Assessing the Role of Multilateral Development Banks in the Legal Empowerment of the Poor

By: Dr. Dimitra Manou

2012
The mission of the Centre for International Sustainable Development Law (CISDL) is to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international sustainable development law.

Editors: Sébastien Jodoin, CISDL Lead Counsel, Climate Change and Sumudu Atapattu, CISDL Lead Counsel, Human Rights and Poverty Eradication

Assistant Editor: Sean Stephenson, Associate Fellow, CISDL

Contact Information:

Centre for International Sustainable Development Law
Faculty of Law, McGill University
3644 Peel St., Montreal, Quebec, H3A 1W9 Canada
Tel: (+1) 514 398 8918
Fax: (+1) 514 398 4659
Email: secretariat@cisdl.org
www.cisdl.org

Published June 2012
# Table of Contents

1. Introduction ......................................................................................................................... 1

2. Multilateral Development Banks and their role in eradicating poverty ............................. 3

3. The World Bank .................................................................................................................. 5
   A. Targeted activities ............................................................................................................. 5
   B. Internal policies ............................................................................................................... 8

4. Asian Development Bank .................................................................................................... 9
   A. Targeted activities ............................................................................................................. 9
   B. Internal policies .............................................................................................................. 11

5. African Development Bank ............................................................................................... 11
   A. Targeted activities ........................................................................................................... 11
   B. Internal policies ............................................................................................................. 13

6. EBRD .................................................................................................................................. 13
   A. Targeted activities .......................................................................................................... 13
   B. Internal policies ............................................................................................................. 14

7. Inter-American Development Bank .................................................................................. 14
   A. Targeted activities .......................................................................................................... 14
   B. Internal policies ............................................................................................................. 15

8. Conclusions ....................................................................................................................... 15
1. Introduction

Although we live in times of great prosperity and economic growth, billions of people suffer from extreme poverty even in most affluent countries. As hard as we may pursue economic growth, we have not been able to fight effectively the root causes of poverty and people’s deprivation of basic needs. We are still far from achieving the Millennium Development Goals, especially with regard to ending poverty and hunger. The first goal of eradicating extreme poverty and hunger comes in line with the Millennium Declaration and the commitment to “free fellow men, women and children from the abject and dehumanizing conditions of extreme poverty.” Not only people die every day out of hunger but they are actually deprived of every means to live a life of dignity.

Some people still consider that poverty is the result of bad fate which condemned these people to a life of misery and debility. Yet, millions of poor people are hard workers who struggle with under-paid jobs and degrading working conditions, often without any property or labour rights. Thus, poverty and hunger are not always the result of unemployment or low income: low or insufficient income is only one aspect of poverty. The latter may also be the result of lack of education, poor environmental conditions, low health standards and exclusion from the rule of law.

Defining poverty as the resultant of many different components is the result of a long process of confronting poverty, at least by development banks. In the 1990s a major concern of the World Bank, was tackling poverty with a two-fold method: first by promoting a labor-intensive economy and second by investing in the health and education of poor people. It became clear during that decade that economic growth depends on several other factors, including the country’s geography, history and the regulatory framework. This led to a new understanding of poverty as lack of opportunity, empowerment and security. Empowerment was perceived as targeted action to promote participatory mechanisms, to disseminate information in order to hold governments more accountable, to assist poor people in getting to know their rights and defend them accordingly, to reform legal systems to be more inclusive and participatory, and to enhance, thus, the rule of law.

Although “rule of law” may be defined in many ways, we can agree on the definition adopted by the World Bank Governance Indicators Project: rule of law is “the extent to which agents have confidence in and abide by the rules of society, and in

---

3 United Nations General Assembly (2009) A/64/133 “Legal Empowerment of the poor and eradication of poverty” par.8
6 Supra note 5 at 5.
7 Supra note 5 at 6.
particular the quality of contract enforcement, the police, and the courts, as well as the likelihood of crime and violence". Further, the United Nations defines rule of law as:

“a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency.”

People excluded from the rule of law are those who do not enjoy legal protection and access to justice or participation in decision-making processes. Women, children and indigenous people are often more vulnerable to exclusion from the rule of law. These unequal terms faced by the majority of earth’s population are not only an issue of injustice but also an issue of international security. Thus, a new concept has arisen to foster and promote development policies for poor people and to halt extreme poverty, in the form of legal empowerment of the poor. According to the Commission on Legal Empowerment of the Poor “legal empowerment is a process of systemic change through which the poor and excluded become able to use the law, the legal system, and legal services to protect and advance their rights and interests as citizens and economic actors.” Further, the UN General Assembly points out that “strengthening the rule of law is an important contributor to the legal empowerment of the poor. While it is not a substitute for other important development interventions, legal empowerment of the poor can be a necessary condition to create an enabling environment for providing sustainable livelihoods and eradicating poverty.”

Legal empowerment of the poor has become an issue of utmost importance and urgency and has been endorsed as a major strategy by many international organizations and development agencies. As stressed by the Asian Development Bank “legal empowerment is both a process and a goal.” In this paper we wish to explore the Multilateral Development Banks’ policies regarding the legal empowerment of the poor and particularly those adopted by the World Bank and the major regional development banks - the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the Inter-American Development Bank.

We will then discuss the accountability mechanisms of these banks and how local communities and/or individuals have accessed them, which is an important tool for

---


12 GA Res. A/64/133, 13 July 2009

promoting the rule of law and the rights of the poor and marginalized people in the borrowing countries.

2. Multilateral Development Banks and their role in eradicating poverty

Before exploring MDBs’ policies to promote the legal empowerment of the poor, it is necessary to examine and justify the legitimacy of the MDBs’ extension of mandate to include sustainable development and Millennium Development Goals (hereinafter MDGs) in their financing activities. First of all, sustainable development has been confirmed as a global goal by the international community and has been broadly accepted by it in both international and national legal documents. The positivist, state-oriented approach of international law, sets state as the primary actor in the development process. However, non-state actors, with a strong role in the development process, have risen due to firstly, the realization of the global or/transboundary nature of environmental problems and second, the increasing interdependence of markets and economies.

Due to this fact several major changes have taken place in global environmental governance and it has been supported that the classic theories of state sovereignty and exclusive jurisdiction of the state at its territory have been impoverished. Thus, development and environmental policies are exercised not only by the state through national legislation and integration of international conventions into the national legislation, but also by international organizations, development banks and the private sector through the signing of investment loans and financing agreements. Especially MDBs play a major role in the development process by supporting initiatives for international action, by lobbying during international conventions’ negotiations and by implementing internal policies and practices – according to international standards, principles and conventions during their financial activities. Besides, according to the New Delhi Declaration (Art. 3.1) international economic organizations have to cooperate and promote international cooperation, as well as to commit to the principle of good governance (Art. 6).

14 D. Manou (2009), The environmental parameter in the international financing for development. The role of Multilateral Development Banks, Sakkoulas Publ. Thessaloniki
The extension of the MDBs’ mandate\(^\text{19}\) to include other concerns in their financing activities, such as environmental protection, eradicating poverty, promoting sustainable development has resulted from the serious criticisms aimed at that these organizations regarding their involvement in the development process (removals of communities without a proper plan of resettlement or even consulting them or the, destruction of forest lands and ecosystems \(^\text{20}\)). The MDBs Articles of Agreement described their goals as strictly economic and developmental\(^\text{21}\); but since the Stockholm Conference on the Human Environment in 1972 the international community has called on states to ensure that international organizations will play a coordinated, efficient and dynamic role for the protection and improvement of the environment. Since then the MDBs have acknowledged the linkage between environment and development and have adopted new policies dealing with the environmental degradation. In addition, the report of the Brundtland Commission “Our Common Future”\(^\text{22}\) called for the international economic organizations to be held accountable for the environmental impact of their development projects\(^\text{23}\). Another important milestone was the Report of the World Commission on Environment and Development (1987) which invited the organs, the organisations and the programmes of the UN (Art. 8), including multilateral development and economic organisations (Art. 9), to commit themselves to the promotion of sustainable development\(^\text{24}\). In Agenda 21 and Rio Declaration on Environment and Development we can also find many provisions with regard to the role of international economic organizations in promoting sustainable development\(^\text{25}\). Although the Rio Declaration and Agenda 21 are non binding documents, they reflect the will of the majority of the international community and thus, are

\(^{19}\) For this issue (extension of mandate) see also Ibrahim F.I. Shihata, \textit{The World Bank in a Changing World: Selected Essays}, (Compiled and Edited by Franziska Tschofen and Antonio R. Parra, Martinus Nijhoff Publishers, 1991) 62


\(^{21}\) The only MDB who explicitly includes promotion of sustainable development among its goals is EBRD: ‘The Agreement Establishing the European Bank for Reconstruction and Development’ (Paris, France, 29 May 1990) Art. 2.1(vii). All the others had to extend their mandate beyond economic and developmental goals.

\(^{22}\) GA A/42/427, 4 August 1987

\(^{23}\) World Commission on Environment and Development, \textit{Our common future (The Brundtland Report)} (Oxford University Press, New York, 1987) 312: “Environmental protection and sustainable development must be an integral part of the mandates of all agencies of governments, of international organizations, and of major private-sector institutions. These must be made responsible and accountable for ensuring that their policies, programmes, and budgets encourage and support activities that are economically and ecologically sustainable both in the short and longer terms. They must be given a mandate to pursue their traditional goals in such a way that those goals are reinforced by a steady enhancement of the environmental resource base of their own national community and of the small planet we all share.”


\(^{25}\) We provide a few examples: Article 4 of the Rio Declaration (principle of integration of environmental concerns in the development procedure), par 8.2 of Agenda 21, Chapter 8.21, Chapter 38 which underlines the mandate to the IEOs to integrate the goal of sustainable development in their development policies and calls for the UN organs to cooperate with the IEOs and MDBs, especially the World Bank (Chapters 38.23 and 38.28). The regional MDBs and the regional economic organisations are invited to incorporate the goal of sustainable development in their policies (Chapters 38.29, 38.30 and 38.31). Finally, in Chapter 33, the MDBs and funds are invited to contribute in the financing of Agenda’s 21 goals.
considered documents of strong political commitment, a form of international consensus, which cannot be ignored by development banks. MDBs’ extended mandate to promote the goal of sustainable development and to eradicate poverty is largely based on these international instruments.

The efforts to promote sustainable development and to eradicate poverty include other dimensions as well, such as enhancing good governance, improving working conditions, strengthening the private sector, combating corruption, promoting gender equality and ensuring local communities’ participation in the decision making process. The banks’ long experience with investment projects in the borrowing countries has forced them to realize the need to ensure local people’s involvement in the development process, in order for them to benefit from development activities, and to ensure that they have access to judicial remedies. The banks have now realized that it is absolutely necessary to promote a coherent legal order while investing in the borrowing countries, if they wanted to succeed in combating poverty and strengthening good governance in the borrowing countries.

3. The World Bank

A. Targeted activities

The World Bank has played a leading role among international economic organizations in promoting good governance and rule of law, through institutional building, such as public administration reforms, training and law reform. The Bank’s activities include legal, regulatory and institutional reforms in the borrowing countries, which are considered necessary for successfully performing the Bank’s financing activities and implementing its investment projects. However, it soon became clear to the Bank that combating poverty cannot be achieved if poor people lack access to justice. Consequently, the Bank initiated several policies with regard to this pressing issue and has adopted the new concept of legal empowerment in several of its sectoral policies, projects and strategies.

26 supra note 10
29 “…compliance with critical policy and institutional actions that are critical for the implementation and expected results of the program” in Legal Vice-presidency World Bank (2005) Review of World Bank Conditionality: Legal aspects of conditionality in policy-based lending at 3-4. See also World Bank OP 8.60 - Development Policy Lending.
The Legal Vice-Presidency of the World Bank is responsible for addressing legal issues, such as promoting sound legal frameworks in Bank’s financing activities in the borrowing countries, providing legal services of a broad content and responding to legal questions, supporting the Bank’s environmental initiatives, providing legal guidance to the Bank’s staff especially when they are engaged in activities at countries with weak governance and regulatory structures.

According to the World Bank, development cannot be achieved without justice. The rule of law is considered a principle of fundamental importance to the Bank, as stated in the Annual Report of the Legal Vice-Presidency (hereinafter Legal VPU) for 2011. The report also highlights its commitment to promoting the rule of law as an important dimension of the Bank’s strategy for poverty alleviation and achieving sustainable development and equitable economic growth.

Recently the bank was engaged in a field exercise in India to explore the country’s intentions to truly go through major judicial and regulatory reforms and the possible involvement of the bank in the legal reform process. The Bank seeks to promote not only reforms in the judicial system, but also to provide marginalized people of India the means and power to confront their social isolation and claim their rights. Raising awareness is a precondition to any reforms, since these marginalized people have no knowledge of their rights. Similarly, the Bank has been engaged in designing and supervising a grant to Uruguay for promotion of equitable access to the legal system. A very important project financed by the World Bank is the National Program for Community Empowerment in Indonesia, which is considered one of the largest programs for poverty reduction in the world. The project’s “overall objective is to reduce poverty and improve local-level governance in rural areas of Indonesia through the provision of investment resources to support productive proposals developed by communities, using a participatory planning process.” In particular grants were given firstly to finance investment proposals made by villages and selected by consensus in an inter village meeting, and second to support the participatory planning process and to ensure proper technical inputs into implementation. It also included costs for training.

In addition, the Bank launched recently an initiative called the “Global Forum on Law, Justice and Development” (hereinafter GFLJD). The forum’s main goal is to assist
legal practitioners and researchers in using law to solve development issues in the host country (the country where the development project is implemented). In particular, GFLJD “seeks to: (1) promote a better understanding of the role of law and justice in the development process, through structured South-South and North-South dialogues amongst relevant stakeholders and a research agenda that will facilitate and support the co-generation of knowledge; (2) strengthen and better integrate legal and judicial institutions in the development process, through the carrying out of relevant capacity building initiatives; and (3) provide access to an open repository of knowledge.”

The Bank has also adopted another intriguing initiative called “Justice for the Poor”, which is funded by the Australian Government (AusAID) with the collaboration of other donors. This program seeks to provide both Bank project teams and client countries with support to address justice issues in development projects. It is housed in the Legal VPU which provides advisory services and disseminates knowledge through publications, a website and training courses for Bank staff. This initiative particularly focuses on the marginalized and the poor aiming at promoting access to justice and protecting their rights.

In this framework the Bank has financed several justice reform loans, such as the Afghanistan Justice Sector Reform Project, the Mongolia Enhanced Justice Sector Services Program, the Moldova Reforming Courts Institutional Development Fund Grant and has provided technical assistance on similar issues to several other countries. For instance, the Justice for the Poor project in Timor-Leste includes technical assistance, training and dialogue with stakeholders, especially landholders and investors, on communal ownership and usage rights. The Legal VPU was assigned to prepare the Directions in Justice, the first official approach paper of the Bank on justice sector reform, which is yet to be released.

Of course, one must not forget the Bank’s original mandate as stated in its Articles of Agreements. Although the Bank has extended its mandate to include the goal of sustainable development, it still needs to be extremely cautious about not interfering in the internal affairs of the borrowing states; Mainstreaming justice and legal

57 supra note 17


59 supra note 34 at 26.

60 This project was established in 2008 and since then undertook two major streams of work, the first related to local governance and the second supported a framework of fair negotiation between investors and communal landholders. The second phase of the project started in 2012 and includes three main project areas: infrastructure, land policy and administration and urban state land


61 supra note 34 at 27.

62 as on April 15, 2012

empowerment in the implementation of development projects is the safest way for the bank to promote the principal goals of sustainable development and eradicating poverty.

B. Internal policies

Accountability for its activities is a major goal of the Bank. For many decades the Bank was heavily criticized for its financing activities, which many claimed were associated with promoting military or illegal governments, destroying the natural environment and not taking into account local knowledge and experience. Accountability is linked to the constant pursuit of legitimacy for the Bank’s actions within borrowing countries. Through the establishment of an accountability mechanism the Bank may ensure to some extent its social legitimacy, meaning the achievement of broad consensus by stakeholders with regard to its activities.

Thus, the internal policies and practices of the Bank must also promote the rule of law and good governance. All the Bank’s institutional organs must follow the pertinent procedures and practices of the Bank in order to internally adhere to justice and accountability. The Bank established the Inspection Panel in 1993, which has since then been assigned with the task of examining staff’s compliance with the bank’s operational policies and practices during project finance. Affected stakeholders can appeal to the Panel regarding the bank’s operations in their community and it accepts complaints made by local stakeholders concerning the implementation of its development projects.

The Inspection Panel is the World Bank’s accountability mechanism. It seeks to provide people who are directly affected by the implementation of a development project with an independent forum, which may address any complaints related to the project. Claims against the Bank are accepted and addressed only if they concern the violation of the Bank’s internal policies and rules. Local communities which are affected by the Bank’s activities in their area may call the Bank to comply with its internal policies and procedures by submitting a complaint to the Inspection Panel, which then holds an independent investigation. Inspection Panel proceeds with the investigation while taking into account the official initial response by the Bank’s Board of Directors. After assessing all the evidence, it submits a report to the Board of Directors deciding on the necessity of proceeding with the case. If there is a positive decision by the Board to proceed with the complaint, the Panel undertakes the case and re-submits its findings to the Board which has the final responsibility to decide appropriate measures to be taken. During the primary investigation phase only the complainants, the Board of Directors and any stakeholders invited by the Panel may submit evidence. But during the main investigation phase anyone may submit evidence to the Panel.


45 supra note 15


47. Some examples of complaints may be found in The Inspection Panel, Annual Report: July 1, 2006 to June 30, 2007.

48. a) More information on requests to the Inspection Panel may be found in The Inspection Panel Annual Report: July 1, 2010 – June 30, 2011.
In the fiscal year 2010-2011 the Panel dealt with 14 cases, of which five involved investigations and the rest of them involved interaction of the Panel with both the project-affected people and the Bank Management. Requests for inspection to the Inspection Panel are mostly about environmental issues, such as the request “Argentina: Second Norte Grande Water Infrastructure Project”, where the Panel interacted with the Management and residents of Santiago del regarding investigation for social and environmental harm as a consequence of proposed sewage works and a wastewater treatment plant, the “Papua New Guinea: Smallholder Agriculture Development” where it was claimed that oil palm development supported by the Project will cause pollution of water and forest degradation. The majority of the requests submitted to the Panel are made by NGOs representing affecting communities (49%) whereas another 12% of requests is made by NGOs representing affecting communities with separate community members.

Apart from enhancing access of local people to the accountability mechanism, the Bank has developed policies to strengthen the participation of stakeholders in the decision-making processes. To this end, the Bank has established a special group, the Participation and Civic Engagement Group, which aims at promoting public participation at the national level. Participation is defined as the process through which stakeholders may affect and engage in the decision-making process and action planning. In particular stakeholders are expected to participate in the planning of the Country Assistance Strategy and Poverty Reduction Strategy Paper, through consultation and negotiation with the government and donors. Stakeholders’ participation is also compulsory in the negotiation procedures of development policy loans.

Stakeholders’ participation is promoted through several operational policies and bank procedures, although without a clear focus on the participation of the poor.

4. Asian Development Bank

A. Targeted activities

Asian Development Bank’s (hereinafter ADB) main goal is to fight poverty in Asia and the Pacific. Legal empowerment and justice sector reforms are two of the strategic areas that the ADB is actively involved in. In particular, ADB seeks to carry out...
its mandate to reduce poverty under the Poverty Reduction Strategy, which is the official strategy of the bank regarding three special pillars: pro-poor sustainable growth; social development; and good governance.56

Since poverty reduction was adopted as an overarching goal by the ADB57 in 1999, it has taken a long time for the bank to realize that good governance mechanisms and legal empowerment are necessary to improve the conditions of the poor. ADB itself is committed to promoting good governance and the rule of law, upholding basic rights and strengthening participatory rights of civil society and of poor people specifically.58 Legal empowerment is an underlying principle of ADB’s work which seeks to foster economic growth and sustainable development in the developing member countries (DMCs)59. In particular ADB is promoting law and policy reform in DMCs “to improve the efficiency and effectiveness of the legal and judicial system, resulting in the twin goals of greater responsiveness to a market economy and increasing the social access of the poor to public goods and services”.60 The Law Policy Reform project of ADB included a pro-poor judicial reform, which will permit the realization of components of pro-poor work (legal aid, decentralization, alternative dispute resolution and legal information).61

ADB has released its new strategic framework for the years 2008-2020. This new framework called “Strategy 2020”62 seeks to advance economic growth in the region and combat any disparities in order to include everyone in the development process, even the most poor and vulnerable. ADB’s vision continues to be an “Asia free of poverty”.63 Strategy 2020 identifies weak governance in member countries as one of the most important problems of the region inhibiting economic growth and development.64 Good governance as defined by the ADB refers to accountability, participation, predictability in regulations and transparency.65 Mainstreaming these components of good governance in ADB’s financing activities is a precondition for sustainable development in the region and for achieving the Millennium Development Goals. It particularly stresses the need for upholding the rule of law, ensuring greater transparency and ensuring the participation of the poor in decision-making processes.66

In this framework ADB has already funded projects in developing member countries, such as the Justice for All Project in Pakistan, which aims at helping poor people to learn about their rights and to have proper access to judicial mechanisms, 68

57 Ibid at 1.
58 Ibid at 10.
59 supra note 14
60 supra note 14 at 1.
61 supra note 14 at 5-6.
63 Ibid at 1.
64 Ibid at 10.
65 Ibid at 14.
66 Ibid at 10.
67 Ibid at 14.
68 http://www.adb.org/features/justice-all?ref=themes/gender/features
especially women who are often denied justice, as well as a new land law in Cambodia and publication of laws in Tajikistan.  

B. Internal policies

In addition, ADB is committed to promoting good governance internally and adhering to the highest ethical standards. The Bank’s aim is to create a suitable regulatory framework to ensure stakeholders’ participation at the national level and to promote transparency and accountability.

ADB established an Accountability Mechanism in 2003 replacing the former Inspection Function. This Accountability Mechanism seeks to provide people adversely affected by the bank’s projects a forum to complain about the bank’s activities. Accountability Mechanism’s functions consist of two separate phases: the consultation phase; and the compliance review phase. During the consultation phase ADB responds to specific problems of people adversely affected by its projects, whereas the second phase aims at investigating possible violations of policies and procedures of the Bank, which may cause harm to local communities.

Complaints may be submitted by at least two people or by their representative as long as they live in the borrowing country or a neighboring country where inhabitants are adversely affected by the project. Under special circumstances the representative may not come from the local community. The appeal may be done in any language of ADB’s member states.

The ADB’s Accountability Mechanism has so far received and addressed less requests than the World Bank’s Inspection Panel, which also deal mostly with environmental issues arising from the bank’s financing activities.

In parallel, ADB promotes stakeholders’ participation at all levels of its activities.

5. African Development Bank

A. Targeted activities

In 2004 the African Development Bank (hereinafter AfDB) revised its policy on poverty reduction with the new “Bank Group Policy on Poverty Reduction” paper.
Poverty reduction is the fundamental goal of AfDB and the achievement of MDGs is the central focus of this policy. According to this document, a participatory approach was followed in the making of the policy with the involvement of Bank staff, and national and international partners.

AfDB directly relates poverty reduction with the participation of civil society, which serves as the basis for the new policy along with national ownership and focus on the outcomes. Good governance, empowerment and gender quality are highly valued, although there is no specific reference to the legal empowerment of the poor in this policy document. In fact, it recognizes several different aspects of poverty beyond inadequate income, such as good governance, environmental degradation, empowerment and inequality. The bank’s policy highlights several issues: the importance of good governance and how the lack of it affects the poor; corruption is a major issue; lack of participation of poor people in the decision-making processes; legal systems which do not promote the economic advancement of the poor; and the poor quality of public services.

AfDB recognizes the link between poverty and lack of social organization and empowerment (social capital), participation and voice (political capital) and environmental degradation (natural capital) and it is trying to address these issues through its financing activities. Participation of poor people at all stages of the project cycle is one major concern of AfDB, which uses special tools, such as the Participatory Poverty Assessments and the Poverty Reduction Strategy Papers, to ensure participation of the poor in decision making.

Further, AfDB is committed to enhancing access by the poor, especially women, to productive assets such as land and credit; supporting commercialization of agriculture in a way that will benefit the poor; developing rural infrastructure; assisting in generating employment and fighting seasonal poverty and to encourage the participation of the poor in designing programs and projects that will benefit them. It is also committed to supporting educational, health and nutritional projects for poor and vulnerable people.

In addition, AfDB’s policy on poverty has a special focus on governance issues. In particular, it recognizes that the links between governance and poverty are strong, and certain factors, such as corruption, lack of participation of the poor in the decision-making processes and legal systems which are actually against the poor and marginalized may perpetuate poverty. Consequently, the bank has decided to promote measures to

---

78 Ibid at 1.
79 Ibid at i.
80 Ibid at 1.
81 Ibid at 3.
82 Ibid at 7-8.
83 Ibid at 14.
84 Ibid at 15.
85 Ibid at 17.
86 Ibid at 16-18.
87 Ibid at 22.
88 Ibid at 22-25.
89 Ibid at 28.
increase transparency, fight corruption, enhance public participation and support legal and judicial reforms\textsuperscript{90} and particularly measures to facilitate access to justice for the poor including legal literacy and right-to-information\textsuperscript{91}.

Thus, although there is no official reference or policy document addressing legal empowerment of the poor, AfDB has developed policies and strategies which map the way towards the direction of legal empowerment of the poor. Several AfDB documents refer to this concept\textsuperscript{92}.

**B. Internal policies**

The bank has developed internal mechanisms of accountability and transparency, in order to increase its credibility and performance. People adversely affected by the bank’s activities may appeal to the Independent Review Mechanism (IRM)\textsuperscript{93}. IRM consists of a Compliance Review and Mediation Unit (CRMU) and a Roster of Experts.

An appeal may be submitted by at least two people who are affected by a project financed by AfDB or by their representative. The appeal may be written either in French or English, which are the official languages of the bank. For an appeal to be reviewed it must be proved that the rights or interests of the persons are affected or maybe affected by the bank’s inability to comply with its internal operational policies and procedures\textsuperscript{94} or with its social and environmental policies\textsuperscript{95}.

Most requests to the IRM are made by NGOs in cooperation with local residents\textsuperscript{96}.

AfDB also promotes stakeholders’ participation at the project cycle’s different stages. Public participation is considered an important tool to combat poverty in the African region.

**6. EBRD**

**A. Targeted activities**

The European Bank for Reconstruction and Development (hereinafter EBRD) has a strong commitment to promoting democratic reforms, good governance and an effective legal and regulatory framework. However, EBRD has no special policy either on legal empowerment of the poor or poverty reduction, since it was basically established to assist former socialist countries in their efforts to integrate into the international economy.

\textsuperscript{90}Ibid at 28.
\textsuperscript{91}Ibid at 29.
\textsuperscript{94}In case of a project financed by AfDB, supra note 15
\textsuperscript{95}In case of co-financing, supra note 15
\textsuperscript{96}AfDB (2010), *The Independent Review Mechanism: Annual Report 2010*, at 5-6, 16-18
B. Internal policies

EBRD recently established a Project Complaint Mechanism which replaced the former Independent Recourse Mechanism (IRM). The PCM has been established to assess and review complaints about bank-financed projects, independently from banking operations\(^{97}\). As its predecessor IRM, the PCM has two functions: (a) a compliance review function, under which it assesses whether a Bank approved project complies with relevant Bank policies, specifically relevant environmental policies and project-specific provisions of the Public Information Policy; and (b) a problem-solving function under which it restores dialogue between the parties and resolves any complaints relating to the projects. PCM accepts complaints by individuals and groups directly located or having interests in the area of an EBRD-funded project, as well as civil society organisations.

Complaints may be submitted in any of the working languages of the Bank, i.e. English, French, German or Russian, or in any of the official languages of the Bank’s countries of operations\(^{98}\). A complaint to the PCM may be submitted in any written format and the PMC may be contacted to provide guidance on how to write and submit a complaint. The claimants can find sample complaint forms on the PMC webpage or hard copy at EBRD offices.

Most complaints to the PMC are made by local and international civil society organizations, who act directly as complainants or on behalf of project-affected communities\(^{99}\). In addition the majority of the complaints relate to large infrastructure projects with high impact on environmental and social issues, such as the Tbilisi Railway Bypass project in Georgia and the Omla Hydro Power Plant in Croatia.

EBRD also recognizes in its official documents that consultation with stakeholders contributes to the improvement of the quality of funded projects\(^{100}\). In addition, EBRD expects implementing agencies to comply with national regulation regarding consultation procedures with the public, and also to follow the bank’s requirements on consultation with stakeholders\(^{101}\).

7. Inter-American Development Bank

A. Targeted activities

Reducing poverty and inequality while achieving sustainable growth are the biggest challenges that the Inter-American Development Bank (hereinafter IDB) is facing\(^{102}\). To reduce poverty and inequality IDB considers it necessary to that address inequities in access to services and productive employment in the region\(^{103}\). In a special report concerning the improvement of access to justice on conflict resolution with a


\(^{98}\) Ibid at par.6


\(^{100}\) EBRD, Environmental and Social Policy (May 2008), at 10.

\(^{101}\) supra note 15

\(^{102}\) IDB Annual Report (2011) at 23.

\(^{103}\) IDB Annual Report (2011) at 23.
focus on Peru, it recognized that poverty hinders access to justice\textsuperscript{104}. However, it does not specifically mention legal empowerment of the poor.

**B. Internal policies**

The Independent Investigation Mechanism, which was established in 1994 reviewed only five complaints.\textsuperscript{105} The bank then established an Independent Consultation and Investigation Mechanism in 2010 (hereinafter ICIM). This mechanism establishes an independent forum to receive complaints from communities or individuals who allege that they are or may be adversely affected by IDB-financed activities. The ICIM oversees compliance with the IDB’s Relevant Operational Policies. The complaint may be submitted in any language. The complaint may be filed by one or more individuals, groups, associations, entities or organizations, including without limitations, groups, associations, entities or organizations that are community-based, or that are formed by indigenous or Afro-descendant peoples or entities that are organized as nongovernmental organizations residing in the country where the Bank-financed operation is or will be implemented\textsuperscript{106}.

Requests to the ICIM relate mostly with issues of access to information and environmental and social safeguards compliance\textsuperscript{107}. The majority of the requests are made by community groups and NGOs\textsuperscript{108}.

Stakeholders’ participation is strongly encouraged by the bank. Consultation procedures were followed when reforming the former Investigation Mechanism, for mainstreaming gender issues in the development process and other issues\textsuperscript{109}. Moreover, IDB takes a great interest in including local knowledge and indigenous people experience in the development process\textsuperscript{110}.

**8. Conclusions**

This paper sought to highlight the possible involvement of multilateral development banks in the legal empowerment of the poor. It focused on two different aspects: the direct policies and strategies of the banks on combating poverty and promoting the rule of law; and their internal policies with regard to accountability mechanisms and accessibility by poor people.

As far as poverty and governance policies are concerned, the World Bank leads the way having developed specific policies on the legal empowerment of the poor. The Asian Development Bank and the African Development Bank have also incorporated this concept in their plans and actions, whereas the European Bank for Reconstruction


\textsuperscript{107} Inter-American Development Bank, *The Independent Consultation and Investigation Mechanism: Annual Report 2011* at 10

\textsuperscript{108} Ibid at 11

\textsuperscript{109} supra note 106 at 28.

\textsuperscript{110} supra note 106 at 62.
and Development and the Inter-American Development Bank have still a long way to go to mainstream this concept in their policies and financing activities.

Regarding the accountability mechanisms established by the banks to promote local people’s participation and access to complaint mechanisms a few sound initiatives are in place, such as the right of the complainants to submit a request in any language they choose, which is the case at least for some of the banks. However, there is a gap between the availability of complaints mechanisms and the knowledge by local people of their right to appeal to the bank itself in the first place.

While the banks have taken many steps to promote the effectiveness of aid and to coordinate their actions and harmonize their policies, they need to include legal empowerment policies for the poor people, in order to create mutual responsibility and strengthen the global fight against poverty. In particular, the banks could take the following steps in order to assist in this overarching goal:

a) train their staff in poverty issues and aspects
b) promote further research on the link between poverty and legal empowerment
c) disseminate their findings and results
d) involve local people, especially poor and vulnerable in every stage of their project cycle by holding regular consultations especially in the planning and implementation stages
e) commit to implement their relevant policies on poverty and good governance
f) develop further cooperation among the banks themselves in order to harmonize their policies on these issues and promote the effectiveness of aid.

MDBs are in possession of the knowledge and the means to further support the global goal of poverty reduction. The World Bank has shown the way by endorsing the new concept of legal empowerment of the poor in its official documents. However, the actual outcomes of this endorsement still remain to be seen.

[111] See for instance the Rome Declaration on Harmonization (February 2003)