRD’s mechanism from assessing compliance against its own standards. For dispute resolution, exceptional circumstances may arise where a dispute resolution initiative interferes with or is hindered by proceedings elsewhere. In cases involving dispute resolution, the Policy should maintain the current language, providing for a case-by-case analysis, rather than making ineligibility the general rule and eligibility the exception.

*Recommendation: Eliminate paragraph 2.4(c)-(d) of draft Policy and replace it with the text from paragraph 26(b) of the current PCM Rules of Procedure.*

**Complaints at the Pre-Approval or Post-Exit Stage** – The draft Policy confines eligibility to complaints regarding projects that have been approved for financing and for which the EBRD still has a financial interest.<sup>21</sup> The pre-approval restriction is out of line with best practice at institutions such as the World Bank,<sup>22</sup> IFC,<sup>23</sup> ADB,<sup>24</sup> African Development Bank (AfDB),<sup>25</sup> and Green Climate Fund (GCF).<sup>26</sup> The current PCM Rules of Procedure even allow for complaints requesting dispute resolution, but not compliance review, to be filed prior to project approval.<sup>27</sup> Under the draft Policy, IPAM will not register pre-approval complaints but will instead only notify Management and the Audit Committee. Management is instructed only to “take the Request into account and inform the IPAM Head in writing of how the Requester’s concern is being addressed.”<sup>28</sup>

Access to a robust accountability process is invaluable both to communities and the EBRD. The most efficient way to redress harm to local communities is to identify negative impacts *before* project implementation has begun and determine how to prevent them. Because the EBRD’s Environmental and Social Policy (ESP) requires the Bank to ensure that its client comply with numerous standards<sup>29</sup> and procedures at the pre-approval stage, it is possible and useful to assess compliance prior to approval. Pre-approval complaints also bolster Board awareness,

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<sup>20</sup> Project Complaint Mechanism Rules of Procedure, para. 26(b), p. 4.

<sup>21</sup> Project Accountability Policy, para. 2.3(i), p. 9.

<sup>22</sup> The Inspection Panel at the World Bank Operating Procedures, para. 11, p. 10.

<sup>23</sup> CAO Operational Guidelines, para. 2.2.1.1, p. 13.

<sup>24</sup> Accountability Mechanism Policy, para. 145, p. 29.

<sup>25</sup> The Independent Review Mechanism Operating Rules and Procedures, para. I.b, p. 1.

<sup>26</sup> Procedures and Guidelines of the Independent Redress Mechanism, para. 20, n. 1, p. 24.

<sup>27</sup> Project Complaint Mechanism Rules of Procedure, paras. 12(a), 13, p. 2.

<sup>28</sup> Project Accountability Policy, para. 2.3(i), p. 9.

<sup>29</sup> For example, the Environmental and Social Policy (ESP) provides for free, prior and informed consent (FPIC) on projects by Indigenous Peoples. However, if at the early stages of project appraisal communities are not identified properly as indigenous, they should have the option to complain before project approval and the start of project activities for FPIC to be meaningful.

institutional learning, and improvement. Enabling IPAM to process pre-approval complaints ensures it can fulfill its mandate – identifying instances of non-compliance and policy gaps – with regard to all stages of EBRD operations. This also gives the accountability framework the opportunity to address issues at an earlier point in the project cycle so as to avoid harmful consequences due to non-compliance.

The draft Policy improves upon the current PCM Rules of Procedure in terms of expanding IPAM’s ability to undertake a dispute resolution initiative at the later stages of a project. However, the requirement that all complaints relate to projects where the EBRD still has a financial interest is a step back for compliance review, which, under the PCM Rules of Procedure, can currently be initiated up to two years after the EBRD ceases to participate in a project.<sup>30</sup> The GCF adheres to best practice, allowing complaints for up to two years from *either* the date the complainant becomes aware of adverse impacts or project closure, *whichever is later*.<sup>31</sup> If a complaint is brought within a reasonable amount of time after the EBRD ceases to have a financial interest, IPAM should still be able to assess compliance and identify pertinent policy gaps, further enhancing institutional learning. Furthermore, a community’s need for redress also does not diminish simply because the EBRD no longer has a financial interest. Although IPAM’s capabilities to facilitate redress may be altered as a result of project exit, the Policy should acknowledge these distinctions, as the policies of the EIB’s Complaints Mechanism<sup>32</sup> and the UN Development Programme’s Social and Environmental Compliance Unit (SECU)<sup>33</sup> do, rather than prohibit post-exit complaints outright.

*Recommendation: Revise paragraph 2.3(i) to allow IPAM to process complaints related to projects in which the Bank is participating or actively considering until 24 months after either the date on which the complainant became aware of adverse impacts or the date on which the Bank ceased to participate in the project, whichever is later.*

**Possible Exclusion of Financial Intermediary Complaints** – Under paragraph 2.4(b) of the draft Policy, it is unclear whether IPAM will be able to process complaints related to EBRD financing that was disbursed through financial intermediaries (FIs), even though the EBRD and its FI clients have numerous responsibilities under the draft ESP.<sup>34</sup> Given the large role the EBRD envisions FIs playing,<sup>35</sup> excluding these from IPAM would be another alarming limit on accessibility.

*Recommendation: Paragraph 2.4(b) should be revised to read, “It relates solely to the responsibilities, commitments or actions of any third party, rather than to issues that are under the control or influence of the Client or the Bank.”*

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<sup>30</sup> Project Complaint Mechanism Rules of Procedure, para. 24(b), p. 4.

<sup>31</sup> Procedures and Guidelines of the Independent Redress Mechanism, para. 23, p. 24.

<sup>32</sup> EIB Group Complaints Mechanism Policy, para. 4.3.13, p. 9.

<sup>33</sup> Investigation Guidelines: Social and Environmental Compliance Unit, sec. 1.1, para. 11(4), p. 4.

<sup>34</sup> Draft Environmental and Social Policy, Performance Requirement 9, p. 67.

<sup>35</sup> *Id.* at para. 1, p. 67 (“This Performance Requirement (PR) recognises that financial intermediaries (FIs) are a key instrument for promoting sustainable financial markets . . .”).

**Required “Good Faith” Efforts with Management or Client** – The draft Policy should be revised to remove the requirement that complainants first engage with EBRD Management or the client.<sup>36</sup> We encourage the EBRD to make available to communities multiple avenues for effective resolution, including engagement with Management or clients. In certain instances, affected communities may opt to approach them first. However, the prerogative must be with the communities so they can choose the avenue most appropriate for their circumstances. This is the approach at the CAO,<sup>37</sup> where complainants are encouraged, but not required, to approach Management or clients first.

While Management or clients may often sincerely want to rectify complainants’ concerns, there may also be instances of delay that could undermine complainants’ pursuit of meaningful accountability. In order to mitigate this and ensure that the complaint process proceeds in a fair manner, mechanisms at the ADB<sup>38</sup> and EIB<sup>39</sup> have instituted procedures and practices to track and monitor the responses of Management to complainant concerns.

*Recommendation: At a minimum, paragraph 2.3(h) should be revised to commit Management or the client to satisfactorily responding within a reasonable timeframe, require IPAM to monitor the actions of Management or the client, and instruct IPAM to resume the full complaint process if the efforts have been unfruitful.*

**Choice of Function** – Though the draft Policy instructs IPAM to “assess the Parties’ willingness to engage in each function,”<sup>40</sup> the draft Policy does not make clear whether IPAM or complainants have the final say on which function to engage in, noting only that the Assessment phase will result in such a determination.<sup>41</sup> Furthermore, under the draft Policy, it is unclear whether compliance review and dispute resolution can be undertaken contemporaneously. Paragraph 1.1(b) of the draft Guidance – which states complainants may state a preference for pursuing both functions – suggests they can. However, paragraph 2.8(d) of the draft Policy – which states that the purpose of the Assessment phase is to determine whether a complaint will “proceed to Problem Solving, will be transferred to a Compliance Assessment, or be closed” – suggests that complaints will only proceed to one function at a time. Which function to use or whether to use them contemporaneously is a crucial decision that the Policy should ultimately let complainants make<sup>42</sup> based on their particular circumstances. This is the practice at SECU, which leaves the decision to complainants after the IAM has provided advice on the choice of function, including whether the complaint is eligible for both functions.<sup>43</sup>

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<sup>36</sup> Project Accountability Policy, para. 2.3(g)-(h), pp. 8-9.

<sup>37</sup> CAO Operational Guidelines, para. 2.1.4, p. 12; para. 2.2.1, p. 13.

<sup>38</sup> Accountability Mechanism Policy, para. 97, p. 19; para. 137(vi), p. 28; para. 195, p. 37.

<sup>39</sup> EIB Group Complaints Mechanism Procedures, para. 3.1.2(a), pp. 9-10.

<sup>40</sup> Project Accountability Policy, para. 2.8(c), p. 10.

<sup>41</sup> *Id.* at para. 2.8(d), p. 10.

<sup>42</sup> A dispute resolution initiative requires the consent of all parties. Complainants cannot force a client or other parties to engage in one. However, complainants should be able to choose to pursue this option and utilize IPAM to assess the willingness of other parties and facilitate preliminary dialogue.

<sup>43</sup> Investigation Guidelines: Social and Environmental Compliance Unit, sec. 8.3, para. 33, p. 8.

*Recommendation: Revise paragraph 2.8, and related provisions, to clarify that the complainant can choose compliance review or dispute resolution in either order or contemporaneously and that IPAM's determination on the function used will be based on the complainants' preference.*

## **5. Compliance Review**

**Compliance Review Reports and Management Action Plans** – The process set out in paragraphs 2.27 through 2.30 of the draft Policy for drafting, modifying, and finalizing the Compliance Review Report are confusing and do not follow an obvious chronological order. This section of the Policy should be revised to more clearly lay out for complainants when each party will have opportunities to comment on the various iterations of the Compliance Review Report.

Under the draft Policy, Management has virtually no responsibility, nor even opportunity, to consult with complainants when preparing the Management Action Plan (MAP). Paragraph 2.28, which describes the substance of the MAP, contains no mention of complainant consultation. Paragraph 2.29(b)(i) suggests that complainant input is confined to Management receiving a version of the draft Compliance Review Report that was updated by IPAM after it received complainant comments. Further, although complainants are given the opportunity to comment on the MAP,<sup>44</sup> Management is not required to revise the MAP based on the complainants' comments.<sup>45</sup> A MAP that is the product of thorough complainant consultation is much more likely to meaningfully remedy non-compliance and ensure past mistakes are not repeated. The Policy should require Management to consult with complainants, as the World Bank's Inspection Panel Operating Procedures do.<sup>46</sup>

*Recommendation: Revise paragraph 2.29 to require Management to consult, in-person, with complainants when developing a MAP and include in its final MAP how it has responded to feedback provided by complainants.*

**Monitoring** – While the draft Policy provides for monitoring following a compliance review, it requires only that IPAM monitor the implementation of the MAP.<sup>47</sup> In some cases, however, the MAP may not be sufficient to address IPAM's findings of non-compliance. This can happen due to rapidly changing local circumstances or other considerations that were not adequately accounted for in developing the original MAP. In that case, the project could remain out of compliance with the EBRD's policies even after the implementation of the MAP. Instead, IPAM should monitor the case until all instances of non-compliance have been remedied. This approach to monitoring is standard practice at the CAO.<sup>48</sup>

Furthermore, we recommend that the EBRD adopt a holistic approach to its accountability framework and ensure that complaints result in meaningful change. It is necessary, but not

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<sup>44</sup> Project Accountability Policy, para. 2.29(b)(ii), p. 16.

<sup>45</sup> *Id.* at para. 2.29(b)(iii), p. 16.

<sup>46</sup> The Inspection Panel at the World Bank Operating Procedures, para. 70, p. 22.

<sup>47</sup> Project Accountability Policy, para. 2.34, p. 17.

<sup>48</sup> CAO Operational Guidelines, para. 4.4.6, p. 25.

sufficient, to, as the draft Policy does, provide monitoring reports to the Board “for information.” The mechanism should have a regular opportunity to raise with the Board, for its consideration and decision, any outstanding issues. The practice of the independent Evaluation Department may serve as a practical example for this approach.

*Recommendation: Add a sub-paragraph to paragraph 2.32 that reads, “(c) non-compliance identified in the Compliance Review Report rectified,” and specify in paragraph 2.34 that IPAM will raise to the Audit Committee as part of its quarterly reporting any outstanding issues of non-compliance related to its findings.*

**Site Visits** – Site visits are crucial to effective fact-finding and bolster the legitimacy of an IAM by engendering trust with communities and clients. However, the draft Policy, by couching its provisions on site visits in discretionary language,<sup>49</sup> fails to recognize the value of routine site visits.

*Recommendation: Revise paragraphs 2.9, 2.18, 2.26, and 2.33 to clarify that IPAM will normally undertake site visits throughout the complaint process, “unless the IPAM Head provides an explanation for why such a visit is unnecessary.”*

**IPAM-Initiated Compliance Reviews** – In addition to accepting complaints from external stakeholders, IPAM should have the authority to initiate a compliance review itself. In limited circumstances – for example if IPAM becomes aware of information suggesting serious non-compliance by the EBRD or if the filing of a complaint would entail significant risk to project-affected people – the mechanism should initiate its own investigation. The CAO has exercised this authority under its policy,<sup>50</sup> resulting in significant policy reforms at the IFC.

*Recommendation: Include in paragraph 2.21 that a Compliance Assessment can be initiated on request from the IPAM Head based on project-specific or systemic concerns.*

**Reserve Fund** – The EBRD should ensure that adequate financial support is available for remedial action if harm occurs. This support could be sourced through the creation of a reserve fund, social and environmental performance bonds, or project-specific escrow funds, which could be administered by an independent, third party.

*Recommendation: Include a provision requiring the establishment of a fund that can be accessed to support remedial action if the client fails to address the harm, after the Bank has exited the project, or if additional measures would contribute to solutions to improve the well-being of complainants as part of the Bank’s own responsibility.*

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<sup>49</sup> Project Accountability Policy, para. 2.9, p. 10; para. 2.26(b), p. 14; para. 2.33(d), p. 17.

<sup>50</sup> CAO Operational Guidelines, para. 4.2.1, p. 16.

## 6. Advisory Function

**Strengthening IPAM’s Advisory Role** – IAMs can provide invaluable insight and foster institutional improvement not only in the course of processing complaints but also by conducting systematic analyses as part of an advisory function. Though the draft Policy describes advisory capabilities, it does not characterize IPAM’s advisory role as a function in paragraph 1.1, diminishing its importance relative to the compliance review and dispute resolution functions. IPAM’s advisory responsibilities are couched in discretionary language,<sup>51</sup> suggesting that this function is an afterthought rather than a crucial part of a holistic approach to institutional accountability. Furthermore, the Policy provides little guidance on how IPAM should communicate its advice or monitor the EBRD’s implementation of that advice. The Policy should be revised to make IPAM’s advisory function a routine part of its responsibilities and instruct IPAM to provide in writing, publicly disclose, and monitor implementation of its advice. Further, the Policy should include language about Management’s role in responding to the learnings that IPAM provides. Ensuring that Management publicly reports on changes undertaken gives the institution the opportunity to highlight innovations and improvements, and reinforces public trust in the EBRD.

*Recommendation: Include “Advisory” in the list of IPAM’s functions in paragraph 1.1 and specify in paragraph 3.17 that Management must publicly respond to IPAM’s recommendations.*

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We commend the EBRD for conducting an extensive review of its IAM and urge the EBRD to utilize this opportunity to build on the improvements incorporated into the draft Policy. By implementing the recommendations above, the EBRD can fully transform its mechanism into one that is eminently independent, fair, transparent, accessible, and effective.

Sincerely,

Accountability Counsel  
Arab Watch Regional Coalition  
Bank Information Center  
Bank Information Center Europe  
Both ENDS  
CEE Bankwatch Network  
Center for International Environmental Law (CIEL)  
Centre for Financial Accountability  
Centre for Research on Multinational Corporations (SOMO)  
Collectif Camerounais des Organisations des Droits de l’Homme (COCODHD)  
Crude Accountability

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<sup>51</sup> Project Accountability Policy, para. 3.17, pp. 22-23 (“IPAM feedback *seeks* to identify common challenges and promote a culture of continuous learning at EBRD,” “Institutional learning initiatives *may* be carried out *at the discretion* of the IPAM Head . . . .” (emphasis added)).

Eurodad  
Focus Association for Sustainable Development  
Friends with Environment in Development (FED)  
Fundación para el Desarrollo de Políticas Sustentables (FUNDEPS)  
Gender Action  
Georgian Young Lawyers Association (GYLA)  
Green Alternative  
Human Rights Education and Monitoring Center (EMC)  
Inclusive Development International  
International Accountability Project  
Jamaa Resource Initiatives  
Lumière Synergie pour le Développement  
MiningWatch Canada  
Urgewald