

## Written Recommendations for the Project-affected People’s Mechanism Policy

Dear Mr. Taylor-Dormond,

We welcome this opportunity to participate in the public consultations on the Project-affected People’s Mechanism (PPM) Policy. We are a group of civil society organizations interested in ensuring that the PPM functions effectively and fairly towards communities negatively impacted by the Asian Infrastructure Investment Bank’s (AIIB) financing.

While the AIIB took a step in the right direction by instituting an accountability mechanism soon after it started operations, the past five or more years of the PPM’s functioning has raised grave concerns about AIIB’s approach to accountability. Prohibitive entry barriers, exclusion of large parts of the AIIB’s portfolio, and the lack of a community-oriented approach have led to the PPM not accepting a single eligible case, even as AIIB’s financing has resulted in at least 34 complaints at peer IAMs. This has led to an erosion of community trust in the PPM, and groups have raised concerns about whether AIIB can still be considered to have a good faith commitment to accountability.

In these challenging circumstances, the review of the PPM Policy has been much awaited, and we appreciate the steps taken by the PPM towards making the review more independent, transparent, and consultative. We also agree with the goal to make improvements on areas of visibility, accessibility, and effectiveness. In particular, the report by the independent expert that preceded this formal review has already reinforced some of the key challenges that civil society organizations have been raising. Accepting the recommendations made in the report would go a long way in bringing the PPM Policy in line with international good practice and ignoring the recommendations would undermine the legitimacy of this review.

We are happy to share this written submission that includes detailed recommendations, provides examples of good policy at other IAMs and based on that proposes specific changes to the language of the 2018 PPM Policy<sup>1</sup> and 2019 PPM Rules of Procedure (**Annexure 1**). The PPM Rules of Procedure contain many important issues that do not find mention in the Policy itself, such as details around the complaint process and functions, and the role of general counsel, and thus it is essential that review result in substantial changes to the Procedures alongside the Policy. The recommendations are based on bringing the PPM Policy and Procedures in line with UNGP 31 effectiveness criteria<sup>2</sup> and based on international good policy compiled in the updated 2024 Good Policy Paper.<sup>3</sup> Our recommendations fall under three

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<sup>1</sup> Additionally, since the hiring process of the MD-CEIU is outlined in the 2024 Terms of Reference (TOR) of the Complaints-resolution, evaluation, and integrity unit, the recommendations accordingly include proposed policy changes for the TOR.

<sup>2</sup> UN Human Rights Office of the High Commissioner, [Guiding Principles on Business and Human Rights](#), Page 33, (2011)

<sup>3</sup> Multiple Authors, [Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms](#) (2023).

issues: visibility, accessibility, and effectiveness, and this letter briefly summarizes our most urgent recommendations and the principles animating them.

**Visibility:** The recommendations focus on improving the disclosure of the PPM, particularly in projects financed through financial intermediaries, and improving information disclosure on case information by the PPM. Transparency is critical to a well-functioning IAM, and it is essential the project-affected communities are aware of the PPM and its processes. Disclosure of the PPM should happen at the project sites, in languages and formats accessible to project affected people, and as early as possible. Currently, the lack of information around the PPM is a big challenge, particularly in projects financed through financial intermediaries, and the review should result in policy changes that improve PPM’s outreach function and strengthen disclosure, in coordination with the management. Moreover, maintaining a complete registry also strengthens the predictability of the mechanism for potential Requestors.

**Accessibility:** The recommendations focus on reducing entry barriers to the PPM, removing subjectivity from the way the eligibility criteria are applied, allowing access to representation of project affected people’s choice, and removing undue limitations on the PPM’s mandate.<sup>4</sup> The recommendations also include identifying ways in which to improve the PPMs ability to assess, mitigate, and protect against retaliation, which is one of the biggest barriers of access for project-affected people. The recommendations enable the PPM to address concerns around biodiversity and environment, even in the absence of directly impacted people. The accessibility challenges of the PPM are well documented,<sup>5</sup> but these issues also lead to a lack of predictability that reduces people’s faith in the PPM’s function as an avenue to seek redress and receive remedy. The review must result in changes that make the PPM more accessible and predictable. Moreover, banks across the board are starting to realize the grim reality many communities face when they raise concerns on issues relating to their land, lives, and livelihoods, and the PPM has the opportunity to lead the way in how IAMs support communities facing this risk of reprisals. The PPM can also be a leader in addressing climate concerns, as AIIB takes on bigger climate commitments. It is essential to include a component of risk and disaster prevention in a changing environment and further it is important to work with CSOs in a horizontal format to reduce gaps, supporting their equal participation from community to global level in the bank’s decision-making process.

**Effectiveness:** The recommendations focus on strengthening the mandate of the PPM, safeguarding its independence, improving the dispute resolution and compliance review

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<sup>4</sup> Many limitations on the PPM’s mandate exist due to complete or partial exclusion of AIIB’s Environmental and Social Framework (ESF) applying to certain types of financing and policy language to that effect is contained in the AIIB’s ESF. However, we still expect that the changes to the PPM Policy will not be bound by the existing ESF and instead as is practice the ESF will be updated, to reflect the new PPM Policy, as was done recently in June 2024 to include Climate Policy-based Financing (CPBF).

<sup>5</sup> Multiple Authors, [Roadblocks to Accountability: Addressing the accessibility crisis in the Asian Infrastructure Investment Bank’s review of its Project-affected People’s Mechanism](#), (September 2023); Recourse, Urgewald, [The Accountability Deficit: How the Asian Infrastructure Investment Bank’s Complaints Mechanism Falls Short](#), (2021).

processes by ensuring fairness and removing potential for bias, and increasing the PPM's ability to facilitate remedy. Moreover, the recommendations support creating an advisory function for the PPM and strengthening its institutional capacity. Independence from management is crucial for the legitimacy of an IAM. The PPM should also strive to be equitable and rights-compatible in the way it carries out its functions. This means attention must be paid to asymmetries in the process, such as providing an equal opportunity to comment on a draft report, addressing any power imbalances between parties in dispute resolution processes, and being remedy oriented in its approach to resolving concerns. Special attention must be paid to respect the Free, Prior, and Informed Consent rights of Indigenous Peoples throughout case processing. Finally the PPM should also be a source of continuous learning for AIIB to prevent future harm.

The recommendations have been based on project affected people's experiences of the PPM and other IAMs, and we sincerely hope that this is helpful as you undertake this review. Please do not hesitate to contact us for any questions or clarifications. We look forward to continuing our engagement with your office during the review.

Sincerely,

Accountability Counsel

African Law Foundation (AFRILAW)

Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)

Asian Forum for Human Rights and Development (FORUM-ASIA)

BRICS Feminist Watch

BRICS Policy Center-Brazil

Campaign for Sustainable Rural Livelihoods (CSRL), Bangladesh

Center for International Environmental Law (CIEL)

Centre for Human Rights and Development

Community Empowerment and Social Justice Network (CEMSOJ)

CWcSN

Defenders in Development Campaign

Equitable Cambodia

Friends with Environment in Development

Fundeps

Global Responsibility (Austria)

Growthwatch

Inclusive Development International

Indigenous Women Legal Awareness Group (INWOLAG)

International Accountability Project

Latinoamérica Sustentable

Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)

Manushya Foundation

Oyu Tolgoi Watch

PA "Bir Duino Kyrgyzstan"

Peace Point Development Foundation-PPDF

Programme on Women's Economic, Social and Cultural Rights (PWESCR)

Psychological Responsiveness NGO, Mongolia  
Reality of Aid - Asia Pacific  
Recourse  
Rivers without Boundaries  
Sustentarse  
Urgewald  
Uzbek Forum for Human Rights

## Annexure I: Detailed Recommendations for the Project-affected People’s Mechanism

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## A. VISIBILITY

The primary audience for the PPM's outreach and communications work is current and potentially project affected people. The visibility of the AIIB's PPM is essential in enhancing its accessibility to those affected communities. In its first years of existence, the PPM has focused on promoting its visibility through outreach events, often jointly with other independent accountability mechanisms. Although these events can be helpful, this is not the most direct or effective means of communicating the PPM's existence to project-affected communities.

### I. *Improve and strengthen information disclosure of the PPM.*

Project-affected communities' access to the PPM would be vastly improved by ensuring disclosure of information about the PPM **at the project level and site** – this includes signage about the PPM in a language and format accessible to local communities; and also information about the PPM being shared during consultations about the project with local communities. While the AIIB's ESF requires clients to disclose the existence of the PPM,<sup>6</sup> this requirement should be included in the PPM Policy and Rules of Procedure including specifying the manner in which this disclosure is carried out. At present, the 2019 PPM Rules of Procedure limit communication about the PPM to its own website, and merely “encourage” the client to include information about the PPM on dedicated project web pages. Project-affected people are unlikely to access this information easily, especially given technical and language challenges.

The January 2024 [Good Policy Paper](#) – which brings together analysis of the policies of development finance institutions' accountability mechanisms (IAMs) – states:

*“To achieve accessibility, the IAM's outreach must be undertaken in languages communities understand and via methods that accommodate their cultural backgrounds, literacy, and technological constraints. Special attention should be paid to vulnerable populations, including women and other groups, to ensure that information reaches all those who may be impacted by an internationally financed project.”*

The external review report found that many AIIB Operations Staff agreed that “at present the proper disclosure of the PPM was not adequate and questioned whether disclosure on a project's/client's website was enough”. The external review goes on to recommend that:

- *Information about PPM should be provided in an accessible and easily understandable manner in local languages together with an increased use of social media;*
- *Both Management and clients/potential clients need to proactively participate in this process of making the existence of PPM widely known. This needs to be followed up by PPM.*

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<sup>6</sup> AIIB's ESF, Section 74.

We agree with the external review’s recommendations and call for them to be implemented in the revised PPM policy. It is also crucial that moving forward, operations staff and the PPM proactively monitor client’s disclosure and ensure that the availability of the PPM is being appropriately publicized.

### *Example of Good Policy*

Asian Development Bank (ADB) Accountability Mechanism (AM) Policy, Para 211: Pamphlets in national or official languages, community notice boards, audiovisual materials, or other appropriate and effective means will be used to inform people.

The proposed policy changes can be found below.

## II. *Improve information disclosure of the PPM in financial intermediary projects.*

With the longer investment chain, via financial intermediary clients such as commercial banks or equity funds to sub-borrowers or sub-projects, FI projects are typically much less transparent than those financed directly. As there can be no accountability without transparency, this translates into a disproportionate lack of cases filed on FI projects compared to the volume of lending: As of mid 2023, there have been only 22 (0.12%) complaints across independent accountability mechanisms arising out of FI projects, despite over half of IFC’s portfolio going to FIs, 45% of EIB’s and around a quarter of AIIB.<sup>7</sup>

Disclosure of the existence of the PPM in FI investments is therefore all the more important to enable access to accountability. Recent research found that over 80% of AIIB’s FI clients failed to disclose the existence of the PPM on their websites despite this being a requirement.<sup>8</sup> As above, it seems there is a clear need for more proactive monitoring of FI clients to make sure they are fulfilling disclosure requirements. Given that AIIB regularly invests in places with limited civic spaces, this should include information on how to access the PPM, the option for confidentiality and anonymity, and the available avenues to approach in instances of reprisals.

### *Examples of Good Policy*

The African Development Bank’s (AfDB) Operational Safeguard 9 (Financial Intermediaries), Para 28: The FI will require the subprojects to disclose AfDB’s support to them, the existence of the project-level Grievance Redress Mechanism (GRM), the Bank’s Independent Recourse Mechanism (IRM) and ensure that this information is clearly visible, accessible and understandable to affected communities.

<sup>7</sup> The Danish Institute for Human Rights, [Fit for Purpose? An analysis of development finance institutions’ management of human rights risks in intermediated finance](#), (April 2024).

<sup>8</sup> Multiple Authors, [Roadblocks to Accountability: Addressing the accessibility crisis in the Asian Infrastructure Investment Bank’s review of its Project-affected People’s Mechanism](#), Page 27 (September 2023).

The Inter-American Development Bank's (IADB) Environmental and Social Policy Framework, Para 39: The Borrower will inform project-affected people about the project's grievance mechanism and the IDB's Independent Consultation and Investigation Mechanism in the course of the stakeholder engagement process.<sup>9</sup>

## Proposed Policy Changes

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<sup>9</sup> While these good policy examples are from MDBs' E&S policies, the external review report recognises that the PPM review must address policies with relevance to accountability beyond the PPM policy. "**6.2 Proposed Change/Reforms identified by the Policy Review should not be restricted to PPM Policy 52.** Many stakeholders (including some Board members) expressed the view that effectiveness of the PPM is intimately related to accountability being a shared responsibility across the AIIB as a whole. Therefore, it follows that areas of reform should extend to include changes to the ESP, and other relevant AIIB policies including the Policy on Public Information and that there should be a coordinated approach to policy changes and policy streamlining within the institution." See, Dr. Zeinab Bashir Elbakri, [Asian Infrastructure Investment Bank Project-Affected People's Mechanism External Review](#) (External Review Report), (May 2024).



## 2018 PPM Policy

**11.2. Outreach, Learning and Training:** The PPM shall ~~conduct outreach to ensure people affected by AIIB-financed projects are aware of the PPM's existence and how to access it if they feel they have suffered harm~~ ~~raise awareness of the opportunities it provides with Clients and other stakeholders that may be interested in, or affected by, AIIB-financed Projects.~~ The PPM shall also collaborate with the other IAMs and MDBs and systematically capture and share lessons learned to enhance effective implementation of the ESP.

## 2019 PPM Rules of Procedure

**11.4. Outreach, Training and Learning.** In addition to the PPM's function of handling submissions, it performs outreach, learning and training functions. ~~The outreach function raises awareness of the opportunities it provides with Clients and other stakeholders that may be interested in, or affected by, AIIB-financed Projects.~~ The outreach function's primary purpose is to ensure people affected by AIIB-financed projects are aware of the PPM's existence and how to access it if they feel they have suffered harm. The training function raises awareness about the PPM with AIIB personnel. Under the learning function, the PPM collaborates with the other IAMs and MDBs and systematically captures and shares lessons learned to enhance effective implementation of the ESP. Attachment 5 below provides details on such outreach, learning and training functions.

**Attachment 5, 2.1.2:** Including links to the PPM website on AIIB's website, and working with Management to encourage the Client to develop and maintain a dedicated website for each Project, including a link to the PPM website. Links to the Client's site are made available on the PPM website. ~~The PPM will work with Management to ensure the Client discusses the PPM's existence and how to access it with project affected people in the course of the stakeholder consultation process and discloses such information at the project site in a culturally appropriate and gender sensitive manner and format accessible to project affected people, including at sub-projects financed via financial intermediaries. Pamphlets in national or official languages, community notice boards, audiovisual materials, or other appropriate and effective means will be used to inform people. This should include information on how to access the PPM, the option for confidentiality and anonymity, and the available avenues to approach in instances of reprisals.~~

~~The PPM will conduct periodic project site visits to monitor the implementation of this requirement.~~

III. *Improve information disclosure by the PPM on information related to submissions.*

While the PPM maintains a registry, certain key pieces of information are still missing. For example, links to complaint letters (redacted if complainants request confidentiality) and decisions on complaint eligibility, including decisions when submissions are ineligible. There are currently four ineligible submissions on the website and only a brief summary behind ineligibility that does not provide enough information to fully understand the decision. For example, if a submission is found ineligible for lack of good faith engagement, it is imperative to know on what basis the PPM came to this conclusion, what actions, if any, were taken by Requestors and why those were not considered to be sufficient to meet the good faith standard. Specifically, for Compliance Review, the PPM should also disclose the decision when they choose not to recommend the Compliance Review. These are crucial to increase the predictability of how the PPM functions. Moreover, all materials should be provided in full, not merely in summarized form and posted online as they become available and remain there indefinitely, not for a limited period of time. A balance should be struck between confidentiality and transparency, by disclosing redacted versions of personally identifiable documentation.

*Example of Good Policy*

AfBD's IRM Procedures, Para 106: The IRM shall maintain a transparent and comprehensive online Register. The information posted on the Register shall include pending, completed and closed cases and all relevant documentation relating to Complaints processing, including Complaints with links to complaint letters (redacted if Complainant(s) request confidentiality), decisions on Complaints eligibility, assessment reports, Problem-Solving report and agreements, terms of reference for Compliance Review reports, monitoring reports and final monitoring reports. All material shall be provided in full and posted online as they become available and remain there indefinitely.

**Proposed Policy Changes**

2018 PPM Policy

8. Disclosure

8.1. Disclosure of information by the PPM shall be carried out in accordance with the Bank's Policy on Public Information. ~~The PPM shall maintain a transparent and comprehensive online Register. The information on the Register should include pending, completed and closed cases and all relevant documentation relating to submission processing, including submissions with links to submission forms or request letters (redacted if Requestor(s) request confidentiality), decisions on eligibility for all submissions. Accordingly, unless a request for confidentiality has been granted by the PPM, all eligible submissions, PPM acknowledgements of receipt of such submissions and PPM eligibility reports for all submissions~~ All material shall be provided in full and posted online on the PPM website as they become available and remain there indefinitely ~~shall be disclosed on the PPM website.~~

8.2. The following additional information will be disclosed on the PPM website: [...]

8.2.3. In the Case of a Compliance Review: the ~~decision of the Board of Directors on~~ PPM's recommendation ~~on whether or not to proceed with to approve~~ the Compliance Review or other course of action; the terms of reference prepared by PPM for the Compliance Review; the final Compliance Review report; Management's response to the Compliance Review report; the MAP approved by the Board of Directors; and any periodic MAP status ~~and monitoring~~ reports.

## B. ACCESSIBILITY

- I. *Requestors should not be required to show that adverse impacts are direct or material.*

It is unduly burdensome to require Requestors to show how the adverse impacts they've suffered are 'material' and further risks creating a bias in the application of the PPM. Moreover, it is inconsistent with AIIB's existing ESF which allows people who believe "they have been or are likely to be adversely affected" to access the PPM, without any requirement to show how the adverse impact is material or direct.<sup>10</sup> Requestors should simply be required to outline the harm arising out of an AIIB-financed project. The requirements around the contents of the submission are contained in the 2019 PPM Rules of Procedure and should be amended accordingly.

### *Example of Good Policy*

European Bank for Reconstruction and Development's (EBRD) Independent Project Accountability Mechanism (IPAM) Policy, Para 2.1.c) iv.: a description of the harm or potential harm which the Project is believed to have caused, or to be likely to cause;

### **Proposed Policy Changes**

2018 PPM Policy

<sup>10</sup> AIIB's ESF, Section 74, People who believe they have been or are likely to be adversely affected by a failure of the Bank to implement the ESP may submit complaints to the Bank's PPM in accordance with the Policy on the PPM, [...]

Other IAMs such as International Finance Corporations' (IFC) Compliance Advisor Ombudsman (CAO) (See, CAO Policy, Page iv) , AfDB Independent Review Mechanism (IRM) (See, IRM Policy, Para 64), and EBRD IPAM (See, IPAM Policy, Page 4) allow complaints of indirect harm. Also See, [Section C.I](#) of this submission.

1.1. [...] The ESP also provides that AIIB will establish a mechanism to receive submissions from Project-affected people who believe they have been or are likely to be adversely affected [...]

6.1. Submission: [...]Other information to be included in the submission shall be detailed in the sample submission form to be set out in the Rules of Procedure for the PPM.

No changes required

#### 2019 PPM Rules of Procedure

6.1.1. The submission includes the following information:  
[...]

(e) ~~Direct and material~~ Potential or actual adverse environmental or social issues to be addressed.

## II. *The PPM should accept submissions from one or more individuals.*

The PPM Policy currently only accepts submission of requests from two or more project-affected people. As noted in the external review report “There is no justification on [the] rule of having two complainants. This requirement can potentially exclude individuals who have been harmed.”<sup>11</sup> We echo this reasoning and recommend that the PPM should accept submissions even when one individual has been harmed due to AIIB’s financing as there is no correlation between number of complainants and existence of harm.

### *Example of Good Policy*

IFC CAO Policy, Para 30: Any individual or group, or representative they authorize to act on their behalf, who believes they are or may be harmed by a Project or Sub-Project may lodge a complaint with CAO.

## **Proposed Policy Changes**

### 2018 PPM Policy

3.1. ~~Two~~ One or more Project-affected people (Requestors) may file a submission. [...]

*Similar language exists in 3.1. of the 2019 PPM Rules of Procedure*

<sup>11</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 28, (May 2024).

- III. *The PPM should accept submissions relating to harms against biodiversity, critical habitats, cultural heritage sites, and other global public goods.*

In line with AIIBs expanding climate commitments, the PPM should be able to receive submissions related to harms caused to biodiversity and heritage sites. AIIB has a responsibility to prevent, mitigate, and remedy harms caused by its financing to global public goods<sup>12</sup> even when there are no direct or indirect harms to people, and the PPM should uphold the Bank's accountability for such harms.

*Example of Good Policy*

European Investment Bank (EIB) Complaints Mechanism (CM) Policy, Para 4.3.1: Any natural or legal person who alleges a case of maladministration by the EIB Group in its decisions, Actions and/or omissions can lodge a complaint.

**Proposed Policy Changes**

2018 PPM Policy

**3. Persons Who May File a Submission [...]**

**3.2. Where there are harms to the environment or biodiversity, any natural or legal person may file a submission.**

- IV. *Requestors should have flexibility to authorize representatives whether local, national, or international.*

The PPM Policy currently allows Requestors to authorize in-country representatives to file submissions on their behalf and authorize individuals or organizations outside of their country as representatives only under exceptional circumstances when in-country representation is unavailable. As noted in the external review report “complainants should be allowed representation by whomever they feel comfortable with, whether local or international CSO[s].”<sup>13</sup> We echo this recommendation for reasons of community agency and equity between parties. Requestors may prefer appointing local, national, or international organizations as authorized representatives for a variety of factors, including expertise, resource and capacity considerations, and retaliation concerns. Further, the Bank and the Bank's clients have total freedom to select and be advised by representatives and legal counsel of their choice, without having to justify their choices.

<sup>12</sup> See, AIIB's ESF, Section 26, Section 31 and the Environmental and Social Exclusion List.

<sup>13</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 28, (May 2024).

Moreover the PPM Policy should recognize the role of Authorized Representatives to act as advisors through the process or as point of contact for formal communications.

### *Example of Good Policy*

EBRD'S IPAM Policy, Para. 2.1d) vii.: If desired, Requesters may identify a Representative who will assist them in the Case handling process. In these cases, the Request must contain written proof (such as a signed letter by the Requesters) of the Representative's authority to act on behalf of the Requesters in relation to the Request.

The Requesters must indicate whether they wish their Representative to act as the point of contact for all formal communications between IPAM and the Requesters, in which case, contact information for the Representatives must also be provided. However, IPAM may communicate directly with the Requesters as necessary.

### **Proposed Policy Changes**

#### 2018 PPM Policy

**3.1.** [...] They **Requestors** may authorize an ~~in-country~~ representative (Authorized Representative) to file a submission on their behalf **and assist them through the process.** **The Requestors must indicate whether they wish their Authorized Representative to act as the point of contact for all formal communications between PPM and the Requestors, in which case, contact information for the Authorized Representative must also be provided. However, PPM may communicate directly with the Requestors as necessary. ~~In exceptional situations, when in-country representation is unavailable, the Requestors may designate an individual or organization outside of the country as their Authorized Representative to file a submission.~~**

*Similar language exists in 3.2. of the 2019 PPM Rules of Procedure and the words Authorized Representative are also prefaced with in-country in multiple instances in the 2019 PPM Rules of Procedure.*

- V. *The requirement to engage in good-faith prior to filing a submission to the PPM should be made voluntary.*

The PPM is an outlier among other IAMs<sup>14</sup> for requiring that potential complainants engage in good faith with both the management and project-level grievance redress mechanisms as a pre-condition to filing a complaint or else risk their complaints being ineligible. We echo the external reviewer's recommendation to lower the bar of accessing the PPM as "(h)aving two

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<sup>14</sup> No other IAM requires project-affected communities to engage with both management and project-level GRMs including, IFC CAO, EBRD IPAM, EIB CM, ADB AM, AfDB IRM, Green Climate Fund's (GCF) Independent Redress Mechanism (IRM). See *also*, Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 21, (May 2024).

internal levels of grievance management prior to accessing the PPM is too restrictive”<sup>15</sup> and does not take into account the risks of reprisals or lack of trust that communities may have in engaging with Project-level GRMs or Management. The exception contained in the 2019 PPM Rules of Procedure where the PPM may waive this requirement for “nonexistence or non functioning of the Project-level GRM or a legitimate fear of Retaliation if a Project-level GRM is used”<sup>16</sup> is too restrictive and places a burden on communities to collect evidence that the Project-level GRM doesn’t exist or isn’t functioning properly or that their fear is legitimate. At minimum, this approach wastes precious time and creates a layer of confusion, and at worst it could expose communities to retaliation.

Moreover, the external review report showed that members of management have admitted to “a lack of knowledge about complaints handling protocols and skills among staff”<sup>17</sup> with respect to complaints handling. Further, an internal AIIB analysis of GRMs found that there was little information on actual GRM functioning on client websites and that AIIB monitoring and supervision visits to project level GRMs was insufficient.<sup>18</sup> Given these circumstances, the PPM should respect community decisions regarding choice of forum.

In accordance with international good practice, we recommend that the requirement to engage with either a Project GRM or Management should be made voluntary.

### *Examples of Good Policy*

GCF IRM Procedures, Paras. 25-26: There are no formal requirements for filing a grievance or complaint ... [W]here possible a complainant may wish to include ... A description of other efforts including access to grievance/redress mechanisms of AEs or other dispute resolution processes, if any, that the complainant has pursued or intends to pursue to resolve the concerns, and redress, if any, already received from such efforts.

IFC CAO Policy, Para 38: Complainants and Clients/Sub-Clients are encouraged to make good faith efforts to resolve concerns in the most effective and efficient manner, at the Project-level where possible.

### **Proposed Policy Changes**

#### 2018 PPM Policy

5.1. A submission shall be ineligible to be considered by the PPM, if:

[...]

<sup>15</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 28, (May 2024).

<sup>16</sup> 2019 PPM Rules of Procedure, Section 5.1.8.

<sup>17</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 16, (May 2024).

<sup>18</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 8, (May 2024).

~~5.1.8. The Requestors have not made good faith efforts to resolve the issues with the Project level GRM and with Management or have not indicated to the satisfaction of the PPM why they have been unable to do so;~~

*Similar language exists in 5.1.8. of 2019 PPM Rules of Procedure.*

6.1. Submission: The submission shall identify the Requestors making the submission. The Requestors shall be encouraged but not required to indicate under which PPM function they propose their submission to be reviewed ~~nor to indicate any prior steps the Requestors have taken to resolve the issue and its outcome~~. Other information to be included in the submission shall be detailed in the sample submission form to be set out in the Rules of Procedure for the PPM.

While prior-engagements with management/client are not relevant to existence of harm and thus should not be an eligibility criteria, the PPM should provide an opportunity to communities to resolve the issue at an earlier stage, if the community chooses to.

#### *Example of Good Policy*

IFC CAO Policy, Para 39: After determining a complaint to be eligible, CAO will enquire (a) whether good faith efforts have been made by the Complainants with IFC/MIGA and/or the Client or Sub-Client to address the issues raised in the complaint or (b) if such efforts were not undertaken, why.

In the event CAO understands that the Complainant has not made any good faith efforts with IFC/MIGA or the Client or Sub-Client, CAO will establish whether the Complainant wishes to refer the complaint to IFC/MIGA or the Client or Sub-Client.

In the event the Complainant does, CAO will refer such complaint to IFC/MIGA and/or the Client or Sub-Client. Complainants who have decided to pursue their complaint with IFC/MIGA and/or the Client or Sub-Client may notify CAO at any time of their desire to resume the processing of the complaint by CAO in accordance with this Policy. In the event no such good faith efforts were made, and the Complainant still wishes to pursue a complaint with CAO, CAO will record the Complainant's response that no such efforts were made.

### **Proposed Policy Changes**

2018 PPM Policy

**6.4 Screening for Eligibility, Registration:**



**6.4.1.** After determining a complaint to be eligible, the PPM will enquire (a) whether efforts have been made by the Requestors with AIIB and/or the Client to address the issues raised in the submission or (b) if such efforts were not undertaken, why.

In the event PPM understands that the Requestor has not made any efforts with AIIB and/or the Client, PPM will establish whether the Requestor wishes to refer the submission to AIIB and/or the Client.

In the event the Requestor does, PPM will refer such submission to AIIB and/or the Client. Requestors who have decided to pursue their submission with AIIB and/or the Client may notify PPM at any time of their desire to resume the processing of the submission by PPM in accordance with this Policy.

In the event no such good faith efforts were made, and the Requestors still wishes to pursue a complaint with PPM, PPM will record the Requestor's response that no such efforts were made.

- VI. *The PPM should accept submissions concerning the risks of projects under consideration but not yet approved by the Board.*

An IAM's mandate must not merely be available to communities after harm has manifested, but they should be equipped to address risks to prevent foreseeable harm. To ensure that communities are able to relay risks of harm not accounted for in project documentation, the PPM must be able to accept complaints prior to project approval. The seriousness of the issues raised through the PPM process should guide whether or not to approve the project at issue and, if the project is approved, and outcomes achieved through the PPM process should inform environmental and social management protection strategies guiding the project's implementation.

Having a mandate to prevent harm is especially important for project-affected communities who are deprived of meaningful consultation or denied their right to Free, Prior, and Informed Consent. Inadequate or absent consultation and disclosure are the issues most frequently raised in complaints submitted to IAMs, indeed the issues have been raised in approximately half of all eligible complaints.<sup>19</sup> But what would be the remedy for communities where the harm at issue is rooted in denying inclusion in the design and planning of a project? Truly, the best approach is to enable IAM processes to address these issues early rather than well into the project implementation.

### *Example of Good Policy*

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<sup>19</sup> Piper Goeking, *Understanding Community Harm Part 1: Consultation, Disclosure, and Due Diligence*, *Accountability Console Newsletter* (May 2021).

GCF IRM Procedures, Para. 20: A grievance or complaint can be submitted to the IRM by a person or group of persons or community who has/have been or who may be affected by adverse impacts of a GCF funded project or programme.<sup>1</sup>

<sup>1</sup>GCF funded project or programme includes a project or programme being actively considered for funding by the GCF.

### Proposed Policy Changes

#### 2018 PPM Policy

**4.1.** Project Processing Query may be submitted after the Project summary information (PSI) in relation to a Project has been disclosed by AIIB and before the approval of the Financing.

**5.1.** A submission shall be ineligible to be considered by the PPM, if:

**5.1.1.** It does not relate to a Project that **is under consideration or has been** approved for financing by AIIB, **or in relation to which** if a PSI has **not** been disclosed;

#### VII. *The PPM should be empowered to accept submissions concerning all co-financed projects.*

There are significant disadvantages to both project-affected communities and AIIB to excluding co-financed projects from the PPM's mandate, and the PPM should seriously reconsider this approach. Project affected communities are denied access to a redressal mechanism of their choice, AIIB's leverage over clients, and their ability to hold AIIB accountable for impacts caused by its financing. These result in inadequate outcomes for communities meaning the harm persists and remedy is not achieved. At the same time, AIIB remains unaware and unwilling to identify the gaps in its due diligence and monitoring processes that allowed the harm to occur in the first place thus repeatedly perpetuating the harm across projects.

The AIIB has justified this approach based on the increasing trend towards harmonization of environmental and social obligations and reliance on co-financiers' environmental and social obligations. It follows, according to this line of reasoning, that the institution's IAM would be in the best position to evaluate whether said policies are complied with.<sup>20</sup> However, according to AIIB's ESF, AIIB can only rely on the other Bank's environmental and social framework if they are in material compliance with AIIBs' own.<sup>21</sup> And even in co-financed projects, AIIB is still responsible for ensuring that "appropriate environmental and social arrangements and monitoring procedures are in place."<sup>22</sup> Moreover, AIIB staff and project teams also provide implementation support, organize monitoring visits, and engage with the borrowers when environmental and

<sup>20</sup> Complaints-resolution, Evaluation, and Integrity Unit, [CEIU Comments on the Report on Ensuring accountability: Framing the Asian Infrastructure Investment Bank's review of its Project-affected People's Mechanism](#), Page 1, 2 (September 2023).

<sup>21</sup> AIIB's ESF, Section 10.1.

<sup>22</sup> AIIB's ESF, Section 10.1.

social issues arise.<sup>23</sup> Thus when harm occurs, it indicates failure of AIIB's own systems of due diligence and monitoring, yet AIIB is never held accountable for it.

Finally, as long as AIIB financing is causing or contributing to harm, AIIB has an institutional responsibility to remedy such harms. This duty cannot be outsourced. In outsourcing its responsibility to the lead financier, often for a fee, AIIB is diluting international legal obligations<sup>24</sup> to provide an effective grievance redress mechanism.

The external review report recognizes the inadequacies of the current approach and recommends two options<sup>25</sup>:

**Option 1:** *Abolish the co-financing option that sets forth the non-applicability of the ESP and the non-reliance on PPM for certain co-financed projects, allowing potential complainants to choose the IAM to send their complaint, regardless of whether the project is co-financed or not.*

**Option 2:** *Maintain the co-financing option, while ensuring first, that the list of complaints received by the IAMs of co-financing institutions is made public, consequences of excluding co-financed projects from the PPM be assessed, and alternative routes be developed including joint missions in select cases. Furthermore, PPM should engage in closely following up on complaints in cofinanced cases, in cases involving financial intermediaries and in cases of PBFs, while emphasizing learning from and the drawing of lessons for the benefit of AIIB's policies and their implementation going forward.*

We reject option 2 as it still ignores AIIBs responsibilities towards remedy for project-affected people and avoids holding AIIB accountable, in favour of a softer learning-based approach. Based on good policy practice at other IAMs, we've recommended a few options, in decreasing order of preference, for removing or improving on the current co-financing approach.

- **Option A:** PPM is wholly empowered to accept co-financed cases where AIIB has agreed to apply the environmental and social policies and procedures of the other institution.

This is the only option that brings AIIB in line with all other IAMs and avoids impinging on community agency, fairness, and accountability.

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<sup>23</sup> Multiple Authors, [Roadblocks to Accountability: Addressing the accessibility crisis in the Asian Infrastructure Investment Bank's review of its Project-affected People's Mechanism](#), Page 46 (September 2023).

<sup>24</sup> "The right to an effective remedy for human rights abuses is a central tenet of human rights law and is reflected in Pillar III of the Guiding Principles, which focuses on remedy for victims of business-related human rights harms. Indeed, the Guiding Principles require development finance institutions to provide access to remedy if they have contributed to the harm." See, Working Group on Business and Human Rights [Development finance institutions and human rights Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises](#), Para 57, (June 2023).

<sup>25</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 30, (May 2024).

- **Option B:** PPM is wholly empowered to accept co-financed cases where AIIB has agreed to apply the environmental and social policies and procedures of the other institution, *except* where the co-financier's IAM is *currently* hearing the case. The PPM can still accept submissions, before and after, the co-financier's case.

While this option prevents affected communities from simultaneously filing to the PPM and the lead co-financier's IAM, it still allows affected communities to access the PPM if they prefer the PPM over the co-financier's IAM or if the process of the co-financier's IAM has not resulted in satisfactory outcomes.

- **Option C:** PPM is wholly empowered to accept compliance review submissions in co-financed cases where AIIB has agreed to apply the environmental and social policies and procedures of the other institution.

While this option still restricts community choice and the PPM's effectiveness, it at least allows PPM to consider AIIB's non-compliance with its obligations and facilitate remedy for harms experienced by affected communities.

### *Examples of Good Policy*

#### ADB's AM Policy, Para 207.

The Accountability Mechanism will also apply to ADB-administered cofinancing operations.

#### AfDB's IRM Procedures, Para 77.

If IRM receives a Complaint that has also been submitted to an IAM of another multilateral development bank (MDB) or International Financial Institution (IFI) for a co-financed Operation, all efforts will be made to cooperate with the other IAM, while remaining within the rules and mandate of each IAM, including on requirements of confidentiality and disclosure of information. These cooperation principles will be included in a Memorandum of Understanding to be signed by IRM and the IAM of the other institution. If deemed necessary IRM may also notify other IAM of registered Complaints not subject to co-financing but located in overlapping countries or territories of operation. If a similar Complaint is submitted to the IAM of other institutions in relation to the same project and the substance of the Complaint is reasonably related IRM may collaborate with those mechanisms in a manner that is consistent with these rules to ensure that cases are handled efficiently. If a Complaint is submitted to a co-financing institution only, but it relates to an AfDB Client and IRM is made aware by the IAM of the co-financing institution, the IRM will brief Management and the Boards of Directors –as publicly available information on such cases becomes available.

## **Proposed Policy Changes**

**Option A: PPM is wholly empowered to accept co-financed cases where AIIB has agreed to apply the environmental and social policies and procedures of the other institution.**

**5.1.** A submission shall be ineligible to be considered by the PPM, if:

[...]

~~5.1.6. The Project is co-financed with another multilateral development bank (MDB) or bilateral development organization and AIIB has agreed to the application of the environmental and social policies and procedures and to rely on the Independent Accountability Mechanism (IAM) of such institution;~~

~~10. Co-financing 10.1. If PPM receives a submission arising out of a Project that is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution, all efforts will be made to cooperate with the other IAM to ensure the case is handled efficiently, while remaining within the rules and mandate of each IAM, including on requirements of confidentiality and disclosure of information. If PPM is made aware by the IAM of a co-financing institution, of a submission relating to an AIIB co-financed Project, the PPM will brief Management and the Boards of Directors –as information on such cases becomes available and report to the Board of Directors on the outcome of the review by the co-financier’s IAM of these submissions including lessons learned from handling the case and recommendations for reconsideration of relevant AIIB operational policies and procedures, guidelines and systems to ensure that similar cases will be prevented in the future. Such a report will be published on the PPM website within five (5) calendar days of it being submitted to the Board.~~

~~In cases where the Project is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution and to rely on the co-financier’s IAM to handle submissions from Project affected people under the Project, the PPM shall coordinate closely with the co-financier’s IAM on the handling of the submissions and report to the Board of Directors on the outcome of the review by the co-financier’s IAM of these submissions.~~

*Similar language exists in 5.1.6. and 10 of the 2019 PPM Rules of Procedure. References to co-financed cases exist throughout the 2018 PPM Policy and 2019 PPM Rules of Procedure.*

**Option B: PPM is wholly empowered to accept co-financed cases where AIIB has agreed to apply the environmental and social policies and procedures of the other institution, except where co-financiers IAM is currently hearing the case. The PPM can still accept Submissions, before and after, the co-financiers case.**

5.1. A submission shall be ineligible to be considered by the PPM, if:

[...]

5.1.6. The Project is co-financed with another multilateral development bank (MDB) or bilateral development organization and AIIB has agreed to the application of the environmental and social policies and procedures and to rely on the Independent Accountability Mechanism (IAM) of such institution **and there is an ongoing complaints process at the co-financier's IAM;**

10. Co-financing 10.1. **If PPM receives a submission arising out of a Project that is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution that is eligible in accordance with Para 5.1, all efforts will be made to cooperate with the other IAM to ensure the case is handled efficiently, while remaining within the rules and mandate of each IAM, including on requirements of confidentiality and disclosure of information. If PPM is made aware by the IAM of a co-financing institution, of a submission relating to an AIIB co-financed Project, the PPM will brief Management and the Boards of Directors –as information on such cases becomes available and report to the Board of Directors on the outcome of the review by the co-financier's IAM of these submissions including lessons learned from handling the case and recommendations for reconsideration of relevant AIIB operational policies and procedures, guidelines and systems to ensure that similar cases will be prevented in the future. Such a report will be published on the PPM website within five (5) calendar days of it being submitted to the Board.**

~~In cases where the Project is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution and to rely on the co-financier's IAM to handle submissions from Project-affected people under the Project, the PPM shall coordinate closely with the co-financier's IAM on the handling of the submissions and report to the Board of Directors on the outcome of the review by the co-financier's IAM of these submissions:~~

*Similar language exists in 5.1.6. and 10 of the 2019 PPM Rules of Procedure. References to co-financed cases exist throughout the 2018 PPM Policy and 2019 PPM Rules of Procedure.*

**Option C: PPM is wholly empowered to accept compliance review submissions in co-financed cases where AIIB has agreed to apply the environmental and social policies and procedures of the other institution.**

**5.1.** A submission shall be ineligible to be considered by the PPM, if:

[...]

**5.1.6.** For submissions relating to Dispute Resolution only, ~~if~~ the Project is co-financed with another multilateral development bank (MDB) or bilateral development organization and AIIB has agreed to the application of the environmental and social policies and procedures and to rely on the Independent Accountability Mechanism (IAM) of such institution;

**10.** Co-financing 10.1. ~~If PPM receives a submission arising out of a Project that is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution that is eligible in accordance with Para 5.1, all efforts will be made to cooperate with the other IAM to ensure the case is handled efficiently, while remaining within the rules and mandate of each IAM, including on requirements of confidentiality and disclosure of information. If PPM is made aware by the IAM of a co-financing institution, of a submission relating to an AIIB co-financed Project, the PPM will brief Management and the Boards of Directors –as information on such cases becomes available and report to the Board of Directors on the outcome of the review by the co-financier’s IAM of these submissions including lessons learned from handling the case and recommendations for reconsideration of relevant AIIB operational policies and procedures, guidelines and systems to ensure that similar cases will be prevented in the future. Such a report will be published on the PPM website within five (5) calendar days of it being submitted to the Board.~~

~~In cases where the Project is co-financed with another MDB or bilateral development organization and AIIB has agreed to apply the environmental and social policies and procedures of such institution and to rely on the co-financier’s IAM to handle submissions from Project-affected people under the Project, the PPM shall coordinate closely with the co-financier’s IAM on the handling of the submissions and report to the Board of Directors on the outcome of the review by the co-financier’s IAM of these submissions.~~

*Similar language exists in 5.1.6. and 10 of the 2019 PPM Rules of Procedure. References to co-financed cases exist throughout the 2018 PPM Policy and 2019 PPM Rules of Procedure.*

VIII. *Matters under concurrent arbitral or judicial review should not be barred.*

The PPM Policy’s eligibility criteria excludes cases from undergoing compliance review if there are any concurrent arbitral or judicial proceedings involving the same issues. This exclusion can



be overturned by an authorisation from the Board of Directors. We echo the external review report's recommendation to remove this clause, as the "The PPM (like peer IAMS) has a discrete purpose and function which is the unique ability to assess AIIBs compliance with its environmental and social obligations and provide important institutional findings that are not always available in judicial or arbitral proceedings. Therefore, a judicial review would not impact the process of deciding on such institutional compliance."<sup>26</sup>

### *Example of Good Policy*

IDB'S MICI Statement, see <https://www.iadb.org/en/node/30986>.

"As of July 1, 2021, clause 19 (d) of the MICI Policy, which excluded 'particular issues or matters (...) under arbitral or judicial review in an IDB member country', will be rendered ineffective."

### **Proposed Policy Changes**

#### 2018 PPM Policy

5.2. Further, a request for Compliance Review shall be ineligible if:

~~5.2.4. It relates to matters concurrently under arbitral or judicial review, save when the Board of Directors authorizes the PPM to process such request; or~~

6.8 Requests for Compliance Review

~~6.8.5. If at any point during the Compliance Review the PPM learns of arbitral or judicial proceedings involving substantive issues raised in the submission, the PPM shall assess the implications of such parallel processes and submit a recommendation to the Board of Directors on whether to continue with the Compliance Review. As an interim measure, the PPM may suspend the Compliance Review until the Board of Directors decides on the matter.~~

*Similar Language Exists in 5.2.4. and 6.7.3.(j) of the 2019 PPM Rules of Procedure.*

- IX. *The PPM Policy should allow self-initiated Compliance Reviews by MD-CEIU and Board subject to specific criteria/conditions.*

This recommendation, from the external review report, recognises that many IAMS, including the AfDB's IRM, the IFC CAO, the GCF's IRM, and the UNDP's SECU, allow for self-initiated compliance reviews to occur even when a formal Request has not been received, subject to certain conditions. These may include fear of reprisals and risk to the reputation of the IFI resulting from the project it is financing. Some IAMS may even allow for such a compliance review to be initiated by a Board member or by the Board as a whole.

<sup>26</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 22, (May 2024).



The PPM must be able to initiate a compliance review on its own discretion when presented with credible evidence on allegations of reprisals, as well as under other specific circumstances such as in cases raising issues of systemic importance or particularly severe harm. In the specific case of reprisals, we note that accountability mechanisms can only respond to cases of reprisals when there are complaints. Yet in contexts of restricted civic space, communities and defenders are often not in a position to file complaints and engage bank mechanisms. Therefore, once the bank and/or mechanism receives credible allegations of reprisals, the PPM should be able to self-initiate an investigation, without the need for a formal complaint to be filed by project-affected people.

#### *Example of Good Policy*

AfDB IRM Procedures, Para 14: Under specific circumstances, the Director of IRM may initiate Compliance Reviews. These circumstances include:

- Complaints raised to the IAMs of co-financiers in a Bank Group co-financed Operation for which no complaint has been submitted to IRM;
- Operations in the public domain where there is a reputational risk for the Bank Group
- Cases where IRM receives information from a credible source that a Bank Group Financed Operation has adversely impacted or may impact persons, a community or the environment; or
- Cases where IRM is informed of a risk of retaliation if a Complainant came forward.
- If a Compliance Review could provide an important learning opportunity.

### **Proposed Policy Changes**

#### 2018 PPM Policy

### **3. Persons Who May File A Submission [...]**

**3.3.** The PPM may initiate a Compliance Review process of one or more Projects or sub-projects as explained below:

**3.2.1.** The PPM may initiate a Compliance Review of one or more Projects or Sub-Projects based on the circumstances described in 3.22 or in response to an internal Request from the President, the Board, or Management.

**3.2.2.** The PPM may self-initiate a Compliance Review or the President, the Board, or Management may put forth an internal request in circumstances where: (i) a Compliance Review is deemed necessary to review environmental and social compliance issues of systemic importance to the AIB; (ii) concerns exist regarding particularly severe harm; or (iii) Project-affected people may be subject to, or fear, reprisals, preventing them from lodging a complaint with the PPM.

**3.2.3.** Such self-initiation or internal requests initiated by the President, the Board, or Management should include a written rationale for the Compliance Review request.

If the PPM initiates compliance review proceedings according to the criteria set out above, the information or internal request is deemed to be eligible under Section 5, and the PPM can proceed accordingly.

X. *The PPM should strengthen its ability to assess, mitigate, and protect against retaliation.*

The PPM recognizes the risk of retaliation faced by impacted communities and defenders when accessing the accountability mechanism. The 2018 PPM Policy and the 2019 PPM Rules of Procedure include the option for confidentiality, assessment and monitoring of reprisal risks, and identification of mitigation measures for Requestors, Authorized Representatives and other persons associated with the complaint. The recommendations below strengthen the existing measures and propose ways of strengthening the PPM's capacity to assess, mitigate, and respond to retaliation risks.

- a. *The AIIB and PPM should clearly state its zero tolerance against reprisals and retaliation in all the projects AIIB it finances.* The 2018 PPM Policy recognizes the risk of reprisal when communities file a complaint, but does not mention that it will not tolerate retaliation. This public declaration is necessary to send a message to its members and clients that the mechanism will not tolerate any form of reprisal to Requestors, Representatives and affected peoples.
- b. *The PPM should strengthen its confidentiality measures:* Any information shared by defenders should be held confidential and if needed to be shared, should be done with their informed consent. The PPM should strive to attend to all requests of confidentiality and should not be an impediment to the investigation of complaints, especially when it relates to the security of impacted peoples.
- c. *The PPM Policy should have a more proactive approach in assessing, mitigating, and responding to retaliation concerns.*
  - The reprisal risk assessment must assess the quality of civic space in the project site and the likelihood of a reprisal occurring, as well as result in risk-reducing strategies and a reprisal response protocol. The PPM currently is required to undertake a due diligence desk review on the risks of retaliation for those filing a complaint. The desk review collates and corroborates information from various sources on perceived risks, is updated when appropriate, and informs mitigation plans. This assessment should be consulted with the Requestors, Representatives and other members of project-affected communities, regularly updated throughout the project cycle, and result in coming up with risk-reducing strategies and a response protocol when reprisals do occur.
  - Reprisal prevention measures and response plans of the PPM should be in consultation with defenders, communities or groups that have a knowledge of the context. In order to safely respond and not to further aggravate the situation, any prevention measures and

response plan undertaken by IAMS should be in consultation with defenders, communities or groups that have a knowledge of the context.

- Reprisal-sensitive site visits should be conducted for outreach events and investigations. While it is important to work with Members to undertake these visits, there should be a protocol on how to investigate cases of reprisals when state forces are alleged to be responsible for perpetuating threats and attacks. Furthermore, threats of reprisals should not be a reason for the PPM to suspend site visits.
- The PPM should ensure that impacted communities and defenders have multiple secure avenues to raise retaliation risks. This can include the bank staff, management, and board members. If needed, these mechanisms should be able to ask support from multilateral institutions, protection groups and other civil society organizations.
- The PPM should establish clear protocols that it will adopt in cases of retaliation, As mentioned above, the PPM should have the ability to self-initiate compliance review in response to credible allegations of reprisals. The PPM should have a directive for staff on how to assess, prevent, mitigate and respond to reprisal risks. The policy should also include its commitment to develop capacities of its staff in responding to retaliation, and supplementing these with the expertise of consultants, civil society organizations, defenders and protection groups when necessary. The staff of the mechanism should have the ability to maintain secure channels with defenders under attack, verify information independently from clients, and develop protocols to respond to reprisals. Independent consultants can also be hired to monitor cases of reprisals independently from the client and the bank. Fact-checking on the information provided by bank staff and clients can be done with communities, civil society organizations and protection groups. This would include allocating resources to support the capacity development and implementation of the directive.
- The PPM has the responsibility to provide emergency assistance to defenders at risk. The PPM can maintain a list of trusted organizations and connect defenders at risk to these networks to provide support. Furthermore, the bank should allocate resources to an independently-managed fund, possibly handled by the PPM, to ensure urgent assistance for defenders at risk. These resources can be given to independent experts and defender protection groups that can provide immediate support to defenders.
- The PPM will publicly disclose reports, with statistical information and disaggregated data, on the cases of retaliation they have encountered. The report should include the kind of reprisal, sectors involved, countries where these took place, and responses of the bank.

### *Examples of Good Policy*

World Bank IPN, Guidelines to Reduce Retaliation Risks and Respond to Retaliation during

### the Panel Process:

Requesters may ask for confidentiality in the handling of their Request. If Requesters wish that their names and personal information remain confidential, the Panel will keep such information strictly confidential from all involved in the process. Confidentiality is a key principle of the Panel process. It covers the Requester's identity and information received from them in all forms (verbal, written and electronic) that may lead to their identity becoming known. Unless specific informed consent is provided for the use of information, the Panel will not make use of it. When consent is granted, the Panel considers whether disclosure would result in retaliation and if so, the Panel will not disclose the information. When it is not clear that confidentiality is requested, the Panel attempts to confirm it. If that is not possible, the Panel assumes it is. The Panel will clearly explain to the Requesters and their Representatives what it will do to maintain confidentiality, and any limitations on these efforts.

### EBRD IPAM Policy, Para 22:

Approach to Concerns Regarding Retaliation. IPAM does not tolerate Retaliation against Requesters or any other individuals involved in an IPAM process or outreach activity, and rejects any form of threat, intimidation, harassment, violence, or discrimination based on the fact that they have exercised their right to raise concerns.

IPAM is committed to taking steps to a) assess the risk of Retaliation against persons involved in IPAM processes and outreach, and b) implement Retaliation risk mitigation measures in connection with Requests or outreach activities, in consultation with the Requesters (or their Representatives, if any), if IPAM is informed by Requesters (or their Representatives, if any) that concerns around Retaliation exist. In such cases, IPAM will initiate a desk review of the risk environment and potential or actual risk of Retaliation against Requesters or other persons involved in an IPAM process as part of the Request registration process, and consider appropriate measures to be implemented. IPAM does not purport to replace national or international judicial bodies, protective services and law enforcement agencies whose functions include protecting the public in such situations.

### World Bank IPN, Guidelines to Reduce Retaliation Risks and Respond to Retaliation during the Panel Process:

The Panel carefully plans the information-gathering process during its site visits, including the type of information needed, and how to access it. Regarding its site visits:

- The Panel relies primarily on the Requesters or their appointed representatives for planning.
- The Panel favors the choice of meeting locations suggested by Requesters. However, if the Panel deems the suggested location to be risky, it suggests alternative locations and/or proposes phone meetings or secure- correspondence exchanges.
- If documenting aspects of its work through photographs, the Panel will not utilize images of individuals at risk or indications of their location. The Panel seeks the consent of all individuals that may be identifiable in their photographs after providing information about how the photographs may be used.
- The Panel proposes follow-up meetings or conversations and suggests appropriate methods (phone calls, email, in person, etc.). The Panel maintains a log of such communications to re- cord regular contacts and monitor security risks.
- As required by its legal framework, the Panel keeps a low profile during its site visits to

avoid media or other forms of public attention.

## Proposed Policy Changes

### 6.5. Site Visits:

The PPM may, ~~unless the Member in which the Project is located objects,~~ undertake site visits to the Project area at any time after a submission has been filed, in order to better understand submission issues and possible ways to address them. ~~The PPM will develop a protocol on how to organize reprisal-sensitive site visits, assessing the context and working with the Requestors, Representatives, project-affected peoples, independent experts and multilateral institutions to plan and facilitate these visits.~~ If the Member rejects a site visit request, the PPM will inform the Board of Directors and shall conduct its review on the basis of the available evidence. In the spirit of AIIB's partnership with its Members, assistance from Members in facilitating timely PPM site visits is anticipated.

### 9.1. Confidentiality:

The Requestors may request confidentiality for a variety of reasons, including risk of retaliation. The request for confidentiality and the reasons for the request shall be provided with the submission. ~~Upon request, all the information provided to the PPM (especially names and personal information) by the Requestors and Representatives will be held strictly confidential. The request for confidentiality shall be considered by the PPM and all reasonable efforts will be made to grant confidentiality.~~ The PPM will advise all PPM personnel, and Management will advise all other AIIB personnel, of their obligations to ensure the requested confidentiality when handling any submissions received. ~~The information will only be used and shared with their informed consent and will be assessed if disclosure of such information could lead to retaliation risk.~~ If, however, confidentiality becomes an impediment to eligibility assessment or to effective resolution of issues raised, the PPM shall advise the Requestors of such concerns and seek to agree on how to proceed. ~~Failing such agreement, the PPM may terminate the review of the submission.~~

### 9.2. Retaliation Risk:

~~The PPM will not tolerate any form of retaliation in all the projects the AIIB finances, and t~~The PPM shall recognize and assess the risks of retaliation against the Requestors, any in-country Authorized Representative and, if determined by the PPM, other relevant persons in connection with a submission. ~~The risk assessment conducted by the PPM will assess the quality of civic space and the likelihood of a reprisal occurring. The assessment will be consulted with Requestors, Representatives and project-affected peoples, based on various sources from human rights mechanisms and civil society organizations, regularly updated throughout the project cycle, and result in coming up with risk-reducing strategies and a response protocol when reprisals do occur.~~

The PPM will establish a clear procedure and protocol on what actions to take once they receive allegations of retaliation. The PPM will have an ability to self-initiate compliance reviews once it receives credible allegations of reprisals. The PPM will develop a directive for staff on how to assess, prevent, mitigate and respond to cases of retaliation. This will include allocating resources to develop staff capacities and supplementing these with the expertise of consultants, civil society organizations, defenders and protection groups when necessary.

The PPM shall advise the Requestors and the in-country Authorized Representative about the ~~inability of the PPM to assist with the physical protection measures~~ various channels to raise their complaints safely and explore with them if confidentiality of the identity of the Requestors or the in-country Authorized Representative and, if applicable, other relevant persons and/or any other information would mitigate the retaliation risks. The PPM will establish secure and direct communication channels where project-affected peoples can report cases of reprisals, discuss prevention measures and response plans. Reprisal prevention measures and response plans of the PPM should be in consultation with defenders, communities or groups that have a knowledge of the context.

The PPM will allocate resources to ensure urgent assistance for project-affected peoples at risk of retaliation. The PPM will also facilitate linkages to provide support for Requestors, Representatives and other project-affected peoples from protection organizations, civil society, bank management, board members, and multilateral institutions.

#### **Attachment 4 Implementing Retaliation Risk Mitigation Measures**

AiIB incorporates mitigation measures for retaliation risk into its Project-financing cycle through five main steps:

**1. Risk Identification:** The PPM makes a due diligence desk review of the risk environment and potential or actual risk of Retaliation against the Requestors, in-country Authorized Representative and other persons determined by the PPM to be relevant. This review forms a routine part of submission eligibility assessment. The PPM collates and endeavors to corroborate information from public sources, AiIB staff, international legal, financial, donor and governance institutions, NGOs and CSOs, private sector organizations, researchers, reporters, ~~and~~ the Requestors ~~and Authorized Representatives~~. The review is documented as a restricted access report that is stored and protected within the PPM management information system. The first review report is updated as appropriate and especially if the likelihood of retaliatory risks increases, until the submission has been concluded or the Requestors and any in-country Authorized Representative indicates that confidentiality is no longer required. If the review report identifies that Retaliation may occur, MD-CEIU notifies Management and discusses any actions that Management may take to avoid increasing the risk to the safety of the Requestors, in-country Authorized Representative and other relevant persons. ~~Any action to be taken to address reprisals will be consulted with the Requestors, Authorized Representatives and project-affected peoples. The PPM will organize reprisal-sensitive site visits, assessing the context and planning these in consultation with the Requestors, Authorized Representatives and project-affected peoples. The PPM, upon~~



assessing the risk, may also decide to forgo a site visit if this provides these persons with greater protection against Retaliation or avoids security risks to AIIB staff and consultants involved in the site visit.

**2. Implementing Retaliation Mitigation Measures:** Following completion of the due diligence desk review, the PPM works with Management to identify Retaliation mitigation measures, if any. **The PPM will have an ability to self-initiate compliance reviews if it receives credible allegations of reprisals.** Other parties with specific expertise may also be involved in this process, but PPM retains the prerogative to implement the measures it considers necessary and feasible. These measures are specific precautionary actions and contact processes.

3. Such measures may include safer locations, methods, timing and transport for site visits, meetings and other communication; and selection and use of trusted intermediaries, interpreters, information providers, consultants and facilitators, including during Dispute Resolution. Persons approaching the PPM may also request confidentiality of their identities or information in accordance with these Rules of Procedure. Free, prior and informed consent will be required before information, digital recordings or images of Requestors can be made public by the PPM.

**4. Monitoring Risk of Retaliation:** The PPM has primary responsibility for monitoring, reviewing and updating Retaliation risk status and measures, in consultation with MD- CEIU and Management. **The PPM will maintain direct and secure channels with Requesters, Authorized Representatives and project-affected peoples to monitor their situation, verify information independently, develop protocols to urgently respond and mitigate reprisal risks. The PPM should let the affected communities know of available avenues within the AIIB, such as Management and board members, to raise retaliation risks.** Information, identities and findings may be shared on a confidential basis with co-financiers to enhance the response against Retaliation, provided the Requestors and any in-country Authorized Representative has given specific consent. Retaliation risk monitoring requires the risk identification report to be updated and contact maintained with the Requestors and the in-country Authorized Representative, particularly after site visits or other meetings.

**5. Responses to Retaliation:** If PPM monitoring or other information indicates that Retaliation has occurred despite precautionary measures, the PPM endeavors to communicate with the Requestors and in-country Authorized Representative to understand and corroborate the facts. The PPM then presents a Retaliation incident report to the President, Management, and the Board of Directors. The PPM and Management then attempt to implement any planned response developed with the Requestors and in-country Authorized Representative (where possible). **The PPM will be able to recommend immediate temporary measures, such as temporarily suspending financing or project operations, upon consultation with Requestors, Authorized Representatives and project-affected peoples involved. The PPM will also be able to recommend consequences for clients that engage in retaliation to the Management and Board of Directors, such as public statements denouncing the action, divestment or disengagement, inclusion in debarment lists, and will be able to monitor how its recommendations are being implemented. Redress measures should be determined by those who faced the retaliation, as well as their communities, be proportional to the gravity of the violations and harm suffered, and restore victims, families and communities to their pre-violation condition.**

The AIIB will allocate necessary resources to an independently-managed fund to provide emergency assistance to Requesters, Authorized Representatives or project-affected peoples facing reprisals, which can be used for medical care, bail and legal fees, among others. The PPM will also facilitate necessary support to Requestors, Representatives and project-affected peoples by connecting them to trusted organizations, protection groups, and multilateral institutions.

**6. Improving Responses to Retaliation:** The PPM will develop a directive for its staff on how to assess, prevent, mitigate and respond to reprisal risks. The PPM will also allocate resources to develop capacities of staff and hire independent consultants to improve its expertise in responding to retaliation. The PPM will work with the Independent Accountability Mechanisms Network, a professional association of IAMs, and other groups to advance development of approaches to effective reduction and management of Retaliation against Project-affected people. This may include developing an incident database and related information exchange measures, including naming of agencies or clients involved in Retaliation. The PPM learning function will also routinely capture and incorporate emerging good practices for mitigating the risks of Retaliation. **The PPM will publicly disclose reports, with statistical information and disaggregated data, on the cases of retaliation they have encountered. The report should include the kind of reprisal, sectors involved, countries where these took place, and responses of the bank.**

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## C. EFFECTIVENESS

### I. *The PPM's mandate should be strengthened.*

The PPM's mandate should be expanded to (i) explicitly include remedy, (ii) allow assessment of compliance with policies beyond the environmental and social policy, and (iii) as previously discussed under [Section B.I of this submission](#) address indirect and non-material adverse impacts. This further includes removing any strict language around direct causation as the PPM should be empowered to assess and redress any potential or actual adverse impacts related to AIIB financing. As the external review report notes, “[r]emedy is the main objective of Complainants when sending in Requests and the only way to mitigate harms suffered,”<sup>27</sup> and “non-compliance with other AIIB Policies may also cause harm including Policy on Public Information, Gender Policy etc.”<sup>28</sup>

The PPM should further include an explicit commitment to respect Free Prior and Informed Consent of affected Indigenous Peoples who are engaging with the PPM, particularly during the dispute resolution, compliance review, and through any investigation or monitoring processes, and ensuring FPIC is secured when any remedial action is proposed. This further includes respecting and supporting Indigenous Peoples’ decision making processes to ensure FPIC is respected. Having specific protections and rights for Indigenous Peoples is essential given the impact AIIB financing has on their land, territories, and resources.

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<sup>27</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 28, (May 2024).

<sup>28</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 28, (May 2024).



## Examples of Good Policy

### **Include Remedy in the Mandate**

IFC CAO Policy, Para 1: In executing its mandate, CAO facilitates access to remedy for Project-affected people in a manner that is consistent with the international principles related to business and human rights included within the Sustainability Framework.

### **Expand the List of Policies Against which Non-compliance can be Assessed**

AfDB IRM Policy, Para 2: The AfDB IRM's scope of work covers all operations financed by the Bank Group and may consider all relevant policies, guidelines and procedures that are approved by the Boards of Directors, Management or Bank Committees as of the date they are effective. The policies relevant to the IRM tend to cover social and environmental aspects of Bank Group-Financed Operations and include the following policies among others: (a) AfDB Policy on Access to Information; (b) AfDB Integrated Safeguards System Policy Statement; and (c) Any other relevant policy guideline or procedure. The IRM shall work with Bank Group Management to establish, maintain, and update an indicative list of relevant policies and procedures of the Bank Group pertaining to its work and post this on its website.

GCF IRM Policy, Para 5: Compliance is reviewed against GCF operational policies and procedures. "These are Policies and Procedures adopted by the Board or issued by the Secretariat pursuant to a mandate by the Board, including environmental and social safeguards environmental and social management system, Indigenous peoples' policy, and gender policy.

### **Address indirect and non-material adverse impacts**

EBRD IPAM Policy, Page 4: Project Affected People: one or more individuals who live in an area that is impacted, or likely to be impacted, by a Project, who have experienced (or are likely to experience) environmental, social or cultural harm as a direct or indirect result of a Project.

AfDB IRM Policy, Para 63: As part of the Compliance Eligibility Assessment, the IRM will determine whether there is prima facie evidence that the Complainants have been harmed or threatened with harm by a Bank Group-Financed Operation and whether the harm or threat may have been caused directly or indirectly by the failure of the staff and Management of the Bank Group to comply with any of the relevant policies and procedures of the Bank Group.

IFC CAO Policy, Para 8(b): Compliance function: CAO carries out reviews of IFC/MIGA compliance with the E&S Policies, assesses related Harm, and recommends remedial actions to address non-compliance and Harm where appropriate.

### **Respecting Indigenous Peoples Rights**

IDB's MICI Consultation Phase Guidelines Para 4.19: When the Consultation Phase involves indigenous peoples, CP officials will take particular care to respect local decision-making structures, gender aspects, history and legacy issues, customary practices, ancient traditions, language preferences, existing legislation

15 on prior consultation, and capacity building needs throughout the case processing.

### **Proposed Policy Changes**

#### 2018 PPM Policy

##### **Include Remedy in the Mandate**

**2.1. Functions:** [...] ~~In executing its mandate, PPM facilitates access to remedy for Project-affected people in a manner that is consistent with the international principles related to business and human rights [...]~~

*Similar language exists in 2.1 of the 2019 PPM Rules of Procedure*

##### **Expand the List of Policies Against which Non-compliance can be Assessed**

**1.1.** [...] The ESP also provides that AIIB will establish a mechanism to receive submissions from Project-affected people who believe they have been or are likely to be adversely affected by AIIB's failure to implement ~~the ESP its environmental and social obligations and includes the following policies among others:~~ (a) Environmental and Social Policy (b) Policy on Public Information (c) any other relevant policy and procedure. The PPM shall work with AIIB to establish, maintain, and update an indicative list of relevant policies and procedures of the AIIB post this on its website.

**2.1. Functions:** The PPM shall provide an opportunity for an independent and impartial review of submissions from Project-affected people who believe they have been or are likely to be adversely affected by AIIB's failure to implement ~~its relevant policies and procedures the ESP in situations when their concerns cannot be addressed satisfactorily through Project level GRMs or AIIB Management processes.~~ [...]

**5.2.** Further, a request for Compliance Review shall be ineligible if:

**5.2.1.** It relates to actions or inactions that do not involve AIIB's failure to comply with the ~~ESP relevant policies and procedure~~ or otherwise raises issues unrelated to AIIB's failure to comply with the ~~ESP relevant policies and procedure~~;

*There are multiple instances of reference to non-compliance with ESP in the 2019 PPM Rules of Procedure*

### **Address indirect and non-material adverse impacts**

**2.1.2.** Dispute Resolution Function (Dispute Resolution), which shall seek to facilitate a dialogue between AIIB, the Project-affected people and/or Clients<sup>3</sup> with a view to agreeing on actions to **remediate or otherwise** mitigate ~~known and quantifiable~~, potential or actual **material** adverse environmental or social impacts that arise during AIIB's environmental and social due diligence of a Project or during Project implementation.

*Similar language exists in 2.1.2. and 6.6.1. of the 2019 PPM Rules of Procedure*

**2.1.3.** Compliance Review Function (Compliance Review), which is designed to investigate allegations by Project-affected people that AIIB has failed to comply with its obligations under the **ESP the relevant policies and procedures** in its environmental and social due diligence of a Project or its oversight of the Project during implementation, ~~assess thereby causing or being likely to cause material~~ adverse environmental or social impacts on the Project-affected people and, if the allegations are substantiated, to review any action plan proposed by Management to address these impacts.

*Similar language exists in 2.1.3. And 6.7.1. of the 2019 PPM Rules of Procedure*

#### 2019 PPM Rules of Procedure

**6.7.2.** Under this procedure, the PPM assesses whether: [...]

(b) A ~~direct causal~~ link exists between the adverse impact and alleged AIIB noncompliance with the ESP.

~~(c) The alleged adverse impact is material.~~

**6.7.3.** (l) Assessment of Impact can be a Complex Matter. The Project-specific task force takes the without-project scenario as the base case for comparison, taking into account any available baseline information. Nonaccomplishments and unfulfilled expectations that do not generate a material deterioration compared to the without-project scenario are not considered as a **material** adverse impact for this purpose. As the assessment of **material** adverse impact in the context of the complex reality of a specific Project can be difficult, careful judgment on these matters by the Project-specific Task Force, and guidance from the ESP, are required. ~~Issues of causation also require careful attention and exercise of judgment to determine if the impact in question is partially or wholly caused by noncompliance.~~

## Respecting Indigenous Peoples Rights

### 2018 PPM Policy

**6.9.** When Requestors include Indigenous Peoples, the PPM will take particular care to respect community-specific decision-making structures, gender inclusivity, history and legacy issues, customary practices, ancient traditions, language preferences, existing legislation on prior consultation, and capacity-building needs throughout the case process and in particular when facilitating redress for harms suffered.

## II. *The independence of the PPM must be strengthened and safeguarded.*

We would like to emphasize the structural deficiencies identified in the current setup of the PPM and call for significant improvements to ensure its independence and effectiveness. We strongly recommend considering structural improvements to bolster the PPM's independence and effectiveness. These changes include the Board's direct involvement in appointing the MD-CEIU, the inclusion of external stakeholders in the hiring process, independent legal advice for the PPM and granting the PPM control over its staffing, hiring, and budgeting, with Board approval. Such measures are vital for maintaining the PPM's integrity and ensuring it can operate without undue influence from Management.

The PPM is organisationally part of the CEIU, which is currently led by a Managing Director (MD-CEIU) who reports directly to the Board. However, "the current structure of combining all independent functions under the same umbrella is not the general norm in peer MDBs, although similar arrangements can be found"<sup>29</sup> in some other institutions. This consolidation can compromise the independence and focus of the PPM.

In line with good practice at other mechanisms (see examples below), the MD-CEIU should be appointed by the Board, with the hiring process including external stakeholders. The MD-CEIU should only be able to be removed by the Board for cause. Currently, the MD-CEIU is appointed and dismissed by the President after consulting the Board.

The provision in the Rules of Procedures (RofP) regarding legal advice (Section 11.3) presents several concerns related to potential conflicts of interest involving the General Counsel's role at the AIIB. The General Counsel serves as the legal advisor to both AIIB and the MD-CEIU on matters related to the PPM. This dual advisory role inherently creates a conflict of interest, as the General Counsel is obligated to protect the interests of AIIB while simultaneously providing independent legal advice to the PPM. The General Counsel's primary loyalty lies with AIIB, which may influence decisions and advice given to the PPM, potentially compromising the independence of the PPM's legal counsel. The RofP states that the General Counsel will manage any conflicts of interest that arise. However, it is unrealistic to expect the General Counsel to objectively identify and manage conflicts that involve their own advisory roles. This

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<sup>29</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 5, (May 2024).

self-regulatory approach lacks transparency and accountability, risking biased advice that favors AIIB's interests over the independence of the PPM. The General Counsel's authority to appoint external counsel and the requirement for MD-CEIU to agree on the choice presents another layer of conflict. The General Counsel's involvement in the selection process could lead to the appointment of external counsel who are more aligned with AIIB's interests rather than ensuring truly independent legal advice for the PPM. Additionally, the requirement for the General Counsel to discuss alternative choices with MD-CEIU until a mutually agreeable solution is found further entangles the legal advisory process in bureaucratic negotiations, which can undermine the timely and impartial provision of legal advice.

The PPM should have the authority to choose its legal counsel from the very beginning. This ensures that the PPM receives independent legal advice that is free from the potential biases and conflicts associated with the General Counsel's dual roles. The selection process for the PPM's legal counsel should be entirely separate from AIIB's General Counsel to maintain the integrity and independence of the legal advice provided. The legal counsel of the bank (General Counsel) should play no role in advising or influencing the PPM's legal decisions. This separation is crucial to avoid any real or perceived conflicts of interest and to uphold the independence of the PPM. A clear and distinct separation of legal advisory roles should be established within AIIB, with distinct lines of reporting and responsibility to ensure that the PPM operates with full autonomy.

Furthermore, the PPM should manage its staffing, hiring, and budgeting processes independently, within the approved budget, rather than being subject to the President's or Board's oversight. As stated by the external review report, "independence from Management with respect to personnel and budget are important aspects of safeguarding the PPM's independence."<sup>30</sup>

### *Examples of Good Policy*

CAO Policy, Para 15: To maintain the independence of the CAO [Director General (DG)], a selection committee will be established to conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities.

CAO Policy, Para 20: The CAO DG may be removed from office only by a decision of the Boards, for cause, as determined by the Boards on the recommendation of CODE.

EBRD IPAM Policy, Para 1.5: IPAM operates independently, with a direct reporting line to the Board.

EBRD IPAM Policy, Para 3.3. a) i.: The IPAM Head is responsible for running IPAM [including CR and DR functions], implementing this Policy, and making the decisions that are the responsibility of IPAM under this Policy.

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<sup>30</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 16, (May 2024).

EBRD IPAM Policy, Para 3.3. c) i.: The IPAM Head manages IPAM staff, to which the Bank’s Human Resources policies and procedures apply. The IPAM Head is free to make recruitment decisions within the limits of the approved budget, without Bank management or Board involvement.”

AfDB IRM Procedures, Para 97: [...] The Director may also seek external legal advice on a Complaint, grievance or complaint-related matter or with regard to any matters concerning the IRM. The Boards of Directors will have the authority to interpret these rules and procedures.

### **Proposed Policy Changes**

#### 2024 Terms of Reference (ToR) for CIEU

The MD CEIU is appointed by the Board following the recommendation of a selection committee set up for the election of the MD CEIU. To maintain the independence of the CIEU, the selection committee will conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities.

The MD CEIU may be removed from office only by a decision of the Board, for cause, as determined by the Board.

~~The MD CEIU is appointed by the President following consultation with the Board and otherwise in accordance with the Staff Rules. The President shall share all relevant information with the Board regarding a candidate they intend to appoint, including background, experience, and their curriculum vitae. The Board may provide feedback to the President, through the Corporate Secretary, within 14 calendar days.~~

#### 2018 PPM Policy

**2.1**[...] PPM operates independently, with a direct reporting line to the Board.

**2.2.** In carrying out the PPM functions, the PPM shall have the following competencies:

**2.2.1.**The PPM Head is responsible for running PPM [including CR and DR functions], implementing this Policy, and making the decisions that are the responsibility of PPM under this Policy.

**2.2.2** The PPM Head manages PPM staff, to which the AIIB’s Human Resources policies and procedures apply. The PPM Head is free to make recruitment decisions within the limits of the approved budget, without Bank management or Board involvement.

**2.2.1-3.** To determine the eligibility of submissions.

**2.2.2-4.** To assess the submissions and make determinations regarding them.

**2.2.3-5.** To carry out such other tasks as are reasonably related to the discharge of the above competencies.

**2.3. MD-CEIU:** [...] The MD CEIU is appointed by the Board following the recommendation of a selection committee set up for the election of the MD CEIU following a process set out in the Terms of Reference for the Complaints-resolution, Evaluation and Integrity Unit. The MD CEIU may be removed from office only by a decision of the Board, for cause, as determined by the Board.

2019 PPM Rules of Procedure

**11.3 Legal Advice.** The General Counsel, as the legal advisor to AIIB, advises MD CEIU, as needed, on matters related to the PPM. In providing legal advice to the PPM, the General Counsel ensures that there is no conflict of interest or, should a conflict of interest arise, adequately manages the conflict so that the PPM can properly discharge its obligations on the basis of independent legal advice. ~~Where the General Counsel determines that, in order to inform his/her advice, the assistance of external counsel is required, the General Counsel appoints the counsel following AIIB's standard procedures for hiring external counsel. If MDCEIU considers the proposed choice of external counsel to be inimical to the functioning of the PPM, the General Counsel discusses alternative choices of external counsel with MD CEIU with an aim to reach a mutually agreeable solution.~~ The MD CEIU may also seek external legal advice on a submission, query, grievance, grievance-related matter or with regards to any matters considering the PPM. The Board of Directors will have the authority to interpret the policy and rules of procedure.

*We recommend that this provision on legal advice also be included in 11 of the 2018 PPM Policy.*

III. *Enhancing effectiveness and community agency in the dispute resolution process.*

- a. *The Dispute Resolution Function should seek to ameliorate any power imbalances and asymmetries between the parties.* In general, parties to the dispute resolution process do not have equal resources, capacity, political power, and information regarding the issues at hand. Mediators should play an active role in paying attention to these asymmetrical power dynamics to ensure that all parties may participate effectively and on equal terms in the process.

*Example of Good Policy*

IDB's MICI Consultation Phase Guidelines Para 3.7: In accordance with MICI's guiding principles (Section C, Paragraph 6) and in order to ensure ethical, transparent and effective case management, CP officials must observe the following principles:

Attention to Asymmetries: CP processes should be particularly sensitive to the existence of considerable asymmetries between the Parties so as not to undermine the possibility of reaching satisfactory results. Particular attention is to be paid to asymmetries in availability of the information needed, and in the capacity and ability to participate effectively in these processes. MICI officials may propose capacity building activities and exercises to facilitate the Parties' effective and fruitful participation.



## Proposed Policy Changes

### 2018 PPM Policy

**6.7.4.** The PPM shall aim to facilitate the formulation and signing of a dispute resolution agreement containing a time-bound, monitorable implementation schedule for specific agreed actions.

**6.7.4.1** The PPM should be particularly sensitive to the existence of considerable asymmetries between the Parties so as not to undermine the possibility of reaching satisfactory results. Particular attention is to be paid to asymmetries in availability of the information needed, and in the capacity and ability to participate effectively in these processes. PPM may propose capacity building activities and exercises to facilitate the Parties' effective and fruitful participation. In order to address power imbalances in dispute resolution, Requestors and Authorized Representatives can be accompanied with representatives from multilateral and human rights organizations that they are comfortable engaging with.

- b. *When mediation is undertaken in the Dispute Resolution Function, the mechanism should use a neutral, professional mediator, or other facilitator as appropriate, agreed to by the parties.* When dialogue is conducted between parties in the Dispute Resolution Function, it is essential that such dialogue is conducted by a neutral third party mediator/facilitator who is appointed on agreement by both parties. This mediator/facilitator can be in-house or externally appointed.

### *Examples of Good Policy*

EBRD IPAM Policy Para 1.1 a): The Problem Solving function, which supports dialogue between Requesters and Clients to resolve the environmental, social and public disclosure issues underlying a Request, without attributing blame or fault. IPAM engages with Project-affected People, Clients, and other stakeholders as a neutral third party, in order to help find mutually-satisfactory resolutions through flexible, consensus based problem-solving approaches [...]

FMO/DEG/Proparco's Independent Complaints Mechanism Policy Para 3.2.6: In the Dispute Resolution phase, a Complaint may be handled by the Independent Expert Panel or mediators selected by the Panel, as long as all parties agree on the selected mediator.

## Proposed Policy Changes

### 2019 PPM Rules of Procedure

**6.6.2.** The PPM explores with the concerned parties mutually acceptable dispute resolution methods and ~~may should~~ hire appoint professional dispute resolution and subject-matter specialists to facilitate the dispute resolution process, ~~who may be externally hired.~~ The



facilitator should be appointed based on mutual consent of the parties. This process may include consultative dialogue, information sharing, joint-fact finding, creation of a mediation mechanism or other methods. The PPM coordinates and guides the parties during the agreed dispute resolution process.

- c. *The PPM should always facilitate the participation of the client in the Dispute Resolution Function and should permit AIB to participate in the process, so long as the parties consent:* In order for the dispute resolution process to be effective, PPM should facilitate clients participation in the process. As project implementers, clients are essential in identifying solutions and committing to implementing them and project-affected communities should be able to directly engage with clients. In fact, financing agreements should also encourage clients to engage in complaints processes relating to potential environmental and social harms caused by their project.

*Example of Good Policy*

IFC CAO Policy, Para 63: Engaging in a dispute resolution process is a voluntary decision and requires agreement between the Complainant and the Client and/or Sub-Client, at a minimum.

**Proposed Policy Changes**

2018 PPM Policy

**2.1.2.** Dispute Resolution Function (Dispute Resolution), which shall seek to facilitate a dialogue between ~~AIB~~, the Project-affected people, ~~and/or~~ Client ~~and/or~~ AIB with a view to agreeing on actions [...]

*Similar language exists in 2.1.2. of 2019 PPM Rules of Procedure.*

- d. *If dispute resolution is wholly or partially unsuccessful, Requestors should have their complaint automatically handled by the Compliance Review Function.* Unless Requestors specifically opt out of the Compliance Review Function, the Submission should automatically be referred for Compliance Review to avoid imposing the burden of filing another submission onto affected communities.

*Example of Good Policy*

GCF IRM Procedures paras 48: If problem solving does not result in an agreement, or if problem solving is wholly or partially unsuccessful, the grievance or complaint or any part of the grievance or complaint that remains unaddressed will be referred for compliance review within seven (7) calendar days of the conclusion of problem solving [...]

**Proposed Policy Changes**

2018 PPM Policy

**6.7.7.** The PPM shall encourage the parties to the dispute to reach an agreement. However, if agreement is unlikely to be reached within a reasonable period of time, the PPM may terminate the ~~dispute resolution process~~ ~~review of the submission~~ ~~after consultation with the parties.~~

**6.7.8.** Any party to the dispute may terminate the dispute resolution process at any stage of the review. In such case, ~~or if dispute resolution does not result in an agreement or is wholly or partially unsuccessful,~~ the submission, or any part of the submission, will be referred to ~~Requestors may submit a request for~~ Compliance Review within the applicable time period, provided that it meets the eligibility criteria ~~contained in para 5.2 for such submission.~~

*Similar language exists in 6.6.4.(h) of 2019 PPM Rules of Procedure.*

#### IV. *Enhancing effectiveness and community agency in the compliance review process.*

The decision to conduct a compliance review should be an objective one based on clear criteria taken by an entity without conflicts of interest. An assessment of Compliance Review is usually done in two parts. First an assessment that the minimal eligibility criteria is met<sup>31</sup> and second an assessment of whether a compliance review is warranted.<sup>32</sup> The criteria used by the PPM as a basis to recommend a Compliance Review should be explicitly stated and made objective.

The Board should not be required to approve the PPM's recommendation to conduct a Compliance Review. The Board members may also have a conflict of interest if the complaint originates in their country or relates to the actions of its government. Involving the Board in approving a recommendation to investigate unduly politicizes what should be a reasoned decision.

During the process, ensuring that communities have equal and timely access to compliance review reports is critical to effectuate the primary purpose of the PPM, as articulated in the CEIU's ToR: "to provide an opportunity for an independent and *impartial* review of submissions from Project-affected people."<sup>33</sup> When communities are not afforded the same opportunity to participate in complaints processes as management teams and the bank's clients and partners, then that creates a perception that an IAM is behaving partially by deprioritizing the voice and perspective of communities. This is to the detriment of both trust-building and satisfactory results. Impartiality demands (a) affording Requestors the opportunity to comment on draft compliance reports at the same time as management teams, and (b) circulating final reports with all parties as they are distributed to the Board and management teams.

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<sup>31</sup> 2018 PPM Policy, Section 5.

<sup>32</sup> 2019 PPM Rules of Procedure, Section 6.7.3.(c).

<sup>33</sup> 2024 CEIU Terms of Reference, Section A a).

As a matter of effectiveness, the PPM should be equipped to relay Requestor concerns that arise in resolution and remediation stages. Doing so safeguards the actual and perceived legitimacy of Management Action Plans (MAP) and their consultation and implementation processes. The AIIB Board should welcome the benefit of receiving the Requestors' and PPM's perspectives on the MAP's adequacy prior to taking a decision on the MAP. Not only should Management Action Plans describe the process of and feedback received from its consultations, but also the Requestors should be able to express concern if they feel their views have been misrepresented or are otherwise not taken into account. While this practice is accounted for in the 2019 PPM's Rules of Procedure, it should be solidified by the underlying 2018 PPM Policy.

Finally, the PPM should be equipped to relay concerns received from Requestors who believe MAPs are not being adequately implemented, and/or to recommend how implementation may be improved. Merely reviewing management-submitted monitoring reports is not enough to ensure accurate reporting and discourage potential misreporting. Rather, the PPM should have the ability to receive and relay Requestor concerns and recommendations to the Board, as well as the ability to independently monitor implementation to ensure remediation efforts are effective and efficient in achieving compliance, remediation, and conflict resolution. Again, the PPM's ability to do this is articulated in its 2019 PPM Rules of Procedure, but it should be made explicitly so in its underlying Policy.

*Examples of Good Policy*

<p style="text-align: center;"><b>Clarity around what considerations PPM uses to recommend CR</b></p> <p><u>EBRD IPAM Policy, Para 2.6 b)</u></p> <p>Criteria. A Case is eligible for a Compliance Review if IPAM deems that:</p> <ul style="list-style-type: none"><li>i. upon preliminary consideration, it appears that the Project may have caused, or may be likely to cause, direct or indirect and material harm to the Requesters (or, if different, the relevant Project-affected People); and</li><li>ii. there is an indication that the Bank may not have complied with a provision of the Environmental and Social Policy (including any provision requiring the Bank to monitor Client commitments); or the Project- specific provisions of the Access to Information Policy, in force at the time of Project approval.</li></ul> <p style="text-align: center;"><b>No board approval requirement</b></p> <p><u>EBRD IPAM Policy, Para 2.6 d)</u></p> <p>Outcome and Reporting. Upon completion of the Compliance Assessment stage, IPAM will prepare a Compliance Assessment Report presenting its findings and:</p> <ul style="list-style-type: none"><li>i. submit it to the Board and the President for information, if it recommends proceeding to</li></ul>
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a Compliance Review, having determined that the criteria set out in Paragraph 2.6(b) are met.

### **Simultaneous Opportunity to Comment on Draft Reports**

GCF IRM Procedures, Para 60: The draft compliance report of the IRM will be provided to the complainant and the Executive Director of the GCF Secretariat for their comments, if any, to be provided within twenty-one (21) calendar days of the receipt of the report. The draft compliance report of the IRM will also be provided to the relevant AE where the report contains recommendations concerning the AE. The main purposes of this opportunity to comment are to enable the complainant, the GCF Secretariat and the AE to provide feedback on statements of facts and factual findings, and on the recommendations, in the draft compliance report.

IDB MICI Policy, Para 44: Once the MICI has completed its investigation, it will issue a draft report including a review of its main findings of fact and recommendations, and forward them to Management and the Requesters for their comments. Management and the Requesters will have a term of 21 Business Days to send comments on the draft report.

### **Ensuring Due Consideration of Community Interests**

AfDB IRM Procedures, Para 68: [...] the Compliance Review Report shall be made available to the Complainants at the same time as it is submitted for consideration and decision.

EBRD IPAM Policy, Para 2.7.1 f): Upon a finding of non-compliance in respect of a Project, IPAM will submit the final Compliance Review Report; the final Management Action Plan; the Management Response, if any; and Requesters' or Representatives' comments on the draft Management Action Plan, if any, to the President and the Board... The IPAM Head will communicate to the Board, whether, in IPAM's view, the commitments identified in the final Management Action Plan adequately address the findings and recommendations of the Compliance Review Report.

### **Relaying Community Input During Implementation Phases**

GCF IRM Procedures, Para 68, 70: The IRM shall report to the Board any cases of which it becomes aware where a final remedial action plan, or any part thereof, cannot be or is not being implemented. ...[The IRM's prior agreement on the final remedial action plan (see paragraph 67)] shall not prevent the IRM from recommending improvements to the final remedial action plan, if necessary, during its implementation. Where the IRM recommends improvements to a final remedial action plan, the Secretariat shall take appropriate steps to amend such final remedial action plan...

## **Proposed Policy Changes**

### **Clarity around what considerations PPM uses to recommend CR and No board approval requirement**

#### 2018 PPM Policy

**6.8.2.** Based on the information provided in the submission, Management's response

(including any actions proposed by Management to address the issues raised in the submission), and additional information obtained during site visits, from the Board Director concerned and any local authorities or agencies involved in the Project, the PPM shall determine whether the submission meets the eligibility criteria set out in Section 5.2, and **considering the factors set out in the Rules of Procedure** decide whether to recommend ~~that the Board of Directors approve~~ the commencement of the Compliance Review **and share it with the Board of Directors for information**[...]

**6.8.3.** If the PPM recommends approval of the commencement of the Compliance Review or other appropriate course of action, the decision ~~of the Board of Directors~~ shall be communicated by the PPM to the Requestors and by Management to the Client.

**6.8.4.** ~~If the Board of Directors approves the PPM's recommendation to commence the Compliance Review,~~ The PPM shall seek comments from the Policy and Strategy Committee of the Board on the terms of reference for Compliance Review and share the final terms of reference with the Board of Directors for information.

*Similar Language exists in 6.7.3.(d) and (e) of the PPM Rules of Procedure.*

#### 2019 PPM Rules of Procedure

**6.7.3.(c)** Recommendation **regarding compliance review to the Board**. Within thirty (30) Working Days following its receipt of Management's response, the PPM determines whether the submission meets the additional eligibility requirements applicable to Compliance Reviews set out in Section 5.2 (Additional Eligibility Criteria for Compliance Reviews) and decides whether to recommend ~~that the Board approve the~~ commencement of the Compliance Review. This decision is based on information in the submission, Management's response and additional information obtained during site visits, from the Board Director representing the Member concerned and any local authorities or agencies involved in the Project. **The PPM will recommend a compliance review when upon preliminary consideration, it appears that the Project may have caused, or may be likely to cause, direct or indirect and material harm to the Requesters (or, if different, the relevant Project-affected People); and there is an indication that AIIB may not have complied with the relevant policies and procedures. The PPM may decide that another course of action in lieu of a Compliance Review is appropriate. In such a case, it also decides whether approval by the Board of Directors of such course of action is required.** The PPM does not make any definitive findings on issues of compliance or the adverse impact suffered by the Project-affected People at this stage. Any definitive findings are made in the final Compliance Review Report.

#### 2018 PPM Policy

### **Simultaneous Opportunity to Comment on Draft Reports**

**6.8.6.** [...]The PPM shall ~~simultaneously provide~~ ~~circulate~~ the draft Compliance Review report to the Requestors, ~~for comment and to~~ Management, ~~for a response.~~ ~~Management shall circulate the draft report to~~ and the Client for comment.

### **Ensuring Due Consideration of Community Interests**

**6.8.8.** If the PPM determines that there has been noncompliance with the ESP, Management shall also prepare a proposed Management Action Plan (MAP). The MAP shall ~~be based on the PPM recommendations in the Compliance Review Report and~~ include ~~actions to address issues set out in the PPM's draft Compliance Review report~~ clear time-bound actions for returning the Bank to compliance and achieving remedy for affected populations. Management shall circulate its draft MAP to the Client and Requestors for comment. Management shall update the MAP, ~~taking into account~~ disclosing and summarizing the comments received ~~and how they informed the MAP~~, and send it to the PPM for ~~review and~~ comment.

**6.8.10.** The PPM shall submit to the Board of Directors its final Compliance Review report, ~~including any comments received.~~ ~~Management's response and~~ ~~the~~ MAP, ~~including any comments made by Requestors on the adequacy of consultations and their satisfaction with proposed actions,~~ if applicable, shall be attached to the final Compliance Review report. The MAP shall be subject to the approval of the Board of Directors.

*The Compliance Review Process is also described in 6.7. of 2019 PPM Rules of Procedure and changes must also be reflected there.*

### **Allowing the PPM to Monitor the Implementation of the MAP and Relaying Community Input During Implementation Phases**

**6.8.11.** ~~Management-~~The PPM shall monitor implementation of the MAP approved by the Board. It will report to the Board of Directors concerning implementation of the MAP, including its determination on the progress in bringing the project into compliance and will continue for as long as non-compliance is addressed. ~~submit implementation reports to the Board of Directors on the implementation of the MAP in accordance with timelines specified in the MAP. The PPM shall review Management's implementation reports.~~ As appropriate, the PPM may submit recommendations to improve the delivery of remedy if delays or conflicts arise during MAP implementation. The Board of Directors and Management shall consider the PPM's recommendations and take appropriate steps to amend MAPs for improved efficiency and outcomes. The methodology for monitoring may include (i) consultations with the Requestors, the Client, the Board member concerned; Management; and staff; (ii) a review of documents; and (iii) site visits. The PPM will also consider any information received from the Requestors and the public regarding the status of implementation. The PPM will make the monitoring reports available to the Requestors, the Client, the Board, Management, staff, and the public.

*Similar language exists in 6.7.3. (u) of the 2019 PPM Rules of Procedure.*



V. *The PPM should facilitate remedy for project-affected people.*

The PPM’s effectiveness in delivering accountability really only matters to project-affected people to the extent that the AIIB embraces its responsibility for remedy. The hope of remedy is often what incentivizes Requestors to seek accountability in the first place. The AIIB’s prerogative to strengthen its environmental and social performance is served only if Requestors feel that it is worth it to them communicating problems and inefficiencies through the PPM.

There are a number of concrete ways to improve the PPM’s ability to facilitate remedy. But we would be remiss not to also urge the AIIB to pursue a comprehensive remedy framework that reinforces the AIIB’s “Do No Harm” commitment. This is an opportunity for AIIB to lead, not follow.

For the purposes of this review, capacity for remedy can be improved in the PPM Policy first and foremost by clearly setting forth the PPM’s role in facilitating access to remedy, which can be operationalized as a practical matter by enabling the PPM to (a) provide community-informed recommendations to address harm and resolve disputes, and (b) as discussed in [Section C.IV. of these submissions](#), monitor and report on the implementation of Management Action Plans until all commitments are satisfied. Additionally, the policy should instruct Management to timely pursue remedy by proactively maintaining communication with Requestors and the communities they may represent.

*Examples of Good Policy*

**Allowing the IAM to Recommend Remedy**

EBRD’S IPAM Policy, para. 2.7(D)(II): “[T]he Compliance Review Report will:...ii. provide Bank Management with specific recommendations to address the findings of non-compliance: a. at the Project level, identifying Project-specific actions to bring the Bank into compliance and address the harm or potential harm associated with the findings of non-compliance; and b. at the procedural and systemic levels, identifying changes to EBRD practices, procedures, guidance or systems to bring the Bank into compliance and to avoid recurrence of such or similar situations on the Project at issue in the Request as well as in other Projects.”

AfDB’s IRM Policy para. 67(iii): “If the Compliance Review Report concludes that any Bank Group action, or failure to act, in respect of a Bank Group Financed Operation has resulted in any material non-compliance in accordance with Paragraph 9, it may recommend: [...] c. That redress be provided to those harmed, which may include financial and/or non-financial considerations, as the case may be.”

**Setting an Expectation for the Timely Pursuit of Remedy**



GCF'S IRM Procedures para. 10: "It shall be the duty of the GCF Secretariat to be reflective and responsive in connection with all processes and phases related to a grievance or complaint to ensure that the funded project or programme concerned is in compliance with GCF operational policies and procedures. It shall also be the duty of the GCF Secretariat to cooperate with the IRM in the discharge of its functions under its TOR."

### Proposed Policy Changes

#### 2018 PPM Policy

##### **Allowing the PPM to Recommend Remedy**

**6.8.6.** Once the Compliance Review has been completed, the PPM shall prepare a draft Compliance Review report. **The Compliance Review report may include recommendations from the PPM as to actions that may help remedy harm and resolve conflicts [...]**

*Similar language exists in 6.7.3. (m)-( o) of the 2019 PPM Rules of Procedure.*

##### **Setting an Expectation for the Timely Pursuit of Remedy**

**2.4. Resourcing:** [...] **It shall be the duty of Management and the Board of Directors to timely engage with and respond to the PPM to improve compliance across projects and programs and correct adverse environmental and social impacts caused to communities.**

- VI. *The PPM should be able to recommend suspension of projects due to concerns of imminent harm.*

In order for the PPM to be able to effectively prevent and protect project-affected people from harm, the PPM should be able to do what it can to ensure that, if needed, measures up to and including suspension of the project will be taken to protect affected communities from harm throughout the process. This is particularly important as complaint processes can be lengthy and serious and irreversible harm can take place during the time it takes for a complaint process to conclude. The ability to recommend suspension of projects should also be considered in cases where reprisals are imminent.

#### *Examples of Good Policy*

United Nations Development Programme's Social and Environmental Compliance Unit Policy, Para 47: There are numerous options to encourage compliance with UNDP's social and environmental commitments. Such options include: . . . .

- Action by the Administrator, where harm to affected people is imminent, to stop UNDP's financial disbursements or other support to a project pending the outcome of SECU's compliance review [...]

International Climate Initiative's Independent Complaints Mechanism Policy, Section 7: If at

any time during the processing of the complaint, the complaint mechanism believes that serious, irreparable harm could be caused by further project implementation, the complaint mechanism may recommend that IKI suspend disbursements for the project.

### Proposed Policy Changes

#### 2018 PPM Language

7.3. If, during its review of the submission, the PPM concludes that continued Project preparation or implementation may potentially result in irreversible material adverse impacts that have not been adequately addressed in accordance with the ESP, the PPM **may recommend that AIIB suspend financial disbursements for the project pending the outcomes of the processes undertaken by the PPM or the accountability mechanisms of AIIB's co-financiers.**

~~shall inform Management in writing of such possible impacts and the reasons for reaching this view. The PPM may also request Management to consider the matter and take appropriate action to address the situation. In such case, the MDCEIU shall inform the President if Management fails to take action to address these matters within a specified period of time following the PPM's notice to Management, in order to enable the President to work with Management to address such matters. If appropriate action is not taken within a set period of time following the PPM's notice to the President, t~~The MD-CEIU shall inform the Board of Directors of **this recommendation the situation in writing on a confidential basis.**

*Similar language exists in 7.3. of the 2019 PPM Rules of Procedure.*

#### VII. *The PPM should have an institutional learning and advisory function.*

An accountability mechanism policy is only one part of effective accountability. If harm occurs despite compliance with AIIB policies, this may indicate that the policies themselves are not adequate. Similarly, if similar instances of non-compliance arise across multiple projects, it could indicate that the AIIB is not adequately operationalizing those policies.

The PPM should be seen as a body that can identify systemic gaps in the AIIB broader accountability system. The external review report states that “many stakeholders (including some Board members) expressed the view that effectiveness of the PPM is intimately related to accountability being a shared responsibility across the AIIB as a whole. Therefore, it follows that areas of reform should extend to include changes to the ESP, and other relevant AIIB policies including the Policy on Public Information and that there should be a coordinated approach to policy changes and policy streamlining within the institution.”<sup>34</sup>

From a learning perspective, the PPM should be mandated to review AIIB compliance in all financing arrangements to ensure that problems can be identified and avoided in the future, regardless of the type of financing. If one goal of accountability mechanisms is to promote organizational learning and thus avoid social and environmental harm in future operations, there is no reason to exclude any financial instrument, as all have the potential to cause harm. This

<sup>34</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 14, (May 2024).

includes the bank's capital market operations, for which under the current Environmental and Social Policy the PPM does not apply.

The shortcomings identified by the external review in the implementation of project-level grievance redress mechanisms and the lack of evaluation of their effectiveness to date<sup>35</sup> suggest that learning has not yet taken place systematically. The PPM should be empowered to identify such gaps, and thus prompt the AIIB to strengthen AIIB policies and practices.

The PPM should play an active role in promoting organizational learning. For example, the PPM should produce reports, with statistical information and disaggregated data, on the cases of reprisals they have encountered. The report should include the kind of reprisal, sectors involved, countries where these took place, and responses of the bank. This would promote transparency of the bank and contribute to institutional learning on addressing reprisals and wider issues of civic space and human rights.

In addition to necessary policy improvements and a broader mandate for the PPM, positive incentives must be put in place to enable AIIB staff to incorporate the lessons learned from complaints into their daily work. PPM must be empowered and equipped to further expand staff training, as this has not been sufficient to date, as the external review has shown.<sup>36</sup> In addition, an organizational culture needs to be created that sees institutional accountability to potentially affected people in project countries as an integral part of lending.<sup>37</sup>

Based on that, the effectiveness of an accountability system should not be measured solely in terms of complaint handling. It should also be measured by the extent to which institutional policies and practices have improved in response to complaints.

### *Examples of Good Policy*

GCF'S IRM Procedures Para. 107: The IRM will report to the Board, through the Board Committee, on lessons learned and insights gained from handling cases and from good international practices, and may recommend reconsideration of relevant GCF operational policies and procedures, guidelines and systems. Such a report will be published on the IRM website within five (5) calendar days of it being submitted to the Board.

IDB MICI Policy Para 61: "The MICI Director will prepare an annual report describing the Mechanism's activities during the previous year, including a description of Requests received and the outcome of the Requests, and follow-up of the MICI process. The annual report may also discuss lessons learned, trends, and systemic issues, and provide recommendations on preventing noncompliance and other advice that stems directly from MICI cases. The annual report will be sent to the Board for information. The MICI will also maintain an interactive

<sup>35</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 9, (May 2024).

<sup>36</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 15, (May 2024).

<sup>37</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 17, (May 2024).

website, on which it will disseminate the annual report and other publications relevant to its work such as brochures, case studies, and best practices.”

### Proposed Policy Changes

#### 2018 PPM Policy

**2.1. Functions:** The PPM shall provide an opportunity for an independent and impartial review of submissions from Project-affected people who believe they have been or are likely to be adversely affected by AIIB’s failure to implement the ESP in situations when their concerns cannot be addressed satisfactorily through Project- level GRMs or AIIB Management processes. AIIB’s accountability is to be enhanced through the following three functions of the PPM:

**2.1.4.** PPM’s advisory function provides advice to the AIIB and the Board with the purpose of improving AIIB systemic performance on environmental and social sustainability and reducing the risk of harm to people and the environment. PPM’s advisory work provides insights and recommendations on broader environmental and social issues relevant to AIIB’s work by drawing on PPM experience addressing complaints and good international practice.

**11.2. Outreach, Learning and Training:** [...] The PPM shall also collaborate with the other IAMs and MDBs and systematically capture and share lessons learned to enhance effective implementation of the ESP. The PPM will report to the Board, through a Board Committee, on lessons learned and insights gained from handling cases and from good international practices, and may recommend reconsideration of relevant AIIB operational policies and procedures, guidelines and systems. Such a report will be published on the PPM website within five (5) calendar days of it being submitted to the Board.

#### 2019 PPM Rules of Procedure

**Attachment 5: 3.2** [...] The PPM will report to the Board the lessons learned from the outcomes of the reviews from cases handled by co-financier’s IAMs. These reports include recommendations for reconsideration of relevant AIIB operational policies and procedures to ensure the effective implementation of the ESP and will be published on the PPM website within five (5) calendar days of it being submitted to the Board.

VIII. *Institutional resources such as staffing and budgeting should be strengthened.*

We strongly support the key points raised in the external review report regarding the staffing and capacity of the PPM.<sup>38</sup> The current situation, where the PPM is managed by a single staff member, is insufficient to meet the demands of both outreach activities and the potential review of cases, despite the lack of active cases to date. The responsibility for initiating and following

<sup>38</sup> Dr. Zeinab Bashir Elbakri, [External Review Report](#), Page 17, 31, (May 2024).

up outreach activities both within and outside the institution, as well as liaising with management and potential complainants, requires a more robust staffing structure.

While it is encouraging that the PPM has recently recruited a second member of staff, together with two analysts and an administrative assistant, this reinforcement is a step in the right direction, but remains insufficient. In order to ensure that the PPM can effectively manage both its outreach and potential caseload, it is recommended that an additional staff member be recruited. This would allow the Head of the PPM to focus on overseeing these activities and take on more strategic functions, thereby improving the overall efficiency and effectiveness of the PPM.

Adequate human and financial resources are critical to the success of the PPM. Without sufficient human resources, the PPM will struggle to fulfill its mandate, limiting its ability to foster accountability and learning. Investing in the capacity of the PPM will not only enhance its operational effectiveness, but also support the AIIB's commitment to accountability, transparency and institutional learning.

### *Example of Good Policy*

#### EBRD'S IPAM Policy Para 3.3 b)

The IPAM Head shall prepare an annual budget (including any contingency funds) identifying a sufficient level of resources to ensure that IPAM can carry out all of the roles, responsibilities, and activities set out in this Policy in an effective way. The IPAM Head will be responsible for determining the allocation of resources within the IPAM department. The IPAM budget will be submitted to the Board for approval on a no objection basis, in the same timeframe as the Bank's general budget, but as a separate decision.

### **Proposed Policy Changes**

#### 2018 PPM Policy

**2.4. Resourcing:** The **President Board** shall ensure that the PPM is adequately resourced and staffed in order to fulfill its functions. **The PPM Head shall prepare an annual budget (including any contingency funds) identifying a sufficient level of resources to ensure that PPM can carry out all of the roles, responsibilities, and activities set out in this Policy in an effective way. The PPM budget will be submitted to the Board for approval on a no objection basis, in the same timeframe as the Bank's general budget, but as a separate decision.** The President shall **also** ensure that the MD-CEIU has full access to AIIB's staff and files, including electronic files, relevant to submissions received and processed by the PPM, and will ensure that AIIB personnel fully cooperate with the PPM [...]