

# **Accountability Mechanism**

## **Dispute Resolution Service**

# **Interim Operating Procedures**

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## **Accountability Mechanism Dispute Resolution Service (DRS)**

Interim Operating Procedures (October 13, 2021)

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## **1. Purpose**

- 1.1. These Interim Operating Procedures (“Interim Procedures”) are designed to operationalize the Dispute Resolution Service (“DRS”), a new service established under the Accountability Mechanism and regulated by [Resolution No. IBRD 2020-0005/Resolution No. IDA 2020-0004](#) and [Resolution No. IBRD 2020-0004/Resolution No. IDA 2020-0003](#) (the “Resolutions”).
- 1.2. The purpose of the DRS is to facilitate a voluntary and independent dispute resolution option for the Parties in the context of Requests for Inspection to the Inspection Panel (the “Panel”).
- 1.3. These Interim Procedures are meant to explain and govern the process by which the Requesters and Borrowers (the “Parties”) may avail themselves of their options for dispute resolution under the Resolutions, and to facilitate their choice, providing transparency and predictability in any process adopted. The Interim Procedures regulate the interaction of the Accountability Mechanism with the Parties in relation to dispute resolution until the Accountability Mechanism Operating Procedures are presented to the Executive Directors, following thorough external consultations (see para. 21).
- 1.4. The DRS offers the Parties an opportunity to reach a voluntary agreement by:
  - a) facilitating dialogue between the Parties in a structured and neutral manner.
  - b) utilizing a collaborative, flexible and situation-specific approach to assist the Parties in finding mutually satisfactory solutions to issues raised.
  - c) facilitating the conclusion of an agreement on the issues so resolved.

## **2. Scope**

- 2.1. The scope of the dispute resolution process is limited to project-related issues raised in the Request for Inspection and identified as the issues to be investigated in the Panel’s report to the Executive Directors declaring eligibility and recommending investigation.
- 2.2. If there is any disagreement or doubt as to the scope of the dispute resolution process as between the Parties, the DRS offers guidance. In accordance with the voluntary nature of dispute resolution, the Parties agree on the scope of dispute resolution before continuing with the process.

## **3. Principles**

- 3.1. The DRS is independent of Bank Management and organizationally separate from the Panel. It is impartial as between Parties and the merits of the dispute and operates in a gender responsive and culturally appropriate manner.
- 3.2. The DRS and its appointed mediator/facilitator act as neutrals and cannot impose solutions upon any Party.
- 3.3. Dialogue requires ongoing willingness to engage in good faith.
- 3.4. Any Party may withdraw from a dispute resolution process at any time.

## **4. Confidentiality**

- 4.1. If, when submitting a Request for Inspection, the Requesters asked for their identities to be kept confidential by the Panel, the DRS asks the Requesters if they seek similar treatment in the context of dispute resolution. If so, the DRS honors any such request and discusses any potential implications for the dispute resolution process with the Requesters.
- 4.2. The DRS keeps confidential any information that the Parties have agreed between themselves to keep confidential.
- 4.3. In accordance with para. 13.3, the Parties have the option to keep any dispute resolution agreement reached confidential, or to disclose it.

- 4.4. The Accountability Mechanism is bound by the World Bank [Access to Information Policy](#). Under this policy, information received in confidence from third parties (such as the Parties) is kept confidential and is not subject to disclosure.

## **5. Pre-eligibility Engagement by the DRS**

- 5.1. When a Request for Inspection is received by the Panel, the Panel determines admissibility and eligibility. Dispute Resolution is only offered as an option upon approval by the Executive Directors of a Panel recommendation to investigate a project (“Investigation Approval”).
- 5.2. Should either Party wish to be informed about dispute resolution as a potential option, this information is provided by a DRS staff member. Information provided by the DRS to the Parties prior to Investigation Approval is limited to the provision of information about dispute resolution services only. The Parties may indicate such interest at any time. Whenever the Parties indicate such interest to either the DRS or the Panel prior to Investigation Approval, the other shall be made aware.

## **6. Independence of the Dispute Resolution Process**

- 6.1. Neither the Panel members nor Panel staff take part in the dispute resolution process.
- 6.2. Any Accountability Mechanism communication with the Parties during the dispute resolution decision phase (according to para. 7) or the dispute resolution phase (paras. 8-12) takes place through the DRS staff or the Accountability Mechanism Secretary (“AM Secretary”). Members and/or staff of the Panel do not communicate with the Parties, their representatives or the DRS staff in connection with the case while the dispute resolution process is ongoing.
- 6.3. In the event the Panel initiates an investigation following the conclusion of the dispute resolution process, the AM Secretary ensures that information under the control of the DRS related to the dispute resolution process and its proceedings and information provided by the Parties is not used in the Panel’s compliance investigation.
- 6.4. DRS staff and the AM Secretary do not opine on the compliance process or outcome.

## **7. Dispute Resolution Decision Phase**

- 7.1. Upon Investigation Approval, the AM Secretary offers the Parties an opportunity for dispute resolution. The Parties each have a maximum of 30 business days from the Investigation Approval date to decide and communicate whether or not they wish to take part in dispute resolution.
- 7.2. The DRS facilitates informed decision-making. To better allow the Parties to make an informed decision on whether to pursue dispute resolution, the AM Secretary meets with each Party to discuss:
  - a) the voluntary nature of the dispute resolution process.
  - b) the scope of the issues that may be considered in the dispute resolution process, as per para. 2.1.
  - c) the potential benefits and drawbacks to engaging in a dispute resolution process.
  - d) that there will be a compliance investigation if dispute resolution is rejected, one or both parties withdraw from the dispute resolution process, or dispute resolution does not conclude in time.
  - e) that willingness to participate and a good faith commitment from both Parties is required to reach a successful dispute resolution outcome.
  - f) any concerns the Parties raise in relation to the dispute resolution process.

- 7.3. If either of the Parties indicate, or the DRS assesses, a need for capacity-building to allow them to better make an informed decision on whether to participate in a dispute resolution process, this may be offered by DRS within the resources and time frame available.
- 7.4. The DRS assigns a staff member to manage the case throughout the decision phase and, if dispute resolution is selected, until its conclusion.
- 7.5. Each Party indicates whether they are willing to proceed with a dispute resolution process.
- 7.6. If both Parties indicate a willingness to move forward with a dispute resolution process, the DRS meets with the Parties, jointly or separately as appropriate, to discuss next steps. This includes asking each Party to agree or decline to invite DRS staff and/or Bank Management to participate as an observer in the dispute resolution process.
- 7.7. Within 30 business days after Investigation Approval, the AM Secretary informs the Executive Directors, the Panel and Bank Management whether the Parties agree to pursue dispute resolution. If the Parties agree to dispute resolution, the Panel holds its investigation in abeyance. If the Parties do not agree to dispute resolution, the Panel commences its investigation, in accordance with the [Panel Resolution](#).
- 7.8. The Parties may agree to limit the dispute resolution process to a subset of the project-related issues raised in the Request for Inspection and identified in the Panel's Report and Recommendation as the issues to be investigated.
- 7.9. At any moment in the dispute resolution process, including during the dispute resolution decision phase, either Party can opt not to pursue dispute resolution.

## 8. Preparation of Dispute Resolution Framework

- 8.1. Following initiation of the dispute resolution process by notice of the AM Secretary, the DRS analyzes the needs and interests of the Parties by conducting a review of project documentation, engaging with the Parties and drawing upon other relevant sources of information. This analysis is used to prepare a dispute resolution framework (the "Framework") in consultation with the Parties and subject to their agreement. This process may also involve the mediator/facilitator, if already identified (see para. 9).
- 8.2. If necessary, the DRS may conduct an assessment mission to prepare the Framework.
- 8.3. The Framework includes the objectives, scope, participants, methods, stages and timelines of the dispute resolution process, and any specific requirements for the appointment of a mediator/facilitator.
- 8.4. A number of dispute resolution methods may be considered relevant in the circumstances of the specific case and agreed to by the Parties in the Framework, including but not limited to the following:
  - a) **Dialogue:** Where communication among Parties has been limited or disrupted, the DRS may encourage the Parties to engage directly to address and resolve the issues raised in the Request for Inspection.
  - b) **Information sharing:** In many cases, the Request for Inspection will raise questions regarding the impacts of a project. The DRS may help the Parties obtain information or clarifications that may result in resolution.
  - c) **Joint fact-finding:** Joint fact-finding is an approach that encourages the Parties to agree on the issues to be examined; the methods, resources, and people that will be used to conduct the examination; and the way that the Parties will use the information generated from the joint fact-finding process.
  - d) **Mediation:** Mediation involves the intervention by a neutral third party in a dispute or negotiation to assist the Parties in voluntarily reaching their own mutually satisfying resolution.

- e) **Conciliation:** Conciliation involves the intervention of a neutral third party in a dispute or negotiation and the third-party neutral may make recommendations to the Parties in the conciliation process.
- 8.5. The Framework states the last date upon which agreement can be reached and documented and the terms for requesting any extension of time. If the timeframe is extended according to the procedure in para. 11.2, the Framework is modified accordingly.

## **9. Selection and Appointment of Mediator/Facilitator and other Service Providers**

- 9.1. The DRS draws upon a pool of mediators/facilitators qualified to deliver dispute resolution services or may suggest a mediator/facilitator on an *ad hoc* basis, as the specific needs of the situation require. The mediator/facilitator is selected based on their expertise, ability to exercise sound judgment and operate with integrity, and ability to understand the cultural context. The mediator/facilitator must be able to serve as a neutral and impartial third party, as assessed by the Parties and the DRS. The Parties may agree or object to the suggestion of mediator/facilitator by the DRS or may propose an alternative.
- 9.2. The DRS engages the selected mediator/facilitator for the purposes of the dispute resolution phase based upon a Terms of Reference prepared and issued by the DRS.
- 9.3. If the appointed mediator/facilitator becomes unable for any reason to continue the process, or if the Parties lose confidence in their appointed mediator/facilitator, the DRS consults directly with the Parties to find an appropriate solution, which may include appointment of a replacement mediator/facilitator.
- 9.4. As determined by DRS according to the circumstances of the case, other service providers may be appointed by DRS and made available during the process. Support services normally include language services, where there is no common language that the Parties and the mediator/facilitator are comfortable using.
- 9.5. Experts who may be appointed by the DRS to perform a different role to the mediator/facilitator are selected based upon the same requirements as those for the mediator/facilitator as described in para. 9.1.
- 9.6. Confidentiality provisions are included in contracts for all mediators/facilitators and any other service providers.

## **10. The Dispute Resolution Process**

- 10.1. The mediator/facilitator closely coordinates with the DRS on the execution of the Framework and may revise it as deemed necessary and by mutual agreement of the Parties.
- 10.2. The mediator/facilitator, or their replacement as specified in para. 9.3, leads the dispute resolution process until its conclusion. The assigned DRS staff member (under para. 7.4) manages the process, from the perspective of budgeting and required DRS actions as provided in these Interim Procedures.
- 10.3. As the dispute resolution progresses, the mediator/facilitator keeps the assigned DRS staff apprised of progress, including any issues resolved or other agreements reached.

## **11. Time Frame**

- 11.1. The assigned DRS staff member manages the time frame of the dispute resolution process, which must be completed within one year from the date on which the AM Secretary informs the Executive Directors, the Panel and Bank Management of the Parties' decision to pursue dispute resolution.
- 11.2. The AM Secretary may offer, or the Parties may jointly request, an extension to the time frame. The AM Secretary may authorize an extension of up to six additional months and,

in such cases, specifies the last day on which a dispute resolution agreement may be finalized under the terms specified in para. 12.2 before the dispute resolution phase is closed. If so authorized, the Framework is modified accordingly.

- 11.3. Exceptional circumstances resulting in unavoidable postponement are considered under para. 18.

## **12. Conclusion of Dispute Resolution**

- 12.1. The dispute resolution process concludes when any of the following events occur: the Parties reach and sign an agreement in accordance with para. 12.2; either or both Parties withdraw(s) from the dispute resolution process in accordance with para. 12.3; the authorized time frame expires; or, the Executive Directors terminate the dispute resolution process upon recommendation of the AM Secretary, in accordance with para. 12.5.

### **12.2. Dispute Resolution Agreement**

- a) If the Parties reach agreement, such agreement is memorialized in a Dispute Resolution Agreement signed by the Parties, containing a time-bound implementation schedule for agreed actions.
- b) The mediator/facilitator, with guidance and support from the DRS, assists the Parties in preparing a Dispute Resolution Agreement.
- c) The Parties may only commit themselves and their agents. If the Dispute Resolution Agreement involves obligations to be performed by any other person or entity, the written consent of such other persons or entities must be included as an annex to the Dispute Resolution Agreement.
- d) The AM Secretary acknowledges receipt of a Dispute Resolution Agreement upon receiving it.
- e) The AM Secretary keeps an official record of all Dispute Resolution Agreements. The classification of such records is consistent with paras. 4.1, 4.2, 4.4 and 13.3, including the confidentiality decisions of the Parties.

### **12.3. Withdrawal**

- a) Should any Party wish to withdraw from the dispute resolution process, they may do so by informing the mediator/facilitator or the assigned DRS staff member.
- b) If some Requesters withdraw, but others remain, the mediator/facilitator informs the assigned DRS staff. Where the remaining Parties so agree, the dispute resolution process continues until its conclusion, with the Panel investigation held in abeyance, unless otherwise decided by the Executive Directors upon recommendation of the AM Secretary under para. 12.5.

### **12.4. Expiry of Time Limits**

If the authorized time frame (under para. 11), either original or extended, expires without an agreement being reached as described in para. 12.2, the dispute resolution process concludes.

### **12.5. Termination**

Parties may make use of their full time, as set out in the Framework, to finalize a Dispute Resolution Agreement. In exceptional circumstances, such as the DRS becoming aware that the dispute resolution process is being used to further criminal conduct or violence, or where reaching a dispute resolution agreement becomes impossible or manifestly

unlikely, the AM Secretary may, upon the joint recommendation of the mediator/facilitator and the assigned DRS staff member, and after having directly consulted with the Parties, recommend termination of the process to the Executive Directors, on an absence of objection basis. Upon approval of the termination by the Executive Directors, the dispute resolution process concludes.

### **13. Reporting**

- 13.1. Upon conclusion of the dispute resolution process, the DRS prepares a report outlining the core process steps and outcomes and the rationale for concluding the dispute resolution process.
- 13.2. This report is issued by the AM Secretary to the Executive Directors, the Panel and the Bank Management. The Parties are provided with a copy of the report, and it is published on the Accountability Mechanism website, subject to the World Bank Access to Information Policy. Confidential information is not disclosed.
- 13.3. If the Parties agree to make public the Dispute Resolution Agreement, it is published on the Accountability Mechanism website. If the Parties do not agree to make public the Dispute Resolution Agreement, the Accountability Mechanism treats the Agreement as confidential, to be kept in accordance with the terms of the World Bank Access to Information Policy.
- 13.4. If the dispute resolution process concludes without an agreement, the Panel commences its investigation, in accordance with the terms of the [Panel Resolution](#).

### **14. Representation**

- 14.1. The Accountability Mechanism seeks to work directly with the Requesters, being project-affected people, and recognizing that local communities and vulnerable groups may benefit or be harmed by a project. The Accountability Mechanism recognizes that these groups of people may live with the impacts and benefits of the project and have an ongoing relationship with the project.
- 14.2. The Parties make their own decisions and are encouraged to participate directly. Parties may appoint a third-party person or organization of their choice to serve as their authorized representative. Such appointment, or change in appointment status, is made in consultation with the DRS and must be voluntary.
- 14.3. The Parties and their representatives have a right to participate in the process. Representatives cannot exclude direct communication between the Parties, or between the Parties and the DRS at any stage during the dispute resolution process. The Parties may engage additional advisers, who may participate subject to no objection of the other Party. Subject to para 12.3 and taking into account the method of dispute resolution selected, the mediator/facilitator may recommend to the Parties that parts of the process be conducted directly between the Parties only.
- 14.4. The costs of any representation and advice obtained by the Parties during the dispute resolution process are borne by the Parties.

### **15. Bank Management**

- 15.1. If the Parties agree, Bank Management may be present as an observer in the dispute resolution process. The AM Secretary notifies Bank Management when such participation is requested.

## **16. Limitations on Dispute Resolution Agreements**

- 16.1. Dispute Resolution Agreements should be consistent with World Bank policies and relevant domestic and international law. If the AM Secretary has reason to believe that a Dispute Resolution Agreement may bring into issue the Bank's rights and obligations, advice on that point shall be requested from the Bank's Legal Vice Presidency, pursuant to Article 17 of the [AM Resolution](#).

## **17. Follow-up**

- 17.1. Upon agreement of the Parties in the Dispute Resolution Agreement, the DRS may follow-up periodically on its implementation.

## **18. COVID-19 and Force Majeure**

- 18.1. The time limits provided for in the Resolutions, including both for the decision-making period and the dispute resolution period, must be strictly observed except for reasons of *force majeure*, i.e., reasons that are clearly beyond the control of the DRS and the Parties, such as exceptional delays directly attributable to the COVID-19 pandemic, as may be approved by the Executive Directors on an absence of objection basis.

## **19. Retaliation**

- 19.1. The Accountability Mechanism does not tolerate threats/acts of retaliation against Requesters, or any other person or entity connected with a Request. During the applicability of these Interim Procedures, the DRS is guided the principles contained in established [Panel Guidelines](#) and other [World Bank commitments](#) as relevant, to reduce retaliation risks and respond to retaliation.

## **20. Definitions**

- 20.1. Unless otherwise stated in these Interim Procedures, capitalized terms have the meaning as set out in the Panel's 2014 [Operating Procedures](#).

## **21. Validity and revision**

- 21.1. These Interim Procedures for the DRS apply for a limited time, from the date of publication until Accountability Mechanism Operating Procedures are presented to the Executive Directors. They shall remain in force until otherwise superseded.
- 21.2. The Accountability Mechanism shall undertake thorough external consultations during the preparation of the Accountability Mechanism Operating Procedures, with a draft for comment made available on the Accountability Mechanism website, at the latest one year from the issuance of these Interim Procedures.
- 21.3. In the intervening period, as the DRS is operationalized, the AM Secretary welcomes comments on these Interim Procedures. Any such input will inform the preparation of the Accountability Mechanism Operating Procedures.