THE NEW "PUBLIC"

The Globalization of Public Participation

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DEMOCRATIZING MULTILATERAL DEVELOPMENT BANKS

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In the past few years, thousands of people have gathered regularly at the annual and spring meetings of the World Bank Group and the International Monetary Fund (IMF) held in Washington DC, in Prague, and elsewhere to protest against the ways these institutions conduct business.[1] These events demonstrate the public's concern for the lack of democracy in the international financial arena and suggest that international financial institutions will continue to lose legitimacy unless they become more transparent and accountable to both the people affected by their projects and those whose tax money supports them.

Traditionally, only nation-states have had the right to participate in the creation and implementation of international law.[2] This model led to non-transparent international negotiations and institutions managed behind closed doors. However, in the past decades, civil society and some governments have begun to demand more transparency and participation wider in international affairs. As a consequence, a number of intergovernmental organizations—including various bodies of the United Nations (UN), international financial institutions, and trade regimes—have gradually moved toward more open and participatory governance.

This chapter will focus on these trends within multilateral development banks (MDBs), including primarily the World Bank Group and the major regional development banks. Section I reviews the emerging international recognition of the importance of public participation. Section II examines the emerging norms, mechanisms, and practices for promoting public access to information, participation, and justice in MDBs. Section III concludes by setting forth a proposal for an International Administrative Procedures Treat which could formalize and crystallize the largely ad hoc processes that have evolved to advance public involvement in international institutions.

I. RIO DECLARATION PRINCIPLE 10: ACKNOWLEDGING THE IMPORTANCE OF PUBLIC INVOLVEMENT

Although many governments and international institutions had for decades recognized the importance of public participation in environmental decisionmaking, only in 1992 at the United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro did the world community officially acknowledge public participation as a critical component to effective development. Principle 10 of the Rio Declaration on Environment and Development[3] explicitly endorses the necessity of access to information, access to decisionmaking, and access to justice in environmental decisionmaking. In the decade since Rio, public involvement in domestic decisionmaking has increased worldwide. Both countries and regions have undertaken initiatives to promote public involvement, as part of the recent emphasis on good governance.[4] In short, people all over the world want to know what their governments are doing and have a say in those decisions that affect their lives.

The same is increasingly true in the area of international policymaking. The public has come to conceive international institutions as functioning under outdated models of governance and diplomacy. "Post-feudal society set in amber" is how British scholar Philip Allott

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[1] *See Seattle Protesters Are Back, With a New Target*, N.Y. TIMES, Apr. 9, 2000; *World Bank and IMF Cut Short Prague Meeting*, GUARDIAN, Sept. 28, 2000; *George Washington University to Shut Sown During IMF/World Bank Protests*, WASH. POST, Sept. 7, 2001.

[2] For a history on participation of NGOs, see Steve Charnovitz, *Two Centuries of Participation: NGOs and International Governance*, 18 *MICH. J. INT'L L.* 2, 183-286 (1997).

[3] Rio Declaration on Environment and Development, U.N. Conference on Environment and Development (UNCED), U.N. Doc. A/CONF.151/26 (vol. I) (1992), 31 I.L.M. 874 (1992).

[4] *See* pt. II of this volume.

describes the international system, resisting the revolutionary changes of the Enlightenment that democratized national governance and grounded the root of government authority in the individual citizen.[5] International institutions, however, have made little room for direct citizen involvement and, thus, their decisions increasingly lack legitimacy. Reflecting these concerns, Agenda 21[6], a detailed action plan for realizing the Rio Declaration's goals, provides that the "United Nations system, *including international finance and development agencies*, and all intergovernmental organizations and forums," should enhance or establish procedures to draw upon the expertise and views of civil society and to provide access to information.[7]

II. PUBLIC ACCESS TO INFORMATION AND PARTICIPATION IN THE DECISIONMAKING PROCESSES OF MULTILATERAL DEVELOPMENT BANKS[8]

The World Bank Group is comprised of four separate, but related, institutions: the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). IBRD and IDA provide loans to support public-sector projects. Together IBRD and IDA are most frequently referred to as the "World Bank." The primary difference between the IBRD and IDA is that IDA provides concessional or low-cost loans to the poorest countries (those having per capita annual income below US$1465 (in 1994 dollars). The IBRD provides loans at a higher rate (although at a rate that is still below market) to other developing countries and to countries in economic transition. The IFC and MIGA provide financial support to private sector projects in all developing countries or countries in economic transition. The IFC makes loans and equity investments in private sector projects, whereas MIGA provides insurance against political risks faced by private sector investments in developing countries (i.e., risks from civil unrest or war).

The Bank is made up of member countries that have agreed to the Bank's By-Laws and Articles of Agreement.[9] The member countries are represented in broad policymaking by a Board of Governors that meets once a year. Day-to-day policy decisions at the World Bank as well as decisions on specific loans are made by a 24-member Board of Executive Directors that meets several times a week at the Bank's headquarters in Washington, DC. Voting at the Executive Directors and at the Board of Governors is based on financial shareholding percentages, which are loosely based on a country's share of the global economy. The United States has the largest voting share of 17 percent. The seven largest industrial countries (the G-7) together comprise 45 percent of the voting shares at the Bank, and all of the donor countries together comprise a solid majority of the vote. Typically, however, decisions are made by consensus. The Board meetings and decisions are not open to the public, nor are the meeting minutes ever made public. Although most countries are grouped together and share an executive director, several larger countries, including the United States, have their own representative on the Board of Executive Directors.

The World Bank has a staff of over ten thousand. The Bank management is presided over by the World Bank President who also acts as the Chair of the Board of Directors. The Bank President, currently James Wolfensohn, is traditionally chosen by the United States. The management is responsible for the day-to-day operations of the Bank, subject to the policies and other decisions set forth by the executive directors or member governments.

In addition to the World Bank, six regional development banks exist to facilitate development in specific regions. These include the Inter-American Development Bank (IADB), Asian Development Bank (ADB), North American Development Bank (NADBank), African Development Bank (AFDB), European Bank for Reconstruction and Development (EBRD), and the Mid-East Development Bank. For the most part, the regional development banks are structured and operate in essentially the same way as the World Bank, although significant regional differences shape the politics, priorities, and approaches of the different banks.[10] For example, the ADB is much more heavily influenced by Japan than the other banks. Similarly, the EBRD is heavily dominated by the Western European donors, particularly the United Kingdom, Germany, and France.

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[5] Philip Allott, International Law and International Revolution: Reconceiving the World, lecture presented at Hull University (1989).

[6] Agenda 21, U.N. Conference on Environment and Development (UNCED), U.N. Doc. A/CONF.151/26 (vols. I, II, III) (1992).

[7] *Id.* art. 27(9).

[8] The following general description of the MDBs is adopted with permission from DAVID HUNTER ET AL, INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 1486 (2nd ed. 2002).

[9] *See, e.g.,* International Bank for Reconstruction and Development, Articles of Agreement, as amended effective February 16, 1989, *available at* web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040600~menuPK:34625~pagePK:34542~piPK:36600,00.html (last visited July 23, 2002).

[10] Overviews of the structures of all the institutions examined here are available on the MDBs' respective websites: www.worldbank.org; www.ifc.org; www.miga.org; www.adb.org; www.afdb.org; www.iadb.org; www.ebrd.org.

TABLE 1: MDB DISCLOSURE POLICIES

MDB	DISCLOSURE POLICIES AS OF JULY 2002	ADOPTED
World Bank [14]	The Disclosure of Information[15]	2001
IFC	Policy on Disclosure of Information[16]	1994
ADB	Confidentiality and Disclosure of Information Policy[17]	1994[18]
AFDB	Disclosure of Information Policy Paper[19]	1998
EBRD	Public Information Policy[20]	2000
IADB	Disclosure of Information[21]	1994

MDBs are the world's largest sources of development assistance.[11] In fiscal year 2001, the World Bank alone provided US$17.3 billion in loans to its client countries.[12] The MDBs are also the conceptual leaders for international development, leveraging their influence not only through their financial strength but also through intellectual leadership.

Given their leadership positions, MDBs should guarantee transparency and accountability through formalized processes with respect to all activities. At a minimum, such processes should give individuals and groups (1) the opportunity to obtain information, with only limited, explicitly defined exceptions; (2) the opportunity to participate in the decisionmaking process, including the right to timely notification and to having input taken into consideration; and (3) the opportunity to independent review when banks fail to comply with their duties to provide access to information or decisionmaking.

A. Access to Information

In the past decade, the public's access to information in MDBs has improved significantly, in large part due to strong external pressure. As one advocate noted: "Today's debates between MDBs and their critics usually lie in the definitions of *how much* information can be released for practical, political, or proprietary reasons, as opposed to *whether* information should be released at all."[13]

Each of the MDBs has adopted formal, written policies setting out clear standards for the release of information, particularly information relating to project design and preparation. The adoption of written policies replaced what were formerly ad hoc and often inconsistent decisions on public disclosure. These formal policies have introduced a measure of accountability and predictability in access to information issues.

[11] By comparison, foreign direct investment (FDI) expanded in 2000 to a global total of $1.3 trillion, with the developing countries receiving 19 percent of the total. *See* United Nations Conference on Trade and Development (UNCTAD), 2001 Investment Report. This growth in foreign investment has been reflected in the growth in importance of the IFC (lending and equity financing) and MIGA (risk insurance) in the past decade. Efforts to require minimum environmental and social standards at these institutions influence not only the specific private sector project involved but also serve as more general standards for foreign investors operating in developing countries.

[12] *See* www.worldbank.org (last visited July 9, 2002).

[13] Chris Chamberlain, Public Access to Information: The State of Disclosure at the Multilateral Development Banks (1998), *available at* www.bicusa.org/publications/stateofdisclosure.htm (last visited July 9, 2002).

[14] The World Bank's Disclosure Policy applies to the IBRD and IDA as well as to the disclosure of documents prepared for projects financed or co-financed from trust funds under the Global Environment Facility (GEF) and administered by the Bank, including the Global Environment Trust Fund.

[15] *Available at* www1.worldbank.org/operations/disclosure (last visited 22 July 2002) [hereinafter World Bank Disclosure Policy]. Note that, as of July 4, 2002, the revised Disclosure Policy, which entered into force on January 1, 2002, was not available on the World Bank's website.

[16] *Available at* www.ifc.org/enviro/enviro/Disclosure_Policy/disclosure.htm (under "POLICY") (last visited July 9, 2002) [hereinafter IFC Policy on Disclosure of Information].

[17] *Available at* www.adb.org/Documents/Policies/Confidentiality_Disclosure/default.asp (under "General Policy in Disclosure") (last visited July 9, 2002) [hereinafter ADB Confidentiality and Disclosure of Information].

[18] In 1994, the ADF produced the Confidentiality and Disclosure of Information Policy Paper. It is not clear from the ADB website whether the proposed policy has entered into force. However, according to an ADB staff contact, the policy took effect Jan. 1, 1995. Also according to the contact, there are no formal plans for a review of the policy. However, in light of the general lack of understanding of the ADB's disclosure policy, the ADB is preparing an education campaign. The Bank will prepare a listing of all documents at the ADB, their disclosure status, who is in charge of the disclosure, and who to contact if there is a problem. A brochure will be prepared for staff, NGOs, libraries, schools, etc.

[19] *Available at* www.afdb.org/about_adb/disclosure.htm (under the title "Policy") (last visited July 9, 2002) [hereinafter AFDB Disclosure of Information Policy].

[20] *Available at* www.ebrd.com/about/index.htm (last visited July 7, 2002) [hereinafter EBRD Public Information Policy].

Most of the information disclosure policies at the various MDBs are similar in form, although the standards for disclosing some types of documents vary. While all policies set out a presumption in favor of disclosure,[22] in practice there is no such presumption. In part this is because the disclosure policies all identify lists of specific documents that are to be disclosed. As a result, MDB staff tend to presume that documents not on the list may not meant be disclosed.[23] The presumption in favor of disclosure also runs counter to a deep-seated culture of secrecy at the Bank, in which staff are used to designing their projects in consultation with only a relatively small group of members of the borrowing country's finance ministry.

1. Availability of Documents

The disclosure policies specify which categories of information are, and which are not, available to the general public or to interested individuals and groups.[24] The types of information that are listed as available to the public are subject to explicit confidentiality and sensitivity exceptions. Private sector financing, such as by the IFC, for example, is generally (but not always) subject to more restrictive information disclosure than public sector lending.[25] Currently, the only project information available at the IFC is a brief Summary of Project Information (SPI) released only thirty days prior to the Board meeting[26] and, where applicable, Environmental Assessments (released 60 days prior to the Board meeting) or Environmental Review Summaries (released 30 days prior to the Board meeting).[27] In contrast, the World Bank also releases, among other things, an initial Project Information Document (PID) in the early identification phase of a project as well as monthly operational summaries and Impact Evaluation Reports prepared after the project is closed.[28] The Annex indicates which documents are available during World Bank and IFC project cycles.[29]

To varying degrees amongst the different MDBs, the availability of documents—under pressure of civil society—is gradually increasing.[30] However, among the wide range of documents now available from certain MDBs, most are released only after the project commitments have been made, that is, generally after approval of the Boards of Directors. This calls into question the timeliness of the access to information. All of the disclosure policies examined here, including the World Bank's most recent policy,[31] generally provide access to final documents, rather than documents in draft form. This denies the public access to information in time for meaningful participation in bank decisions, including project design and policymaking.

For transparency to be effective, denials of access to information should only be possible on the basis of a list of clearly defined exceptions. All of the MDBs' policies examined here include a list of well-defined types of information that are not publicly available.[32] However, in addition to the list of exceptions to disclosure, the policies also set out less clearly defined derogations. The World Bank's policy, for example, states that if documents, which are publicly available according to the policy, include confidential or sensitive information or information that may adversely affect relations between countries and the Bank, such information may remain confidential. In case of "extensive issues of confidentiality, sensitivity or adverse relations with the Bank," the Bank may restrict the release of the entire document.[33] Elsewhere, the same policy also provides that "[p]ublic availability of some information may be precluded on an ad hoc basis when, because of its content, wording, or timing, disclosure would be detrimental to the interests of the Bank, a member country or Bank staff . . . , for example, because of the frankness of views expressed,

[21] IADB, Disclosure of Information, OP-102, *available at* www.iadb.org/cont/poli/OP-102E.htm (under "POLICY") (last visited July 9, 2002) (last visited May 23, 2002) [hereinafter IADB Disclosure of Information].

[22] *See* World Bank, Policy on Disclosure of Information, supra note 15; ADB Confidentiality and Disclosure of Information, *supra* note 17; AFDB Disclosure of Information Policy, *supra* note 19, para. 1; EBRD Public Information Policy, *supra* note 20, para. 1(a).
The IADB does not explicitly refer to the "presumption in favor of disclosure." However, by stating that "[i]nformation of the Bank's operational activities will be made available to the public in the absence of a compelling reason for confidentiality," the policy also sets such a presumption, at least with respect to operational information; IADB Disclosure of Information, *supra* note 21.

[23] *See* Graham Saul, The Ongoing Struggle for World Bank Policy –The Outcome of the Information Disclosure Policy Review 4 (2001), *available at* www.bicusa.org/mdbs/wbg/Info%20Disclosure/infodiscupdate.htm (last visited July 9, 2002).

[24] *See, e.g.*, World Bank Disclosure Policy, *supra* note 15, para. 2 and pt. III.

[25] *See* IFC Policy on Disclosure of Information, *supra* note 16, at 3; *see also* Inter-American Investment Corporation (IIC), Policy on Disclosure of Information, CII/GN-129-3 (1999), *available at* www.iadb.org/iic/english/policy/gn1293.htm (last visited July 9, 2002).

[26] *See* IFC Policy on Disclosure of Information, *supra* note 16, at 3.

[27] This will depend on whether the project is classified as a Category A or B project. *See infra* section II.B.2.

[28] *See* World Bank Disclosure Policy, *supra* note 15, paras. 15, 17.

[29] This table was prepared with the assistance of Esther Seng and is based on a table by the World Bank, available at www.worldbank.org/html/pic/projectcycle.htm, and on an overview by the IFC, available at www.ifc.org/proserv/apply/cycle/cycle.html.

[30] See, for example, a matrix of the Disclosure Policy Revisions (Aug. 2001), *available at* www1.worldbank.org/operations/disclosure/ (last visited July 9, 2002).

[31] On the World Bank's new disclosure policy, see *World Bank Agrees to Further Disclosure but Stops Short of Public Board*, Wall St. J., Sept. 6, 2001; *Critics Get World Bank to Ease Disclosure Policy*, Wash. Post, Sept. 6, 2001; *World Bank Set to Allow Some Public Access*, Fin. Times, Aug. 31, 2001.

[32] *See, e.g.*, World Bank Disclosure Policy, *supra* note 15, paras. 82-89.

[33] *Id.* para. 52.

or it might be premature."[34] Similarly, the AFDB, excludes from disclosure, "information concerning the Bank Group's operations, including proposed projects, whose public disclosure might prove prejudicial to the interests of the Bank Group or relations between the Bank Group and a member state."[35] Because these grounds are not well defined, they are subject to the discretion of the relevant MDB staff. If broadly defined exceptions such as these are not interpreted very narrowly, they could render the disclosure requirements useless.

Perhaps most disturbingly, the IFC excludes from disclosure all confidential business information, which is defined to be any information provided by the business and labeled confidential.[36] Incredibly, businesses are able to exempt any information from disclosure by citing confidentiality reasons without any independent assessment whether the information should in fact be classified as confidential. This exemption has been used to keep critical information about the IFC's operations out of the public's hands and should be narrowed to include only information that is proprietary or could otherwise provide an unreasonable business advantage.

2. Board Meetings

The meetings of the Boards of Directors of the MDBs examined here are closed to the public and to journalists. Moreover, neither transcripts of these meetings nor minutes are disclosed. At the World Bank, the chairman's summaries of "Concluding Remarks" are made available, but only in restricted areas[37] and subject to the executive directors' approval.[38] The summaries are very brief and do not include detailed information. Moreover, they do not attribute comments to specific executive directors, making it impossible for citizens to know how they are being represented. Some governments release the written statement of their executive directors, but little can be learned about the discussions at the Bank.

3. Effectiveness of Access to Information

Under the disclosure policies examined here, access to information is available to any individual, public interest organization, or business group, with no necessary demonstration of interest in the information and regardless of nationality or the reasons for the request. However, the policies lack the precision of procedures and timeframes for responding to requests for information.[39] In addition, none of the policies require that refusals to provide information be in writing nor that they state the reasons for the refusal.[40]

In addition, insufficient attention has been paid by MDBs to the importance of the language in which documents are available. According to a recent World Bank press release, "[f]urther work will investigate options for increasing translation of documents to ensure outreach to affected people …."[41] Currently, none of the disclosure policies address the issue of language requirements except in the context of environmental impact assessments.[42] Moreover, despite being asked for nearly ten years, the World Bank has yet to translate all of its safeguard policies as well as its information disclosure policy into the official UN languages.

Access to information is incomplete so long as the public is not informed about its rights of access to information. Banks should inform the public of its rights to information and how to exercise those rights. The exercise of rights should be facilitated through the creation of easily accessible points of contact. To address this problem, MDBs have established central and country-based points of contact. Relying on its 1993 Disclosure Policy, the World Bank, for example, established the Washington-based InfoShop and in-country Public Information Centers (PICs) as central contacts for persons seeking to obtain Bank documents. Documents can be obtained electronically or in hard copy at these centers as well as field offices. Certain documents can be obtained free of charge; for others, a standard charge is required for hard

[34] *Id.* para. 90.

[35] AFDB, Disclosure of Information Policy Paper, *supra* note 19.

[36] *See* IFC Policy on Disclosure of Information, *supra* note 16, annex 1.

[37] *See* World Bank Disclosure Policy, *supra* note 15, para. 66 (setting forth a list of concluding remarks and summaries subject to disclosure).

[38] *Id.* paras. 9, 14, 28.

[39] *See* CHAMBERLAIN, *supra* note 13 (examining practices of disclosure at various MDBs).

[40] The AFDB's Disclosure of Information Policy is the only policy to address the issue of giving reasons in case of restrictions to disclosure. It states: "It is intended that in all cases of restriction or non-disclosure, Bank Group staff explain to those seeking information the reasons for non-disclosure to the extent necessary, in light of the restriction on disclosure, to avoid the appearance of evasion." *See* AFDB Disclosure of Information Policy, *supra* note 19, para. 2. The AFDB's Policy, like all other policies examined here, does not require that denials be in writing.

[41] *See* lnweb18.worldbank.org/news/pressrelease.nsf/673fa6c5a2d50a67852565e200692a79/f54075ef30ebe01285256ac000708f8a? OpenDocument (last visited July 9, 2002) ("Further work will investigate options for increasing translation of documents to ensure outreach to affected people, strengthening Public Information Centers, and involving communications experts more effectively in the dissemination and outreach elements of the new policy.").

[42] While MDB disclosure policies are silent, the environmental policies of some MDBs explicitly include language requirements. *E.g.*, World Bank Environmental Assessment Policy, para. 16, *available at* lnweb18.worldbank.org/essd/essd.nsf/Safeguard/EnvironmentalAssessment (last visited July 23, 2002).

copies. Regional MDBs have followed the World Bank's example.[43]

4. Review

As of July 2002, none of the Banks have established a specific review mechanism to ensure compliance with their duties to provide access to information.[44] However, as will be further elaborated below, some of the banks have established broader inspection mechanisms which can be used to review compliance with policies on the access to project-related information. The banks should actively inform the public of the availability of such a review mechanism in case of denial of access to information.

5. Recent Developments

Although none of the MDBs discussed here are currently conducting a formal review of their information disclosure policies, most are in the process of informally reviewing a range of issues. The World Bank, for example, is considering the review of its translations policies as well as procedures for releasing certain documents in draft form before Board consideration.[45] The World Bank will also be conducting "pilot" disclosure programs in a number of countries that agree to release a greater amount of information than required under the new disclosure policy.[46]

B. Participation and Consultation

In the past fifteen years, MDBs have begun to acknowledge the importance of engaging civil society in the development process and in policy dialogues as an essential precondition for effective poverty alleviation and sustainable development. The recognition that local participation enhances development effectiveness is reflected in a host of the MDBs' internal documents, ranging from internal policies and guidelines to resource books and handbooks.[47] However, none of the MDBs have adopted an overarching mandatory policy on participation. Public consultation is only assured in those projects that are covered by standards in other policies —i.e., in projects that significantly affect the environment, involuntarily resettle people, or affect the interests of indigenous peoples. Thus, consultation practices have generally developed ad hoc, designed at the discretion of the staff in response to the specific demands being made by outside critics. As a consequence, public participation processes have been inconsistent and their success has varied accordingly.

1. Lack of General Consultation Procedures

The broad range of MDB activities calls for different approaches in structuring public participation. Bank activities that significantly affect the lives of people in borrowing countries could be clustered into the following four groups: investment loans; policy-based loans; country programming and sector strategies; and Bank strategies, policies, and procedures.[48] In the past, con-

[43] The AFDB's public information center (PIC), for example, started its operations in 1998 in Abidjan, Ivory Coast. *See* Aboubacar Fall, *Implementation of Public Participation in African Development Bank Operations*, in this volume.

[44] Such a mechanism has been established by the United Nations Development Programme (UNDP), for example. In addition to providing for information disclosure, UNDP's disclosure policy creates a Public Information and Documentation Oversight Panel. The Oversight Panel's functions are both to ensure full implementation of the policy and to reconsider denials of requests for information. *See* UNDP Public Information Disclosure Policy, paras. 20-23, *available at* www.undp.org/disclose/info-new.htm (last visited July 23, 2002).

[45] For detailed information on that process, see www.bicusa.org/mdbs/wbg/info.htm (last visited July 9, 2002).

[46] For more information, see www.worldbank.org/html/extpb/annrep97/research.htm (last visited July 9, 2002). For information on the pilot disclosure program in Vietnam, see www.worldbank.org.vn/wbivn/tf_ta_idf/tf_ta_idf001.htm (last visited July 9, 2002).

[47] *See* World Bank, Consultations with Civil Society Organizations (CSOs): General Guidelines for World Bank Staff, *available at* wbln.0018.worldbank.org/Networks/ESSD/icdb.nsf/D4856F112E805DF4852566C9007C27A6/E4BC2886DC664564852568D2006D0D5A/$FILE/4271 Consultations.pdf (last visited May 20, 2002); World Bank, Civil Society Participation in World Bank Country Assistance Strategies – Lessons from Experience, FY97-98, *available at* wbln0018.worldbank.org/essd/essd.nsf/d3f59aa3a570f67a85256cf00695688/ba289d4bcea17e2a852567ed004c4d9a?OpenDocument (last visited May 20, 2002); World Bank, GP 14.70 – Involving Nongovernmental Organizations in Bank-Supported Activities, *available at* wbln0018.worldbank.org/Institutional?Manuals/OpManual.nsf/toc1/1DFB2471DE05BF9A8525671C007D0950 (last visited May 20, 2002); World Bank, World Bank Operational Policies, Guidelines, and Good Practices, *available at* wbln0018.worldbank.org/essd/essd.nsf/d3f59aa3a570f67a852567cf00695688/c55320488d4562ac852567ed004c48d4?OpenDocument (last visited May 20, 2002); IFC, Doing Better Business Through Effective Public Consultation and Disclosure, Work with NGOs and Community-based Organizations, *available at* www.ifc.org.enviro/Publications/Practices/sectionb.pdf (last visited May 20, 2002); ADB, Cooperation Between the ADB and NGOs, *available at* www.adb.org/Documents/Policies/Cooperation_with_NGOs/default.asp?p=coopng (last visited July 9); AFDB, Cooperation with Civil Society Organizations (not available on AFDB website); AFDB, Handbook on Stakeholder Consultation and Participation in ADB Operations (2001) (not available on AFDB website); AFDB Good Governance Policy, at 17-20, *available at* www.afdb.org/projects/polices/pdf/governance.pdf (last visited May 21, 2002).

[48] *See* Kari Hamerschlag, Putting Participation into Practice at the Inter-American Development Bank 2-6 (Bank Information Center, 2000), *available at* www.bicusa.org/lac/idb/eng_putting.pdf (last visited July 11, 2000).

sultation has taken place primarily in the context of lending for investment projects, such as infrastructure, agriculture, education, and health. By contrast, policy-based loans in which MDBs finance macroeconomic policymaking, sector reforms, and privatization programs are generally designed without the participation of the public.

In recent years, external demands for consultation further "upstream" in the setting of development strategies has led some MDBs to open up the country programming process and sector strategies. For example, the World Bank is requiring broad based public participation for developing a country's Poverty Reduction Strategy Paper (PRSP), which provides the framework for all lending operations in a given borrowing country.[49] Finally, most MDBs now increasingly consult the public for the adoption and revision of internal bank policies, strategies, and procedures.[50]

The Inter-American Development Bank is currently preparing a new draft of its Participation Policy Document,[51] which seeks to mainstream citizen participation in Bank operations and activities.[52] The policy does not appear to cover internal bank policies and strategies, focusing on three other categories as the "major spheres of the Bank's activity, whose scope and complexity call for different approaches to citizen participation." In the IADB's draft policy, these are the definition of the development agendas of the countries, sectoral strategies, and lending operations and technical cooperation. The IADB management will prepare an action plan that will include, among other things, operational guidelines and procedures for public participation in each of the three spheres identified. These will be advisory procedures only, but deviations from them are supposed to be provided in writing.[53] These guidelines may introduce some predictability, consistency, and accountability to the consultation processes.

2. Environmental Assessment and Consultation

While MDBs lack general mandatory standards or processes of consultation, they do have several specific operational policies and guidelines that include provisions requiring stakeholder participation in the design and implementation of development policies and plans. Such operational policies or guidelines include, among others, environmental assessment policies, indigenous peoples policies, and resettlement policies.

Environmental Assessment policies provide the most detailed framework for public consultation.[54] MDBs usually distinguish between at least three types of projects based on the scale of impact on the environment. Each category is subjected to different requirements. The category of projects likely to have the most severe environmental[55] impact (usually referred to as "Category A" or "Category 1" projects) requires full environmental impact assessments. For these projects, the consultation processes for the preparation of environmental impact assessments are outlined in a reasonably detailed manner across the various MDB environmental policies and guidelines. However, the language used tends to be dis-

[49] *See* World Bank, Poverty Reduction Strategy Sourcebook, vol. 1, ch. 2.1, *available at* www.worldbank.org/poverty/strategies/chapters/particip/orgpart.htm (last visited July 11, 2002).

[50] See, for example, the ongoing revision of the Indigenous Peoples Policy at the World Bank. A summary of the consultations with external stakeholders lists some of the critiques of the stakeholders with respect to the consultation process. World Bank, A Summary of Consultations with External Stakeholders regarding the World Bank Draft Indigenous People Policy, Draft OP/BP 4.10 (Apr. 2002, updated July 2002), *available at* lnweb18.worldbank.org/ESSD/essd.nsf/1a8011b1ed265afd85256a4f00768797/c4a768e4f7c935f185256ba5006c75f3/$FILE/SumExtConsult-4-23-02.pdf (last visited July 11, 2002). *See also* www.bicusa.org/policy/IndigenousPeoples/index.htm (last visited July 11, 2002). Another example is the revision of the Inspection Function at the ADB. *See* www.adb.org/inspection/review.asp (last visited July 11, 2002) (regarding external consultations).

[51] *See* IADB, Citizen Participation in the Activities of the Inter-American Development Bank, Document for Discussion (2000), *available at* www.iadb.org/sds/doc/scs%2DSantodomingoE.pdf (last visited July 11, 2002). For a critique of an earlier draft, *see* Hamerschlag, *supra* note 48.

[52] The discussion document states that "the Bank's Strategic Framework on Participation will define the spheres of action in which participation is to be promoted and will set *forth clear principles and defined responsibilities* to ensure the integrity of the process." IADB, Citizen Participation, *supra* note 51, at 5 (emphasis added).

[53] *Id.* at 11. The document also enumerates participation standards for which it will "encourage adherence". These include: inclusiveness, pluralism, timeliness, openness, efficiency, and cultural sensitivity. *Id.* at 7, 8.

[54] *See*, World Bank, Policy on Environmental Assessment, BP 4.01, *available at* lnweb18.worldbank.org/essd/essd.nsf/Safeguard/EnvironmentalAssessment (last visited July 23, 2002); IFC, Policy on Environmental Assessment (1998), OP 4.01, *available at* http://www.ifc.org/enviro/EnvSoc/Safeguard/EA/ea.htm (last visited July 23, 2002); AFDB, Environmental and Social Assessment Procedures (June 2001), not found on the AFDB website; EBRD, Environmental Procedures (1996), *available at* www.ebrd.com/about/policies/enviro/procedur/main (last visited July 23, 2002); IADB, Procedures of the Committee on Environment and Social Impact, *available at* www.iadb.org/sds/doc/env.CESIprocedE.pdf (last visited July 23, 2002). The ADB still lacks an environment policy, but a draft will be submitted to the Board of Directors in September 2002. Currently, the ADB's environmental framework is included in guidelines that are subject to Board approval. Personal communication, Nurina Widagdo, Bank Information Center to Nathalie Bernasconi-Osterwalder (July 10, 2002).

[55] Most of the Banks' environmental policies also address social impacts. For example, the AFDB uses the term "Environmental and Social Assessment Procedures (ESAP)" in its Environmental and Social Assessment Procedures for African Development Bank's Public Sector Operations (2001). IADB, Procedures of the Committee on Environment and Social Impact, para. 4.08, *available at* www.iadb.org/sds/doc/env.CESIprocedE.pdf (last visited July 11, 2002).

cretionary in many instances. For example, the AFDB's environmental policy, while giving quite clear guidance, states that "for Category 1 projects, the Borrower is required to conduct meaningful consultation with relevant stakeholders . . . . These consultations shall take place according to the country's legal requirements, if they exist, but *should* at least meet the minimal requirements described hereafter."[56] The language indicates that the borrowing country remains free to adopt its own consultation standards. Similarly, under the EBRD's Environmental Procedures, the "Project Sponsor *will be requested* to provide the affected public and interested nongovernmental organizations (NGOs) with notification about the nature of the operation for which financing is sought from the EBRD. . . . If there has been no previous notification by the Project Sponsor then notification *should* be made no later than four weeks after the operation passes Initial Review."[57] The language in this document is of also discretionary nature. Moreover, these provisions require only notification, not consultation.[58]

Additionally, some environmental policies and procedures do not appear to give sufficient guidance with respect to the process of consultation. For example, the IADB's procedures provide only that "[t]he Bank *expects* borrowers to consult affected communities and other local parties" and that the Bank "requires that borrowers: (i) employ *reasonable* consultation procedures to elicit the informed opinion of concerned local groups, and take their views into account during project preparation and implementation, especially during the scoping and draft phases of an impact assessment."[59]

The second category of projects (usually referred to as Category B), which comprises projects likely to have detrimental environmental impacts that can be minimized, do not require a full impact assessment.[60] None of the MDB documents require public consultation regarding these projects.[61]

Analysis of the various environmental policies and guidelines indicate that many MDBs do not provide sufficient minimum substantive standards for effective public consultation. An exception is the IFC's 1998 environmental policies which are more specific than the other policies and guidelines of most other MDBs. IFC policies specifically require that project-affected people be consulted at least twice for Category A projects: (1) in the scoping period, shortly after environmental screening and before the terms of reference for the environmental impact assessment are finalized, and (2) once a draft environmental assessment has been prepared.[62] This explicit requirement, particularly the requirement that the public be consulted during the scoping phase, is widely regarded as the minimum consultation necessary for any environmental assessment process.

Another issue is the timing of the release of information. For Category A projects,[63] the environmental impact assessment is generally released 120 days before Board consideration for public sector projects and 60 days before Board consideration for private sector projects. For Category B projects, the document is generally released 60 days before Board consideration for public sector projects and only 30 days for private sector projects. Thus, in some cases, the public has only 30 days to review the assessment and prepare comments. This has proven to be too short, so that the public consultation requirements for private sector projects has become almost worthless.

3. Internal MDB Policies and Procedures

In the past five years, the IFC and the World Bank have regularly consulted the public during the adoption or revision of policies. It is now routine that draft policies or strategies are released on an MDB's website with a specific amount of time provided for public comment. This form of "notice and comment" rulemaking is frequently complemented by public meetings held either in the Bank's headquarters or, in some cases, in regional offices. Although the timelines and processes for these consultations are ad hoc and, thus, not subject to any set standards, there is, nonetheless, developing a consistent practice of open and participatory rulemaking.

The primary shortcomings of current approaches are that deadlines for submitting comments are often too short and that MDB staff almost never provide meaningful responses to the comments. Although civil society does not expect all of their issues to be accepted or directly addressed, it does expect some evidence that their comments are taken seriously and considered in finaliz-

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[56] *See* AFDB, Environmental and Social Procedures, *supra* note 54, paras. 5.1-5.8. (emphasis added).

[57] EBRD, Environmental Procedures, *supra* note 54, annex 1 (emphasis added).

[58] For a detailed analysis of the EBRD's consultation policies, *see* CLAUDIA SALADIN ET AL., IMPLEMENTING THE PRINCIPLES OF THE PUBLIC PARTICIPATION CONVENTION IN INTERNATIONAL ORGANIZATIONS (1998).

[59] *See* IADB, Procedures of the Committee on Environment and Social Impact, *supra* note 55, para. 4.14 (emphasis added).

[60] The scope of the environmental assessment for Category B projects may vary from project to project, but is narrower than that of a Category A assessment. For an overview of the content of a Category A and B assessments, *see, e.g.* World Bank, Policy on Environmental Assessment, *supra* note 54, para. 8.

[61] *See*, *e.g.*, AFDB Environmental and Social Assessment Procedures, *supra* note 54, para. 5.9 (stating that "OPs *may* determine that some special issues such as small scale resettlement may require the Borrower to consult with potentially affected stakeholders early in the project cycles … .") (emphasis added).

[62] Standards for consultation for Category B projects are also lacking under the IFC procedures.

[63] Note that the language for categorizing projects varies among the different banks.

ing the policies.[64] In addition, the process of internet notice and comment may not reach the vast majority of the people in developing countries who are most likely affected by the policies. MDBs have relied too heavily on electronic consultation, neglecting to seek input via additional alternative avenues for people who lack access to the internet.

The IFC has been at the vanguard of this notice and comment rulemaking, setting the precedent in 1999 with the release on the web of its draft environmental and social policies. The IFC also compiled and analyzed the comments it received on that policy. In 2001, the IFC conducted a substantial review of its environmental and social safeguard policies, using both the internet and a series of regional meetings throughout the world to solicit comments on the existing policy framework. Similarly, the ADB is conducting a six-month consultation process relating to revisions to its accountability mechanism. That process will involve at least two draft versions of the paper released for comment on the web, and no fewer than nine public consultations in both donor and borrowing countries.

4. Setting Mandatory Standards for Consultation in Project Lending

Consultations with project-affected communities are carried out by the MDB, the borrowing Government, or both, depending on the activity involved. Where the MDB is responsible, clear mandatory standards should guide MDB staff. Where it is the role of the borrower to consult, MDB rules and procedures should require the implementation of the borrower's domestic consultation processes. In addition, the MDB should oblige the borrower to respect minimum consultation standards set out by the MDB. In the context of disclosure, experience shows that this is possible: pursuant to some MDB disclosure policies, the bank discontinues project processing if the borrowing government objects to the disclosure of an environmental assessment.[65] A similar mechanism should be considered to guarantee meaningful consultation. MDBs should adopt mandatory minimum standards of consultation that must be followed, with the MDB discontinuing the project if the standards are not met.

[64] See discussions elsewhere in this volume requiring decisionmakers to give "due account" to public input. *E.g.*, Svitlana Kravchenko, *Promoting Public Participation in Europe and Central Asia* in this volume.

[65] World Bank Disclosure Policy, *supra* note 15, para. 34.

C. Access to Justice and the Accountability Mechanisms

After the environmental and social policy frameworks were adopted at the various development banks, concerns began to arise regarding whether and how these policies would be enforced. The MDBs enjoy immunity under international law and are not subject to the jurisdiction of national courts. Additionally, there was no mechanism in international law where citizens could press their concerns relating to the activities of MDBs. In this respect, the MDBs were "lawless" institutions with no accountability either to affected communities or to the member countries that had established the environmental and social policies. At the same time, a number of controversial cases (most notably the Narmada dam in India[66]) highlighted major policy violations and led civil society to call for international fact-finders into the impacts of MDB-financed projects.

The World Bank was the first international organization of any kind to provide a mechanism for citizens to bring claims regarding policy violations without going through their respective national governments. The World Bank's Inspection Panel was created in 1993. It covered projects financed by the IBRD and the IDA and was followed in subsequent years by accountability mechanisms at several other MDBs. Table 2 highlights the subsequent evolution of MDB accountability mechanisms.

This section briefly reviews the experience with the World Bank Inspection Panel and the IFC/MIGA Compliance Advisor and Ombudsman. There is significantly greater experience with these two mechanisms than with the mechanisms of the other MDBs. Moreover, the ADB is in the process of revising its mechanism, and both the AFDB[70] and the EBRD[71] are currently developing background papers on accountability mechanisms.

1. World Bank Inspection Panel

The World Bank Inspection Panel was created in 1993 "for the purpose of providing people directly and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and proce-

[66] *See* www.narmada.org/sardarsarovar.html (last visited July 12, 2002).

TABLE 2: ACCOUNTABILITY MECHANISMS AT THE MULTILATERAL DEVELOPMENT BANKS

IBRD/IDA	World Bank Inspection Panel established 1993
IFC/MIGA	Compliance Advisor/Ombudsman established 1999[67]
AFDB	Draft prepared in 1994 but never adopted; mechanism expected 2003
ADB	Inspection Function established in 1995; revision planned for 2002[68]
EBRD	Mechanism expected in 2003
IADB	Investigation Mechanism created 1994[69]

dures."[72] The Panel officially opened for business in 1994 and over the past eight years has received twenty-seven claims. By comparison, the IADB's Independent Investigation Mechanism, established in August 1994 and amended in 2001, has had only one full investigation since its establishment. The IADB has recently received a second request, but the Board has yet to consider whether to authorize an investigation. In contrast to the World Bank's Inspection Panel, the IADB's Independent Investigation Mechanism also applies to private sector operations.

The World Bank's Inspection Panel is comprised of three permanent members, each of whom serves for five years. Panel members are nominated by the President and approved by the Board. To ensure the independence of the Panel, Panel members cannot have served the Bank in any capacity for the two years preceding their selection to the Panel. More importantly, Panel members are forbidden from ever working at the Bank again. The Panel also has a permanent Secretariat with five staff.[73]

The Panel receives and investigates claims from project-affected people alleging that they have been harmed by the Bank's violations of its policies and procedures. Any affected group of more than one person residing in the borrower's territory can file a claim to the Inspection Panel.[74] Claims must be in writing but can be in any language. As of July 1, 2002, the Inspection Panel has received twenty-six formal requests for inspection, which are listed at the Inspection Panel's website.[75] A majority of the requests have cited violations of the World Bank's environmental assessment, indigenous peoples, and involuntary resettlement policies. Also frequently cited are the World Bank's policies on information disclosure and project supervision.[76] A number of claims have involved the failure to screen the projects correctly under the environmental assessment or indigenous peoples policy (which then has implications for consultation requirements), as well as the failure to extend the rights of consultation to all of the project-affected people who should be consulted according to the norms within the policy. Thus far, the Inspection Panel has recommended an investigation of twelve claims, and the Board has approved investigation of eight.

Some general conclusions can be drawn from the Panel's history thus far. The Panel is widely respected as credible and independent by civil society organizations around the world. The Panel has also clearly strengthened the Board's ability to review staff compliance with World Bank policies, and placed a greater emphasis on consistency in applying the safeguard policies internally. On the other hand, the Panel's lack of authority to provide recommendations for resolving the problems of affected people and to monitor the implementation of remedial actions adopted in light of Panel claims has meant that Panel decisions have not necessarily benefited project-

67 *See* www.cao-ombudsman.org/ev.php?URL_ID=1249&URL_DO=DO_TOPIC&URL_SECTION=201&reload=1026503671 (last visited July 12, 2002).

68 *See* www.adb.org/Inspection/default.asp (last visited July 12, 2002).

69 *See* www.idb.org (last visited July 12, 2002).

70 The African Development Bank (AFDB) developed and circulated a proposal for an inspection panel in 1994. That proposal would have included a three-member, part-time panel patterned substantially after the World Bank Inspection Panel. The AFDB's Board of Directors never voted on the proposal, but beginning in June 2002, the AFDB hired a consultant to begin designing a new accountability mechanism.

71 The EBRD has recently begun to develop a compliance and appeals mechanism and plans to create such a mechanism during the next year. In February 2002, EBRD held its first meeting with civil society organizations aimed at discussing the future EBRD accountability mechanism.

72 World Bank Inspection Panel, Operating Procedures 1 (Aug. 19, 1994).

73 For more information, see the Inspection Panel website at wbln0018.worldbank.org/ipn/ipnweb.nsf (last visited July 12, 2002).

74 Resolution No. IBRD 93-10 (Sept. 22, 1993), para. 12; Resolution No. IDA-93-6 (Sept. 22, 1993), para. 12 ("The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank … provided in all cases that such failure has had, or threatens to have, a material adverse effect.").

75 *Supra* note 73.

76 *See* World Bank, The World Bank Inspection Panel, Annual Reports 1994-2001, *available at* wbln0018.worldbank.org/ipn/ipnweb.nsf/Wannual?openview&count=500000 (last visited July 12, 2002).

77 For more information see, the CAO webpage, *supra* note 67.

affected people on the ground. The Panel's mandate to "inspect" the performance of the Bank has also created strong dissent among staff and some developing country members, creating a polarized atmosphere around Inspection Panel claims. The Panel is also marginalized within the World Bank, with its findings and policy interpretations largely ignored by staff as soon as a specific case is over.

2. IFC/MIGA Compliance Advisor/Ombudsman

When the Inspection Panel was created, neither the IFC nor MIGA had any environmental or social policies. Accordingly, the Panel's jurisdiction did not extend to their operations. In 1999, after the IFC adopted its safeguard policies, World Bank President James Wolfensohn announced the creation of an office of the Compliance Advisor and Ombudsman (CAO). In an interesting example of public participation, the CAO was selected by the President based on the recommendation of an external steering committee that included both civil society and private sector representatives. In addition, the CAO has established an external Reference Group of independent stakeholders from the private sector, the NGO community, academia, and other institutions which meets annually to provide advice regarding CAO's activities.[77]

The CAO has two goals: "first, to help the IFC and MIGA address—in a manner that is fair, objective, and constructive—complaints made by people who have been or may be affected by projects in which the IFC and MIGA play a role; and second, to enhance the social and environmental outcomes of those projects."[78] To achieve those goals, the CAO has three related roles:

> (i) Responding to complaints by persons who are affected by projects and attempting to resolve issues raised using a flexible, problem solving approach (the ombudsman role);
> (ii) Providing a source of independent advice to the President and the management of IFC and MIGA. CAO provides advice both in relation to particular projects and in relation to broader environmental and social policies, guidelines, procedures, and systems (the advisory role);
> (iii) 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).[79]

Any individual, group, community, entity, or other party affected or likely to be affected by the social or environmental impacts of an IFC or MIGA project may make a complaint to the Ombudsman's office.

The Ombudsman process tries to resolve the concerns raised by the affected communities through a variety of possible conflict resolution methodologies, including, for example, consultation, dialogue, or mediation. The focus is not necessarily on determining whether the IFC or MIGA have been at fault in the design or implementation of the project. Because IFC and MIGA projects involve private sector companies, the Ombudsman can more easily play an intermediary role using IFC/MIGA leverage with the project sponsor to address legitimate concerns of affected people.

The CAO may bring the complaint process to a close either when a settlement agreement has been reached or when it has determined that further investigation or problem-solving efforts are not going to be productive. At that point, the CAO will inform the complainant and report to the President of the World Bank Group. The report to the President may include specific recommendations the CAO believes could help to solve problems raised by the complaint. The CAO may also decide to conduct a compliance audit to address non-compliance issues identified in the course of responding to the complaint or may refer any policy issues to the advisory role of the CAO's office.

The CAO's compliance role may be triggered through the ombudsman's process, at the request of management or on the CAO's own initiative. The purpose of a compliance audit is to determine whether IFC, MIGA, or in some cases the project sponsor have complied with the environmental and social safeguard policies of the respective institution. The compliance report may also contain specific recommendations for improving compliance both in the specific project and more generally. A report from each compliance audit is provided to the President.

As of April 2002, the Ombudsman had received eleven claims, resolving or closing four of them. The CAO has identified a number of projects for which it expects to conduct a compliance audit pending finalization of its compliance procedures and the selection of the senior specialist for compliance. In its advisory role, the CAO's office is managing the review of the IFC's environmental and social safeguard policies, contributing several case

[78] International Finance Corporation/Multilateral Investment Guarantee Agency, Compliance Advisor/Ombudsman, 2000-01 Annual Report, at 2.

[79] International Finance Corporation/Multilateral Investment Guarantee Agency, Compliance Advisor/Ombudsman, Operational Guidelines (Apr. 2000), at 6, *available at* www.ifc.org/cao/english/guidelines/ENGLISH_09-20-00_.pdf (last visited July 12, 2002).

[80] *See* CAO webpage, *supra* note 67; *see also* Marcos A. Orellana,

studies to the extractive industries review, and participating in the preparation of the IFC's sustainability agenda.[80]

Given the relatively short period of time in which the CAO has been operating, there is insufficient experience to determine its long-term success in resolving the problems of project-affected people or in improving the IFC's and MIGA's policy compliance. In several cases, however, the affected people have been satisfied with the outcomes of the process or at least the preliminary assessments that have validated their concerns.

III. CONCLUDING REMARKS

Governance needs to be improved at all international institutions, particularly with respect to the orientation of international institutions toward the public. The MDBs discussed here are a good example where some progress in expanding participation and transparency has been made. However, that progress reflects an ad hoc system formed mostly by the respective Banks' various reactions to outside pressure from civil society and member governments. There is no systematic or consistent approach to the issues of transparency, participation, and access to justice. As a result, the MDBs do not adequately disclose information, consider the public's views, or provide effective means for redress. Yet, the MDBs may be the most advanced of all international institutions in their governance orientation toward the public (precisely because they have felt the most pressure for democratization over the longest time).

What is needed is a systematic set of minimum citizen-based rights to information, participation, and independent review that covers all international institutions. This could take the form of an International Administrative Procedures Treaty. Such a treaty would set minimum criteria for how international institutions operate, how they promulgate policies and procedures, what information they release, and how they shape their relationship with citizens around the world.

Such minimum standards could be developed through an examination of the policies and procedures of the MDBs as well as other institutions, and of standards common to many different countries or regions. Establishing such a treaty would also improve the efficiency of international governance and would save civil society from having to repeat the same battles for transparency, participation, and accountability at every organization. It would bring international institutions out of the dark ages and into a transparent era of governance that responds more directly to the concerns and aspirations of the people.

Unearthing Governance: Obstacles and Opportunities for Public Participation in Minerals Policy, sec. IV.C, in this volume (discussing the extractive industries review).

ANNEX:

CHART PROJECT CYCLE

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[1] Note that these documents are generally disclosed but are subject to exceptions in accordance with the World Bank's Disclosure Policy. *See supra* note 16. The documents listed here include only documents relating to individual projects. Not listed are documents relating to structural or sectoral lending.

[2] Note that these documents are generally disclosed but are subject to exceptions in accordance with the IFC's Disclosure Policy. *See supra* note 17.

[3] *See* World Bank Disclosure Policy, *supra* note 15, para. 17.

[4] *Id.* para. 15.

[5] *Id.* para. 30.

[6] *Id.* para. 31. If required, the following documents would be disclosed with the EA: Resettlement Instrument (RI), Indigenous Peoples' Development Plan (IPDP). *See* para. 34.

[7] The project category (A, B, C or FI—for types of environmental assessment instruments), rationale for categorization, and environmental and social issues and any policy concerns are briefly stated in the PDS-ER.

[8] *See* World Bank Disclosure Policy, *supra* note 15, para. 36.

[9] *See* IFC Policy on disclosure of information, *supra* note 16, under the heading "Environment-related documents". These documents could be available at an earlier or a later stage. Unlike World Bank projects, EAs are not required to be released before appraisal. The EA report includes an Environmental Action Plan (EAP).

[10] *Id.* These documents could be available at an earlier or a later stage. Unlike World Bank projects, ERSs are not required to be released before appraisal.

[11] *Id.*, under the heading "Summary of Project Information". These documents could be available at a later stage.

[12] *See* World Bank Disclosure Policy, *supra* note 15, para. 18.

[13] *Id.* para. 26.

[14] *Id.* para. 47.

[15] *Id.* para. 48.

[16] *Id.*

Project Cycle of Public Sector Projects / World Bank	**Documents Disclosed Pursuant to the World Bank's Disclosure Policy**[1]	**Project Cycle of Private Sector Projects / IFC**	**Documents Available Pursuant to the IFC's Disclosure Policy**[2]
Identification During identification, both the Borrower and the Bank are involved in analyzing development strategies. At this point, the project would undergo an environmental screening to determine whether or not an environmental assessment is required.	Monthly Operational Summary (MOS)[3] Initial Project Information Document (PID)[4]	Identification The Investment Officer (IO) is responsible for project identification. Once the IO receives authorization from Investment Department management to proceed to the next phase, the IO requests assignment of a project team, including environmental and social specialists as appropriate.	No documents disclosed
Preparation The Borrower is responsible for project preparation, which normally lasts 1 to 2 years. The Bank often provides technical and financial assistance. During preparation, a country's project team has to determine all the technical, institutional, economic, environmental, and financial conditions required for the project to succeed. The team must also compare possible alternative methods for achieving the project's objectives. If required, an environmental assessment is undertaken.	Integrated Safeguards Data Sheet (ISDS)[5] Environmental Category A and B projects would disclose the Environmental Assessment (EA)[6]	Preparation / Early Review The purpose of the Early Review is for IFC to give a quick decision to a project sponsor on whether the Corporation is interested in engaging in the project. As a basis for an early management decision the Investment Department prepares the Project Data Sheet Early Review (PDS-ER), which contains a project description, details of potenital investment, highlights any policy issues and potential dealbreakers, reviews IFC's role in the project, assigns the project category and issues the Environmental and Social Information Memorandum (ESIM). The ESIM provides environmental and social language for the PDS-ER[7] and the Monthly Operations Report (MOR).	No documents disclosed
Appraisal The Bank is solely responsible for project appraisal, which is usually conducted by Bank staff, sometimes in cooperation with consultants, who spend three to four weeks in the client country. The appraisal team reviews all the work conducted during identification and preparation. The team prepares a Project Appraisal Document (released to the public after Approval).	Revised PID Major contract award decisions[8]	Appraisal An appraisal team, consisting of an investment officer with financial expertise and knowledge of the country in which the project is located, an engineer with the relevant technical expertise and an environmental specialist evaluates the technical, financial, economic and environmental aspects of the project. This process entails visits to the proposed site of the project and extensive discussions with the project sponsors. After returning to headquarters, the team submits its recommendations to senior management of the relevant IFC department. If financing of the project is approved at the department level, IFC's legal department, with assistance from outside counsel as appropriate, drafts appropriate documents.	Environmental Category A projects would disclose the EA report (released 60 days prior to Board Meeting)[9] Environmental Category B projects the Environmental Review Summary (ERS) (released no later than 30 days prior to the Board Meeting)[10] Summary of Project Information (SPI), released no later than 30 days prior to the Board Meeting. No disclosure requirement.[11]

Negotiations During negotiations, the Bank and Borrower endeavor to agree on the measures required to assure project success. The Borrower reviews final documents and both sides come to agreement on the terms and conditions of the loan.	No documents disclosed.	Negotiations Outstanding issues are negotiated with the company and other involved parties such as governments or financial institutions.	No documents disclosed
Approval The Project Appraisal Document and loan documents are submitted to the Bank's Board of Executive Directors for approval.	Project Appraisal Document (PAD)[12] Technical Annex (TA)	Approval The Board Report is submitted to IFC's Board of Directors, who reviews the proposed investment. If the investment is approved by the Board, and if stipulations from earlier negotiations are fulfilled, IFC and the company will sign the deal, making a legal commitment. Funds are disbursed under the terms of the legal commitment signed by all parties.	No documents disclosed
Effectiveness Following approval, the loan or credit agreement is submitteed to whatever final process is required by the borrowing government. If the outcome is positive, the loan or credit is declared effective, or ready for disbursement, and the agreement is made available to the public.	Loan or Credit Agreement		No documents disclosed
Implementation and Supervision Implementation is the responsibility of the Borrower, with agreed technical assistance from the Bank. The supervision of the project is the responsibility of the Bank. The Borrower prepares the specifications and evaluating bids for the procurement of goods and services related to the project. Once the Bank reviews this work and determines that the Bank's procurement guidelines have been followed, funds will be disbursed. Once funds have been disbursed, supervision entails monitoring, evaluating, and reporting on project progress.	Status of IBRD/ IDA Projects in Execution[13]	Implementation and Supervision IFC monitors the performance of all active projects in its portfolio to ensure compliance with environmental, social and other conditions. The project compmay provides annual environmental monitoring reports to IFC at the end of each of its fiscal years. In addition, Project Supervision Reports (PSRs). which IFC prepares at least annually, include a section on environmental and social compliance. In the case of non-compliance, an appropriate course of action is determined by IFC, and the project company is notified as to required follow-up actions.	No documents disclosed
Evaluation At the end of the disbursement period (anywhere from 1-10 years), a completion report identifying accomplishments, problems, and lessons learned is submitted. This report is not available to the public.	Implementation Completion Report (ICR)[14] Project Performance Assessment Report (PPARs)[15] Impact Evaluation Reports (IERs)[16]		No documents disclosed