

# INTEGRITY AND ANTI-CORRUPTION DEPARTMENT OF THE AFRICAN DEVELOPMENT BANK GROUP: STANDARD OPERATING PROCEDURES

## Background

In February 2006, the leaders of International Financial Institutions (IFIs) and the African Development Bank agreed to establish a Joint International Financial Institutions Anti-Corruption Task Force to work towards a consistent and harmonised approach to combat corruption in the IFI financed operations.\* This led to the adoption of the Uniform Framework for Preventing and Combating Fraud and Corruption in September 2006. Consequently, these IFIs endorsed a common set of principles for investigations of 'Sanctionable Practices' conducted by them. The principles are guidelines and are adapted in line with each organisation's policies, rules, regulations, privileges and immunities.

At the African Development Bank Group, these guidelines mirrored existing policies used by its investigative function. The Standard Operating Procedures (SOPs) reproduced below therefore reflect these policies, the Uniform Framework, and best practices of other IFIs while preserving its relevance to the mandate of the AfDB.

## Principle 1

The Integrity and Anti-Corruption Department (IACD) of the African Development Bank (AfDB or the Bank) is the initial point of contact for allegations of integrity violations involving AfDB related activities or AfDB staff.

## Principle 2

The purpose of an investigation by IACD is to examine and determine the veracity of allegations or suspicions of Sanctionable Practices affecting the Bank's activities or involving members of staff.

Sanctionable Practices are:

- a) Corruption: A corrupt practice, that is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of another party;

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\* The IFIs were Asian Development Bank (the AsDB), European Bank for Reconstruction and Development (the EBRD), European Investment Bank (the EIB), International Monetary Fund (the IMF), Inter-American Development Bank (the IADB) and the World Bank Group (the World Bank). The participating institutions agreed on a Uniform Framework for Preventing and Combating Fraud and Corruption, which was formally agreed upon on in September 2006.

- b) Fraud: A fraudulent practice, that is any act or omission, including a misrepresentation, which misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation;
- c) Coercion: A coercive practice, that is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence the actions of a party;
- d) Collusion: A collusive practice, that is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly, the actions of another party.
- e) Obstructive practice:
  - i. Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, or coercive practice; and/or threatening, harassing or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
  - ii. Acts intended to materially impede the exercise of the Bank's Inspection and Audit rights provided for under the Procurement Rules.

Sanctionable Practices have been defined in the Bank's [Rules and Procedures for Procurement of Goods and Works](#) and [Rules and Procedures for Recruitment of Consultants](#).

### **Principle 3**

IACD shall maintain objectivity, impartiality, and fairness throughout the investigative process and conduct its activities competently and with the highest levels of integrity. In particular, IACD shall perform its duties independently of those responsible for or involved in operational activities and of staff members liable to be subject of investigations and shall also be free from improper influence and fear of retaliation.

### **Principle 4**

- a) Staff of IACD shall disclose to the Director of IACD, any actual or potential conflict of interest that he or she may have in an investigation in which he or she is participating, within 48 hours of knowledge of such conflict. The Director shall take appropriate actions to remedy the conflict and document his or her decision in writing. Actions to address conflict of interest may include but are not limited to exclusion from an investigation, and limits on access to case records and information.

- b) The Director of IACD shall disclose conflicts involving himself or herself to the President within 48 hours of knowledge of such conflict. The President shall decide on the matter.

## **Principle 5**

The procedures to investigate allegations of misconduct of any staff member of IACD, the Sanctions Office or the Sanctions Appeals Board shall be as follows:

- a) Allegations concerning misconduct of IACD staff members, the Sanctions Office or the Sanctions Appeals Board should be reported to the Director of IACD. Allegations concerning members of the staff of IACD, the Sanctions Office or the Sanctions Appeals Board will be investigated by investigators from IACD designated by the Director of IACD.
- b) Allegations concerning the Director of IACD should be reported to the President. Allegations concerning the Director of IACD will be investigated by an investigative expert selected by the President who will report his or her findings directly to the President.
- c) A member of the Sanctions Office or the Sanctions Appeals Board, against whom allegations have been made, may be excused from all matters before the Sanctions Office or the Sanctions Appeals Board if the Sanctions Commissioner or the President of the Sanctions Appeals Board accepts such allegations. In the case where the allegations concern the Sanctions Commissioner or the President of the Sanctions Appeals Board the President shall decide.

## **Principle 6**

The Bank will publish the terms of reference for IACD as well as an annual report highlighting the integrity and anti-fraud and anti-corruption activities of IACD in accordance with the Bank's Anti-Corruption Strategy.

## **Principle 7**

- a) IACD will limit the circulation of information regarding on-going investigations strictly to those with a need to know. During the course of investigations, IACD shall take reasonable measures to protect and treat non-public information as confidential.
- b) During the course of investigations and until sanction determination has been made, IACD shall take reasonable measures to protect and treat as confidential, the identities of the subjects of such investigation.
- c) IACD shall take reasonable measures to protect and treat as confidential, the identities of parties providing testimony or evidence. Depending on the nature of the case, IACD may disclose certain evidence to the subject of an investigation in a manner that considers the need to protect whistle blowers and witnesses in accordance with the Bank's "Whistle Blowing and Complaints Handling Policy".
- d) Only IACD may access IACD files and records. IACD may determine whether IACD files and records may be shared (unedited or redacted) with other parties to support other investigations or where it is deemed to be necessary to fulfil the task of IACD.
- e) All documentation and information for cases whether opened or unopened, substantiated or unsubstantiated, shall be kept in a secure and confidential manner by IACD and shall be retained for at least three years.

## **Principle 8**

Investigative findings shall be based on facts and related analysis, which may include reasonable inferences.

## **Principle 9**

IACD shall make to the President, recommendations other than sanctions that are derived from its investigative findings. The recommendations may address but are not limited to structural deficiencies of the Bank that have been identified during the conduct of investigations as fostering Sanctionable Practices.

## **Principle 10**

- a) All investigations conducted by IACD are administrative in nature.
- b) In view of the administrative nature of investigations, a staff member that is subject of the investigations shall not have the right to be accompanied during interviews by another staff member or retired staff member in his or her defence. The provisions of the AfDB staff rules do not apply.
- c) In view of the administrative nature of investigations, non-staff members shall not have the right to counsel during proceedings and interviews.

## **Principle 11**

Misconduct is the failure by a staff member to observe the rules of conduct or the standards of behaviour prescribed by the Bank. In particular, misconduct includes but is not limited to:

- a) Corruption: A corrupt practice, that is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of another party;
- b) Fraud: A fraudulent practice, that is any act or omission, including a misrepresentation, which misleads, or attempts to mislead, a party in order to obtain a financial or other benefit or to avoid an obligation;
- c) Coercion: A coercive practice, that is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or property of the party to influence the actions of a party;
- d) Collusion: A collusive practice, that is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party.
- e) Obstructive practice:
  - i. Deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, or coercive practice; and/or threatening, harassing or intimidating any party to prevent it from

- disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
- ii. Acts intended to materially impede the exercise of the Bank's Inspection and Audit rights provided for under the Procurement Rules.

### **Principle 12**

- a) For the purposes of an investigation, the standard of proof that shall be used to determine whether a complaint is substantiated is defined information that as a whole, shows that something is more probable than not.
- b) 'More probable than not' means that upon consideration of all of the relevant evidence and materials, a preponderance of the evidence and materials supports the finding.

### **Principle 13**

A staff member who qualifies as a "whistle blower" under the rules, policies and procedures of the Bank shall not be subjected to retaliation by the Bank. The Bank will treat retaliation as a separate act of misconduct.

### **Principle 14**

- a) Bank staff are required to report suspected acts of fraud, corruption, misconduct and other Sanctionable Practices immediately but in any event, not later than seven (7) days after becoming aware of the Fraud or Corruption
- b) Bank staff are obligated to report any suspected integrity violation to IACD. No approvals or authorisations are needed by staff to report a suspected integrity violation or misconduct.

### **Principle 15**

Bank staff are required to cooperate with an investigation and to answer questions and comply with requests for information.

## **Principle 16**

The Bank shall adopt rules, policies and procedures such as in its procurement rules and, to the extent that it is legally and commercially possible, include in its contracts with third parties, provisions that parties involved in the investigative process shall cooperate with an investigation.

## **Principle 17**

As part of the investigative process, the subject of an investigation shall be given an opportunity to explain his or her conduct and present information on his or her behalf. The determination of when such opportunity is provided to the subject is to be taken by IACD considering the right of the subject to be informed as well as the state of investigations.

## **Principle 18**

The investigation should be conducted expeditiously within the constraints of available resources.

## **Principle 19**

IACD should examine both inculpatory and exculpatory information.

## **Principle 20**

IACD shall maintain and keep secure an adequate record of the investigation and the information collected. The record should be kept for at least five years after the filing of the complaint.

## **Principle 21**

The staff of IACD shall take appropriate measures to prevent the unauthorised disclosure of investigative information.

## **Principle 22**

IACD shall document its investigative findings and conclusions.

## **Principle 23**

For purposes of conducting an investigation, IACD shall have full and complete access to all relevant information, records, personnel, and property of the Bank, in accordance with the rules, policies and procedures of the Bank.

## **Principle 24**

To the extent provided by the Bank's rules, policies and procedures and relevant contracts, IACD shall have the authority to examine and copy the relevant books and records of projects, executing agencies, individuals, or firms participating or seeking to participate in Bank-financed activities or any other entities participating in the disbursement of Bank funds. IACD shall have the authority to call any non-staff member as a witness as required to conduct the investigations.

## **Principle 25**

IACD may consult and collaborate with other organisations, international institutions, and other relevant parties to exchange ideas, practical experience, and insight on how best to address issues of mutual concern.

## **Principle 26**

IACD may provide assistance to and share information with other investigative offices, including national authorities, in the interest of cooperation, harmonisation, or other relevant considerations. IACD will require recipients of such information to protect the confidentiality of such information and to use it only for the purpose for which IACD disclosed the information.

## Principle 27

IACD shall accept all complaints irrespective of their source, including complaints from anonymous or confidential sources. IACD may also open cases of its own volition, for example arising out of press reports of “Sanctionable Practices” in Bank activities.

## Principle 28

Where practicable, IACD will acknowledge receipt of all complaints in accordance with the “Whistle Blowing and Complaints Handling Policy”.

## Principle 29

- a) All complaints shall be registered and reviewed to determine whether they fall within the jurisdiction or authority of IACD.
- b) Among the information available IACD shall document
  - i. The name of the staff member who received the complaint
  - ii. The date and method of contact with the complainant
  - iii. The identity of the complainant, if disclosed
  - iv. A brief summary of the allegations, including the type of wrongdoing alleged and the parties alleged to be involved
  - v. The connection to the Bank, if any, including the description and location of the project or operation involved; and any other information that the staff member considers significant.

## Principle 30

- a) Once a complaint has been registered, it will be evaluated by IACD to determine its credibility, materiality, and verifiability. To this end, the complaint will be examined to determine whether there is a legitimate basis to warrant an investigation.
- b) For the purpose of the preliminary evaluation the following definitions shall apply:
  - i. *Credible*: there is a reasonable possibility that a violation occurred
  - ii. *Material*: the matter is of sufficient importance to justify the projected requirements of the investigation and any remedial action

- iii. Verifiable: practicable options exist to obtain sufficient evidence to determine the truth of the allegations on the balance of probabilities
- c) At the conclusion of the preliminary evaluation, IACD staff shall recommend closure of the complaint or further investigation to the Director of IACD who shall decide on the matter.
- d) If the Director of IACD decides to open a case, he or she shall promptly record the decision in the case management system.
- e) If the Director of IACD decides not to open a case, he or she shall promptly record the decision in the case management system make the information regarding the allegation and its evaluation available upon request to appropriate parties, including the President and include the number of cases evaluated but not opened in IACD's "Annual Report of Fraud Investigations".

### **Principle 31**

Decisions on which investigations should be pursued are made in accordance with the rules, policies and procedures of the Bank; decisions on which Investigative Activities are to be utilised in a particular case rest with IACD.

### **Principle 32**

The planning and conduct of an investigation and the resources allocated to it should take into account the gravity of the allegation and the possible outcome(s).

### **Principle 33**

IACD shall, wherever possible, seek corroboration of the information in its possession. Where it is not possible IACD shall weigh the information according to its best conviction.

### **Principle 34**

For the purpose of these guidelines, “Investigative Activity” includes the collection and analysis of forensic evidence, documentary, video, audio, photographic, and electronic information, or other material, interviews of witnesses, observations of investigators, and such other investigative techniques as are required to conduct the investigation.

### **Principle 35**

Investigative Activity and critical decisions should be documented in writing and reviewed with management of IACD.

### **Principle 36**

Subject to the Bank’s rules, policies and procedures, if, at any time during the investigation, IACD considers that it would be prudent, as a precautionary measure or to safeguard information, to temporarily exclude a staff member that is the subject of an investigation from access to his or her files or office or to recommend that he or she be suspended from duty, with or without pay and benefits, or to recommend placement of such other limits on his or her official activities, IACD shall refer the matter to the Corporate Human Resources Department for appropriate action.

### **Principle 37**

- a) To the extent possible, interviews conducted by IACD should be conducted by two persons.
- b) IACD shall provide, at their request, a copy of the record of interviews for the witness or subject of investigations after closure of investigations.
- c) Interviews may be recorded with the knowledge of the witness or subject of investigations.

### **Principle 38**

- a) Interviews with staff members shall be conducted in one of the working languages of the Bank. Translation into another working language may be offered.
- b) Subject to the discretion of IACD , interviews with non-staff members shall be conducted in one of the working languages of the Bank or may be conducted in the language of the person being interviewed, where appropriate, using interpreters.

### **Principle 39**

IACD will not pay a witness or a subject for information. Subject to the Bank's rules, policies and procedures, IACD may assume responsibility for reasonable expenses incurred by witnesses or other sources of information to meet with IACD.

### **Principle 40**

IACD may engage external parties to assist in its investigations.

### **Principle 41**

If IACD does not find sufficient information during the investigation to substantiate the complaint, it will document such findings, close the investigation, and notify the relevant parties, as appropriate.

### **Principle 42**

- a) If IACD finds sufficient information to substantiate the complaint against staff members, it will document its investigative findings and refer the findings to the President.
- b) If IACD finds sufficient information to substantiate the complaint against non-staff members, it will document its investigative findings and refer the findings to the Sanctions Office.

### **Principle 43**

Where IACD's investigative findings indicate that a complaint was knowingly false, IACD shall, where appropriate, refer the matter to the relevant authorities in the Bank.

### **Principle 44**

Where IACD's investigative findings indicate that there was a failure to comply with an obligation existing under the investigative process by a witness or subject, IACD may refer the matter to the relevant authorities in the Bank.

### **Principle 45**

IACD may consider whether it is appropriate to refer information relating to the complaint to the appropriate national authorities, and IACD will seek the necessary internal authorisation to do so in cases where it finds a referral is warranted.