

IMPLEMENTING PUBLIC PARTICIPATION IN AFRICAN DEVELOPMENT BANK OPERATIONS

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Good governance is central to creating and sustaining an environment that fosters strong and equitable development, and it is an essential prerequisite for sound economic management. Toward this end, the African Development Bank¹ (AFDB) adopted a Vision statement in 1999² that stressed the promotion of good governance as one of its primary areas of intervention and public participation as one of its main pillars to achieve poverty reduction and sustainable development.³

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¹ The African Development Bank Group is comprised of the African Development Bank, the African Development Fund, and the Nigeria Trust Fund. For the purposes of this paper, AFDB refers to the entire African Development Bank Group.

² African Development Bank, Vision, available at www.afdb.org/knowledge/documents/The_Banks_Vision.htm (last visited July 30, 2002).

After broad-based consultations, AFDB has crystallized its operational focus around the following key areas of intervention: "(i) at the country level, three broad sectoral themes, namely agriculture and rural development, human resource development, and private sector development (ii) one generic theme, namely good governance (iii) at the regional/continental level, economic integration and co-operation and (iv) two cross-cutting issues, namely environment and gender, which permeate all aspects of the development effort, both at the national and regional levels." *Id.* (emphasis added).

³ For the AFDB, good governance is defined to include "respect for the rule of law and human rights, enhanced accountability and transparency in the management of public resources as well as credible legal and regulatory system. In addition the Bank would sensitize and encourage Regional Member Countries (RMCs) to not only decentralize the decision-making and investment program process, but also give local stakeholders and targeted beneficiaries the means to effectively participate in the development process." *Id.*

Participatory approaches have been shown to enhance project quality, ownership, and sustainability; empower targeted beneficiaries; and contribute to long-term capacity building and self-sufficiency. Accordingly, most of the Bank documents refer to the importance of "stakeholder participation" and encourage staff to utilize a "participatory approach" in their day-to-day operations.⁴ For example, the Bank's Vision emphasizes the importance of a "bottom-up," "participatory approach" and a "client-responsive approach to ensure stakeholder commitment and ownership."⁵ Further, the Bank developed a document entitled Operationalizing the Vision which calls for a shift to an approach where "all stakeholders, including targeted beneficiaries of civil society, the donor community and borrower countries are involved from the outset of program design through to implementation."⁶

This chapter focuses on experiences in developing and implementing mechanisms to ensure public access to information, decisionmaking processes, and justice in AFDB operations. Section II examines public involvement in AFDB strategies, and section III analyzes how public involvement has been incorporated into AFDB projects, with a case study on the Bani Plains development project in Mali. However, before addressing implementation of public participation in AFDB development strategies and funded-projects, it is useful to define two concepts which are often used interchangeably: "consultation" and "participation."

I. PARTICIPATION AND CONSULTATION

Participation can take various forms, depending on the breadth of stakeholders involved and the depth of their participation. While most AFDB documents on social and environmental review and assessment procedures for public and private sector operations imply the necessity of including public participation, the documents still only refer to the term "consultation." However, "consultation" and "public participation" are, in

⁴ African Development Bank, Handbook on Stakeholders Consultation and Participation in AFDB Operations by Environment and Sustainable Development Unit (OESU), sec. 1.2 (2001) [hereinafter AFDB Handbook].

⁵ AFDB Handbook, *supra* note 4, sec. 1.2.

⁶ *Id.*

practice, very different. Below are explanations of the meanings of consultation and public participation, as defined by the World Bank and adopted by AFDB:

CONSULTATION:

1. **Information-sharing:** dissemination of documents, public meetings, and information seminars.
2. **Listening and learning:** field visits, interviews, and consultative meetings.
3. **Joint assessment:** participatory needs and assessments and beneficiaries assessment.

PARTICIPATION:

1. **Shared decisionmaking:** public review of draft documents, participatory project planning, workshops to identify priorities, conflict resolution, etc.
2. **Collaboration:** joint committees or working groups with stakeholder representatives and stakeholder responsibility for implementation.
3. **Empowerment:** capacity-building activities and stakeholder initiatives.

[Adapted from AFDB, Handbook on Stakeholder Consultation and Participation in ADB Operations (2001)]

It is important to note that in March 2000, the AFDB and the World Bank signed a Memorandum of Understanding for a Strategic Partnership to reduce poverty and promote sustainable development through activities that strengthen opportunities for public participation.⁷ For the AFDB, public "participation in development" is defined as:

the process through which people with an interest (stakeholders) influence and share control over development initiatives and the decisions and resources that affect them. In practice this involves employing measures to: identify relevant stakeholders, share information with them, listen to their views, involve them in processes of development planning and decision-making, contribute to their capacity building, and ultimately, em-

power them to initiate, manage and control their own self-development.⁸

However, even though the AFDB has adopted the World Bank's definitions differentiating consultation and public participation, most policies and guidelines still refer to "consultation" alone.

Although the AFDB aims to involve all stakeholders in the entire design and implementation process for development strategies and projects, the use of the term "consultation" in its documents blurs its intent. While through consultation, stakeholders receive information and are able to voice their opinions and concerns, the process stops short of actually involving all of them in designing, managing, and monitoring development projects.

In contrast, public participation processes—including those set forth by the World Bank⁹—allow for an exchange of information and input from all stakeholders that will ultimately result in better project design, strategy, and implementation. Most importantly, all stakeholders are involved in the decisionmaking process, which improves the sense of ownership in the project and minimizes conflicts that may arise among the affected parties. By incorporating public participation into a project, there is a greater likelihood that all stakeholders will be satisfied by the ultimate project formulation, while consultation alone does not necessarily lend itself to the same result.

The rest of this chapter examines the extent to which access to information, decisionmaking, and access to justice are incorporated into AFDB operations. In some cases, public involvement is promoted through consultative processes, while increasingly the AFDB may be seen to be transitioning to processes that ensure broader public participation.

⁸ AFDB Handbook, *supra* note 4, sec. 2.1.1; see also Donald N. Zillman, *Introduction to Public Participation in the 21st Century*, in Human Rights in Natural Resources Development: The Law of Public Participation in the Sustainable Development of Mining and Energy Resources 1 (Donald N. Zillman et al. eds., 2002) (recognizing that "This 'participation explosion' (whether called 'public participation,' 'citizen involvement,' 'stakeholder engagement,' 'indigenous people rights,' 'local community consultation,' 'NGO intervention,' 'access to information,' 'Aarhus rights' or any of a number of other names) promises to define and redefine sustainable development in the 21st century").

⁹ See, e.g., Samuel Paul, *Community Participation in Development Projects: The World Bank Experience*, World Bank Discussion Paper No. 6 (1987) (observing that the World Bank views community participation (CP) as "an active process whereby beneficiaries influence the direction and execution of development projects rather than merely receive a share of project benefits. For the purposes of this study, the objectives of CP as an active process are: (a) empowerment, (b) building beneficiary capacity, (c) increasing project effectiveness, (d) improving project efficiency, and (e) project cost sharing").

⁷ AFDB World Bank Strategic Partnership Window, available at www.afdb.org/about_adb/worldbank.htm (last visited July 30, 2002).

II. IMPLEMENTING PUBLIC PARTICIPATION IN AFDB DEVELOPMENT STRATEGIES

This section examines how public participation is currently implemented on-the-ground in AFDB's development strategies. The main AFDB documents in which the public may participate are Poverty Reduction Strategy Papers (PRSPs) and Country Strategy Papers (CSPs).

A. POVERTY REDUCTION STRATEGY PAPERS (PRSPs)

A PRSP, which individual countries submit every three years to the International Monetary Fund (IMF) and the AFDB, sets forth comprehensive, self-defined, and multi-authored strategies for poverty reduction. In recent years, there has been a growing consensus among national governments in Africa, civil society, bilateral development partners, and other stakeholders that effective public participation is vital to ensure broad support and ownership of the PRSP. This means that the public needs to be engaged in the design, implementation, and monitoring of poverty reduction strategies.¹⁰

Generally, the PRSP's purpose is to ensure that debt relief provided under the Highly Indebted Poor Countries Initiative (HIPC) and concessional loans from multilateral financial institutions actually help reduce poverty in the poorest countries. Therefore, a meaningful PRSP must incorporate a broad spectrum of stakeholders including government, at the national, regional, and local levels; political parties; nongovernmental organizations (NGOs); scholars; the media; donor agencies; and other relevant parties.¹¹ The inclusion of a wide range of stakeholders in the PRSP process, particularly those from poor communities targeted by development projects, results in a better diagnosis of solutions to poverty and the improvement of policy instruments to promote sound development.

For example, Guinea's 2002 final PRSP—which highlighted strategies to reduce poverty—was the result of a broad consensus of stakeholders. This particular document illustrates how, in preparing the development strategy, the government consulted the private sector, civil society organizations, and grassroots communities, all of which subsequently became active contributors to the PRSP. A new national policy for poverty reduction emerged from this broad consensus, which emphasized transparency, access to justice, and incorporated recom-

mendations from all sectors to improve public resource management.

In another example, the government of the Republic of Djibouti consulted with the private sector and civil society organizations (CSOs)¹² in March 2002 on developing Djibouti's PRSP. They identified three major good governance issues considered to be vital in promoting economic growth and reducing poverty. These governance issues are:

- public financial resource management,
- legal and judicial reforms, and
- legal and institutional framework of public participation.

Subsequently, the government requested and obtained financial and technical assistance from AFDB to conduct on-the-ground studies with multistakeholder involvement. These studies will feed into the national PRSP process. Two of the studies focusing on legal and judicial reforms and the legal and institutional framework of public participation have been finalized, having integrated comments and suggestions from individual people and from CSOs. This process has been welcomed by the Djibouti government, the private sector, and civil society as a new way to build a strong partnership based on trust, dialogue, and consensus, thus enabling all parties to agree on common goals to reduce poverty. This participatory approach is expected to help ensure a broad country ownership of the PRSP.¹³

B. COUNTRY STRATEGY PAPERS (CSPs)

Each Country Strategy Paper (CSP) is prepared by the AFDB Group in consultation with the relevant national government and other public and private stakeholders, including the major aid agencies active in that country.¹⁴ The CSP describes the AFDB's strategy for project lending based on an assessment of its priorities in the country, and indicates the level and composition of assistance to be provided based on the PRSP and the country's portfolio performance. As part of its Vision to ensure public participation in development strategies and projects, the AFDB management mandated that the new generations of CSPs be prepared in a participatory man-

¹⁰ Jalal Abdel Latif, *Participatory Monitoring and Evaluation, Perspectives on Monitoring Process and Outcomes of PRS: The Civil Society Perspective*, in AFDB/World Bank/UN Economic Commission for Africa Workshop Proceedings on Participation and Civic Engagement in Poverty Reduction Strategies 47, 49 (July 10-13, 2000) [hereinafter Commission for Africa Workshop].

¹¹ Commission for Africa Workshop, *supra* note 10, at 13 (overview of the PRSP process).

¹² For the purposes of this chapter, the term "civil society organization" encompasses formally registered nongovernmental organizations (NGOs), community-based organizations (CBOs), and less formally constituted bodies. Generally speaking, the AFDB utilizes the term "civil society organization."

¹³ The author participated in the preparation mission of the Djibouti PRSP and is currently involved in the supervision of the three good governance-related studies.

¹⁴ African Development Bank, Disclosure of Information Policy Paper, available at www.afdb.org/about_adb/disclosure.htm (last visited July 30, 2002).

ner. According to the AFDB's guidelines on Cooperation with Civil Society Organizations,

In accordance with guidelines governing CSP processes, the Bank is committed to involve representatives of national CSOs in meaningful consultations during CSP formulations and revisions. As appropriate, the [local] media can also be involved to publicly disseminate information regarding the content of CSP and the consultation process. Participatory aspects of the policy preparation process are normally described in the final CSP document.¹⁵

As a result of the AFDB's new policies and guidelines, almost all CSPs prepared by the AFDB for the 1999-2001 period involved consultations with CSOs and other stakeholders.¹⁶ This trend demonstrates a marked improvement of previous CSPs conducted from 1996 to 1998 in which no formal consultations with stakeholders outside of government were recorded. While consultation alone is not sufficient to ensure effective involvement of all stakeholders, this represents a significant step forward.

Despite the increased use of participatory approaches, experiences in preparing CSPs under the new policy varied greatly due to the lack of specific guidelines for AFDB staff. In some cases, consultations were limited to individual interviews, while in other cases, workshops and meetings involving several hundred stakeholders were organized. In some cases, professional facilitators were used, but in most cases consultations were designed and led by AFDB staff and their government counterparts.¹⁷

For example, in Benin, a team of resource people collaborated with the government to organize a two-day workshop, made up of five thematic commissions and involving about 120 stakeholders from different sectors. Similarly, in Morocco, an additional participatory approach mission was conducted, where two one-day workshops were held, involving a total of approximately forty participants from different professional fields.¹⁸ This new

approach of incorporating consultation into the process of preparing a CSP resulted in a broader consensus on key constraints and priorities in both countries regarding human resource development and rural development.¹⁹ Still, incorporating public participation, in addition to consultation, is critical to ensure a sound socioeconomic development strategy in which there is a broad sense of ownership and more effective implementation of poverty reduction strategies.

III. IMPLEMENTING PUBLIC PARTICIPATION IN AFDB PROJECTS

In addition to strategies, the AFDB has taken a number of formal and informal steps to ensure consultation and public participation in AFDB projects. In order to understand the opportunities for the public to obtain information about and participate in the various stages of an AFDB project, this section first summarizes the phases of the project cycle. Subsequently, it reviews CSO involvement in specific AFDB projects, including a case study of involvement in the Middle Bani Plains Development Project in Mali.

A. DESCRIPTION OF THE AFDB PROJECT CYCLE

Public participation can occur in many different phases of the project cycle. These phases include project identification, preparation, appraisal, implementation and management, supervision, monitoring and evaluation, completion, and portfolio review.

First, in the project identification phase, primary stakeholders have the opportunity to influence fundamental decisions regarding the type of development project (e.g., education, health, or infrastructure) and the general objectives and goals. This phase also helps to clarify the potential role and contribution of stakeholders throughout the life of the project.²⁰

Next, while formal responsibility for the project preparation lies primarily with the government, AFDB staff assists the government in carrying out background studies and using participatory approaches in designing the project.²¹

During the appraisal phase, the project design is finalized and operational details and procedures are developed and agreed to by all parties. Therefore, it is crucial at this stage to ensure that the specific project components and strategies that will be implemented are acceptable to all stakeholders and follow participatory processes.²²

¹⁵ African Development Bank Group, Environment and Sustainable Development Unit, Cooperation with Civil Society Organizations, Policy and Guidelines, sec. 7.1-7.2.

¹⁶ AFDB Handbook, *supra* note 4, at 12, box 2 ("Bank Experience with Participatory CSPs").

¹⁷ *Id.*; see also Paul, *supra* note 9, at ix ("Governments have an important resource in their networks of training institutions which could be used not only to disseminate the lessons learned and methodologies or guidelines but also to encourage public servants to play a proactive role in CP. Government training strategies could thus complement the training efforts of NGOs and other micro level organizations at the grassroots.").

¹⁸ AFDB Handbook, *supra* note 4, at 12, box 2.

¹⁹ *Id.*

²⁰ *Id.* sec. 3.3.

²¹ *Id.* sec. 3.4.1, box 4 ("Promoting the Participation of Primary Stakeholders"); *id.* sec. 3.4.3, box 5 ("Promoting Women's Participation in Project Planning").

²² *Id.* sec. 3.5.1.

For the implementation and management phase, responsibility for promoting public participation lies mainly with the staff of the project implementation unit (PIU), relevant government ministries, and implementing agencies. While the AFDB does not play a direct role in project implementation, AFDB staff provides support, advice, and monitoring through field missions, as well as convening dialogues between project staff and other stakeholders throughout the life of the project.²³ For example, in April 2002 in Djibouti, the launching mission of the “Pro-Women Advocacy Project” has provided all parties the opportunity to reiterate the project’s participation-related goals with government counterparts and to renew contacts with key stakeholders groups in target districts and villages.²⁴

In the project supervision phase, missions carried out by AFDB staff provide an opportunity to collect feedback from project beneficiaries and other stakeholders and for monitoring the extent of public participation in the project’s implementation and management. Supervision missions also allow AFDB staff to identify problems or issues affecting overall project performance.²⁵

In the monitoring and evaluation phase, public participation allows primary stakeholders (those directly affected by development projects) and secondary stakeholders (such as government officials and NGOs) to work together to assess the project’s successes and shortcomings. Monitoring is undertaken as an ongoing process throughout the project cycle, while evaluations are usually conducted at the project mid-term, at the end of the project, or both.

One example of a project that incorporated public participation into the monitoring and evaluation (M&E) process is the Mali Poverty Reduction Project.²⁶ During the project preparation phase, bilateral funds were used to recruit a public participation specialist to assist the project team in designing a participatory M&E system. The completed project implementation document called for the system to chart the progress of physical works (such as dams and power plants), monitor overall project implementation, and evaluate the project’s impact on reducing poverty.²⁷ In this system, many stakeholders, including citizens and community groups, play an active role in identifying indicators of project progress and impact, as well as in monitoring these indicators throughout the life of the project. As the project proceeds into the next phases, a Community Development Agent (CDA) will collect baseline data from each participating community and progress monitoring forms, which will

be completed by stakeholders every three months. The CDA will then submit the reports to local authorities and the PIU. The PIU will also receive regular progress reports from participating CSOs and other project intermediaries and will incorporate this information into its progress reports to the AFDB. In this phase, regular stakeholder meetings at the local, regional, and national levels serve as fora in which to examine overall progress and address any persistent problems.²⁸

In the project completion phase, a project completion report (PCR) assesses the degree to which the project objectives were achieved and considers plans for future project operations. Lessons learned from all aspects of the implementation phase are also identified and included in the PCR. Public participation is essential when obtaining a complete picture of a project’s overall quality and success at its completion.²⁹

Finally, in the portfolio review, the AFDB collects feedback from all stakeholders in order to assess the level of public participation on the Bank’s operations in the country. The portfolio review also provides all stakeholders the opportunity to discuss with the country’s government the importance and benefits of incorporating public participation in the national development process.³⁰

B. CSO INVOLVEMENT IN AFDB-SUPPORTED PROJECTS

To strengthen public participation in development projects, governments must collaborate, and cooperate with, CSOs. However, many CSOs in Africa feel that they lack the necessary expertise, knowledge, and resources to play a decisive role in shaping the development strategy.³¹ In addition, but CSOs often express the desire to be viewed as partners, CSOs find that government agencies and officials often view CSOs as a source of potential or actual opposition.³² In order to be able to play an integrated role in development projects, many CSOs have sought to strengthen their institutional capacity and expand collaboration with other organizations. In addition, many CSOs are seeking to expand the role of the media in monitoring and reporting on the PRSP process. While the political and legal freedoms vary within African countries, the PRSP process can be one factor in facilitating civil society participation without

²³ *Id.* sec. 3.6.

²⁴ The author participated in the launching mission of this project.

²⁵ AfdB Handbook, *supra* note 4, sec. 3.7.1.

²⁶ *Id.* at 28, box 8 (“Participatory M&E in Mali Poverty Reduction Project”).

²⁷ *Id.* at 28.

²⁸ *Id.*

²⁹ *Id.* sec. 3.9.1.

³⁰ *Id.* sec. 3.10.1.

³¹ Alieu Jeng, Constituency-Based Discussions, in Commission for Africa Workshop, *supra* note 9, at 52. Also, one of the major recommendations of the Djibouti PRSP study on public participation advised capacity building of local CSOs, both in terms of expertise and knowledge, to help them cooperate effectively in the project cycle.

³² *Id.*

necessarily challenging the legal and political framework. For example, in Gambia, umbrella NGOs have been organized to take part in specific participatory processes.³³

Like many of its sister international financial institutions in recent years, the AFDB has sought to improve and expand its relations with CSOs.³⁴ In 1990, the AFDB adopted an official policy on cooperation with NGOs; in 1991, the Bank issued guidelines and procedures related to that policy; and in 2000, the AFDB Board revised the new Policy and Guidelines on Cooperation with Civil Society Organizations.

An operational study conducted in 2000 revealed that 57 AFDB-supported projects in 26 countries had involved CSOs.³⁵ A total of 350 community-based organizations, 250 national NGOs, and 55 international NGOs participated in these projects. According to the study, from 1986 to 1996, an average of only 2 projects per year involved CSOs; however, from 1997 to 1999, the average increased to 13 projects per year. While many CSOs have been well-integrated into the implementation of project activities (88 percent), CSOs were only involved in project identification in two-thirds of the projects. Subsequently, only in one-half of the projects did they participate in project design, and one-third in project management.³⁶ While these results show a marked improvement from previous years, in order for public participation to be truly effective, it must be exercised during all phases of development projects.

To improve public access to information regarding the Bank's operations, AFDB has recently set up a Public Information Center (PIC) at its headquarters in Abidjan. This Center is designed to make available to the public all project documents, policies, and guidelines, in accordance to the AFDB's Disclosure of Information Policy.³⁷ This Center is open to the public from Monday through Friday during regular business hours. Finally, at the time of this writing, AFDB is recruiting a "Principal NGO Liaison Officer" to strengthen the Bank's cooperation with CSOs. The main tasks of this liaison officer will include:

- Define and coordinate Bank Group's involvement in setting the international agenda for participatory approaches and CSO involvement.
- Develop projects which promote the use of participatory development approaches by promoting country consultation regarding Bank Group-financed projects and lending in identification, preparation, and appraisal missions.
- Monitor progress in adopting participatory

approaches and the impact of poverty on the participation of stakeholders in Bank Group-financed projects.

- Mobilize resources to strengthen CSO-AFDB relations for institutional support, technical assistance, and consultancy requirements.³⁸

C. CASE STUDY OF THE MIDDLE BANİ PLAINS DEVELOPMENT PROJECT (MALI)

This subsection examines the controversy surrounding the construction of a hydroelectric dam project near the village of Talo in Mali. This controversy highlights lessons in public participation in AFDB decisionmaking processes and in access to justice for AFDB-funded projects.

Approved by the AFDB Board of Directors on December 1997, this project, which cost 26.89 million Units of Account (approximately US\$28 million), sought to place a low dam, or weir, across the Bani River at the Middle Bani Plains. The Bani River is a tributary of the Niger River. The primary purpose of this proposed dam is to raise the level of the river to flood the plains, thereby increasing agricultural production through recreating natural flooding conditions. The project also aims to benefit the environment by regenerating lost vegetation cover and improving long-term soil fertility, replenishing groundwater tables, and resettling aquatic fauna in the region. Moreover, it seeks to improve the health conditions of people in the project zone by eliminating the consumption of contaminated surface water by generating a potable water supply by drilling of wells.³⁹

Until recent decades, the Middle Bani Plains have been a focal point for both farmers and pastoralists. The planned irrigation areas have typically been subject to seasonal flooding with wide changes in annual variation of rainfall and flood depth, thus permitting extensive cultivation of crops, especially rice and bourgou (a fast-growing plant favored by cattle that graze seasonally).⁴⁰ However, since 1972, due to successive years of drought, the Bani River's average annual flow has fallen by 25 percent and its average depth at peak flood is approximately 40 percent lower. This has severely affected agriculture. As a result, the plains were abandoned and a significant proportion of the labor force left the region. Therefore, the return to flooded cropping, to be achieved through the construction of the dam, is critical to revitalizing the zone.

1. Environmental Issues in the Project

Pursuant to AFDB policies, developing an Environmental Monitoring Plan is a mandatory precondition

³³ *Id.*

³⁴ Afdb Handbook, *supra* note 4, at 21.

³⁵ See *id.*, at 21, box 6 (discussing study).

³⁶ *Id.* at 21.

³⁷ See *supra* note 13.

³⁸ See www.afdb.org ("Vacancies," Job ref.VN ADB/02/55) (last visited July 30, 2002).

³⁹ African Development Bank, Country Department West Region, Appraisal Report Middle Bani Plain Development Programme, Phase I, Doc. No. ADF/BD/WP/97/188 (Nov. 26, 1997), para. 4.8.3.

⁴⁰ See *id.* para. 4.1.2.

for loan disbursement. Since this project was classified under Category I of the Environmental Assessment Procedures in the AFDB project cycle (significant environmental impacts likely),⁴¹ the probable negative environmental impacts were identified and described in the EIA summary, which also set forth provisions for mitigating the impacts. The AFDB requires environmental monitoring to be carried out by the development and monitoring committee, set up within the framework of the new decentralization policy, and include all regional government departments and representatives of local development committees.⁴²

The AFDB first undertook identification and preparation missions of the Bani dam project in 1989 and 1994. In 1995, the AFDB, with the government of Mali, carried out an environmental impact assessment (EIA), pursuant to the Bank's new policy requirements.⁴³ The EIA could not precisely assess the impact of the flood level and the risk of flooding certain villages upstream, mostly owing to the absence of up-to-date topographical data. The appraisal mission, which took place in

October 1996, recommended that additional optimization studies on the dam be carried out on the basis of new surveys and hydrological, topographical, environmental, and socio-economic data analyses. Completed in July 1997, the optimization studies concluded that the dam construction would not amplify the risk of flooding for villages located along the nearby Talo River's headwaters.⁴⁴ The program was again appraised in September 1997. However, throughout the entire EIA process, the government of Mali did not inform local villages of the project until May 1997. While at the time the population was practically unanimous in supporting constructing a dam in order to return to flooded cropping, further events, as discussed below, starkly illustrate project pitfalls when not all stakeholders are informed and included in from the beginning of project planning and implementation.

2. The Controversy over the Implementation of the Project

Despite the project's good intentions, opposition to the construction of the Bani River dam erupted, largely due to the lack of public participation in the project from its inception. While many stakeholders in the region supported the project because it would generate more agricultural production and help relieve the area of drought through increased irrigation, one group in particular—comprised of retired government officials from Djenne, but now residing in Bamako—voiced its opposition. The group claimed that the dam would imperil a World Heritage site with an agricultural civilization that went back thousands of years and, therefore, requested that the project be reviewed and ultimately cancelled. The group recommended that the Bani River be allowed to continue its normal behavior, in both good and bad flood years, despite the declining rainfall.

In contrast, traditional chiefs of villages near the site fully supported the project and expressed impatience for it to begin. In addition, younger leaders from Djenne feared that if the project were cancelled, Djenne would not benefit from increased irrigation, and therefore made a plea that if that were to occur, that another weir be installed upstream from Djenne.

As the controversy grew, a U.S.-based NGO called Cultural Survival filmed a documentary entitled *Dam Nation: Water is Life*, in which it took a public stand

⁴¹ The AFDB's Environmental Assessment Procedures in the project cycle are as follows:

An environmental assessment system will be utilized through all the stages of the Project cycle—identification, preparation, appraisal, implementation, and post-evaluation. Prior to the application of the environmental assessment process, an initial environmental examination will be carried out on all projects to determine whether an Environmental Impact Assessment (EIA) study or environmental mitigation measures are required. This initial examination will categorize projects based on potential Environmental Impacts into four types:

- (i) Category I: Projects with the potential for significant environmental impacts requiring detailed field review and in most cases an EIA.
- (ii) Category II: Projects with limited environmental impacts that can be routinely resolved through application of mitigation measures and design changes.
- (iii) Category III: Projects not anticipated to result in adverse environmental impacts that would not require detailed environmental review.
- (iv) Category IV: Projects with beneficial environmental impacts.

This initial examination is considered as an important check-point in the project review process. No project will be allowed to continue until it has gone past this initial environmental examination, and every appraisal report will therefore contain an environmental statement based upon the above categorization.

AFDB Group, Environmental Policy Paper 48-49 (June 1990)

⁴² Commission for Africa Workshop, *supra* note 10, sec. 4.8.6 ("The priority task of the local development committees grouped under the regional development committee is to coordinate farmers to allow for the correct implementation of the flooding plan prepared by the technical departments in collaboration with the farmers. It serves as an interface between the traditional villages structures, farmers associations, decentralized local authorities and the relevant technical services.")

⁴³ Environmental Policy Paper, *supra* note 41, at 48-49.

⁴⁴ These studies all cover the Bani Basin from just upstream of the dam to 100 kilometers downstream. See also Richard S.D. Hawkins, Regional Environmental Officer, U.S. Embassy, Abidjan, Talo Dam Project Recommendations, Unclassified Memorandum, Embassy of the United States of America (July 23, 2001).

against the construction of the Bani River dam.⁴⁵ In addition, Cultural Survival sponsored faculty members from Clark University in Worcester, Massachusetts to examine previous feasibility studies of the project, which were conducted by the Malian government and AFDB. Ultimately, the Clark University report called for

a new EIA and socio-economic study focusing on the downstream area of the dam site to Mopti, another EIA of the dam's impact on the greater Niger Inland Delta, a revised cost-benefit analysis including upstream and downstream costs and losses, as well as project benefits, and a comprehensive hydrological study taking into account for water to be diverted, evaporation, and climatic variability.⁴⁶

The African Development Bank responded vehemently to these claims. First, the AFDB reminded the villagers from the Bani River who opposed the project, as well as Cultural Survival, that an EIA of the project had been carried out in 1995. Since there were no specific background studies to which it could refer, the EIA could not determine the shape of the future storage lake. But based on preliminary surveys, the AFDB claimed that provisions had been made for the construction of a dyke across the Bani River to protect villages upstream from the dam. The Bank also stressed that in July 1997 the EIA was supplemented by topographical, hydrological, and socio-economic studies that precisely assessed the impact of the dam's construction and operation on the environment, especially the risk of flooding upstream induced by these activities. Potential negative impacts of the project on the environment were identified and described in the EIA, which also contains mitigating measures. For example, it was foreseen that the risk of villages being flooded could be contained through the construction of a dyke that would protect areas most vulnerable to flooding. Project managers also insisted that previous technical studies were adequate and indicated that additional studies demanded in the Clark University report would impose years of delay on building the dam, which would be due largely to a lack of hydrological data on the Djénne flood plain, the confluence of the Bani and Niger Rivers at Mopti, and the Inland Delta downstream of Mopti.

However, since Cultural Survival's opposition to the dam generated international attention for the project,

the U.S. delegation to the AFDB called on the President of the Bank to postpone the implementation of the project until further review. In February 2001, the Bank decided to postpone the project, alarming the Malian government and villagers and farmers in the Middle Bani Plain who supported the project. The U.S. Executive Director and Head of Delegation to the AFDB requested that the U.S. State Department Regional Environmental Officer (REO) in Abidjan visit both Bamako and the dam site in the Bani region in an independent mission to evaluate the project and make recommendations on whether the project should proceed.

In order to assess the controversy, the REO met with a wide range of the stakeholders in July 2001, including two civil society groups representing Djénne (a neighboring village), Ministry officials, local project managers, and village spokesmen. The REO also visited the Middle Bani region to view the dam site. In his meeting with the Ministry chief of staff, the REO discovered that the government had been withholding certain information regarding development projects. According to the Ministry, a new dam project in Djénne was indeed being planned, and the Terms of Reference (TOR) had already been sent to the AFDB to seek funding. Surprisingly, none of the young leaders in Djénne, those who wanted a dam alternative in Djénne if the Bani dam were cancelled, were ever informed of the Ministry's plans. After the REO revealed this plan to the leaders in Djénne, the government of Mali agreed with the local leaders that a public forum be organized. This forum would allow for a public discussion regarding the project and seek consensus on key issues. In another meeting, a mid-level official acknowledged that original technical studies of the project should have looked at potential impacts farther downstream. Project managers also admitted to the REO that the Ministry had been more secretive than forthcoming in informing the local population of its plans. They agree with the REO's urgings to create a public relations campaign and suggested holding a public forum to broaden the public debate.

The fact that the government of Mali withheld information from so many stakeholders in designing the TOR, as well as informing the public of its intent to develop certain projects, highlights the need for capacity building of many government officials on public participation. It also illustrates some of the misperceptions regarding the role of the public in conceiving, developing, and implementing projects. Only when the government was prompted to do so, did it agree to convene public forums to generate debate and solicit feedback. The Middle Bani Plains Development Project provides a cautionary tale in short-circuiting public involvement: in order for all stakeholders to feel as though they possess ownership of a project, public participation must be incorporated into the beginning phases, and not post-

⁴⁵ *Id.* With the assistance of an American resident in Djénne, Cultural Survival prepared a documentary film called "Dam Nation: Water is Life." The film highlighted the opposition of numerous Djénne citizens to the Talo project, citing their belief that the dam will prevent flood waters from reaching Djénne's expansive and fertile rice fields, and thus result in starvation and abandonment of the city, a World Heritage site.

⁴⁶ See Hawkins, *supra* note 44, sec. II.

poned until the project is already in the planning or implementation stages.

The REO concluded that the Bani dam project should continue because further delay or cancellation would impede the project's benefits.⁴⁷ Despite the recommendations from the Clark University report, the REO believed that it was most important to increase water availability in the Bani basin and regulate seasonal flows to capture more water for agricultural and other purposes. Additional delay could exacerbate the agricultural crisis, as rainfall and surface and ground water supplies remained severely diminished. However, in order for the dam project to proceed with minimal conflict, the REO recommended that the AFDB continue to encourage the Ministry to communicate openly with the public and to cooperate with other Ministries to educate citizens in their roles in water management. The REO also encouraged Cultural Survival to monitor the project closely and, if they have concerns, to meet with government officials and project managers. Finally, the REO recommended the creation of a forum in which all involved Malian interest groups could voice their opinions and concerns so that consensus could be developed. The REO suggested that such participants include farmers, traditional chiefs, herders, fishermen, religious leaders, government representatives, and other stakeholders in Djenne's water resources.

Since the U.S. mission was an independent and informal fact-finding mission, the AFDB found it necessary to conduct its own formal assessment of the project in order to determine whether to postpone, reactivate, or cancel the project. The AFDB accordingly sent a mission to the site from September 21 to October 5, 2001. The main objectives of the mission were to conduct large consultations with all stakeholders, particularly the villagers affected upstream by the construction of the dam; to meet with the government of Mali, local associations, and all parties concerned with the issues raised by Cultural Survival; and to identify and address concerns of the local population. The AFDB released a preliminary report on October 8, 2001, recommending that a large number of workshops and seminars be organized to increase awareness among the population and other stakeholders on the general purposes of the Bani dam project and improve their involvement in its implementation. At the time of this writing, the AFDB has decided to suspend the construction of the dam until further notice.

3. Lessons Learned from the Bani River Project

The Bani River project demonstrates how a development project can be impeded or even threatened with cancellation when there is limited access to information

and public participation in the decisionmaking process,⁴⁸ as well as a lack of administrative or judicial forum to hear, investigate, and resolve controversies. As noted previously, the AFDB does not play a direct role in project implementation and the responsibility for promoting public participation lies mainly with the staff of the project implementation unit and relevant government bodies.⁴⁹ However, even though a government has the primary responsibility in the identification, preparation, and appraisal phases of the project, the AFDB staff should have made sure that all stakeholders were adequately consulted and effectively involved in the overall process. The failure to do so has resulted in a serious conflict, in which groups of villagers have demanded that the project be canceled. This conflict could have been averted had they received information about the project earlier and had an opportunity to provide feedback.

Another issue raised by the Bani dam case study was the lack of mechanisms set up by the AFDB to carry out thorough fact-finding missions before a controversy became highly polarized, and to prevent, mitigate, and resolve disputes in Bank-supported projects through an independent body. Although the AFDB has an Ombudsman in its internal governance structure, the AFDB lacks a permanent and independent forum to ensure accountability in Bank operations with respect to its policies, procedures, and implementation. Such a forum is also critical in providing a link between the Bank and the people who are likely to be affected by the projects that it supports. For example, if the stakeholders of the Bani dam project had been able to present their concerns to an independent forum through a request for inspection, controversy over the dam may have been greatly reduced.

⁴⁸ Paul, *supra* note 9, at 4 ("it is useful to distinguish between four levels of intensity in CP, though different levels of CP may co-exist in the same project. (1) Information-sharing: project designers and managers may share information with beneficiaries in order to facilitate collective or individual action ... (2) Consultation: when beneficiaries are not only informed, but consulted on key issues at some or all stages in a project cycle, the level of intensity of CP rises. There is an opportunity here for beneficiaries to interact and provide feedback to the project agency which the latter could take into account in the design and implementation stages ... (3) Decision making: a still higher level of intensity may be said to occur when beneficiaries have a decision making role in matters of project design and implementation ... (4) Initiating action: ... Initiative implies a proactive capacity and the confidence to get going on one's own ... [But] in planning project, governments and donors often tend to pre-empt the initiatives that beneficiaries might have taken. In such cases, the latter can play only a reactive role.").

⁴⁹ AFDB HANDBOOK, *supra* note 4, sec. 3.6; Paul, *supra* note 9, at ix ("Even if governments and donors are persuaded that CP is appropriate to their projects, they are unlikely to incorporate CP in project methodologies ... The approaches and methods for operationalizing CP may vary by sector and sub-sector. There is a need, therefore, to develop and disseminate sector-related guidelines or at least advice on the use of CP in projects relevant to specific country contexts.").

⁴⁷ *Id.* at sec. VI.

Following its experiences with the Bani River Project and recognizing emerging institutional arrangements in other international financial institutions, the AFDB is considering the creation of an Independent Inspection Panel which could address the effects of environmental damages in development projects.⁵⁰ Like the World Bank and other international financial institutions, such as the Asian Development Bank and the Inter-American Development Bank, the proposed AFDB Independent Inspection Panel would be composed of independent individuals selected for their expertise by the Bank President and Board.⁵¹ It would be empowered to consider claims brought by citizens whose environment has been or could be negatively impacted by an AFDB-supported project due to the Bank's failure to follow its own policies or procedures.

After receiving a claim, the proposed Panel would initiate a two-stage fact-finding investigation to determine whether AFDB policies or loan covenants were violated. The Panel would first conduct a preliminary assessment, including a site visit and a review of the claim and the Bank's response. Based on this preliminary assessment, the Panel would recommend to the Bank's Board of Executive Directors whether a full inspection is warranted. The Board would retain sole power to authorize a full inspection. If a full inspection is authorized, the Panel would enjoy broad investigative powers including access to all Bank Management and staff. Following the investigation, the Panel would issue a report with its recommendation to Bank Management and the Board of Executive Directors. It is likely that in most cases, the Panel process would result in the Bank adopting some form of an action plan to address the underlying harms alleged in the claims.⁵²

⁵⁰ It should be stressed that the AFDB is still at an early stage in setting up an independent inspection panel, and that no final draft has been produced yet.

⁵¹ World Bank Inspection Panel, IBRD Resolution No. 93-10 (Sept 23, 1993); World Bank Inspection Panel, Operating Procedures (August 1994); Dana Clark & Michael Shu, A Citizen's Guide to the World Bank Inspection Panel (1997), available at www.ciel.org/Publications/citizensguide.pdf (last visited July 30, 2002).

⁵² Center for International Environmental Law, Effective Dispute Resolution: A Review of Options for Disputes Resolution Mechanisms and Procedures, Document prepared for the fifth session of the Multilateral High-Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific 26 (Sept. 1999), available at www.ciel.org/Publications/effectivedisputeresolution.pdf (last visited July 30, 2002).

IV. CONCLUSION

Drawing upon the AFDB's experiences in implementing public participation policies and guidelines into its development strategies and projects, the effectiveness of the Bank's Vision may be improved on the ground in a number of ways. First, currently the term "consultation" is used exclusively to denote participatory approaches in AFDB procedures, such as its Environmental Review and Social Assessments Procedures. Instead, the term "public participation" should be incorporated into document language in order to avoid confusion as to the extent to which all stakeholders can be involved and develop ownership of AFDB strategies and projects. This distinction may seem to be a matter of semantics, but it is necessary to have this distinction in AFDB documents so that project managers and Bank staff know that from the outset a project must involve the public and they should identify the major phases of the project cycle in which to bring ensure genuine participation.

Second, as evidenced by the case study of the Bani dam in Mali, public participation must begin at the earliest possible stage in a project, so as to minimize conflicts and misunderstandings between stakeholders and project designers. To a large extent, the AFDB has the capacity to control whether or not development strategies and projects incorporate public participation: it can make public participation a precondition for loan disbursement. However, the Bank could take this concept one step further by, for example, only accepting Terms of Reference for feasibility studies that incorporate the perspectives of all stakeholders, particularly those most affected by the proposed development project.

In following these recommendations, the AFDB will strengthen environmental governance by ensuring that all people have access to information, participate in the decisionmaking process, and have access to effective administrative and judicial proceedings. Public participation is a key component to achieving sustainable development because it empowers people by ensuring they have a voice in decisions that could affect their health, livelihood, and environment, and thus have ownership of their future.