

Reforms Needed at the ADB's Accountability Mechanism

Briefing for ADB's Board of Directors

June 2024

Accountability Counsel advocates for people seeking redress for negative impacts from internationally financed projects, including those funded by the Asian Development Bank (ADB). We have advised communities as they undergo accountability mechanism processes and have learned lessons from these cases about what policies are necessary to create effective processes for project-impacted communities. **The ADB's Accountability Mechanism (AM) is woefully behind good practice [Annexure 1] and requires substantial improvements in order to be an effective governance tool.¹ We seek for the Board to support an improved policy that is in line with international good practice.**

The AM policy review process has already begun and we appreciate the Bank's commitment to conduct "[e]xtensive and inclusive public and internal consultations". We also welcome the commitment to disclose the report of the external reviewer for public comments. We understand that the formal review will be conducted by a joint working group that includes the Office of Secretary and Board Members, and supported by a technical committee of experts. We would appreciate any additional details on the process and look forward to the constitution of the working group, committee, and the commencement of the formal review.

Urgent Substantive Changes Needed:

The following is an updated list of our recommendations for the most important changes we will be seeking from the AM policy review.

1. *The AM's structure and independence should be retained and strengthened:* The AM's unique function of exercising independent oversight while still being an internal mechanism brings it under frequent pressure from other stakeholders at ADB, leading to bureaucratic politics. The structure and independence of the AM play an important role in its ability to withstand these pressures. The AM's current structure that includes two separate functions with separate heads who are at the level of the Director General or equivalent should be retained as it better safeguards against the risk of management influence that exists with the one-head model. The Office of Special

¹ The Board Compliance Review Committee (BCRC) noted that "a number of other multilateral development banks have updated both their safeguards framework and accountability mechanism." For example, the World Bank reviewed its accountability mechanism procedures in 2014 and 2020, the European Bank for Reconstruction and Development in 2014 and 2019, the African Development Bank in 2015 and 2021, and the IFC in 2019. The UNDP, which created a mechanism only in 2014, has already initiated a review in 2022.

Project Facilitator (OSPF) should also be made independent from Bank management² through inclusion of reporting to the Board³ and hiring safeguards⁴ to buttress its ability to play a neutral role in the problem-solving process and further increase community trust in the independence of the problem solving process.

2. *The AM should have the ability to get independent legal advice:* Although ADB's Office of General Counsel (OGC) is legal counsel for the Bank, it regularly provides advice to Bank management and to its independent components, including the Board and the IAM. The interests of Bank management, the Board, and the IAM are not the same—and nor should they be. Obvious and direct conflicts of interest can and have resulted when OGC advises all parties, and we are particularly alarmed by any situation where the OGC could prioritize narrower, immediate interests of Bank management over broader and longer-term interests of the Bank that are more aligned with accountability to project-impacted communities. Explicitly permitting the AM the ability to get an independent opinion⁵ will act as a check against the conflict and allow both the AM and BCRC to make more informed decisions around the Bank's accountability mandate.
3. *The AM should have an explicit remedy mandate:* Communities negatively impacted by unintended consequences of ADB's financing are often the same vulnerable and marginalized communities that ADB seeks to empower. Moreover, the do-no-harm mandate necessitates mitigating and remedying harm when it does occur. Currently, ADB's AM policy does not commit to mitigating harm, even when its own AM has found the existence of direct and material harm caused by ADB's own non-compliance.
4. *The CRP should be empowered to self-initiate a compliance review:* In limited circumstances, such as when there are credible reports of serious non-compliance in

² We welcome the BCRC's recognition of an independent Compliance Review Panel (CRP) as "necessary to protect the integrity of ADB's accountability system and delivering on our promise to do no harm." Letter from Donald Bobiash in response to Dr. Dustin Schaefer dated 29 January 2024.

³ The dispute resolution functions at the following institutions report to the board, either directly or through an independent office: International Finance Corporation's (IFC) Compliance Advisor Ombudsman (CAO), African Development Bank's Independent Recourse Mechanism (AfDB's IRM), European Bank of Reconstruction and Development's (EBRD) Independent Project Accountability Mechanism (IPAM), Inter-American Development Bank's (IDB) Independent Consultation and Investigation Mechanism (MICI), World Bank's (WB) Accountability Mechanism (AM), Green Climate Fund's Independent Redress Mechanism (GCF's IRM).

⁴ For example of good policy, See [2021 Compliance Advisor Ombudsman Policy](#). "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."

⁵ For example of good policy, See [GCF IRM Procedure, Para 100](#).

ADB-funded projects, or if the filing of a complaint entails significant risk of reprisals for project-affected communities, or if there is systematic evidence of environmental harm caused by ADB-funded projects which do not directly affect any communities, the CRP should be empowered to self-initiate a compliance review.⁶

5. *Communities should have the ability to choose Compliance Review or Problem Solving simultaneously and/or in the sequence of their choice:* The AM allows communities to conduct compliance review after problem solving but not vice-versa. Considering the differences between the problem solving and the compliance review functions of the AM, complainants should have the right to choose which one(s) may best serve them and in what sequence.⁷
6. *Communities should not be required to first bring issues to ADB management before filing a complaint with the AM:*⁸ A high number of complaints are found ineligible due to the requirement for prior good faith engagement with management.⁹ Communities often fear reprisals and are unwilling to raise issues directly with bank actors who they perceive to be engaged in environmental or social harm. Because the AM does not permit communities to raise issues to it directly, communities are either choosing not to raise issues or to not pursue complaints once filed, leaving the Bank vulnerable and unaware of the unsustainable aspects of its projects.
7. *The AM Policy should enshrine the principle of community agency throughout the AM process, including the Free, Prior, and Informed Consent when engaging with Indigenous communities:* At every step of the accountability mechanism process, the Mechanism staff, Bank management, and project implementers, should respect community agency and explicitly (a) require documents to be shared with and

⁶ For example of good policy, See International Climate Initiative's Independent Complaint Mechanism Policy, Section 5: (i) "receives information from a credible source that an IKI project is having a direct, negative impact on a person, a group of persons, communities or the environment, or if there is evidence of corruption, fraud or misappropriation of funds; and (ii) the resulting harm is not insignificant; it may decide, on the basis of prima facie evidence, to initiate proceedings as per this Section."

⁷ For example of good policy, See UNDP's Social and Environmental Compliance Unit Investigation Guidelines Para 33, "If both processes are applicable, the Complainant will be informed that both are applicable, and be given the choice to proceed with compliance review, stakeholder response [dispute resolution], or both."

⁸ For example of good policy, See [2021 Compliance Advisor Ombudsman Policy](#) "33. There are no formal requirements for lodging a complaint with CAO, [...] 34. In addition, the Complainant may wish to provide information on the following: a. Whether anything has been done by the Complainant to attempt to resolve the problem, including any contact with IFC/MIGA staff, the Client, Sub-Client, or the host government, and what aspects remain unresolved."

⁹ In 2022 alone, 3 out of 5 cases received by the CRP were found ineligible due to lack of prior so-called "good faith" engagement. See [Annual Report of the Board Compliance Review Committee 2022](#).

translated into the language of communities, (b) respect community norms around decision making, and (c) require community agreement for the appointment of mediators and independent evaluators. When engaging with Indigenous communities, the AM policy should also enshrine the obligation to respect their international legal right of free, prior and informed consent.¹⁰

8. *The CRP should have a mandate to recommend substantive remedial actions for inclusion in the Remedial Action Plan.* Under the current AM policy, the scope of CRP's compliance review report is limited to providing a finding on ADB's non-compliance.¹¹ The CRP should also be empowered to provide substantive remedial recommendations that would create a standard against which to measure the effectiveness of the RAP.¹²
9. *The ADB must consult communities on Remedial Action Plans.* Complainants are the only stakeholders (among ADB management, borrowers/clients, and the Mechanism) who are currently excluded from being consulted on the RAP¹³ even though communities are directly impacted by noncompliance with safeguards and have insight into what it would take to address the harms they have suffered.¹⁴
10. *The AM Policy should redefine its monitoring mandate.* Monitoring mandates for the OSPF and Office of CRP should continue until all harm is remedied and not be limited to a prescribed number of years. A recent CRP report confirms that in several cases remedial action plans are not being implemented in the 3-year or 5-year time period.¹⁵ This is a failing of ADB management that cannot be permitted to continue.
11. *The AM Policy should include a clear and rights-based procedure for addressing reprisals.* The AM Policy should include a zero-tolerance statement for reprisals and be empowered to prevent, mitigate, and protect affected-communities from reprisal risks by, among other things, fast-tracking cases where necessary, communicating any instances of communities facing imminent risk to the Board of Directors, and recommending suspension of projects in response to retaliation.

Safeguarding the AM Policy Review

We know from experience with accountability mechanism policy reviews at many institutions that a good review process must be independent, transparent, and inclusive of the views of

¹⁰ Article 10, [UN Declaration on Rights of Indigenous Peoples](#).

¹¹ Para 186 of the [Accountability Mechanism Policy 2012](#).

¹² For an example of good policy, See Para 67 (iii), [AfDB's IRM Rules and Procedures](#).

¹³ Para 190-191 of the [Accountability Mechanism Policy 2012](#).

¹⁴ For an example of good policy, See Para 2.7.1 (c): Upon receipt, IPAM will send the draft Management Action Plan to Requesters (or their Representatives, if any) for review and comment, [IPAM Project Accountability Policy 2019](#).

¹⁵ [Common Threads: Lessons from Compliance Review](#) (2022), Page 21.

project-impacted communities. Moreover, these principles must be complied with in letter and spirit and not just as a check-box exercise. For example, it is not rare for Banks to commit to broad and inclusive consultations with civil society organizations and yet not have many or most of their recommendations reflected in the final draft of the policy. With that in mind, the review process must include the following steps, at minimum:

1. Allow the AM staff to be the lead authors on the draft of the new policy within the technical committee of experts.
2. Disclose all documents, including Approach Papers, internal review reports on the impacts of the AM and cost-benefit analysis, that will inform the policy review.
3. Set a principle of no regression in the terms of reference of the formal review and set out minimum areas where the board expects improvements from the review process at the outset, including (a) reducing eligibility barriers to the AM, (b) enshrining community agency throughout the process; and (c) increasing focus on remedy.¹⁶

We sincerely offer our expertise and support, based on our work with numerous financial institutions to strengthen accountability mechanisms. We look forward to your considered response and hope to further engage with you on the process.

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¹⁶ For example, [Third Review of AfDB's IRM](#) "The objective of the review is to take stock of IRM's experiences and to examine how its scope and functions can be improved to enhance its independence, effectiveness, and relevance."

Annexure 1

	ADB	IFC	EBRD	AfDB	EIB	IDB	WB	AIIB	GCF	UNDP
Does not require complainants to engage with the operational department in charge of implementing the project and/or allows exceptions		✓	✓	✓	✓	✓	✓	✓	✓	✓
Does not mandate prior engagement with Management and/or allows exceptions, <i>inter alia</i> , for fear of reprisals, futility.		✓	✓	✓	✓*			✓	✓	✓
Allows the IAM to self-initiate compliance reviews in limited circumstances		✓		✓					✓	✓
Allows IAM to seek outside legal counsel for advice		✓^		✓	✓^	✓			✓	✓^
Does not limit non-local representation		✓	✓	✓	✓	✓	+		✓	✓
Problem Solving function is independent of the management and reports to the Board		✓	✓	✓		✓	✓		✓	
Does not require Board approval for Compliance Investigations		✓	✓	✓	✓				✓	✓
Allows IAM to provide substantive recommendations along with findings.		✓	✓	✓	✓	✓			✓	✓
Mandates management to consult communities on Management Action Plan		✓	✓	✓#			✓	✓	✓#	
Monitoring mandate continues until all instances of non-compliance are addressed		✓	✓	✓						✓
Permits complaints after 2 years from the date of final loan disbursement.			✓	✓	✓				✓	✓

*unless under project appraisal; ^ nothing in the policy prohibits the IAM from seeking outside legal counsel for advice; + allows advisors; # indirectly through the IAM