

Preliminary Recommendations For AIIB's PPM Policy Review

March 2024

Thank you for the opportunity to provide preliminary comments to guide the external review of the Operating Procedures of the AIIB's Project-affected People's Mechanism (PPM). Our recommendations are categorized under five major principles: **Independence, Accessibility, Complainant Agency, Anti-Retaliation, and Remedy**. We have decided to focus on these principles because they are essential to improving the actual and perceived legitimacy of the mechanism, as well as its effective and efficient use.

Independence

- **The MD-CEIU should be appointed by the Board and the hiring process should include external stakeholders:** Currently, the MD-CEIU is appointed by the President, following consultation with the Board. Allowing independent and external stakeholders to participate in the hiring process will increase the trust CSOs place in the PPM, trust that is crucial for the PPM to be effective.¹
- **The PPM should be responsible for its staffing, hiring, and budgeting process with approval from the Board, not the President:** Alongside reporting to the Board, independence from management with respect to personnel and budget are crucial aspects of safeguarding the PPM's independence as it allows the PPM to operate independently of the Management. In line with good policy, we urge that the MD-CEIU be entrusted to hire its own staff and manage its budget to secure stakeholder confidence in the mechanism's independence and authority.²

¹ See, e.g., **Policy of the Compliance Advisor Ombudsman of the International Finance Corporation ("IFC CAO"), ¶ 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, IFC, and MIGA will solicit nominations for the selection committee from stakeholders and forward them to the CODE Chair and Vice-Chair for their consideration. The CODE Chair and Vice-Chair will appoint six people to form the selection committee, including two Executive Directors, two senior representatives from the global business community, and two senior representatives from the civil society community, and appoint one of these Executive Directors as chair of the selection committee."); see also **Policy of the Independent Consultation and Investigation Mechanism of the InterAmerican Development Bank ("IDB MICI"), ¶ 53(a); Policy of the Project Complaint Mechanism of the European Bank for Reconstruction and Development ("EBRD PCM"), ¶ 57.**

² See, e.g., **IFC CAO Policy, ¶¶ 21-22** ("... The CAO DG will be responsible for determining the allocation of resources within CAO, including appropriate staffing and recruitment of consultants and experts. ... The CAO DG is free to make staffing decisions within the approved budget limits, without the Boards' or Management's involvement."); **IDB MICI Policy, annex 2** ("The MICI Director will have overall responsibility for the day-to-day operations of the MICI, oversight, supervision, and management of all MICI employees [including the Consultation Phase Coordinator and Compliance Review Phase Coordinator, operations and administrative staff, and contractuels]. He or she will be responsible for the effective and efficient delivery of MICI's work program, and for managing and overseeing the MICI operations and budget"); **Policy of the Independent Recourse Mechanism of the African Development Bank ("AFDB IRM"), ¶ 87** ("The Director shall have the overall responsibility for

- **The PPM Policy should include a post-employment ban for the MD-CEIU and a cooling off period for key personnel of the PPM:** The possibility of subsequent employment at the financial institution could compromise the impartiality, or the perception of neutrality, of the MD-CEIU, experts and key staff. We urge that the PPM Policy align with peer institutions in protecting the integrity of IAM.³
- **The PPM should have explicit powers to hire independent legal counsel, if it deems necessary:** A practice of requiring that IAMs listen to the internal legal departments of the very institutions that they are meant to provide oversight over presents conflict of interest issues. In recognition of this, the PPM's Rules of Procedure currently allow the General Counsel to appoint external counsel to ensure that PPM can properly discharge its obligations. We recommend that the MD-CEIU should have similar authority to hire independent legal counsel.⁴

the day-to-day operations and external relations of the IRM, which shall include . . . Hiring staff and ensuring that IRM staff fulfill their responsibilities generally and in accordance with any applicable Terms of Reference and/or Job Description . . . [and] Exercising independent authority on the use of IRM's budgetary allocations for the IRM").

³ See, e.g., **IFC CAO Policy, ¶¶ 18, 22** ("Upon conclusion of the appointment, the CAO [Director General] is restricted for life from obtaining employment with the World Bank Group . . . Contracts for CAO staff restrict staff at the level of specialist and above from obtaining employment with IFC or MIGA for two years after the end of their engagement with CAO, subject to any exception to this restriction that may be mutually agreed between the CAO DG and the Vice President responsible for human resources at IFC or a member of senior management responsible for human resources at MIGA, as applicable, with the goal to avoid any actual or perceived conflict of interest"); **Policies of Independent Complaints Mechanism jointly shared by FMO, DEG, and Proparco ("FMO/DEG/Proparco ICM"), ¶ 3.4.4** ("The members of the Panel must be independent, i.e. they should not have had any involvement in activities related to FMO-Financed Operations for at least a period of two consecutive years nor are they allowed to be employed by or perform activities for [DEG/FMO/Proparco] within two years after their term has ended").

⁴ See, e.g., **Policy of the Independent Redress Mechanism of the Green Climate Fund ("GCF IRM"), ¶ 100** ("If requested by the Head of the IRM, the General Counsel of the GCF or a counsel designated by the General Counsel will provide legal advice to the IRM on the GCF's rights and obligations and GCF operational policies and procedures relevant to a request, grievance or complaint. The Head of the IRM may also seek external legal advice on a request-, grievance- or complaint-related matter or with regard to any other matters concerning the IRM"); **AfDB IRM policy, ¶ 97** ("The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank Group's policies and procedures and the Bank Group's rights and obligations in respect of the Bank Group Financed Operations to which a Complaint relates, as well as such advisory opinions and interpretations on points of law as the President or the Boards of Directors shall determine. 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"); **IDB MICI policy, ¶ 64** ("If requested by the MICI Director, the IDB Legal Department will provide legal information and advice regarding the Bank's rights and obligations in relation to a specific Bank-Financed Operation at issue in a Request, or regarding the interpretation of Relevant Operational Policies. Except with regard to the Bank's rights and obligations, the MICI Director may also, at any time, seek external legal advice on Request related issues as they arise").

Accessibility

- **The requirement to engage in good faith with project-level grievance mechanisms and management prior to filing a complaint should be removed or made voluntary:** The PPM is the only major development finance IAM that requires two levels of engagement with internal processes before it can find a complaint eligible. This requirement creates a major obstacle for affected-communities who want to directly access the PPM. Communities often have good reason to fear sharing their concerns with project implementers and to doubt the ability of managers and project-level complaint mechanisms to give their concerns fair hearing. Moreover, Complainants should not need to justify their choice to the IAM; the IAM should respect that complainants will choose the complaint forum that maximizes their security and the utility of their efforts.⁵
- **The exclusion of co-financed complaints from the PPM's mandate should be removed:** AIIB has a duty to ensure the project is in material compliance with its environmental and social standards, even in co-financed projects. Neglecting co-financed projects proliferates accountability gaps that deprive the AIIB of valuable institutional learning for improving project compliance and safeguarding the sustainability of co-finance projects. AIIB can close these gaps by allowing the PPM to receive complaints about co-financed projects, and empowering it to coordinate with the accountability mechanisms of implicated partner institutions to investigate non-compliance and approve remediation holistically.⁶ We further recommend that the CEIU publicly disclose the [7 complaints](#) that have been filed in AIIB co-financed projects.
- **The exclusion of complaints due to parallel proceedings, either judicial or arbitral, should be removed:** Again, it is essential to eliminate barriers to accountability; accordingly, the PPM should not bar complaints that are subject to parallel proceedings. The PPM 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

⁵ See, e.g., **GCF IRM Policy**, ¶¶ 25-26 (“[W]here possible a complainant may wish to include . . . [a] description of other efforts including access to grievance/redress mechanisms of [project implementers] 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**, ¶¶ 33-34 (“There are no formal requirements for lodging a complaint with CAO, but complainants . . . may wish to provide information on . . . [w]hether 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”).

⁶ See, e.g., **Policy of the Accountability Mechanism of the Asian Development Bank** (“ADB AM”), ¶ 207 (“The Accountability Mechanism will also apply to ADB-administered cofinancing operations”); **IFC CAO Policy**, ¶ 32 (“Complaints may relate to environmental and social harm regarding any aspect of the planning, implementation, or impact of a Project or Sub-Project”).

proceedings. We therefore urge eliminating the parallel proceedings barrier, in line with best practice.⁷

- **The PPM Policy review should make recommendations to improve transparency and project information disclosure at AIIB, particularly at community level, including about the PPM:** There can be no accountability without transparency and rules around disclosure at AIIB are deeply flawed, especially in financial intermediary lending. The PPM policy should include a requirement that AIIB and its clients disclose the existence of the mechanism during project consultation processes and through other appropriate means in a manner and language accessible to them.⁸

Complainant Agency

- **The PPM Policy should allow complainants to select representatives of their choosing:** Currently the PPM policy only allows communities to choose representatives from outside the country in cases when “in-country representation is unavailable.” Communities frequently seek advice and representation from international civil society organizations, lawyers, economists, scientists, negotiation experts, and others to help them understand the full nature of a project and overcome language, resource, technological, and information barriers. It is critical that IAMs protect communities’ right to involve any and all organizations as advisers and representatives.⁹

⁷ See, e.g., **Policy of the Complaints Mechanism of the International Climate Initiative (“IKI CM”)**, ¶ 3.7 (“The complaint mechanism will consider identical claims already being processed by comparable accountability mechanisms or courts . . . on a case-by-case basis so as not to duplicate work already done or impede ongoing proceedings. This will not affect eligibility”); **ADB AM Policy**, ¶ 131 (“The [Compliance Review Panel] will . . . coordinate its activities, to the extent appropriate, with those of the compliance review mechanism of any other co-financing institution that is conducting a separate compliance review of the same project; . . . [and] liaise with accountability mechanisms at other institutions”).

⁸ See, e.g., **ADB AM Policy**, ¶ 211 (“Staff, working with the borrower, will disseminate information early in the project cycle about the Accountability Mechanism and its availability as a recourse in case other mechanisms for dealing with harmful project effects are not successful. The intensity and format of this activity will vary with the nature of the project. Operations departments will focus on projects with a high degree of safeguard risks, such as projects with heavy resettlement. Pamphlets in national or official languages, community notice boards, audiovisual materials, or other appropriate and effective means will be used to inform people”).

⁹ See, e.g., **IFC CAO Policy**, ¶ 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”); **Policy of the Independent Project Accountability Mechanism of the European Bank for Reconstruction and Development (“EBRD IPAM”)**, ¶ 2.1 (“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”).

Anti-Retaliation:

- **The PPM Policy should empower the PPM/MD-CEIU to trigger a Compliance Investigation in certain circumstances:** The ability to self-initiate investigations under limited circumstances is crucially important to ensure accountability where it is reasonable to believe that fear of reprisal has prevented people from raising complaints. This is especially true with respect to projects undertaken in fragile or conflict contexts, areas of repressed civic space, or more specifically where there is repression of women. The PPM should also be empowered to initiate compliance review itself rather than waiting for a request from complainants or the Board.¹⁰

Remedy:

- **The PPM Policy should allow the PPM to provide substantive recommendations in response to findings of non-compliance, and verify adequate and meaningful consultations efforts for Management Action Plans:** The PPM should be empowered to include recommendations to address any findings of non-compliance and to mitigate harm to project-affected communities, against which the Management Action

¹⁰ See, e.g., **IKI ICM Policy**, ¶ 5 (“If the complaint mechanism 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”); **Policy of the Social and Environmental Compliance Unit of the United Nations Development Program (“UNDP SECU”)**, ¶¶ 3-4 (“Investigations may also be triggered on SECU’s own initiative by the Lead Compliance Officer, or at the request of the UNDP Administrator. When this occurs, disclosure of documents will occur in a manner similar to disclosure pursuant to complaint processes triggered by community complaints. UNDP takes all reports of alleged breaches of social and environmental commitments seriously, and all allegations are assessed to determine whether an investigation is appropriate. . . . Proactive investigations are defined as investigations intended to identify and respond to significant potential or actual harm to an individual or community resulting from an existing [but yet unidentified] failure of UNDP to meet its social and environmental commitments . . . The ability to investigate matters without first having to receive a request is intended to:

- Allow SECU to respond to high risk projects before harm occurs to individuals or communities, as well as damage to project success and UNDP’s reputation;
- Address the situation in which, for a variety of reasons (e.g. cultural, lack of knowledge, etc.), impacts are not likely to be reported;
- Serve as an effective deterrent to avoiding compliance with these commitments;
- Build a more comprehensive and balanced portfolio of compliance cases at the corporate level across regions and development sectors;
- Strengthen UNDP’s credibility with donors”).

Plan's effectiveness should be measured.¹¹ Moreover, the PPM should be able to relay and reflect on the adequacy of community consultations in the development Management Action Plans in order to ensure that remedy legitimately integrates the interests of those adversely impacted by the project.¹²

- **The PPM Policy should allow the PPM to monitor remedial action plans until all instances of non-compliance are remedied:** Currently, monitoring is carried out by the Management and the PPM only reviews management's monitoring reports. In the experience of complainants, action plans are often not implemented fully or not implemented in a manner that meets the complainants' expectations. For this reason, it is important that the PPM monitor outcomes, including by consulting project-affected people to understand, from their perspective, whether the plan and implementation are effectively stopping the impacts they experienced and ensuring the remedies they were promised.¹³
- **Management should be obligated to ensure remedy for harms identified through the PPM process:** The effectiveness of accountability frameworks depends on whether there is commitment from the top to accept the fact-finding and outcomes of the complaint process – whether compliance review or dispute resolution – and to implement remedial actions. Challenges to remediation can include the lack of readily available resources for remedying the harm.¹⁴ At a minimum there must be a commitment to timely and effective remedy, matched with sufficient resources and tools to make good on that commitment (see, e.g., the IFC's ongoing development of

¹¹ See, e.g., **EBRD IPAM Policy**, ¶ 2.7(D)(II) (“[T]he Compliance Review Report will . . . provide Bank Management with specific recommendations to address the findings of non-compliance . . . 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 . . . 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 IRM Policy**, ¶ 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 . . . [t]hat redress be provided to those harmed, which may include financial and/or non-financial considerations, as the case may be”).

¹² See, e.g., **Policy of the Inspection Panel of the World Bank (“WB IPN”)**, ¶ 70 (“According to the Panel’s governing framework, Management will communicate to the Panel the nature and the outcomes of the consultations with the affected parties on the action plan agreed between the Borrower and the Bank. The Panel may submit to the Board, for its consideration, a written or verbal report on the adequacy of these consultations. The Panel’s reporting may be based on information available to the Panel by all sources, and the Panel may decide, in consultation with the Executive Director representing the Borrower, that a country visit is needed to be able to prepare its report accurately”).

¹³ See, e.g., IFC CAO Policy, ¶ 139; EIB PCM Policy, ¶¶ 1, 6; IKI CM Policy, ¶ 2.4; EBRD IPAM Policy, ¶¶ 2.5, 2.8; AfDB IRM Policy, ¶¶ 53, 72-73; GCF IRM Policy, ¶ 73; IDB MICI Policy, ¶¶ 35, 49; EBRD PCM Policy, ¶¶ 39, 47; UNDP SECU Policy, ¶ 12.50; ADB AM Policy, ¶¶ 174, 192.

¹⁴ See, Office of the High Commissioner for Human Rights, *Remedy in Development Finance: Guidance and Practice* (2022), available at <https://www.ohchr.org/en/publications/policy-and-methodological-publications/remedy-development-finance>.

an “Approach to Remedial Action”). Further, Management Action Plans must be supported with clear timebound actions to both bring a project into compliance and achieve remedy for affected populations.¹⁵

Conclusion

Thank you for your consideration of these preliminary recommendations. Please do not hesitate to reach out if you would appreciate elaboration on any of these points.

¹⁵ See, e.g., ADB AM Policy ¶ 190 (“If the CRP concludes that ADB’s noncompliance caused direct and material harm, Management will propose remedial actions to bring the project into compliance with ADB policies and address related findings of harm”); AfDB IRM Policy ¶ 69(B) (“If IRM finds the Bank to be non-compliant, Management shall . . . Include in the Management Action Plan clear time-bound actions for returning the Bank to compliance and achieving remedy for affected populations”).