

PUBLIC

DOCUMENT OF THE INTER-AMERICAN DEVELOPMENT BANK



# **Review of the Ethics, Conduct, and Grievance Systems of the Inter-American Development Bank**

**October, 2011**

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## **Review of the Ethics, Conduct, and Grievance Systems of the Inter-American Development Bank (IDB)**

### **Context Note by the IDB**

At the direction of the Board of Executive Directors (the “Board”), the Bank has been evaluating its systems for ethics and employee conduct, and employee grievances. For these purposes and following a competitive selection process, on December 16, 2010 the Bank engaged the firm Global Compliance Services, Inc. (“Global Compliance”) to review the internal pillar of the Bank’s anti-corruption framework, namely its system for addressing allegations of employee misconduct. Global Compliance was also tasked with reviewing the Bank’s employee grievance resolution system.

Their review considered the structures and authorities currently in place at the Bank, and assessed these against best practices of comparators in the international community. As part of their review, Global Compliance conducted interviews with the various stakeholders (e.g., members of the Board of Executive Directors, Management officials, employees working with and using these systems, the current judges serving on the Bank’s Administrative Tribunal, the President and Board members of the Bank’s Staff Association) as well as officials from comparator organizations to benefit from their experiences and distinct points of view. In order to understand employee experiences and perceptions of the Bank’s Ethics, Conduct and Grievance systems, Global Compliance conducted an online survey for all Bank employees, and focus groups were held with the participation of employees in Headquarters and Country Offices.

Global Compliance’s findings are summarized in the attached report, submitted to the Board on May 16, 2011. The Report finds that the Bank’s policies are, in many respects, effective in supporting Bank Management and employees in addressing important issues. Global Compliance also makes several important recommendations for further policy development.

As a primary area of focus, Global Compliance reviewed the Bank’s Code of Ethics and Professional Conduct and its associated Procedures. Global Compliance provided many recommendations on themes such as how the Ethics Office would best serve the Institution, the reporting relationships of integrity functions within Management, and the manner in which allegations of misconduct are received and addressed. Several recommendations address reporting obligations, the duty to cooperate, and clarification of Bank resources for reporting allegations. Reforms will also include enhanced disclosure and assessment of potential conflicts of interest, and enhanced training for employees.

The Report also addresses the manner in which investigations of employee misconduct are processed, including affirming protections that ensure the integrity of the investigative function and the confidentiality of information. The policy development that will follow these

recommendations will build on a system that was initially established in 2006, and which has been the subject of continual assessment and renewal as the Bank reflects on its own experiences and evolving standards of best practice among the Bank's comparators.

Regarding the Bank's systems for resolving employee grievances, Global Compliance also reviewed Bank policies pertaining to its Administrative Tribunal. The Tribunal was established by the Board of Executive Directors in 1981 as the final appellate forum for deciding on employee grievances. Global Compliance's recommendations were primarily directed at streamlining the Tribunal's procedures and increasing the efficiency with which cases are processed. Recommendations to reinforce the Bank's current administrative review processes for employee grievances, primarily by adding a phase for mandatory mediation with professional mediators as a prerequisite for access to the Tribunal, were also proposed.

The Bank's Ombudsperson will continue to provide counseling as requested by employees and support a confidential, flexible and informal means to support the settlement of disputes. Global Compliance found that the combination of both formal and informal systems used by the Bank provides flexibility to resolve most employee grievances in a way that would be beneficial to both employees and Management.

Another set of recommendations are directed at clarifying the Bank's policy for the protection of whistleblowers, which has been the subject of ongoing review since it was first established in 2003. The Bank continues to support employees by providing a safe environment in which to report wrongdoing.

The Board considered the sixty recommendations arising from the Global Compliance Report. Many elicited no objections from Management, the Staff Association and the Administrative Tribunal and were approved. The recommendations on which there was no consensus were divided for initial consideration by two working groups who reported to the Organization, Human Resources and Board Matters Committee. The proposals from the working groups were approved by consensus with only two recommendations referred to a new working group of the Committee for further review.

The Board has worked with Management on the attached comprehensive Action Plan to implement the recommendations. It is expected that actions to be taken as a result of this process will further strengthen confidence in the Bank's commitment to the principles of ethics and integrity, the Bank's systems for addressing allegations of misconduct, protections for the rights of whistleblowers, and due process in the handling of employee grievances and related decision-making processes.

## Section II

Review of the Ethics, Conduct and Grievance Systems of the  
Inter-American Development Bank – Report by Global Compliance





# Review of the Ethics, Conduct, and Grievance Systems of the Inter-American Development Bank



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May 16, 2011

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# Executive Summary

## *Process of completing this review*

The Inter-American Development Bank (“IDB”) asked for an evaluation of, among other things:


- The rules and procedures for the resolution of employment-related disputes, including the roles of Management, the Ombudsperson, the Conciliation Committee, and the IDB Administrative Tribunal (“Administrative Tribunal”);
- The manner in which the IDB investigates and addresses alleged staff misconduct under the Bank’s *Code of Ethics and Professional Conduct* (“Code”);
- The protection of whistleblowers against retaliation for reporting misconduct; and
- The proper roles of the Board of Executive Directors, Management, and the Staff Association with regard to the Bank’s ethics, conduct, and grievance systems.

To complete this review, we reviewed all relevant Bank policies and interviewed more than fifty people, including:

- Several members of the Board of Directors
- Management officials, including the President, members of the President’s Office, the Office of the Vice-President for Finance and Administration (“VPF”), the Office of Institutional Integrity (“OII”), the Office of the Executive Auditor, the Legal Department, the Human Resources Department (“HRD”), and the Ethics Office.
- Members of the Ethics Committee and Conciliation Committee
- Executive Secretary and each of the current judges on the Administrative Tribunal
- Staff Association’s President, Board members, and external attorney

We invited all staff members to complete an online survey, and 444 persons completed the survey. We held focus groups with 153 staff members from twenty-six countries. The focus groups were held at Bank headquarters in Washington, DC. Staff members from member countries participated by videoconference.

Finally, we sought the practices, experiences and opinions of other multilateral organizations and outside stakeholders. We examined policies and interviewed officials at the International Monetary Fund (“IMF”), the World Bank, the Asian Development Bank (“ADB”), and the United Nations (“UN”). We also examined some policies and spoke with officials at the Corporación Andina de Fomento (“CAF”), Organization of American States (“OAS”), and the African Development Bank (“AfDB”). In this report, we’ve limited specific references to these organizations’ practices to those described in publicly available documents. We also met with a representative of the Government Accountability Project.



## ***Overview of Findings***

*The IDB has taken several positive steps to establish an ethics program and ethical culture*

In the past several years, the IDB has taken several laudable steps to implement an effective ethics program. In 2007, the Bank issued a revised Code of Ethics and hired its first full-time Ethics Officer, who built a functioning Ethics Office with professional staff. Since 2007, the Ethics Office has provided ethics training to employees in headquarters and in member countries and has established a robust consultation process where employees can seek guidance on conflicts of interest or other ethical dilemmas.

Possibly as a result of the Ethics Office's training and outreach efforts, many employees have felt comfortable reporting concerns about potentially unethical conduct. The Ethics Office has overseen the investigation of those allegations. While we were not in a position to review the handling of individual cases, we note that investigating alleged employee misconduct often brings criticism and controversy.

*IDB staff members believe the Bank is an ethical place to work*

We found that IDB staff members generally view the Bank as an ethical place to work. 83% of staff members believe that unethical behavior is not tolerated in their division. In our previous surveys of hundreds of thousands of employees at more than fifty organizations, only 57% of employees responded that unethical behavior is not tolerated in their division.


However, IDB staff members appear to be more likely to observe misconduct than employees at other organizations. 31.5% of IDB employees reported observing misconduct in the last year, which compares to a benchmark of 22%.

*Staff may be reluctant to report misconduct for fear of retaliation or fear that nothing will be done*

Of the IDB employees who observed misconduct, only 29.6% reported it, which compares to a benchmark of 41%. Research has shown that employees often don't report misconduct if they fear retaliation or if they believe that management will not properly handle the report. Both fears seem to be prevalent among IDB staff.

First, some staff members fear that they will suffer retaliation if they report misconduct. While IDB employees are not significantly more likely than employees in other organizations to believe that they will be retaliated against for reporting misconduct, the consequences of retaliation, especially if it involves termination of employment, can be much greater at the IDB than at other organizations. Because many IDB staff members are on G-4 visas, if they lose their position they usually must leave the country within 30 to 60 days.

IDB staff members' fear of retaliation may be heightened because there is a belief that the IDB's existing grievance mechanisms do not allow for fast and just relief if they were to face retaliation or other unfair treatment. For example, if an employee believes she has been terminated or suffered some adverse employment action unfairly or in retaliation for




reporting misconduct, she generally must first bring her claim to a peer review panel called the Conciliation Committee. While the Conciliation Committee is often ineffective in resolving matters brought before it, the staff member must go through this process, which takes on average four to five months to complete. At the end of the process, the Conciliation Committee provides a recommendation to Management, which need not follow the recommendation. Only at this point can the staff member file a claim with the Administrative Tribunal, where a binding decision can be obtained.

However, for cases filed since 2007, the Tribunal has taken on average 18 months to decide a case. In the meantime, the Tribunal has no authority to order a stay on Management's decision against the employee, even in cases where the IDB's decision appears to be unlawful and would result in irreparable harm to the employee. Even if the employee ultimately prevails, the Tribunal's ability to make the employee whole is limited by an "either/or" approach to a rescission of Management's decision or monetary damages. Monetary damages are capped at two times the person's salary, three times in exceptional cases, without regard to what the actual damages may have been. Finally, the employee is not entitled to reimbursement for costs or attorney fees.

Thus, an employee who believes she has suffered retaliation or otherwise been treated unfairly faces an almost two year process before she can receive a binding decision by an external body. Even if she wins, her ability to get relief is limited. And she has probably spent a large amount of money challenging the decision. Given this, it is not surprising that employees may be reluctant to report misconduct if they fear that they will suffer retaliation.

Research also has shown that employees are less likely to report misconduct if they do not have confidence that management will handle the report properly. In our surveys of other employers, 77% of employees have indicated that they believe their management responds appropriately to ethics-related concerns. At the IDB, only 24.7% of survey respondents indicated that they believe the Bank responds appropriately to ethics-related concerns. IDB employees do not necessarily believe that the Bank responds inappropriately to ethics-related concerns—57.8% of respondents answered the question with the response, "I don't know." This response indicates that there is a lack of transparency in the system, which may weaken employees' confidence in the system.

It is incumbent upon Management to ensure that the investigation and disciplinary procedures are being correctly followed and, if they are, to publicly support the Ethics Office in the carrying out of its duties. However, we have found several practices and policies that isolate the Ethics Office from Management. Perhaps in an attempt to maintain the perceived independence of the Ethics Office, in the past, Management has not provided oversight of the substance of the Ethics Officer's work nor provided performance evaluations. In addition, current procedures give primary investigation oversight duties to a peer review committee – the Ethics Committee. While the Ethics Committee is made up of highly respected IDB staff members, there is no requirement that any of the members have experience or expertise in overseeing misconduct investigations or in recommending appropriate disciplinary action.



While peer review systems in theory provide employees with the comfort that Management consults with these groups of employees before taking final action, in reality Management can, and in many cases does, take action at odds with the committees' recommendations. Indeed, because these committees are made up of non-experts, it is not surprising that Management would rely on its Legal, HRD, and other appropriate officials for guidance instead of recommendations from peer review committees.

In July 2009, after extensive study, the UN moved away from a system that relied heavily on peer review committees because it found them to be slow, inefficient, and ultimately ineffective. In late 2010, the UN Secretary-General stated that he viewed “the implementation of and functioning of the new system of administration of justice as a success and a significant improvement over the old system.”<sup>1</sup> Of course, the UN and the IDB differ vastly in terms of size, culture, and resources, so that many of the specific solutions adopted by the UN would not be appropriate at the IDB. However, some of our recommendations are based on the same principles behind the new UN system. Specifically, we recommend that the IDB move to a system that gives Management greater accountability and flexibility in making decisions impacting employees in ethics and grievance matters. At the same time, we recommend that employees be given easier access to mediation services and quicker access to the Administrative Tribunal, where employees can have their cases heard by professional judges who can issue binding decisions.

We believe that our recommendations provide for a system that will be much more streamlined, better safeguard the rights of employees, including whistleblowers, and ensure effective accountability of Management and staff.

## ***Overview of Recommendations***

In this overview section, we provide an outline of our recommendations at a high level. In the sections that follow within the main report body, we provide detailed analysis and our recommendations.


### **Administrative Tribunal**

Our recommended changes to the Administrative Tribunal are the lynchpin for many of our other recommendations. If the Tribunal is able to decide cases expeditiously, stay management decisions in cases that appear to be unlawful and would result in irreparable harm, and provide full relief to staff members who have been treated unlawfully, many of the other staff and management concerns should be lessened. Management can have the flexibility of investigating alleged misconduct, imposing discipline, or taking other personnel actions without having to go through the Ethics Committee or Conciliation Committee, but knowing that the Administrative Tribunal can review and overturn Management's actions in a public forum. At the same time, staff members who believe they have been treated

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<sup>1</sup> Administration of Justice at the United Nations. Report of the Advisory Committee on Administrative and Budgetary Questions. 4 November 2010.





unfairly can relatively quickly bring their cases before a mediator and/or the Administrative Tribunal, which can issue a binding decision and fully compensate them for their losses.

Our recommendations for changes to the Administrative Tribunal are designed to achieve the following objectives:

- Expedite average case resolution time from the current 18 months to around six months;
- Provide the Tribunal the ability to stay Management decisions in cases that appear to be unlawful and that would result in irreparable harm;
- Expand the Tribunal's ability to award full relief to an employee who has been treated unlawfully, including costs and attorney's fees; and
- Reduce any appearance of possible conflicts of interests due to the manner in which judges are appointed, renewable terms, and subsequent employment of judges with the Bank.

### **The Grievance System**


We recommend eliminating the Conciliation Committee and replacing it with a system of management review and mandatory mediation before a professional mediator.

The administrative review process by which an employee complains up the chain of command and ultimately gets a decision from the Human Resources Manager would continue. At that point, if a staff member is not satisfied with the Human Resources Manager's decision, the staff member no longer will proceed to the Conciliation Committee. Instead, he or she may file a "Notice of Grievance" with the office of the VPF signifying the staff member's continued dissatisfaction with the situation and his or her intent to file a case with the Administrative Tribunal if no resolution can be reached.

The VPF would then have 30 days to review and attempt to resolve the grievance before the individual could proceed to the Tribunal. This 30-day period would constitute a "cooling off period," to allow the employee to consider whether filing with the Tribunal would necessarily be the best way to resolve the dispute. It would also give Management an opportunity to reconsider the matter and examine any possible solution to the conflict.

In order to encourage settlement at this stage, we recommend that mandatory mediation occur during this 30-day period. An initial session would be required involving the grievant and a Management representative; mediation would continue past this initial session only if both parties were amenable to continuing. If not, after the 30-day period has passed, the employee would be able to file his or her case with the Administrative Tribunal.





## **Ethics Officer should report to President and newly created Board Ethics Oversight Committee**

Consistent with the reporting structure of the Ethics Officer in comparator organizations such as the UN, World Bank, and IMF, the IDB Ethics Officer should report to the President of the Bank. The President should ensure that the Ethics Officer receives substantive oversight of his or her work and performance evaluations.

The Ethics Officer should have access to an appropriate committee of the Board so that he or she can raise concerns about senior Management if necessary or apprise the Board of high-priority cases that might impact the reputation of the Bank. Because of the sensitive nature of ethics investigations, we recommend that the Ethics Officer report to a newly created confidential Ethics Oversight Committee. The Ethics Oversight Committee's primary role would be to ensure the compliance structure is appropriate, and that management is accountable for maintaining an ethical environment. The Ethics Oversight Committee would not sit to second-guess management on the adjudication of individual cases. However, it could learn details of cases, especially high-priority cases, as necessary to ensure that Management is properly implementing its investigation and disciplinary processes and procedures for the protection of whistleblowers.

## **Ethics Committee should not be involved in misconduct investigations**

We recommend eliminating the Ethics Committee's role in misconduct investigations. The Ethics Committee would no longer be responsible for determining whether misconduct has occurred or recommending disciplinary action. Instead, the Ethics Officer would be responsible, as it is now, for conducting the investigation and writing the investigative report. The accused would be given the opportunity to review and comment on the report. The Ethics Office would consider any response from the employee, and, if still merited, would forward the report and the employee's comments, if any, to the VPF. The VPF, typically in consultation with Legal, HRD, and any other appropriate Bank officials, would decide if misconduct has occurred, and if so, what level of discipline should be imposed. As is the case now, if the employee is disciplined for misconduct, he or she would have the ability to file immediately with the Administrative Tribunal.

We note that several of the comparator organizations have abandoned their use of peer review committees to decide on whether misconduct has occurred or recommend discipline.

## **Investigation Procedures, Rights, and Responsibilities**

We also examined questions around the process for conducting investigations. We make the following recommendations, some of which comport with existing practices:

- Supervisors should have a duty to promptly report Misconduct
- IDB policies should clarify the role of the Staff Association in receiving reports of misconduct
- Staff discussions with the Ombudsperson will be kept confidential and no reporting will be taken without the person's consent

- Anonymous reports of misconduct should continue to be accepted
- Bank policies should clarify that the Bank cannot always promise witnesses absolute confidentiality
- Investigations should generally be completed within 90 days
- All employees, including Management and Staff Association officials, have a duty to cooperate in investigations
- Employees do not have a right to have an attorney or other representative present during an investigative interview
- The Ethics Office has the right to access employee email, computer, and other information technology as part of an investigation
- Employees accused of misconduct should be given access to evidence necessary to defend themselves
- The standard of proof is “preponderance of the evidence”
- Employees should be placed on administrative leave in limited circumstances
- The Bank should create an investigations manual for its investigators to follow

We also describe procedures for when cases should be referred to national authorities and procedures to be followed in the case of conflicts of interest within the Ethics Office.

### **The Whistleblower Policy**


The Bank’s Whistleblower Policy was updated in April 2010 and goes a long way to clearly stating the IDB’s policy prohibiting retaliation against those who report misconduct or participate in investigations in good faith. We reviewed the policy and offer some recommendations for improvement. Among other things, we recommend that the policy should:

- Specifically identify non-renewal of contracts as a covered type of retaliation
- Allow for interim relief to protect whistleblowers in certain cases
- Clarify that employees who report misconduct or participate in investigations in “good faith” are protected from retaliation, even if misconduct is not ultimately found
- Use best practices in standards of proof, including a “clear and convincing” burden on management after a prima facie case has been established by the preponderance of the evidence

### **Roles, Responsibilities and Functions of the Ethics Office**

Our overall assessment is that the IDB Ethics Office has been very successful in achieving its objectives. We note that:

1. The formal program aspects of the Ethics Office are generally in-line with those of comparator organizations;
2. Tracking data on ethics consultations demonstrate that staff are increasingly using it as a resource and that they are pleased with the service provided; and

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3. The survey and focus group participants had generally favorable impressions of the Ethics Office and their ability to use it as a resource.

While the overall functioning of the Ethics Office works well, we do have several recommendations to improve certain areas. Among other things, we recommend that the Bank:

- Revise the content and visual layout of the Code
- Require all staff to take annual online ethics training with additional content for supervisors
- Implement a more robust case management system
- Consider hiring an additional ethics investigator
- Require staff covered by the declaration of interest to file it within three months of joining the IDB or being promoted into a covered position

In the following sections of the report, we provide detailed analysis of each of the issues described above.



# The Administrative Tribunal

## *Overview*


The Administrative Tribunal has the authority to “pass judgment upon any application by which a staff member of the Bank or of the Corporation alleges non-observance of his contract of employment or terms and conditions of appointment.” (Statute, Art. II). Individuals qualified to bring a cause of action under the Statute may do so only when they have exhausted all other remedies available within the Bank within appropriate time periods. The current statute allows for timely petitions to be filed within 90 days of either: (1) receipt of notice of termination of the actions of the Conciliation Committee; (2) passage of 30 days of inaction regarding measures the Bank has agreed to take pursuant to a Conciliation Committee decision; or (3) receipt of notice of a decision of the Administration imposing a disciplinary action for violation of the Code of Ethics. Unlike the administrative tribunals of many comparator organizations, the Tribunal holds evidentiary hearings that are often attended by all seven judges, all of whom are highly respected judges, law professors, or lawyers in their own country. Usually all seven judges decide upon each case.

While there is no reason to question the quality of the proceedings, current case processing timelines and limits on the Tribunal’s authority to order relief call into question the effectiveness of the Tribunal. First, it takes an average of 18 months for the Tribunal to issue a decision. In the meantime, the Tribunal has no authority to stay a Management decision in cases that appear to be unlawful and would result in irreparable harm. If the staff member wins the case, the Tribunal may order either a rescission of the Management decision or damages, but not both. If damages are awarded, they are limited to two times the person’s salary, three times in exceptional cases. The staff member is not entitled to costs or attorney fees. In many of these areas, the IDB Administrative Tribunal lags behind the powers and authority given to comparator tribunals.

Given that the Tribunal is established as a highly experienced, fact finding adjudicatory body, we consider it to be a cornerstone of the IDB’s internal justice system. However, we have concerns that the limitations we have outlined above may cause staff members whose rights have been violated not to bring cases to the Tribunal because the relief is unlikely to outweigh the financial and emotional costs of bringing a case under such a system. Also, there is concern that staff members might be unlikely to report misconduct because they fear that if Management were to retaliate against them, the Tribunal does not provide a way to obtain fast or effective relief from the retaliation.

If the Tribunal is able to decide cases expeditiously, stay management decisions in cases that appear to be unlawful and would result in irreparable harm, and provide full relief to staff members who have been treated unlawfully, it will hold Management accountable for:

- Protecting employees from discriminatory or other unlawful treatment
- Ensuring that whistleblowers not suffer retaliation

- 
- Protecting the rights of the accused during the investigative and disciplinary processes

And it will allow employees to present important issues with the ultimate goal of improving employee-Management relationships and the overall strength of the Bank.

Our recommendations for changes to the Administrative Tribunal fall into the following categories:

- Expedite average resolution of cases from 18 months to around 6 months
- Provide the Tribunal the ability to stay Management decisions in cases that appear to be unlawful and that would result in irreparable harm
- Expand Tribunal's ability to award full relief to an employee who has been treated unlawfully
- Reduce any appearance of possible conflicts of interests relating to the appointment of judges, renewable terms, and subsequent employment of judges with the Bank


### ***Expedite average resolution of cases from 18 months to around 6 months***

#### *Current Process*

Once a staff member files a Complaint with the Tribunal, the Bank has 30 days to respond. Before the 30-day period begins to run, however, the Tribunal typically translates the Complaint and annexes so that they are available in both Spanish and English. This process can sometimes take over two months.

Once the Bank files its Answer and annexes, the Tribunal again typically provides for translations in both Spanish and English, which may take several more weeks or months. Then, the Complainant files a replication, and the Bank files a rejoinder, both of which require further translation. Thus, many months often pass before the pleadings are complete and the case is ready to enter the discovery process.

Once documents have been exchanged, translations have been provided, and witnesses identified, the Executive Secretary schedules evidentiary hearings, trying to accommodate the schedules of the seven judges, each of whom are coming from a different country. The judges are paid a small stipend for their work on the Tribunal and many have other jobs. Scheduling presents its own challenges and may create some delay not found in a system in which one adjudicator is responsible for a case. The judges typically meet only two to three times a year. Matters not completed within the week that they are at Headquarters must be continued until the next time they can meet.



Once evidentiary hearings are concluded, the Tribunal hears oral arguments with all judges in Washington DC. Only at this point is the case ready for a decision.

For cases filed since 2007, it has taken an average of 18 months from the filing of a complaint to a decision. Much of the delay is caused by the need to coordinate the schedule of seven judges and the need for translation. The Tribunal works simultaneously in Spanish and English. Currently, none of the seven judges speak both Spanish and English: five judges speak only Spanish; two judges speak only English.

We provide several recommendations to streamline the process so that the overall time it takes to move a case through the system will be markedly improved. Even the most efficient administrative tribunal system must allow for reasonable periods of time for accumulating the record, providing for exchanges of pleadings and documentation of the parties, and evaluation of the record by the judges. Given a reasonable pace for this process, most cases filed with the Tribunal could proceed to a final decision within around six months of the original filing.

*The Complainant should choose the language of the pleadings*

To streamline the Tribunal process, we recommend that the Complainant be given the power to choose the language of the pleadings. The Complainant would choose either Spanish or English, and this would be the language used for all pleadings. The Bank's Legal Department would file the Answer in the chosen language within 30 days. There would be no need to wait weeks if not months for the Complaint and annexes to be translated.

This should help expedite the process because only documents that the Bank introduces in the non-chosen language would need to be translated. Any pleadings and written submissions would not need to be translated. And any evidentiary documentation already in the chosen language of the case would not need to be translated.

While pleadings and discovery proceed during the first few months, the Executive Secretary of the Tribunal can ensure that any necessary translations will be ongoing so that they are ready when the case goes to the panel of judges that will decide the case without a significant delay. Interpreters will be provided for evidentiary hearings, as needed.



*The Tribunal should assign one judge as Managing Judge of each case to guide it through the discovery process*

We recommend that the Tribunal change its Rules to create the role of a “Managing Judge.” The Managing Judge would be appointed by the President of the Tribunal at the start of each case, and would be responsible for shepherding the case through the discovery process. The Managing Judge would be fluent in the language chosen by the employee for the pleadings phase of the case—English or Spanish. In this way, there is no need for the parties to have to wait for the pleadings to be translated before discovery can proceed.

The Managing Judge would: work with the parties to create an expeditious discovery schedule; schedule and hear witness testimony; handle discovery disputes; and work with the parties to explore and encourage settlement in appropriate situations, including ordering the parties to explore mediation.

Instead of waiting until all seven judges could come to Washington to view witness testimony, only the Managing Judge would come to oversee the proceedings. As occurs now, the testimony will be transcribed and translated.

Once the evidentiary hearings are complete, the parties will submit briefs to the panel of judges that will decide the case, outlining their legal arguments and the facts that support their cases. This will allow the judges to focus only on the evidentiary record that is relevant to deciding the case. The judges can review the written record at home. They can then fly to Washington only to hear oral arguments, deliberate the case with the other judges and make a decision. In fact, if the members of the panel cannot all come to DC in a timely manner, the panel should consider hearing the parties’ oral arguments and conducting deliberations with the other judges by videoconference or teleconference. Other comparator organizations’ tribunals have used videoconference and teleconferencing capabilities to hear cases expeditiously.

*The Tribunal should have the option of hearing cases through a 3-member panel*

To expedite the decision-making process, we recommend that the Tribunal follow a recommendation from the Staff Association and hear cases in panels of three judges instead of the full panel of judges. Requiring only three judges to hear a case may speed up the process for scheduling oral argument.

In rare cases, the complexity or sensitive nature of a case may cause a party to request that the case be heard en banc, and the judges may so agree, or the judges themselves may see a need to hear a case en banc.

This structure of a three-judge panel is used widely throughout the administrative tribunals of other multilateral organizations, including the United Nations Appellate Tribunal and the Tribunals of the OAS, World Bank, IMF, ADB, and AfDB. The statutes of these other administrative tribunals generally allow for individual cases to be heard by the full panel under certain exigent circumstances, as is suggested here.



### *Initial Pleadings Should Include Only Complaint and Answer*

In order to streamline the pleading process, and because we are recommending that each case be shepherded through the discovery process by a Managing Judge, we recommend the removal of the replication and rejoinder from the initial pleading stage. This would save 28 days from the pleadings phase, not counting the time for translations, which can be much more. The Managing Judge, working closely with the parties, will be able to hone in on important issues and may always request that the parties enter additional discovery as needed. This is the case even in the event that a party comes before the Tribunal *pro se*.

### *Initial Pleadings should be immediately served on the other party*

Currently, the Rules provide for a period of seven days between the time of the filing of the Complaint and the service of the Complaint on the Bank. Similarly, seven days is provided for service of the Answer to the Complainant. These timeframes should be eliminated. The parties should simply serve the pleadings on the other party at the same time they serve the Tribunal.

### *Summary*

All told, assigning a Managing Judge to each case, allowing the Complainant to choose the language of the case, and allowing for the Tribunal to meet in panels of three on a more flexible schedule throughout the year should have the effect of dramatically shortening the timeline of cases through the Tribunal process.

Overall, the litigation could typically proceed as such:

Complaint Filed	Tribunal President reviews and assigns case to Managing Judge
30 days	Bank files Answer
30 days	Exchange of documents and identification of witnesses
45 days	Evidentiary hearings
45 days	Parties file summary briefs with the 3-judge panel
30 days	Oral arguments, if necessary, are held before 3-judge panel, and decisions rendered. Judges participate by videoconference if necessary.

Thus, in most instances, cases could be decided within six months, instead of the current average of eighteen months.





### ***Tribunal should have the power to order interim relief***

Currently, the Tribunal is without statutory authority to provide interim relief. In order to strengthen the Tribunal, and provide for a full array of remedies for Complainants, particularly with regard to cases involving allegations of retaliation, we recommend that the Tribunal be given the power to order interim relief where the contested administrative decision appears to be unlawful and where its implementation would cause irreparable damage. The purpose of interim relief in employment matters generally is to maintain, or return to, the status quo during the pendency of the litigation.

This power to provide temporary relief to a Complainant before a decision on the merits has been specifically established in the statutory language of the UN Dispute Tribunal, which allows for the Tribunal to “order an interim measure, which is without appeal, to provide temporary relief to either party, where the contested administrative decision appears prima facie to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage.”


Other tribunals operate under similar authorities. For instance, the World Bank Administrative Tribunal may order a stay when the execution of the decision is shown to be highly likely to result in grave hardship to the applicant that cannot otherwise be redressed (Rule 13). The Commentary to the IMF Administrative Tribunal Statute specifically states that the Statute “does not preclude justices from ordering interim measures if they are warranted by the circumstances.”

### ***Tribunal should be able to order full relief to make employee whole for damages suffered***

All Tribunal Judges we interviewed agreed that they should be able to award relief necessary to “make whole” the successful applicant. That is, if the Bank has treated an employee unlawfully, the Tribunal should have the authority to provide relief that would remedy the effects of the unlawful treatment.

Currently, the Statute provides:

If the Tribunal finds that an application is well founded, it shall order the rescission of the decision contested or specific performance of the obligation invoked. At the same time the Tribunal shall fix the amount of compensation to be paid to the applicant for the injury sustained if the President of the Bank or the General Manager of the Corporation, as applicable, within 30 calendar days of the notification of the judgment, decides in the interest of the Bank or of the Corporation, respectively, not to comply with the terms of the judgment, provided




that such compensation shall not exceed the equivalent of two years of the applicant's basic net salary. In exceptional cases, the Tribunal may order payment of a higher compensation of up to one more year, and shall state the reasons justifying such payment.

This “either/or” approach gives Management the option to either accept the Tribunal’s specific order or pay monetary damages. If Management chooses to pay monetary damages, its exposure is limited to two times the staff member’s salary, three times in exceptional circumstances. Given this, the Tribunal’s ability to order damages to a high-paid manager would be much greater than its ability to order damages for a lower-paid secretary, even if the harm they suffer is the same. Economists might argue that this differential treatment might lead to the Bank failing to internalize the true costs of unlawful actions, especially as it relates to lower-paid staff members. For example, should the Bank be more concerned about sexual harassment of higher paid officials than lower-paid staff members, given that the potential damages may be much higher?

The ability to order “make whole” relief is particularly important in the context of whistleblower cases. If a staff member has reported misconduct and then been fired in retaliation, the Tribunal needs to be able to make the person whole. Indeed, the US Department of Treasury includes in its recommendations to Directors of multilateral development banks that their policies and procedures allow for international whistleblower best practices, including the ability to effectuate “results that eliminate the effects of proven retaliation.” 22 US Code - Section 2620-4. Other multilateral organizations have supported the “make whole” remedy, as shown in the AfDB Whistleblower policy and in some comparator administrative tribunal statutes.

The Tribunal should have the ability to order the Bank to do any or all of the following, depending on the case:

- **Pay the staff member for lost wages and benefits, plus interest.** The Bank’s payment here will be less than would otherwise be expected if our recommended changes to the Tribunal are able to reduce the amount of time to decide a case from 18 months to six months.
- **Pay the staff member compensatory damages for emotional, physical, or reputational harm.** The Tribunal would only award such damages in appropriate cases. Such damages could be limited by statute. For example, under US federal law in harassment and discrimination cases, compensatory damages are limited to \$300,000.
- **Require the Bank to rescind the contested decision or perform their obligation.** However, where the contested administrative decision concerns appointment, promotion or termination, the Tribunal should set an amount of compensation that the Bank may elect to pay as an alternative to the rescission of the contested administrative decision or specific performance ordered. This amount might be related to the person’s salary, as these types of damages are considered



“front pay” to compensate the staff member for future losses of earnings and benefits.


Comparator tribunal statutes provide for more extensive relief than provided currently by the IDB Tribunal Statute. For example, the UN Tribunal statute allows both the rescission of a management decision *and* compensation. While compensation is usually limited to two years’ salary, the UN Dispute Tribunal statute allows for an award of more in “exceptional circumstances.” The IMF Tribunal may order rescission and “all other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.” The AfDB Tribunal statute allows for “rescission of such a decision, and may order any other measures, whether involving the payment of money or otherwise, required to correct the effects of that decision.” While the statutes of the World Bank and the ADB Tribunals follow the IDB Tribunal statute’s current “either/or” approach to rescission of the management decision or damages, neither limits the damages that can be awarded.

### ***The Tribunal should be able to award costs and attorney’s fees to successful claimants***

Based on our review of comparator procedures and principles of sound jurisprudence, we recommend that the Tribunal be given the authority to require the Bank to pay costs and attorney’s fees to successful complainants in cases in which it deems them appropriate. The Tribunals of the World Bank, IMF, ADB, and UN all have this authority. Each of the current judges we interviewed agreed that they should have this power.

We recommend the Tribunal Statute include language such as this paragraph from the ADB Tribunal statute:

“If the Tribunal concludes that an application is well-founded in whole or in part, it may order that the reasonable costs incurred by the applicant in the case, including the cost of applicant’s counsel, be totally or partially borne by the Bank, taking into account the nature and complexity of the case, the nature and quality of the work performed, and the amount of the fees in relation to prevailing rates.” (Art. X(2)).



### ***Tribunal should be able to award costs to the Bank in cases of abuse***

At the same time that a remedy for legal costs and fees should be available to successful complainants, the Tribunal should be given the power to redress costs incurred by the Bank in cases in which a Complainant brings a frivolous case with the purpose of harassing the Bank, rather than in good faith. While we would expect such an authority to be used only very rarely, as one does not want to chill employees from bringing cases in good faith, we recommend that the Tribunal be given the authority to act in a frivolous case.

The language we suggest below is based on that found in the statutes of the IMF and ADB Tribunals:

“The Tribunal may order that reasonable compensation be made by the applicant to the Bank for all or part of the cost of defending the case, if it finds that:

- The application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification, or reversal of existing law; or
- The applicant intended to harass the Bank or any of its officers or employees.


The amount awarded may be collected by way of deductions from payments owed by the Bank to the applicant or otherwise, as determined by the President of the Bank. The Bank would not be able to deduct pension payments.

### ***Judges should serve for one 6-year nonrenewable term***

The Tribunal achieves its independence through the selection of qualified judges and other procedures designed to allow them to do their job capably and at arm's length from the operations of the Bank. The issue of conflict of interest, or at the least, the appearance of a conflict of interest, may arise, if the Bank (which is also the Respondent in cases) is at liberty to extend a judge's appointment for any period of time.

To this end, we would recommend one nonrenewable term of 6 years, instead of two three-year terms. In practice, most judges are renewed for a second three-year term, effectively serving for six years. In addition, going to one single six-year term would relieve Management, the Staff Association, and the Board of Executive Directors of the time and attention required of the current renewal process.

Comparator tribunals are split on this issue, although more often than not, renewal of a term once or twice is allowed. For instance, judges on the World Bank Tribunal serve for one five-year term with one renewal possible. IMF judges serve for four-year terms that may be renewed twice. ADB judges serve for three-year terms, which may be renewed twice.



However, in both the UN Dispute and Appellate Tribunals, judges sit for one fixed 7-year term.

More important, though, is that the use of single term is a straightforward method of insuring that the judges are not subject even to the appearance of a conflict of interest with the Bank. This is an issue that goes directly to the independence of the judges and on that ground, we recommend making this change.

***Time constraints regarding future employment with the Bank should be lengthened***


Currently, Tribunal judges cannot work for the Bank for two years after their appointment ends. The Staff Association has indicated that it believes this presents a potential conflict of interest, in that a judge's neutrality may be swayed by the possibility that he or she may one day want to get a job with the IDB. The Staff Association says that judges should never be allowed to work for the IDB. The statutes of the World Bank, IMF, and ADB Tribunals follow this approach. Other tribunal statutes, including those of the UN and AfDB impose a five-year ban on future employment, after which former judges would be allowed to work as a staff member.

In our interviews with the current judges, there appeared to be little interest in any of the judges going on to apply for employment with the IDB after their term as judge has expired. A complete ban on future employment would eliminate any potential for the appearance of a conflict of interest. However, the five-year limitation also seems reasonable. We recommend that the Tribunal statute be amended to allow for at least a five-year ban on future employment.

***An independent Judicial Appointment Committee should be created.***

Under the current system, judges are appointed by the Board of Executive Directors from lists presented to it by the President of the Bank. At the origination of the Tribunal, the Staff Association drew up a list of six candidates, and the Board of Directors used that list to appoint three of the judges. At the same time, the President drew up a list of eight candidates, and the Board appointed four judges from the President's list. Since that time, the Staff Association continues to provide a list of three candidates to the Board to replace each of the three judges originally selected through the Staff Association list, and, likewise, the President submits a list of three for each of the other four Tribunal positions.

This system has been the subject of dissatisfaction during interviews we have conducted with Management, Executive Directors, and Staff Association representatives. Executive Directors have pointed out that they are not experienced in the selection of judges, and that



they find it difficult to assess the relative merits of the three individuals presented to them for each selection. Management has cited the time it takes to interview potential candidates, and has found that putting forth three individuals when only one can be selected is inefficient.

The Staff Association has called attention to the issue that, at all times, a minority of judges sitting on the Tribunal come from Staff Association lists. It has raised the issue of conflict of interest and potential bias in the outcomes of decisions; that judges who were appointed from the President's list might favor the Bank in its decisions, leading to less than impartial justice. Our review of actual decisions and our interviews with judges does not indicate that this is occurring. Currently, many judges did not appear to know from which list they were recommended. Additionally, each judge assured us that he or she believed the Tribunal currently operated in a manner of collegiality and independence, deciding cases on the merits, and not for political means. Our review of decisions over the past five years has borne out this view in that many of the decisions are unanimous. That said, some judges did indicate that in years past there were judges who seemed to almost always favor Management or the Staff Member.

Due to the fact that the current selection process is disfavored by all of the current stakeholders, and in keeping with the desire to strengthen the independence, including the perceived independence of the Tribunal, we recommend the Bank create a Judicial Appointment Committee to select judicial candidates. The Committee would be composed of one appointee from Management and one appointee from the Staff Association, and chaired by an external jurist, who would be agreed upon by the two Bank appointees. The external jurist would have experience in employment law or international civil service law. The Committee would select two to three potential candidates for each opening on the Tribunal, and rank them, explaining to the Board of Directors the reasons for the ranking.

So created, the Committee would then be the place for both compromise and independence to occur. The representatives of the Staff Association and Management would have to work together, with the help of the external jurist, to identify individuals qualified to be a Tribunal judge. Appearances of conflict of interest dependent on the origination of each Member's selection would fall away. The mix of internal and external individuals on the panel recognizes the importance both of Bank culture and outside expertise. The ranked list, assembled by an experienced Chair, would provide assistance to the Board as they decide whom to appoint.

This Committee is patterned on a process now used to appoint judges at the UN. In its overhaul of its internal justice system in 2009, the UN created an Internal Justice Council, one of whose tasks is to recommend possible judges to the General Assembly. The Council is made up of one staff representative, one management representative, and two distinguished external jurists, one nominated by the staff and one nominated by management. The four together select another distinguished external jurist to be the chair. This five-member panel researches, interviews and presents two to three possible candidates for each open chair on the UN Dispute and Appellate Tribunals.



### ***No term limit should be imposed on the Executive Secretary position***

We have been asked to examine the issue of whether or not the Executive Secretary of the Tribunal should be subject to a term limit. We do not recommend the adoption of a term limit. A review of comparator tribunal statutes and rules does not reveal that other Tribunals utilize term limits for the equivalent positions within their Secretariats. In fact, there is much value to be gained by having an individual remain in the position for a significant length of time. Such an individual helps carry forward the institutional history of the Tribunal. This is especially true of a judicial institution in which the judges themselves are part-time and under strict term limits.

While the Staff Association has requested that we consider the issue of term limits for the Executive Secretary position, we note that Professor Sicault, who the Staff Association hired to prepare a report analyzing the Bank's internal justice system, recommended that no term limit be imposed.

We note that the judges with whom we spoke unanimously praised the current Executive Secretary's professionalism and his knowledge of previous Tribunal cases.

Going forward, to eliminate any appearance that future Executive Secretaries of the Tribunal could be aligned with the Bank, the Judicial Appointment Committee we describe above for the appointment of judges could also oversee the hiring of future Executive Secretaries.





# The Grievance Process

As detailed below, we recommend eliminating the Conciliation Committee, reinforcing the current administrative review process, adding a mandatory mediation step to matters that appear on their way to the Tribunal, and encouraging informal dispute resolution throughout. This process, in alignment with our recommendations to strengthen the Tribunal, is intended to facilitate informal resolution where it is possible, and improve Management accountability and employee access to independent judicial review in instances where employees and Management do not see eye-to-eye.

## *The Current Process*

Staff Rule PE-326 provides for a formal administrative process to be followed by employees who disagree with a decision affecting their employment and are looking for redress. Specifically covered is “any alleged non-observance of the contract of employment, the terms and conditions of appointment, the Bank’s Administrative and Personnel Policies, or, in general, any claim related to a decision taken by the Administration which directly affects the individual employee.” This system does not pertain to disciplinary decisions, nor does it involve matters such as pension cases or worker’s compensation.

### *Step One – Line Supervisor*

The policy first requires the employee with a grievance to raise the matter with his or her direct supervisor, or, depending on the circumstances, the supervisor’s supervisor.<sup>2</sup> If the matter is not resolved within ten working days, the employee may proceed to the second step.

### *Step Two – Human Resources Manager*

The employee may present the matter to the Human Resources Manager (“HRM”), who heads the Human Resources Department (“HRD”). Under the policy, the HRM has 20 days to respond. If, at the end of this time period, the grievance remains, the employee may bring the matter to the Conciliation Committee.

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<sup>2</sup> Employees in Country Offices may first present matters to the Representative, unless the Representative is involved in the underlying action; in which case employees may present their grievance directly the Human Resources Manager. Staff benefit rules may be brought directly to the Human Resources Manager, without first being presented to a supervisor.





### ***Step Three – Conciliation Committee***

The Conciliation Committee serves the role of peer review of the employee grievance. This volunteer committee of three staff members (one recommended by HRD, one by the Staff Association, and a retiree) analyzes the case and makes a recommendation back to Management, which is free to accept or ignore the recommendation. Only once this process has been completed, which takes on average four to five months, may the employee bring the matter to the Administrative Tribunal where he or she can receive a binding decision.


### ***The Current Process Lacks Efficiency and Clarity of Purpose***

Almost everyone with whom we spoke—members of Management, the Staff Association, and even members of the Conciliation Committee—agreed that the Conciliation Committee was often ineffective in resolving disputes. While the stated purpose of the Committee is to bring about conciliatory agreements in appropriate cases, in practice it functions as a quasi-litigation body. An employee seeking Committee review must file a claim in writing, and the administration is provided time to respond, also in writing. The Committee is empowered to collect written documents and hold hearings. Upon conclusion of the collection of evidence, the Committee presents a written preliminary recommendation to the parties, and meets with them to attempt a resolution. If attempts at conciliation fail, the Committee prepares a final report, including recommendations for resolution, and provides it to the HRD and the employee. The Committee cannot institute its recommendations. Even if the Committee sides with the employee, Management may not agree with the Committee's recommendation, and the employee's only remedy is to continue to the Tribunal.

While the Committee has been created with an express goal of finding mutual agreement between staff and Management, its functioning as a fact-finding and evaluative body may serve to further concretize the positions of the individuals involved in the process, each arguing for their side of the case. At the same time, the Committee lacks the types of authority needed to operate as a truly adjudicative body. The Committee is made up of staff members who do not necessarily have experience or expertise in collecting or evaluating evidence, making credibility assessments, or in settlement negotiation or conciliation. Evidentiary powers are limited and collection of evidence takes time, and many see the Committee process as moving too slowly to adequately address the needs of the employees utilizing the system.

### ***Proposed new system, including elimination of the Conciliation Committee***

We recommend eliminating the Conciliation Committee and replacing it with a system of management review and mandatory mediation before a professional mediator.



The administrative review process by supervisors and the HRM would continue as described in Staff Rule PE-326. Once the 20 day period for resolution with the HRM runs out, the staff member would have 30 days to file a “Notice of Grievance” with the Office of the Vice President of Finance and Administration (“VPF”) signifying the staff member’s continued dissatisfaction with the situation and an intent to file a case with the Administrative Tribunal if no resolution can be reached.

The VPF would then have 30 days to review and attempt to resolve the grievance before the individual could proceed to the Tribunal. This 30-day period would constitute a “cooling off period,” to allow the employee to consider whether filing with the Tribunal would necessarily be the best way to resolve the dispute. It would also give Management an opportunity to reconsider the matter and examine any possible solution to the conflict. Filing with the Tribunal necessarily involves more time and expense for both the individual and the Bank. The VPF oversees both Human Resources and the Legal Department, two parties the Bank would want to involve in matters presenting the possibility of Tribunal action. It would also put conflicts in front of the Bank at the Vice President level so that senior management would have the opportunity of identifying issues of a systemic manner.

In order to encourage settlement at this stage, we recommend that mandatory mediation occur during the 30-day period. An initial session would be required involving the grievant and a Management representative; mediation would continue past this initial session only if both parties were amenable to continuing.<sup>3</sup> The mediator would work with the participants to assist them in determining whether any common ground could be found. Any agreement would be binding.

One issue we have had to consider is what length of time to recommend for this new step in the grievance system. Given that the HRM has already had 20 days in which to consider the issue, the 30-day period appears reasonable. Mediation simply means that the VPF, or likely his designee, needs to sit down with the employee and a mediator and see if a negotiated solution can be reached. If it is clear that no negotiated solution can be reached, the employee should not have to wait for more than the 30-day period to file his case with the Tribunal. Of course, if the employee believes that negotiations are proceeding well, he or she may always choose to delay filing the case with the Tribunal.

A short list of available mediators could be developed through the Office of the Ombudsperson, in consultation with the Staff Association and with approval by the President. In the alternative, the proposed Judicial Appointment Committee could be tasked with creating a short list of available external mediators.

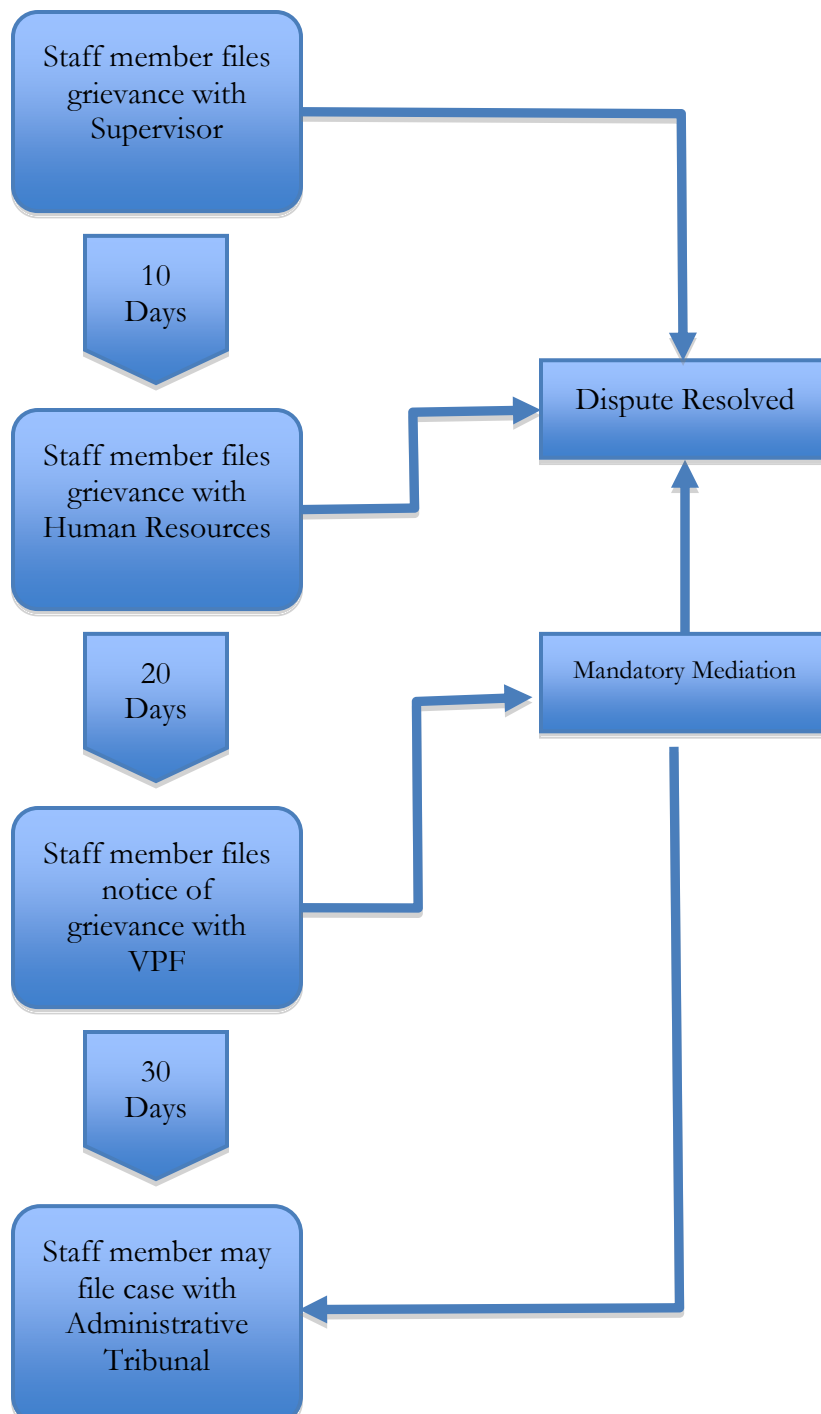
Bank employees are unlikely to miss, or even notice the elimination of, the Conciliation Committee. In our focus groups with more than 150 employees, the Conciliation

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<sup>3</sup> There may be some instances in which an informal process such as mediation is not found to be appropriate. An experienced mediator regularly screens each matter for these situations and he or she should be empowered through rules or procedures with the authority to reject a particular mediation for good cause.

Committee was almost completely unknown. The only persons who expressed any knowledge of the Committee could not describe what it actually did.

### *Proposed New System Flow Chart*





## ***Benefits of the Proposed System***

The proposed system allows for a break from the past. The Conciliation Committee is similar to the peer review systems that many multilateral organizations have used for decades. But it is not working for IDB at this time.

In July 2009, the United Nations abandoned the use of peer review committees in the grievance process and instead instituted a system of management review. Our proposed system is modeled in part on the new UN system. At the UN, a newly created Management Evaluation Team must review the matter within 30 days for staff in headquarters and 45 days for those in field offices. If the matter is not resolved through this review, the employee may file with the UN Dispute Tribunal. At any point in the grievance process, the Office of the Ombudsman and Mediation Services is available to the grievant.


The combination of an emphasis on informal systems with a strengthened Tribunal empowers employees to work directly with supervisors and Management in order to resolve disputes more quickly and on a lower level within the Bank hierarchy. Requiring Management to stand squarely behind personnel decisions without relying on peer committees provides clarity and allows justice to flow through the Tribunal, where experienced judges will decide whether an individual's rights have been violated.

The current grievance system does not engage Management in the way the proposed system would. Management does not have a large incentive to pay attention to these matters until the four to five month Conciliation Committee process is complete and it receives the Committee's recommendations. Under the proposed system, grievances will quickly move directly from the HRD to the VPF. An experienced neutral will engage the parties and seek to find resolution. With the only other alternative being an action in front of the Tribunal, both Management and the staff member have a strong incentive to look for common ground.

If informal resolution is not an option, neither the staff member nor Management spends considerable resources in the Conciliation process. Instead, the staff member will be able to go directly to the Tribunal, after the 30-day period, where the matter will be considered by independent judges who can issue binding decisions on the Bank. Also, assuming our proposals are adopted and do result in the Tribunal deciding cases in six months on average instead of eighteen months, the staff member can get a relatively quick decision.

The Bank will incur some costs in the instances when it hires an external mediator. However, this cost will likely be a few thousand dollars per case. In contrast, the Conciliation Committee has its own costs. The resources now used to maintain the Conciliation Committee mechanism would no longer be needed. Time spent by staff members on Committee activities could be turned back to other work.

In addition to the time and money savings, the use of a professional mediator may prevent claims from going to the Tribunal. Some of the Tribunal Judges who we interviewed noted



that some of the cases brought before it in recent years might have settled if professional mediation had been used.

Mediation is informal and participant-oriented; the mediator hears each party's concerns and helps them identify issues and focus on possible solutions. Ultimately, participants retain control over their participation in the process and any outcome that results. Mediation sessions are completely confidential, creating no record that could be used in the Tribunal.

Mediation is not an evidentiary-based system, so it does not require the accumulation of a full record, as formal dispute resolution systems do. Mediation generally occurs over the course of days to weeks, rather than months to years. Rules of evidence do not apply, so anything the parties believe is relevant may be explored with the mediator. This allows for a broader airing of grievances and can also make room for creative solutions, perhaps even solutions typically unavailable through an adversarial system. Solutions decided upon by the parties themselves generally lead to greater acceptance of the result.


Often, participants in mediation come away with improved or repaired relationships, even when they are unable to reach a mediated settlement. In a working environment, this may help employees in conflict find ways toward cooperation and respect of different opinions, creating a healthier and more productive workplace not only for the parties to the dispute, but for coworkers and the institution overall. Mediation is remarkably effective in resolving workplace matters. The UN Ombudsman and Mediation Services website states that, "Organizations that use mediation achieve settlement rates of over 70% and participants give satisfaction ratings of over 85% even if settlement is not achieved."

### ***Not required to mediate misconduct cases***

We do not recommend that mandatory mediation be required for misconduct cases. Management should not have to attend a mediation session with an employee accused of misconduct before imposing discipline. The employee should be able to appeal his or her discipline directly to the Tribunal, as is currently the case now. Of course, while we would not require mediation in misconduct cases, in some cases it may be helpful in allowing the parties to avoid litigation. The Bank and employee can always mutually agree to engage in mediation and the Tribunal should have the power to order the parties to mediate under circumstances it deems appropriate.

### ***Reasons for rejecting the Peer Review Concept***

We reviewed the current peer review systems in place at other multilateral organizations. After looking at this matter closely, and considering the needs of IDB, we decided against recommending maintaining some type of peer review committee.




The IDB Administrative Tribunal already has established its role as a fact-finding adjudicatory body. A peer review or grievance committee's decisions would still be merely recommendations for Management, and not binding decisions. If the Bank does not agree with the peer review committee's findings, it can simply ignore them. In those cases, the employee and the Bank will then have to re-litigate the case before the Tribunal. This is an unnecessary burden to place on both employees and the Bank. We fail to see the efficacy of creating such a structure directly below the Tribunal, which would still be tasked with making a final decision binding on the Bank.

### ***Whistleblowing cases and the grievance system***

One of the questions raised during this project is how whistleblower retaliation cases should fit into the current Bank procedures. When an employee believes an adverse employment decision has been taken because of his or her involvement in either reporting misconduct or participating in an investigation, that matter needs to come before both the Ethics Office and The Human Resources Department. The Ethics Office has the responsibility to look into the alleged retaliation, in order to determine if misconduct has occurred. The HRD is the proper office to consider the matter of the grievance. The two offices should work together to determine if the grievance could be considered before the investigation of alleged misconduct is completed.

Prompt attention to the grievance is ideal. However, the Staff Rule should allow for tolling of time periods for the grievance matter when Management decides to complete a related investigation of misconduct prior to making a final decision on the grievance. At the same time, protection of the whistleblower from the possible effects of the reprisal and against further reprisal must gain the immediate attention of Human Resources and, if needed the VPF.



## ***Provide for the possibility of a second 5-year term of the Ombudsperson***

The Bank's Office of the Ombudsperson is the home of informal mechanisms for dispute resolution. Staff Rule 323-1 states, "The Ombudsperson position is part of the Bank's informal grievance procedure whereby an impartial and independent official may, through informal means, inquire into and seek to resolve, through conciliation, mediation or any other appropriate means, any complaint by an employee alleging mistreatment and/or non-observance of his/her terms and conditions of employment with IDB. The purpose of such a procedure is to promote good practices in personnel management, greater organizational and operational efficiency and, in general, foster a harmonious and productive work environment."

From all indications, the Office of the Ombudsperson appears to be widely recognized and accepted as an integral part of the Bank's internal justice system. Staff survey results and focus groups have found a high degree of awareness and trust in the office by staff.

In each of the preceding three years, the Office of the Ombudsperson has cited in its Annual Report a substantial increase in "visitors" and issues addressed. Nearly two-thirds of all visitors have come to the Ombudsperson about "Supervisory Relationships" or "Career Progression." The Ombudsperson has described the work of her office as involving primarily coaching – confidential conversations with the visitor not involving the other party. By far the next most common action taken by the Ombudsperson is Separate Meetings (37% in 2009), with 8% of cases referred to other offices, 7% cases resulting in "upward feedback," for issues affecting a group of employees more generally, and 4% in "facilitated discussion," which appears to be similar to mediation, with the Ombudsperson playing an active, although "impartial, objective" role.

Currently, the Ombudsperson serves one non-renewable five-year term. We recommend that the term of service be extended to allow for the possibility of a second five-year term. While we are cognizant of the argument that a one-term appointment increases the appearance of independence of the office, we believe that, in the case of IDB, having the possibility of providing a second term would be beneficial. This office is working well at a time when there has been much change in other conflict resolution offices of the Bank, and when this report recommends still more changes. In addition, comparator handling of this issue is mixed. One comparator organization appoints the Ombudsperson for an initial term of two-years, with a possible renewal for an additional three years. Two other comparator organizations provide for one five-year term, which may be renewed once for an additional five years.





# Ethics Officer Reporting Structure

## *Ethics Officer Should Report to the President*

Currently, the Ethics Officer reports to the Vice-President of Finance and Administration (“VPF”). We recommend that the IDB’s Ethics Office should instead appear on the IDB’s Organization Chart as an executive office reporting directly to the President. Consistent with best practices in the corporate world, the Ethics Officer in comparator organizations such as the World Bank, IMF, and UN all report to the head of their respective organizations.

There are several reasons why the Ethics Officer should report to the President. First, if an employee is considering reporting unethical conduct, the employee wants to know that the Ethics Officer has sufficient power within the organization to ensure that the matter is investigated and resolved properly. This is especially true when allegations are made against high-ranking officials within the Bank.


Second, given the sensitive nature of the Ethics Office’s work, particularly around investigations, it is critical that the Ethics Office’s power is seen and understood as an extension of the President’s duties. Some employees who are accused of misconduct will challenge the competence of the Ethics Officer in the investigation. Elevating the Ethics Office within the organizational hierarchy both increases the level of responsibility the Ethics Officer must uphold in the undertaking of the duties of the Office and helps buffer the Office from unsubstantiated criticisms or attacks.

Third, if the Ethics Officer believes that the Bank is not fulfilling its obligation to promote ethical conduct or deal appropriately with misconduct, he or she must have the ability to go to the President with his or her concerns. The President has indicated that he plans on meeting periodically with the Ethics Officer. During those meetings, the Ethics Officer can bring any concerns he or she has to the attention of the President.

Going forward, the Ethics Officer should receive an annual performance evaluation. The annual performance evaluation process should help the President ensure that the Ethics Office is running smoothly and handling investigations, consultations and its other duties properly.

If the Ethics Office is functioning effectively, oversight of the office should not be a tremendous drain on the President’s time. Oversight of investigations and misconduct cases are the most time-consuming element of Management’s involvement in oversight of the Ethics Office. The President, though, is not personally going to be involved in reviewing each investigation of alleged unethical conduct. Instead, review of those matters can properly remain delegated to the VPF, who oversees the Legal and HRD Departments. The President, however, is ultimately accountable for ensuring that alleged employee misconduct





is investigated properly, that appropriate corrective action is taken where necessary, and that whistleblowers are protected from retaliation.


### ***Reporting to the Board***

The Ethics Officer should report to the President *and* the Board of Directors. This is consistent with best practice in the corporate and non-profit world where the Board of Directors, or an appropriate Board committee, is not just allowed but expected to play an active role in oversight of a company's ethics and compliance program.

There are several reasons why Board oversight over the Bank's ethics program at some level is prudent. First, if the Ethics Officer believes that high-ranking Management officials are engaged in misconduct or that Management is not taking seriously its responsibilities for maintaining an effective ethics and compliance program, he or she should have the ability to express his or her concerns to the Board. Second, in some cases, the allegations of ethical misconduct overlap with substantive and reputational interests of the Bank. For example, certain high-priority cases such as an allegation against the President or other senior managing official, an allegation of systemic fraud, corruption or other misconduct, or an allegation of reprisal against a whistleblower may well affect the reputation of the Bank. Such allegations, whether true or not, may bring inquiries from the press, NGOs, or member countries themselves. Given the Board's oversight role, the Board should be given some assurances that Management is handling these cases appropriately, and that it will be informed of them in some reasonable way.

There is increasing global awareness of the importance of proper Board oversight. For instance, the Organization for Economic Co-operation and Development ("OECD") in 2009 published its "Good Practice Guidance on Internal Controls, Ethics, and Compliance." The Guidance, which was adopted as part of its *Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions* highlights the monitoring role of the Board. The Guidance states that companies should consider providing oversight of ethics and compliance programs to one or more senior corporate officers, which in the Bank's case would be the Ethics Officer. The Guidance says that this person or person should "have the authority to report matters directly to independent monitoring bodies such as internal audit committees of boards of directors or of supervisory boards."

In the United States, the Federal Sentencing Guidelines pertaining to organizational crime provide boards a strong incentive to actively oversee the organizations' ethics and compliance programs. Specifically, an organization may be entitled to leniency where a crime was committed even by high-level management where there is a "direct reporting obligation" between the board and the individual who has day-to-day responsibility for overseeing the organization's compliance and ethics program. Indeed, when the U.S. Department of Justice has entered into deferred prosecution agreements in recent years,



many of these settlement agreements require direct reporting by the Ethics Officer to the board of directors.


While there are some differences in the role and functions of the IDB Board from a corporate board, we believe that the IDB Board should have some role in oversight of the ethics program. While the Charter states that the President is the principal executive officer and that he oversees the ordinary business of the Bank, he discharges those functions “under the direction of the Board of Executive Directors.”

### ***Ethics Officer Should Report to a Confidential Board Committee***

In our review of Bank policies and practices, we have found that there is not an existing framework within which Management and the Board can appropriately share confidential details of Ethics Office investigations. We recommend that the Board appoint oversight responsibility of the Ethics Office to a small committee of Board members. In the corporate world, it is typical for a Board committee to have primary responsibility for overseeing the work of the Ethics Office. At the Bank, this responsibility could be assigned to an existing committee. However, because of the sensitive nature of the Ethics Officer’s work, particularly around investigations, the committee should be confidential such that discussions of sensitive matters are not open to the Board at large. We understand that current Board committees are typically not confidential such that any Board member may attend committee meetings. We therefore recommend creation of a confidential Ethics Oversight Committee.

The Ethics Oversight Committee could be tasked with the following responsibilities:

- Review the performance evaluation of the Ethics Officer and evaluations on the Ethics Office from the Auditor General
- Review all annual and quarterly reports developed by the Ethics Office
- Review Ethics Office success in providing training, outreach, consultations, and other preventative measures
- Be a resource for the Ethics Officer if he or she believes that Management is not taking seriously its responsibilities for maintaining an ethics and compliance program
- Receive summary information on the disposal of allegations of misconduct, including
  - how many allegations of misconduct have been received
  - types of misconduct alleged
  - disposition of all allegations received, based on category of disposition, i.e., transfers to another department; investigations opened, etc.
  - the number of allegations that resulted in an investigation
  - the number of investigations that resulted in a finding of misconduct
  - the number of investigations that resulted in disciplinary action against the employee

- 
- the length of time required to complete each investigation
  - for ongoing investigations, how long they have been in progress
  - Be informed as soon as practical of the existence of certain high priority allegations, including:
    - an allegation against the President, other senior managing officials, the Ethics Officer, or Chief of OII
    - an allegation of systemic fraud or corruption
    - an allegation of reprisal against a whistleblower
    - any other case which by its nature may cause significant harm to the reputation of the Bank

The Ethics Oversight Committee should not be involved in the adjudication of individual cases. In a particular case, they should not second-guess Management's decision that misconduct has occurred or that discipline should be imposed on a particular case. The review of individual cases should typically be limited to high priority cases described above. And the review should usually be limited to determining if Management is following procedures to investigate and properly respond to the allegations, and for the Committee to decide if any other Board Members, or the Board as a whole, need to be alerted to an ongoing issue that might impact the Bank.

The Committee should put in place rules addressing:

- The duty not to disclose confidential information shared with the Committee with those outside the Committee, including other Board members, except in appropriate circumstances
- Procedures for investigation and sanctioning of Board members who violate committee protocols
- Recusal of committee members when conflicts of interest arise, such as when a member has a personal relationship with an involved party that might impact his or her judgment. If the Board member does not recuse himself or herself, the other Board members should be given the authority to vote to recuse him or her for that issue.

Board rules or policies also should be changed to reflect the role of the Committee in providing a bridge between the Board and Management regarding investigation and disciplinary matters. Thus, if a staff member were to complain to a Board member who is not on the Committee about the staff member's treatment in the investigative process, or reports suspected wrongdoing or retaliation to a Board Member, Board policies would refer that member to the Board Ethics Oversight Committee and he or she would have no reason to contact Management directly.



## The Ethics Committee Should Not Be Involved in Misconduct Investigations

Currently, the Ethics Officer conducts or oversees investigations of alleged violations of the Code of Conduct. Once the investigation is complete, the Ethics Committee, which is composed of five staff members, reviews the results of the investigation and determines if misconduct has occurred. If so, the Committee recommends remedial actions and/or disciplinary sanctions to the VPF. The VPF is free to accept or reject the Committee's recommendations.

We recommend eliminating the Ethics Committee's involvement in misconduct investigations. First, the investigation of employee misconduct and the imposition of discipline are core management functions. Management should not delegate the responsibility for those functions to staff members who are not part of senior management.


Second, while the members of the Ethics Committee are highly respected staff members, there is no indication that they have any experience or expertise in overseeing investigations, determining if misconduct has occurred, or making appropriate recommendations for discipline.

Third, some employees may be dissuaded from filing a complaint of certain types of misconduct—sexual harassment, for example—knowing that the details of their cases would be shared with five other employees who are not in senior management.

Finally, the Ethics Committee ultimately only makes a recommendation to the VPF, who need not follow them. Indeed, Management's decisions on discipline have on several occasions differed from Committee recommendations. This fact calls into question the utility and effectiveness of the Committee, and its actual importance in the overall process.

Instead of looking for guidance to a peer review committee, the VPF should appropriately consult with the Legal Department, the HRD, and other appropriate officials in the Bank in making complicated determinations about whether misconduct has occurred and what level of discipline should be imposed.

We note that many of the comparator organizations have already moved away from peer involvement in misconduct investigations.



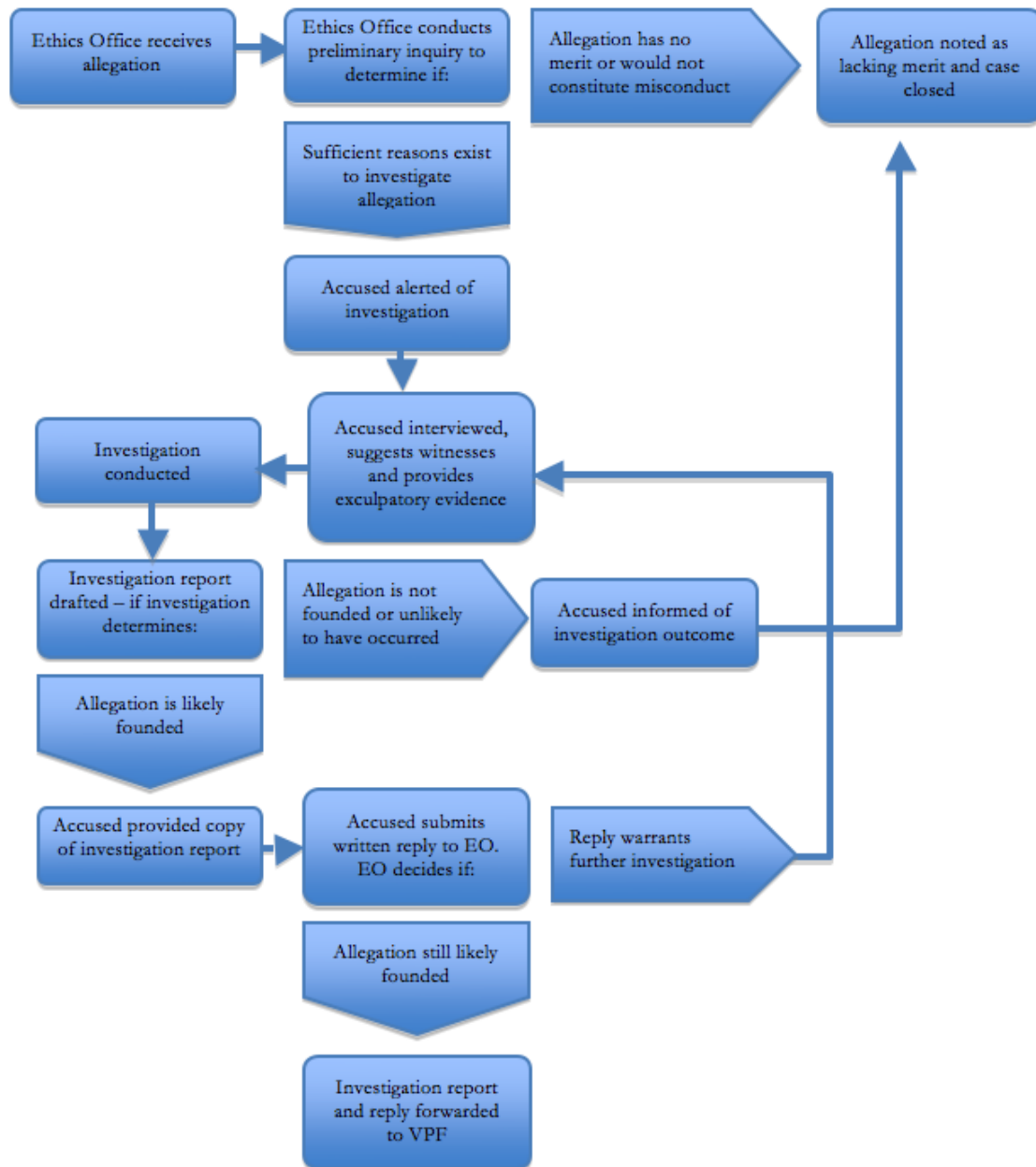
### ***Proposed new process***

Under the proposed new system, after an investigation is completed, the Ethics Officer will have the responsibility to decide whether it is more likely than not that the alleged misconduct occurred. If so, at this point the Ethics Officer will share the written report with the accused, who, as in the current Procedures, will be given not less than five days to respond. The Ethics Office will then consider the employee's comments, if any, make any changes to the report based on the employee's comments, and forward both to the VPF.

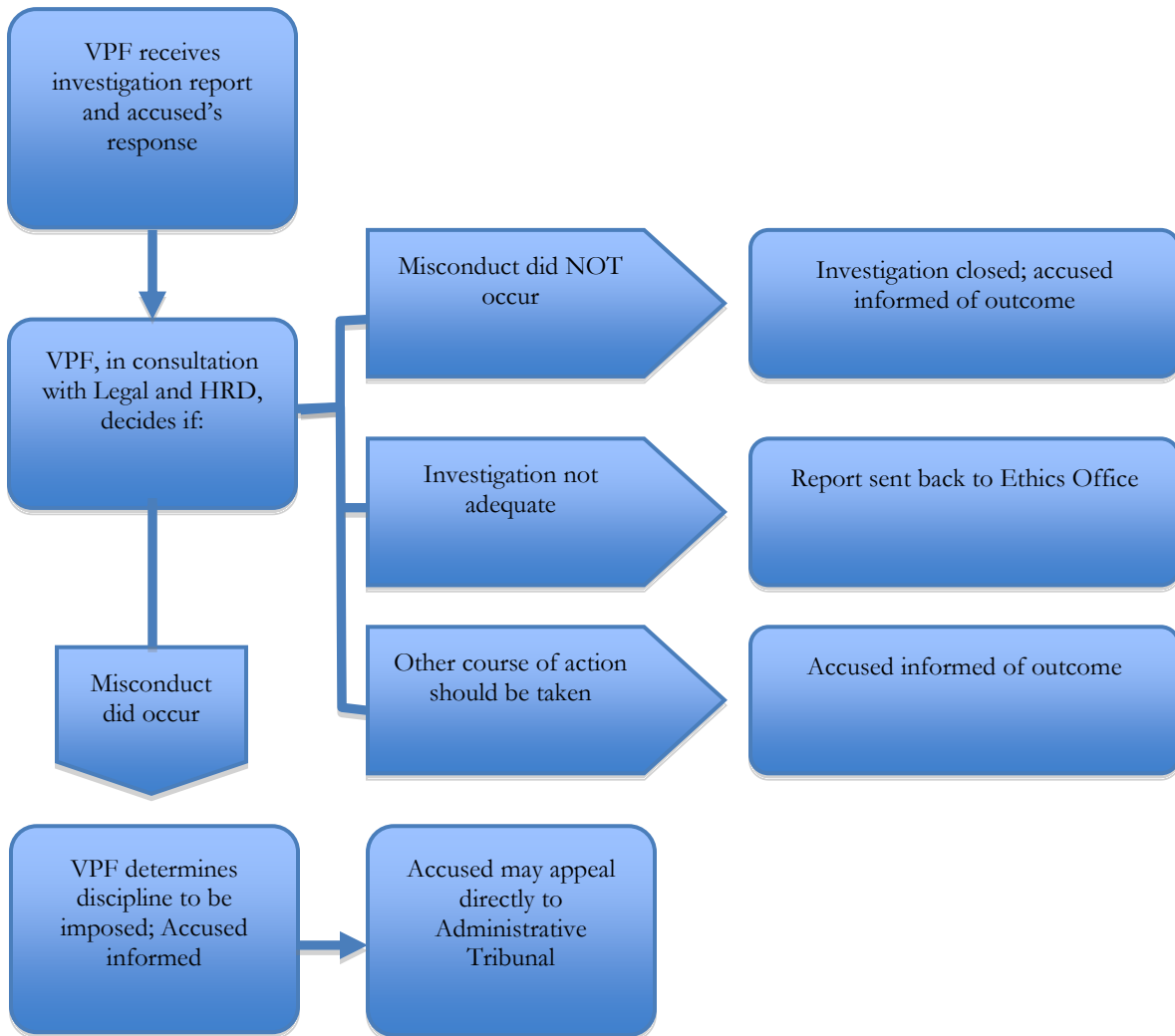
The VPF, under the same deadline as provided for in the current Procedures, would, in ten business days, decide whether misconduct had occurred and impose discipline. The VPF also would have the power to return the file to the Ethics Office if further investigation was needed, or to otherwise determine the course of action to be taken on the matter. It would be the Office of the VPF, rather than the Ethics Office, that would notify the accused of the decision reached by the VPF, unless the file was returned to the Ethics Office.


A visual flowchart of the process is provided on the next page:

## Investigation Process Overview



## Disciplinary Process Overview





## Investigation Procedures, Rights, and Responsibilities

We were asked to address each of the questions below that relate to investigation procedures and staff members' rights and responsibilities during the investigative process. For some issues, our recommendations simply affirm the current policy or practice, and for others our recommendations would require a change in policies or practices.

### ***Supervisors should have a duty to report misconduct***

Section IV of the Code of Ethics and Professional Conduct states, "Any suspected act of fraud or corruption involving Bank-financed activities or Bank employee must be reported immediately to the Office of Institutional Integrity." For other "suspected Misconduct, which includes violations of this Code," the Bank "urges" but does not require employees to report the misconduct.


Supervisors and managers, because of their leadership positions and because they could be considered "agents" of the Bank, should be required to promptly report any misconduct of which they become aware to the Ethics Officer, not just allegations of fraud or corruption. This would mean that if an employee reports suspected misconduct to any supervisor, even one outside the employee's direct supervisory line, the supervisor must report the concern to the Ethics Office immediately. Supervisors must also report to the Ethics Office any suspected misconduct that they observe or of which they otherwise become aware.

Requiring supervisors to report misconduct is in line with the reporting responsibilities of supervisors and managers at comparator organizations. The World Bank whistleblower policy mandates that any manager who suspects or receives a report of misconduct is required to report it to the proper officials. Other comparators have gone even further, placing a duty to report on all employees. For example, the UN policy creates a "duty of staff members to report any breach of the Organization's regulations and rules," and the AfDB policy states that all "Bank Personnel are required to disclose acts related to Fraud, Corruption, or any other Misconduct that come to their attention."

### ***Clarify role of Staff Association in receiving misconduct reports***

While staff members have the right to discuss concerns with the Staff Association, they should be informed that reporting concerns to the Staff Association is not a report to the Bank. That is, the Staff Association does not have a duty to forward the report to the Ethics Office or other appropriate officials, such that an investigation will not necessarily begin.





At the same time, staff members need to understand that their communications with Staff Association officials are not necessarily confidential. Thus, if an investigator needs to interview a Staff Association official, the Staff Association official has a duty to cooperate in the same way any Bank staff member would. Indeed, as discussed below, the only Bank official who can promise absolute confidentiality is the Ombudsperson.

Finally, if the matter involves fraud or corruption, the Staff Association official, like any other Bank employee has to report the matter to the Ethics Office, even if the staff member does not want it reported. All employees are required to report allegations of fraud and corruption of which they become aware.


***Staff discussions with the Ombudsperson are kept confidential and no reporting is taken without the person's consent***

The Office of the Ombudsperson is subject to strict standards of confidentiality. As such, the Ombudsperson is exempt from the requirement to pass on reports of suspected misconduct by staff members unless the staff members themselves agree to the disclosing of information. From our interviews with the Ombudsperson and other related offices, it appears that this practice is currently being followed. The Ombudsperson can play a valuable role for staff members who are considering reporting misconduct but who would like to first speak with someone confidentially. Hopefully, after their discussions with the Ombudsperson, they will gain an understanding of the process and the confidence to report.

***Anonymous reports should continue to be accepted***

Acceptance of anonymous allegations has been criticized by some as alien to the culture of many of the borrowing countries and because of concern about the possibility for abuse. We understand that there is some concern that allowing for anonymous reporting could create an opportunity where an individual may make a false report and would be protected from discipline because his or her identity remains hidden. While there is certainly a risk of a false report being made, this is something that a trained, responsible Ethics Office can deal with in the course of its normal duties. An allegation of misconduct by itself with no other evidence should not ever lead to a finding against the accused.

Allowing anonymous reporting provides the Bank with the opportunity to receive information on suspected misconduct even when the reporting individual may be afraid to be identified, most likely because of fear of reprisal. This may allow for a lower-level employee to report important information to the Bank about the activities of someone higher up in the Bank hierarchy, or about coworkers with whom they are in close contact. Many Bank personnel work under renewable contracts. There is a perception among some, whether accurate or not, that acting as a whistleblower could jeopardize their employment



with the Bank. In these situations, allowing for anonymous reporting provides individuals who have such fears an opportunity to assist the Bank in uncovering and addressing misconduct.

At the same time, the Bank may choose to convey its preference for having whistleblowers identify themselves. Comparator organizations have applied a similar approach of allowing anonymous allegations while also expressing the limitations often inherent in anonymous reporting. The World Bank policy provides:

*Anonymous Allegations.* A staff member who chooses to report on an anonymous basis must provide in a timely manner enough information concerning the basis of the allegations and sufficient detail or supporting evidence that the matter can be pursued responsibly. Otherwise, the matter usually cannot be pursued further. Even where anonymous allegations are sufficiently detailed or supported to permit a responsible investigation to be conducted, no final finding of misconduct will be made based solely on the anonymous allegations without independent corroboration.


Similar language is found in the ADB policy:

Whistleblowers are encouraged and witnesses are required to report in a manner that will facilitate effective investigation, which in general requires open or confidential, rather than anonymous, reporting. Whistleblowers who choose to report on an anonymous basis must provide in a timely manner enough information concerning the basis of the allegations and sufficient detail or supporting evidence that the matter can be pursued responsibly. Even where anonymous allegations are sufficiently detailed or supported to permit an investigation to be conducted, no final finding of misconduct will be made based solely on the anonymous allegations without independent corroboration.

The AfDB Whistleblowing and Complaints Handling Policy states:

Allegations and concerns expressed anonymously shall be considered at the discretion of the Auditor General. In the exercise of such discretion, the factors to be considered by the Auditor General shall include, without limitation, the seriousness of the allegation, its credibility, and the extent to which the allegation can be confirmed or corroborated by attributable sources.

When the Ethics Office receives an anonymous allegation, it should make an initial inquiry to determine if the allegation is credible and could be corroborated. If possible, it should move forward with its investigation. An individual who has committed wrongdoing should not escape sanction merely because the Bank initially became aware of the conduct through an anonymous source. At the same time, false allegations would be considered misconduct in and of themselves, resulting in disciplinary action, up to and including termination.



## ***Bank cannot always promise witnesses absolute confidentiality***

The Ethics Code and Procedures already has specific language with regard to the protection of confidentiality of those who report misconduct. A healthy investigative process will endeavor to protect the confidentiality of witnesses and whistleblowers as much as possible. However, employees should be aware that the Bank cannot always guarantee complete confidentiality. For example, in some cases, the Ethics Office may need to reveal the identity of a witness to allow the accused the opportunity to defend him or herself. This is especially true in cases where the determination of misconduct is based solely on witness testimony and there is no other evidence. If a person is both the whistleblower and a witness to misconduct, it may be necessary to identify the person as a witness. Although the individual would not be identified as the whistleblower, his or her connection to the matter may be revealed in the course of the investigation if he is also a witness to the misconduct.


Staff members who disclose suspicions of misconduct to supervisors, HRD, the Ethics Office, or other Bank authorities should not be guaranteed that those disclosures will be kept confidential. In some situations, the Bank has a duty to act on allegations, even if the person reporting the misconduct would rather that no action be taken. Because of these realities, protection from retaliation is crucially important.

## ***Receipt and initial evaluation of allegations***

The Ethics Office should continue to use a case management tracking system to capture the handling and resolution of every allegation that comes through the office. Allegations generally will be addressed in one of three ways: the Ethics Officer decides the allegation is under the jurisdiction of another Bank office, and transfers it; the Ethics Officer decides that, even if proven, the allegation would not constitute a violation of the Ethics Code or other misconduct, and closes it, perhaps with a referral to another Department, such as Human Resources or the Office of the Ombudsperson; or the Ethics Officer opens an initial inquiry.

With proper oversight from senior Management and the Board Ethics Oversight Committee, the Ethics Office should be able to decide on its own the initial handling of the allegations of misconduct it receives. Ensuring that a record is kept of every allegation, including timeframes and resolution, provides those who oversee the Office the ability to verify that its responsibilities are adequately undertaken. The UN Office of Internal Oversight Services Investigation Division advisory investigation manual (“OIOS Investigation Manual”) recommends “a documented system to track both the handling of incoming reports through each stage, from the initial receipt to the final disposition, and those responsible for the ultimate decision on disposition.”

In addition, in a confidential notice, the complainant should receive notification if the allegation is closed or transferred. Any communication with the complainant should be maintained in the case management system.



According to current terms of reference for the Ethics Officer position, the Ethics Officer has at his or her disposal, when needed, the offices of the President, the Executive Vice President, the VPF, including HRD and the Legal Department, and other Bank managers and supervisors. Some allegations of misconduct may in actuality be performance issues or conflicts arising from poor supervisory skills. By consulting with other appropriate Bank officials, some matters may be resolved without the need to frame the issue as a misconduct investigation.

### ***Timeframes for Investigations***


In general, investigations should be conducted within 90 days. Actual time will vary, depending, for instance, on whether the matter involves country offices and/or Headquarters, the complexity of the matter, and the number of complainants and/or witnesses. While no exact schedule should be mandated, the Office should institute case tracking milestones to ensure that each case moves on a reasonable schedule and that an explanation is offered for any delay. The Ethics Office should keep the accused and complainant apprised of the progress of the investigation.

### ***Duty to cooperate***

Current procedures establish that all employees have a duty to cooperate in good faith in an investigation. Employees cannot decline to be interviewed or fail to answer questions posed. This is a best practice standard utilized by comparator organizations. Policies at the World Bank, UN, and ADB all include a duty to cooperate. The duty to cooperate applies to everyone within the organization, including high-level Management and Staff Association officials. Failure to cooperate in an investigation can result in disciplinary action.

### ***No right to an attorney or other representative during investigative interview***

Any individual involved in an investigation should be given the right to speak to an attorney about the matter, at his or her own cost, but we do not recommend that there be provided a right to have an attorney or other representative present during the investigative interview. The Bank has the right to question its employees and need not wait for an employee to get an attorney before questioning. The internal investigation is not a criminal procedure and as such does not require such strict rights to the accused as might be found in a criminal law procedures.



## ***Ethics Office procedures for obtaining emails and other electronic data***

It is best practices for organization policies to clearly state employee rights and responsibilities with regard to organization property, including emails and other electronic data. Expectations are already set forth in the Bank internal staff rules AM-305 and AM-323: “the Bank reserves the right to have access to any of an employee’s electronic communications transmitted through the Bank’s communications facilities, and to retrieve their contents without notice for legitimate reasons, such as ... investigations of alleged wrongful acts.”


Expectations regarding organization rights to emails and other electronic data for investigative purposes should be included in the Ethics Code and Procedures as well. For instance, the ADB disciplinary policy specifically states, with regard to the employee duty to cooperate in investigations:

Staff members must cooperate with reasonable requests to search or physically inspect their person and/or work areas, including files, electronic databases, and personal property used on ADB property (including mobile phones, personal electronic devices, and electronic storage devices such as external disk drives). ADB e-mail accounts and other electronic information may be accessed by the Investigator in accordance with [other policies].

In addition to explicitly addressing employee expectations in the Procedures, we recommend that the IDB create a process for the Ethics Office to obtain approval to review employee emails or other necessary electronic data. One way of doing that would be to add the Ethics Office to the Regulations for Access to Electronic Data as an office that may have access to electronic data, including emails, according to the procedures set forth in the policy. In accordance with internal policies, misconduct investigators at other comparator organizations have access to electronic information, as needed, and through specific procedures designed to protect as much as possible the privacy of the individual and the security of Bank systems.

## ***Access to information for the accused***

The Bank should always allow for employees to present relevant evidence through Bank records such as emails and computer files. Here, the Bank must balance its information security needs with the employee’s need to be able to access information to defend him or herself. In some cases, based on the details and exigencies of the investigation, senior officials may decide that an employee will be denied access to work areas, files, computer systems, work cell phones, email, or other Bank property. Even in these cases, however, the Bank should allow employee access to information that could be important to raise a defense. For example, if the accused claims that he has emails that contain exculpatory



evidence, he should be given access to a copy of his emails and the ability to search them, even if he were not allowed access to the email account itself. We recommend that the Information Technology Department, the Ethics Officer, the Legal Department, and the VPF collaborate to create a protocol on how to handle these requests in the future.

### ***Standard of Proof is “Preponderance of the Evidence”***

Best practices for internal investigations of employee misconduct by employers of all kinds, including multilateral organizations, provide that investigators should decide whether or not the evidence presented supports the allegation by the preponderance of evidence standard. This is the standard currently used by the IDB and we recommend that it continue to remain so. The “beyond a reasonable doubt” standard is more appropriately used in criminal courts. All comparators that we reviewed also use the preponderance of evidence standard of proof for their misconduct investigations.

### ***Administrative Leave***

Current Procedures provide:

If the Ethics Officer determines, following consultation with an employee, that it is in the best interests of the Bank that s/he be relieved of his/her duties through administrative leave with pay pending the outcome of an investigation, the Ethics Officer shall make this recommendation to the Manager of the Human Resources Department. The Manager of the Human Resources Department may also, at his/her own initiative, determine that such leave is advisable.

It is not always necessary to place the accused on administrative leave during the investigation, although it may be appropriate under particular circumstances. We recommend adopting the approach set forth in the UN OIOS Investigation Manual:

- the conduct of the staff member would pose a danger to other personnel or to the Organization, or
- the staff member is unable to continue performing his or her functions effectively, or
- in view of (a) the ongoing investigation; and (b) the nature of those functions continued service by the staff member would create an unacceptable risk that he or she could destroy, conceal or otherwise tamper with evidence, or interfere in any way with the investigation

In addition, the language cited above from the IDB Code of Ethics Procedures should be modified to clarify that the Ethics Officer does not have to first consult with the employee



before making a recommendation to the HR Manager to put the person on administrative leave.

### ***Handling conflicts of interest involving employees in the Ethics Office***

Section 103 of the Ethics Code Procedures states, “If the Ethics Officer experiences a conflict of interest, s/he shall inform the Vice President for Finance and Administration who shall appoint a temporary Alternate Ethics Officer to deal with the respective matter.” In order to promote the transparency and accountability of the office, we recommend several changes to the current policy.

First, the policy should state that an investigator should disclose to the Ethics Officer in a timely fashion any actual or potential conflicts of interest he or she may have in an investigation in which he or she is participating. Notification should take place immediately, and in no event no later than one business day from the time of discovery of the conflict, or appearance of conflict. The Ethics Officer should take appropriate action to remedy the conflict, including assigning another internal or external investigator to the matter.


If the Ethics Officer determines that the Ethics Officer herself or himself has a conflict of interest, or the appearance of conflict of interest, in conducting an investigation, the Ethics Officer shall refer the matter to the President in addition to the VPF. The President’s oversight of the Ethics Office requires notification of such conflicts or appearances of such conflict. At the same time, the President’s office is free to reach out to the VPF to make decisions regarding the matter, including whether or not the hiring of external investigators is necessary.

In addition, a conflict of interest within the Ethics Office such that it is not able to conduct an investigation is of the level of importance that the Board Ethics Oversight Committee should also be notified.

### ***Referral of cases to national authorities***

If the alleged misconduct is also criminal in nature, the victim, whistleblower, or the Bank itself may refer the case to national authorities for investigation or prosecution. However, in most cases, the Bank should continue its own investigation and make its own findings and disciplinary decisions. The Bank need not wait on the results of the external investigation to conduct its own investigation and impose discipline. Regardless of the decisions made by national authorities, the Bank continues to have its own duties to prevent, investigate, and remedy misconduct, especially conduct that may be criminal in nature. Different standards of proof likely will apply to the internal investigation and an investigation conducted by outside authorities, as well as different definitions of misconduct and sanctions.





The Bank should create a protocol outlining when it is appropriate to refer matters to national authorities. As a part of the protocol, the Bank should not collaborate with law enforcement authorities without authorization from the Legal Department. No official records should be provided nor should access to officials or documents of the Bank be granted without authorization from the Legal Department.

### ***Investigation manual should be created***

The Ethics Office has now been in place for several years, and as it progresses to its next stage of growth, we recommend that it develop an investigation manual laying out the procedures and steps that must be followed by any investigator of alleged misconduct. This will assist in promoting uniformity in investigations and clarity and accountability for related professional roles. Comparators such as the UN have produced such investigation manuals. The Manual should require that all investigators be experienced in investigative techniques and trained on best practices in investigations and relevant Bank policies.





# The Whistleblower Policy

The Bank's whistleblower policy, Staff Rule PE-328, was updated on April 20, 2010, and the resulting policy goes a long way in recognizing many of the issues facing the Bank and individuals surrounding the issues of whistleblowing and retaliation. We provide the following recommended changes: (1) to further reflect the seriousness with which the Bank approaches the issue of encouraging staff to report wrongdoing; (2) to clarify language so that employees and other individuals understand both their rights and responsibilities under the policy; (3) to synchronize language in the policy with other Bank policies and procedures, particularly the Ethics Code and Procedures; and (4) to offer additional best practices in this area.

As the IDB has taken great efforts in recent years to demand clarity and accountability in its external projects, it is imperative that its internal policies and procedures keep pace. It is in the Bank's interests to create a workable whistleblower policy and to hold those who retaliate accountable because employees who do not believe that management will take their concerns seriously, and worse, may even retaliate against them for raising issues, will either ignore the wrongdoing they see, or, if they feel compelled to report, will report to organizations outside the Bank.

Moreover, the U.S. Treasury instructs its Executive Directors to multi-national banks that the policy of the United States with regard to whistleblower protections is that each institution:


implement best practices in domestic laws and international conventions against corruption for whistleblower and witness disclosures and protections against retaliation for internal and lawful public disclosures by the bank's employees and others affected by such bank's operations who challenge illegality or other misconduct that could threaten the bank's mission, including: (1) best practices for legal burdens of proof; (2) access to independent adjudicative bodies, including external arbitration based on consensus selection and shared costs; and (3) results that eliminate the effects of proven retaliation. 22 U.S.C. § 262o-4(11).

We approach the policy section by section.

## Section 101 – Purpose

### *Clarify the definition of “employees” covered under the policy*

The policy defines the term “employee” to include “all categories of international employees as defined in Staff Rule 311, including consultants and other contractual employees.” We recommend that references to other staff rules, regulations and policies be kept to a



minimum throughout the whistleblower policy. References to Rules and procedures outside the policy may lead to confusion.

The Bank has stated in its *Code of Ethics and Professional Conduct* that “Adherence to the Code is mandatory for the Bank and all of its employees, regardless of their form of contract.” We recommend that the language in this section of the Whistleblower policy mirror the language of the Code.

Other comparators have adopted broad interpretations of the term “employee” for their Whistleblower policies. For instance, the AfDB policy defines “Bank Personnel” as “Elected Officers of the Bank and their Advisers and Assistants, regular Bank Employees, Short Term Bank Staff, Bank employed Consultants and any individuals hired or employed, either permanently or temporarily by the Bank.”

## **Section 102 – Definition of Whistleblower and Witness**


### ***Provide comprehensive definitions of “whistleblower” and “witness”***

We recommend a change to the definition of “Whistleblower” to extend protection: (1) to those individuals it is proved were about to make a disclosure otherwise protected in this policy, and (2) to those who are believed to have reported even if they in fact have not reported. A change to the definition of “Witness” would include those individuals “believed” to have participated in a Bank investigation, audit or other inquiry.

Evidence that the current policy intends to extend comprehensive protection to such individuals can be found in Section 104 (“definition of reprisal for the purposes of this Staff Rule includes such actions even when based *on a mistaken belief* that reporting or cooperation has occurred.”) (emphasis added.) The clarification in the definitions of “Whistleblower” and “Witness” in Section 102 would have the effect of ensuring that such individuals would receive the full protection of the policy.

Comparable language can be found in the policies of the ADB and the AfDB. For example, the ADB policy protects, “any person who, in good faith and voluntarily, reports, or is believed to be about to report, or is believed to have reported a suspected integrity violation or misconduct.”

The AfDB policy defines “Whistleblower” or “Complainant” as “any person or party who conveys *or is proven to be about to convey* a concern, allegation or any information indicating that Fraud, Corruption or any other Misconduct is occurring or has occurred in the Bank or in a Bank Project; with knowledge or good faith belief that the concern, allegation or information is true.” (emphasis added.)



## Sections 103 and 104 – Prohibition of Reprisal and Definition of Reprisal

### ***Specifically identify non-renewal of contracts as a covered type of reprisal***

Based on the comprehensive definition of “reprisal,” it appears likely, although it is not specifically stated, that a consultant or contractual whistleblower would be protected from a non-renewal of contract or employment term if such decision was the result of retaliatory misconduct. Of course, the whistleblower policy does not prevent non-renewal of contracts that are not a result of retaliation.

There is value in including this example in the Staff Rule in order to encourage employees working under term contracts not only to come forward with whistleblowing complaints, but to know that they can participate freely and honestly in Bank investigations, without fear that such participation may lead to the loss of their employment relationship with the Bank.

This is in accordance with the United States’ policy promotions regarding “results that eliminate the effects of proven retaliation” and concerns that whistleblowers in multilateral institutions may face retaliation in the form of non-renewal of employment contracts.


Thus, we recommend that the language of Section 104 be amended as follows:

... Reprisal may include, but is not limited to, wrongful termination, *non-renewal of contract*, harassment, improper assignment of work outside of the corresponding position description, unsubstantiated adverse evaluation of performance or determination of merit pay, the withholding of any other entitlement, any other unfounded adverse personnel action and such actions against others because of their association with a Whistleblower.... (suggested language in italics).

## Section 105 – Duty to Report

### ***Mandate a supervisory duty to report misconduct***

All employees, including non-supervisors, have a duty to report fraud and corruption. The policy states that all employees *should* also report suspected misconduct covered by the Bank’s Code of Ethics and Professional Conduct. In our recommendations for changes to the Code of Ethics discussed in the previous section of this report on, “Investigation Procedures, Rights, and Responsibilities,” we have recommended that the Bank mandate that employees are encouraged and supervisors are *required* to report allegations of any form of misconduct. We recommend changing the language of this paragraph to reflect the supervisory duty to report, whether the allegation is of fraud, corruption or other types of misconduct.



Other comparator organizations similarly encourage all employees but require supervisors to report misconduct. For example, at the World Bank, all staff members must report fraud or corruption. “A staff member is encouraged to report all other forms of misconduct to his or her management or [the Ethics Office], but is not required to do so. A manager who suspects or receives a report of suspected misconduct, however, has an obligation to report it to [the Ethics Office]. (World Bank Staff Rule 08.02.02(b).)


## **Section 106 – Resources for Reporting and Cooperation**

### ***Clarify reporting lines***

Section 106 lists the Bank authorities that “serve as resources for employees and external parties for reporting suspected acts of wrongdoing, and for protecting their individual rights with the Bank.” It goes on to state that several Bank authorities may be involved in investigations or may serve as resources for employees and external parties reporting suspected acts of wrongdoing. It then lists the following authorities: the Office of Institutional Integrity, the Ethics Officer, the Committee of Ethics and Professional Conduct, the Human Resources Department, the Office of the Ombudsperson, the Office of the Executive Auditor, the Sanctions Committee, the Conciliation Committee, the Administrative Tribunal, the Independent Consultation and Investigation Mechanism and the Conduct Committee of the Board of Executive Directors, and the Staff Association President and Vice President.

While it is commendable that the Staff Rule undertakes to list all Bank bodies that a whistleblower may encounter in the course of an investigation or disciplinary action involving wrongdoing, it would be helpful also identify the points of access to this complex array of investigative and disciplinary bodies. We recommend that the Staff Rule be amended to set forth the specific offices to contact for reporting. These recommendations should be in line with procedures for reporting already in place. In order to make the whistleblowing policy a more useful tool on its own, however, rather than requiring individuals (some of whom may be outside the Bank) to have a panoply of policies at their disposal, reporting offices and their contact information should be included in the Whistleblowing policy itself.

There may be times where an individual would like to provide a good faith report of a suspected wrongdoing, but fears either retaliation from the individual or office to whom reports are directed, or believes that a conflict of interest is presented in that office or individual that would compromise a fair and complete investigation. The policy should provide for alternate reporting venues when this is the case. For instance, when an individual honestly believes that a conflict of interest exists for the Ethics Office, or OII, he or she should be allowed access to the President’s office for reporting. For allegations involving the President’s Office, whistleblowers should be allowed to report to the proposed Board of Directors Ethics Oversight Committee.



### ***Clarify that Staff Association is not a Bank authority for receiving reports***

The policy currently states that “the Staff Association, through the Offices of its President and Vice President, offers additional resources to employees.” As discussed in a previous section of this report on “Investigation Procedures, Rights, and Responsibilities,” while staff members have the right to discuss concerns with the Staff Association, they should be informed that reporting concerns to the Staff Association is not a report to the Bank. That is, the Staff Association does not always have a duty to forward the report to the Ethics Office or other appropriate officials, such that an investigation will not necessarily begin.

At the same time, staff members need to understand that their communications with Staff Association officials are not necessarily confidential. Thus, if an investigator needs to interview a Staff Association official, the Staff Association official has a duty to cooperate in the same way any Bank staff member would.


Finally, if the matter involves fraud or corruption, the Staff Association official, like any other Bank employee has to report the matter to the Ethics Office, even if the staff member does not want it reported. All employees are required to report allegations of fraud and corruption of which they become aware.

### ***Clarify that reports to the Ombudsperson are kept confidential***

The Office of the Ombudsperson may provide confidential counseling. However, because of the very nature of the Ombudsperson’s responsibility to protect the confidentiality of its visitors, the Office of the Ombudsperson is not considered a reporting body of the Bank. As a result, a contact with the Ombudsperson, on its own, would not trigger an investigation. Thus, this section should be amended to clarify the Ombudsperson’s role in these matters.

### ***Allow for interim relief to a whistleblower if necessary***

In cases of whistleblowing, it is conceivable that there may, at times, be a need to take interim measures of relief in order to protect a whistleblower or witness from possible retaliation, including even a risk of personal harm, or, after alleged retaliation has occurred, to provide that no further harm results before the Bank has had an opportunity to conduct proper investigations and make personnel decisions, and before the Bank’s internal justice system, including its Administrative Tribunal, has had a chance to act.



We recommend adding to the current policy a statement regarding who in the Bank would be responsible for granting interim relief, under what circumstances, and the types of relief that may be granted. We recommend that the Ethics Officer be given the authority to apply to the VPF for interim relief, including, with the whistleblower's approval, transfer to a different office or station, or placement on paid administrative leave. Any situations involving the personal safety of a whistleblower or witness and/or immediate family members would immediately be brought to the President's attention. This is very similar to procedures in place at the AfDB.

The ADB similarly sets forth specific relief:

7.1 Whistleblowers and witnesses who are staff will be accorded interim protection during the course of review or investigation as necessary to safeguard their security and interests. At the direction of the Director General, BPMSD, and with the consent of the concerned staff, such interim protection may include, but is not limited to, temporary reassignment to another position and if appropriate, placement on paid administrative leave for an initial period not to exceed four months. If the investigation is still ongoing, the President may approve an extension of such leave for the period necessary to complete the investigation.

7.2 If the staff member believes that there is a direct and imminent threat to his or her personal security or to the security of his or her family, he or she can raise the concern with OAI and BPHR, and OAFA-SE will provide guidance to the staff on the appropriate security measures.


## **Section 107 – Duty to Act with Regard for the Truth**

### ***Use “good faith” standard for reporting and cooperation***

Section 107 sets forth that the policy protects only employees or external parties with “a reasonable basis on which to believe that the information provided through such reporting or cooperation is true.” In order to clarify the intent of the policy, we recommend utilizing the “good faith” standard, so that employees are required to report and participate in investigations in good faith, and, as such, any good faith activity will be protected from reprisal.

A simple statement that “An employee reporting in good faith will be protected from retaliation” should be included in the policy. This is similar to language in the UN Whistleblowing Policy:

1.1 It is the duty of staff members to report any breach of the Organization's regulations and rules to the officials whose responsibility it is to take appropriate action. *An individual who makes such a report in good faith has the right to be protected against retaliation.* (emphasis added).



1.2 It is also the duty of staff members to cooperate with duly authorized audits and investigations. *An individual who cooperates in good faith with an audit or investigation has the right to be protected against retaliation.* (emphasis added.)

The AfDB policy also uses the “good faith” terminology and further elucidates:

It should be noted that whistleblowers and complainants are reporting parties. They are neither investigators nor finders of fact; they do not determine if corrective measures are necessary; and they do not determine the appropriate corrective or remedial action that may be warranted.

### ***Clarify that a whistleblower is protected even if misconduct is not found***

At the same time, in order to clarify what is expected of the whistleblower, we recommend adding language that whistleblower protections will be afforded those who have made good faith reports, even in instances in which the report does not lead to a finding of misconduct.

Similar language can be found in the World Bank policy: “The protections afforded by this Rule do not require that the staff member’s report of suspected misconduct lead to a final determination by the Bank Group that misconduct has occurred. Nor is the staff member required to determine whether the suspected misconduct meets a specific degree of seriousness.”


Similarly, the IMF website regarding its whistleblower policy states: “Your right to be protected from retaliation does not depend upon the Fund concluding that misconduct occurred as you alleged.”

## **Section 108 – Reporting of Reprisal**

### ***Use best practices in standards of proof, including a “clear and convincing” burden on management after a prima facie case has been established by the preponderance of the evidence***

We recommend that the Bank’s policy reflect best practices in standards of proof relating to allegations of retaliation. Specifically, if the whistleblower is able to show by a preponderance of the evidence that retaliatory motive was behind the adverse action, the burden would then shift to the Bank to show by clear and convincing evidence that the same action would have been taken absent the retaliation.





The UN, the World Bank, the AfDB, and the ADB have followed this standard. Their policies state:

ADB: If OAI determines that a staff member did experience retaliation for having reported a suspected integrity violation or misconduct or for having cooperated with an OAI or BPHR investigation and that the staff member's action related to the investigation was a contributory factor in the retaliation, the burden of proof will shift to ADB to show by *clear and convincing evidence* that the same action would have been taken in the absence of the staff member's report or cooperation. (emphasis added).

AfDB: Where Bank Personnel can show evidence that prior to the alleged Retaliation, the Bank Personnel had reported or was in the process of reporting an instance of Fraud, Corruption or any other Misconduct to the Hotline, Auditor General or the Division, or pursuant to any other reporting mechanism provided under this Policy, such Bank Personnel shall be deemed to have satisfied the minimal burden of proof. The burden of proof shall then shift to the Bank to prove by *clear and convincing evidence* that the action taken by the Bank against such Bank Personnel was for separate and legitimate reasons, and not in reprisal or Retaliation for the malpractice reported by the Bank Personnel. (emphasis added).

UN: However, the burden of proof shall rest with the Administration, which must prove by *clear and convincing evidence* that it would have taken the same action absent the protected activity referred to in section 2.1 above. (emphasis added).


### ***Provide for status updates to whistleblowers***

Whistleblowers should have the right to receive periodic reports regarding the matter that they reported. We suggest that they be notified in a confidential communication: (1) when an investigation is opened; (2) when it is completed, including the outcome of the investigation. If the investigation is ongoing for more than the 90 days, status updates should be provided at least every three months to notify the whistleblower that the matter is still under investigation.

## **Section 111 – Reporting to Authorities Outside the Bank**

Section 111 provides the circumstances under which a whistleblower will be protected from reprisal for reports to external parties. Expedient, internal reporting provides the Bank the best opportunity to respond to allegations of fraud, corruption and misconduct. At the same time, it is important to recognize the need for external outlets for reporting. There always may be specific circumstances under which an external report is necessary at the time, and it is still within the best interests of the Bank in these matters to undertake an investigation and protect the whistleblower. This section reflects best practices in whistleblowing policies





around the world and recognizes that, in certain situations, compelling circumstances may present themselves that make external reporting necessary.

There are two changes we recommend to make this section even stronger, and to align it with comparable clauses in comparator organization whistleblower policies.

***Allow external reports if Bank fails to timely update whistleblower of status of matter***

The first is to offer protection to whistleblowers who go outside the Bank to report, subject to the other provisions of the section, if they have already made an internal report, but have not received any status of the matter for a time period exceeding six months. Absent any notification from the appropriate office within the Bank, the whistleblower may be unaware of whether the Bank is, indeed, taking any action on the report at all. At this point, it would seem reasonable that the individual might pursue an external avenue in order to alert someone to what they believe is wrongdoing.

Similar language can be found in the policies of the UN, WB, ADB and AfDB, allowing the same six-month period for the organization to provide a status update to the whistleblower.

This proposed amendment corresponds with our earlier recommendation that the policy include a requirement that whistleblowers receive a status report on the investigation at least every three months.

***Allow external reports to be made to “an individual or entity”***

The current policy reads that protections will be extended to employees reporting suspected wrongdoing “to an authority” outside the Bank, subject to the provisions listed. The requirement that the report be to “an authority” deviates from the practices of the AfDB (speaking merely of “public disclosure”), the UN, ADB and WB (using the phrase “*an individual or entity* outside of the established internal mechanisms”)(emphasis added).

In order to provide whistleblowers with the opportunity to receive protection even when they make an external report, as long as the reporting meets other stated requirements, we recommend deleting “authority” and using instead the term “individual or entity.”



## Role, Responsibilities and Functions of the Ethics Office

The current IDB internal ethics strategy was launched in 2006 with the new Code of Ethics and Professional Conduct, which was then revised in 2007. The IDB Ethics Office was established in 2007 as part of the President's strategic plan of reinforcing the IDB's framework for ethical behavior. Five years later there has been significant progress and demonstrable results. This section of the report describes our findings and recommendations for the IDB Ethics Office.

Our overall assessment is that the Ethics Office has been very successful in achieving the objectives set for it by the President. This assessment is based on the following three factors:

1. The formal program aspects of the Ethics Office are generally in-line with those of comparator organizations;
2. The Ethics Office's own tracking data on consultations demonstrate that staff are increasingly using it as a resource and that they are pleased with the service provided; and
3. The survey and focus group participants had generally favorable impressions of the Ethics Office and their ability to use it as a resource.

While the overall picture of the Ethics Office is positive, we do have several recommendations to improve certain areas.

### *Structure of the Ethics Office*

The IDB ethics office is divided between two sets of functions – investigations and prevention. Currently, 7 full-time personnel and 1 consultant staff the office.



Given the expected number of investigations and the amount of money that the Ethics Office has spent on hiring external investigators so far in 2011, we agree with the current Interim Ethics Officer that the Ethics Office could use a second investigator on staff. While some cases are best investigated by an external investigator—such as cases against very high-ranking officials within the Bank—internal investigators can carry out many investigations, and often do so more cheaply than external investigators.

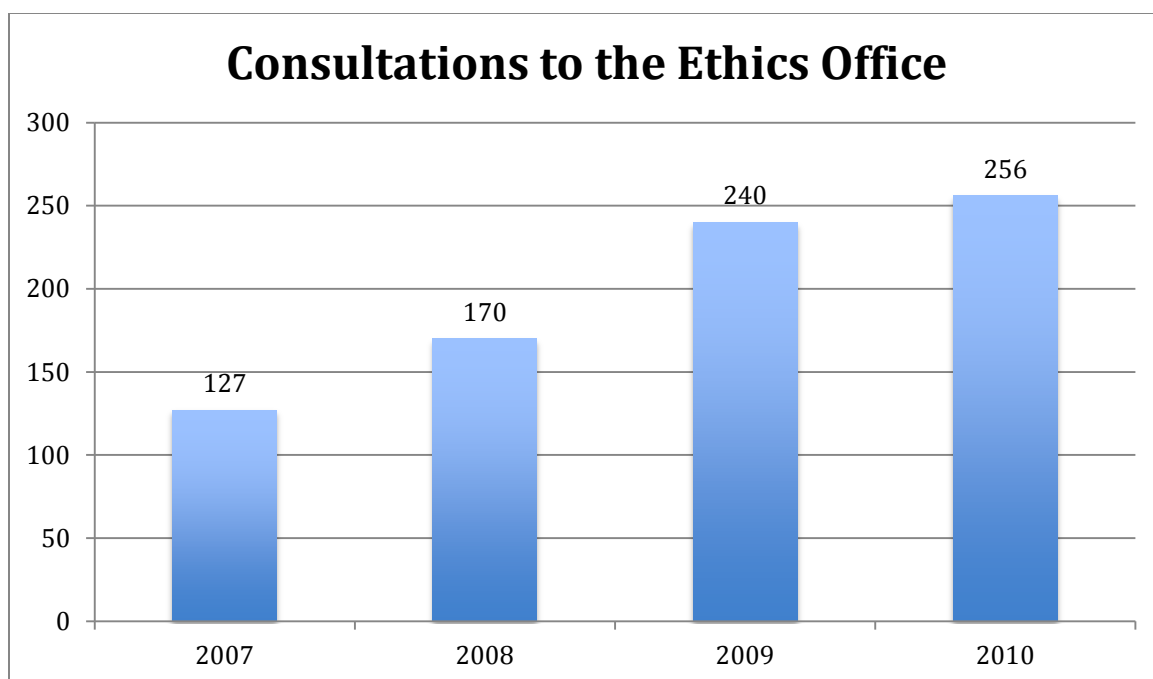
Beyond the cost of external investigations, we find the budget provided to the Ethics Office generally appropriate for the tasks assigned.

### ***Consultations***

Consultations are one of the most important preventative measures conducted by an Ethics Office. “Consultations” describe the process by which IBD staff request guidance from the Ethics Office on a particular situation. Most of these consultations have been about conflicts of interest. By allowing staff a means of seeking guidance before they engage in a potential conflict of interest, the consultation process prevents violations of the Code of Ethics from ever occurring.

Over the last three years, the Ethics Office has achieved a remarkable degree of success with this function. We arrive at this conclusion based on:

1. The increasing number of consultations provided to IBD staff;
2. The client satisfaction survey results during the period in which they were collected; and
3. Focus group participants who expressed their satisfaction with the results of a consultation.



From September 2010 to January 2011, the Ethics Office asked persons who had requested a consultation to complete a satisfaction survey. Of the 79 consultations performed during this period, 27 completed the survey. The results of were extremely positive.

Question	Response
Was the advice or guidance you received clear and easy to understand?	96% responded “Definitely”
Was the information you received helpful?	100% responded “Definitely”
Were you satisfied with the timeliness of the response?	89% responded “Definitely”

Currently, staff members who disagree with the consultation from the Ethics Office are given the opportunity to appeal the opinion to the Ethics Committee. The Bank could choose to continue with the Ethics Committee serving a similar role for consultations. The Ethics Officer may not have experience with the operations of the Bank, so it can be helpful to have staff members who work in Bank operations to be available to provide their perspective. We do not have the same concerns about the Ethics Committee involvement in reviewing consultations as we do about it being involved in investigations and recommending discipline for misconduct cases.

### ***Formal Program Aspects - Previous and Current Efforts***

Formal program aspects refer to the *Code of Ethics and Professional Conduct*, the Training Program, the Declaration of Interest system and the Quarterly and Annual reports. In each

of these cases, we find the Ethics Office efforts to be appropriate and sometimes best practice.

We do, however, believe there are improvements that could be made, particularly to the *Code of Ethics and Professional Conduct* and the formal training program.





























### ***Code of Ethics and Professional Conduct should be revised***

The IDB *Code of Ethics and Professional Conduct* (“Code”) does not meet best practice. It is below what we consider best practice in two ways: it is missing a few important content pieces, and the graphical design is below standard.

The benchmarking table below summarizes our comparison of IDB’s Code with codes from three peer organizations – the World Bank, UN and IMF. Among the peer organizations, the IDB’s is the weakest.

#### ***Legend***

 Significant Treatment     
  Included     
  Not included

Overall structure, format and introductory material	IDB	World Bank	UN	IMF <sup>4</sup>
Leadership letter from President/head of organization				
Table of contents				
Guiding principles/values				
Guidelines for decision making/quick test				
Questions and answers				
Additional resources/policies/links				
Index				

Best practice codes tailor their content to be accessible to staff and easier to read. The formal rules that underpin the Code are essentially explained in simpler terms, with examples and attractive design.

The IDB's Code would benefit from:

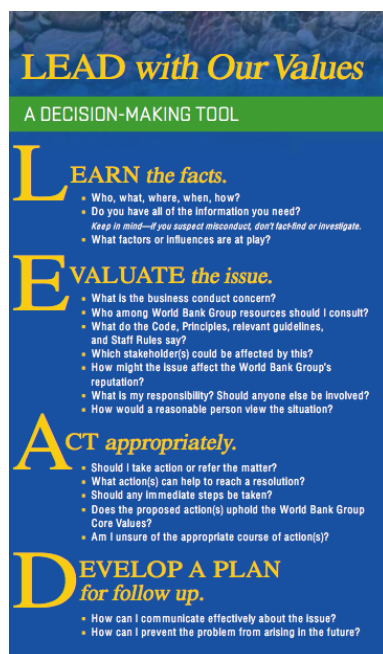
- Expanded content;
- Better explanations of the investigations and disciplinary process; and
- Updated design to include more user-friendly features, learning aids and a more inclusive tone.

IDB's Code should include:


- (1) A letter from the Bank President;
- (2) Simple guidelines or tests for making decisions;
- (3) Questions and answers; and
- (4) An index

A letter from the Bank President helps communicate the importance of the Code to staff. For example, the World Bank's Code of Conduct includes a letter from the Bank President. We noted that the Ethics Office recognizes the value of such leadership letters as the IDB's flagship training workshop, Earning Public Trust, includes an introductory video of President Moreno emphasizing the importance of ethics and professional conduct.

A simple set of guidelines or tests for ethical decision-making provides Code users with a set of concrete questions or instructions to ask when confronted with a difficult situation. An example of this in the World Bank's code is *LEAD with our Values* test (pictured below). It asks staff to consider several factors, including Learning the facts, Evaluating the issue, Acting appropriately and Developing a plan for follow up.



Best practice codes also increasingly include questions and answers, often derived from real cases. This feature is considered very useful among Code users since it provides practical































































examples of how the Code provisions are used in real situations. Generally, such questions and answer portions of a Code are either placed next to relevant text in the Code, or collected together as their own section. The current IMF Code includes 28 questions and answers.

Finally, an index allows staff to use the Code as a reference document. The World Bank's code provides an excellent index for staff.

## Comparison of Code with Codes of other multilateral organizations


### Legend

 Significant Treatment
  Included
  Not included

Code Content	IDB	World Bank	UN	IMF
Call process/requesting guidance/reporting violations				
Anti-Retaliation				
Special guidelines for privacy				
Waivers and exceptions				
About E&C Program/Administering the Code				
Employee responsibilities				
Leadership responsibilities				
Applicability of code to third parties, agents, consultants				
Equal opportunity/fair treatment				
Diversity				
Harassment				
Corporate Social Responsibility & Human Rights				
Environmental concerns				
Safe and healthy workplace				
Workplace violence				



Code Content	IDB	World Bank	UN	IMF
Alcohol/drug use	■	■	■	■
Conflict of interest (general)	■	■	■	■
COI Gifts, entertainment	■	■	■	■
COI Family members/personal relations	■	■	■	■
COI Outside employment/investments	■	■	■	■
COI Self-dealing/opportunities	■	■	■	■
Civic, charitable, non-profit activities	■	■	■	■
Political involvement/contributions	■	■	■	■
Supplier relations/purchasing	■	■	■	■
Communicating with the public, media/on-line forums	■	■	■	■
Confidential information – organizational	■	■	■	■
Confidential information – client	■	■	■	■
Confidential information –employee/privacy	■	■	■	■
Intellectual property/proprietary information	■	■	■	■
Acquiring/using confidential information of third parties	■	■	■	■
Post-employment responsibilities	■	■	■	■
Protecting organizational assets	■	■	■	■
Proper use of social media	■	■	■	■



Code Content	IDB	World Bank	UN	IMF
Document retention/destruction	■	■	■	■
Insider information/ securities trading	■	■	■	■
Bribes, corruption	■	■	■	■
Anti-money laundering	■	■	■	■

The IDB Code is missing a few key content areas, including:

- Waivers and Exceptions;
- Corporate Social Responsibility and Human Rights;
- Environmental Concerns;
- Proper use of social media; and
- Document retention/destruction.


In addition, several other aspects should be amplified, including:

- Supervisor duty to report misconduct and their role as a reporting entity;
- Appropriate use of managerial power; and
- Accuracy of records.

*Corporate Social Responsibility and Human Rights* refers to the social obligations of staff. While such content is generally not monitored by the Ethics Office, it is seen by many staff as, at core, an ethical issue. Including such language, similar to what the World Bank's Code says, describes what staff members are expected to do with regard to the organization's corporate social responsibility commitments.

*Environmental Concerns* refers to the sustainability responsibilities of staff. The World Bank's Code includes a section on environmental commitment with advice for staff. As with human rights, environmental concerns are often equated with ethics in the minds of staff.

*Proper use of social media* refers to staff use of social networking sites and technology such as Facebook and Twitter. In our experience, an increasing number of employers are finding that employees are not cautious with statements about their organizations on social media sites. This can lead to potential leaking of confidential information or even harassment. Having a clear statement about what is and is not acceptable to say about the IDB on social media sites can help reduce such incidents.



*Document retention/destruction* refers to the organization's policies and procedures for document handling. While this was not cited as a concern by any of the IDB personnel we interacted with throughout this project, in our experience rules about document retention and destruction are rarely common knowledge among staff. Providing guidance can help sensitize staff and avoid problems. If the Bank has other policies on document retention/destruction, it should at least reference those policies in the Code.

## ***Ethics Training***

The current IDB training program primarily exists as three components:

1. An ethics briefing provided to new staff as part of orientation;
2. An online training module available online; and
3. Earning Public Trust live workshop.

In reviewing the IDB training, we found that the content of the current training efforts are appropriate, well conceived, and effective.

We do, however, note that there are significant gaps between the IDB ethics training regime and that of comparator organizations. For instance, at least one comparator organization requires all staff to undergo yearly online training on their ethical standards. Annual ethics training is also considered best practice among leading private sector organizations. The Bank last required all staff members to take ethics training during 2007 and 2008.

While a mandatory ethics training course could be conducted live, there are three compelling reasons to develop an online version:

1. Online training would ensure a consistent message throughout the organization;
2. Online training would utilize the IDB's existing learning technology already implemented throughout the organization; and
3. Online training would be cost-effective.

An annual online training course should be compulsory for all employees, and be assigned to new staff members within three months of hire.

The training should include additional content for supervisors, which would address issues such as their duty to report misconduct of which they become aware. Newly promoted supervisors should receive this training within three months of their promotion.

We note that the Ethics Office training plan already includes a goal of developing supervisor training this year.



## ***Declaration of Interests System***

The IDB's Declaration of Interests system is a useful tool for both surfacing potential conflicts of interest and raising awareness among staff. Currently, on an annual basis, staff members of grade 3 and above are required to submit the Declaration to the Ethics Office. This information is then reviewed by the Ethics Office, and if any potential conflicts of interest are discovered, addressed directly with the staff member. In addition, approximately 10 percent of submissions are randomly chosen for a second review. In 2010, 100 percent of IDB staff required to submit a Declaration of Interest did so.

There are, however, several ways in which the current Declaration of Interest system can be strengthened:


1. **We recommend developing a formal policy of escalating disciplinary action for failure to submit a Declaration of Interest.** Currently, IDB has not addressed this gap since it has achieved 100 percent compliance. However, we cannot assume that will always be the case. We recommend including a formal process such as:
  - a. *Six weeks after the deadline:* A letter to the staff member who has not submitted the form that it is overdue;
  - b. *Eight weeks after the deadline:* A letter to the staff member and his or her supervisor that the form is overdue;
  - c. *Ten weeks after the deadline:* Referral of case to VPF for possible disciplinary action.
2. **We recommend requiring all staff who are hired or promoted into a Grade 3 or above position, or have procurement responsibilities, to be required to complete the declaration of interest form within three months of assuming their role.** Currently, staff members who join the IDB after the annual declaration of interests campaign begins may not complete a form until the next year. They may be most vulnerable to conflicts of interest when they are just beginning a new role.

## ***Case Management System***

The Ethics Office investigations are currently tracked in a Lotus Notes database developed in-house. The database is on an internal server, is encrypted, and the server ID and access are tightly controlled. We believe the possibility of outside intrusion (i.e., malicious hacking) to be minimal.

The current case management database, does, however, have three defects in need of correcting:

1. The current database is largely a “digital archive” of documents – it does not provide any helpful investigative features;

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2. The current database is accessible by everyone in the Ethics Office and does not allow exclusion of an individual's access to a particular case file where appropriate, such as when a conflict of interest is present; and
  3. The current database does not log when an individual accesses a case file.

The Ethics Office itself expressed the first of these concerns. Modern case management systems include several features helpful for investigators, such as searching ability. The current database does little more than store documents inputted by the investigator.

The second two concerns are linked – currently, any Ethics Office staff member can open investigations records. This is done for practical reasons – so that information can be more efficiently logged – but it does represent a possible security risk, and it would be desirable to be able to exclude access to persons within the Ethics Office if access to a case file could create the perception of a conflict of interest (e.g., a case in which a member of the Ethics Office is a witness). Taken together with the third concern – that the database does not maintain a log when an individual accesses a case file – it could create a situation in which unauthorized access by someone in the Ethics Office would be difficult to uncover.

To ameliorate all of these problems, we recommend the Ethics Office contract an external provider of case management systems. The Office of Institution Integrity has already contacted an external vendor to provide a similar case management system.

(Global Compliance is a provider of case management systems and online ethics training. We would, however, recuse ourselves from any IDB RFP for these services to avoid the appearance of a conflict of interest with our recommendations in this report.)



## Appendix A: Glossary of Acronyms

ADB	Asian Development Bank
AfDB	African Development Bank
CAF	Corporación Andina de Fomento
Code	IDB's <i>Code of Ethics and Professional Conduct</i>
HRD	Human Resources Department
HRM	Human Resources Manager
IDB	Inter-American Development Bank
IMF	International Monetary Fund
OAS	Organization of American States
OII	Office of Institutional Integrity
UN	United Nations
VPF	Vice-President for Finance and Administration

## Section III

### IDB Action Plan to Implement Approved Recommendations





**Ethics, Conduct and Grievance Systems of the IDB**  
**Action Plan to Implement Approved Recommendations**

#	Subject	Responsibility	Proposed Actions <sup>1</sup>	Proposed Timeline					
				Q3 '11	Q4 '11	Q1 '12	Q2 '12	Q3 '12	Q4 '12
1	Administrative Tribunal	Board	Update Administrative Tribunal Statute						
			Create a Nominating Committee for Tribunal Judge Candidates						
		Tribunal	Update Rules of Procedures of the Administrative Tribunal						
2	Ethics Oversight Committee	Board	Create an Ethics Oversight Committee of the Board						
3	Conciliation Committee and Mediation System	HRD (Lead) LEG & Ombuds-person <sup>2</sup>	Create Guidelines for Mediation System and New Staff Rule(s)						
			Define the organizational unit in charge of the Mediation System						
			Terms of reference for Mediators and selection process carried out						
			Transition plan for ongoing cases in the Conciliation Committee						
			Eliminate <i>Conciliation Committee</i> in Manuals						
			Update references of the new system in the Organizational and Administrative Manuals, Staff Rules and National Staff Regulations						
4	Code of Ethics and Professional Conduct	Ethics Officer (Lead) HRD & LEG	Update Code of Ethics and Professional Conduct of the IDB						
			Update <i>Ethics Officer</i> Staff Rule						
			Eliminate <i>Committee of Ethics and Professional Conduct</i> from Organizational Manual						
5	Procedures for the Code of Ethics and Professional Conduct	LEG (Lead) Ethics Officer & HRD	Update Procedures for the Code of Ethics and Professional Conduct of the IDB						
		HRD (Lead) Ethics Officer & LEG	Create new Staff Rule for Administrative Leave						
			Create Investigations Manual						
6	Ethics Reporting Structure	LEG (Lead) PCY & SPD	Update <i>Basic Organization</i> Manual and Bank's <i>Organizational Chart</i>						
7	Other Functions of the Ethics Office	Ethics Officer (Lead) KNL, HRD	Review Case Management System and implement recommended enhancements						
			Training on the Code of Ethics and Professional Conduct						
			Update and require annual online training						
			Require all staff who are hired or promoted into Grade 4 or above position, or have procurement responsibilities, to complete the Declaration of Interest Form						
8	Ombudsperson	HRD (Lead) LEG	Update <i>Ombudsperson</i> Staff Rule and National Staff Regulation						

**Ethics, Conduct and Grievance Systems of the IDB**  
**Action Plan to Implement Approved Recommendations**

#	Subject	Responsibility	Proposed Actions <sup>1</sup>	Proposed Timeline					
				Q3 '11	Q4 '11	Q1 '12	Q2 '12	Q3 '12	Q4 '12
9	Access to Information	LEG (Lead) HRD, Ethics Office & Ombudsperson <sup>2</sup>	Update Bank Policies concerning access to information in the context of investigations, including: - Code of Ethics and Professional Conduct of the IDB - Procedures of the Code of Ethics and Professional Conduct - Access to Information Policy - Access to Confidentiality of Records and Information - Information Resources Security - Telecommunications Services Administration - Electronic Communications - Personnel Records Procedures - Confidentiality of Personnel Information - Confidentiality of Medical Information and Records - Regulations of Access to Electronic Data						
10	Whistleblower Policies	LEG (Lead) HRD, Ethics Officer & Ombudsperson <sup>2</sup>	Update <i>Whistleblowers and Witnesses</i> Staff Rule and National Staff Regulation						
11	Change Management	VPF (Lead) HRD, KNL, EXR, PCY & EVP	Develop a change management and communication plan						
			Execute Change Management and Communication Plan						

<sup>1</sup> Additional policies may require development or amendments subject to the terms of the final implementation.

<sup>2</sup> The Ombudsperson's participation will be limited to providing subject-matter expertise, not to make decisions or write policy.