

Reforms Needed at the ADB's Accountability Mechanism

Briefing for ADB's Board of Directors

June 2023

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 and needs to reform urgently. We seek for the Board to support an effective AM Policy review.**

We appreciate that the Board Compliance Review Committee (BCRC) acknowledged that the AM "is quite outdated and risks falling behind international best practice."¹ [Annexure 1]. We also support the proposal for external consultants to first review the AM Policy followed by a formal review. We continue to have important questions and concerns regarding the process, however, and offer our advice below.

Safeguarding the Accountability Mechanism Policy Review

We know from experience with accountability mechanism policy reviews at many institutions that a good review process increases the legitimacy and effectiveness of the final accountability mechanism procedures. Specifically, we know that a good process requires more than simply seeking comments on draft procedures, which are often heavily negotiated internally before they undergo public scrutiny. This stands especially true for ADB's Accountability Mechanism policy which was last reviewed in 2012² and requires substantial improvements. With that in mind, the review process must include the following steps, at minimum:

1. Immediately disclose the Approach Paper and Terms of Reference for the Accountability Mechanism policy review, which have already been approved by the BCRC. Disclosing approach papers has been standard practice at the ADB at previous

¹ [Annual Report of the Board Compliance Review Committee 2022](#), Page 8.

² The 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.

reviews³ and helps ensure that the scope and process of review is in alignment with CSO expectations.

2. Disclose the report from the internal review of the impacts of the Accountability Mechanism.
3. For the cost-benefit analysis, require the authors to seek input from project-affected communities and civil society organizations and disclose the final analysis.
4. For the external review of the Accountability Mechanism policy, (a) require the authors to consult publicly as they draft it; and (b) disclose the final external review report.
5. For the drafting of the new Accountability Mechanism policy, (a) set a principle of no regression, (b) ask the Accountability Mechanism staff to be the lead authors on the draft; and (c) conduct public and meaningful consultations on the draft policy.

Minimum Substantive Changes Needed:

We also request that the Board set out minimum reforms⁴ that it expects from the review process at the outset including, (a) reducing eligibility barriers to the Accountability Mechanism, (b) enshrining community agency throughout the process; and (c) increasing focus on remedy.

1. *Communities should not be required to first bring issues to ADB management before filing a complaint with the Accountability Mechanism.*⁵ A high number of complaints are found ineligible due to the requirement for prior good faith engagement with management.⁶ 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.
2. *The Accountability Mechanism Policy should incorporate the Free, Prior, and Informed Consent standard when engaging with Indigenous communities:* At every step of the accountability mechanism process, the Mechanism staff, Bank management, and project implementers, should respect Indigenous People's international legal right of free, prior and informed consent.⁷ We recommend that the policy enshrine this obligation and explicitly (a) require documents to be shared with and translated into

³ Asian Development Bank, [Evaluation Approach Paper: Corporate Evaluation of the Safeguard Policy Statement](#), August 2018.

⁴ We will share additional recommendations throughout the review process This list includes the most important changes needed.

⁵ For example of good policy, See [2021 Compliance Advisor Ombudsman Policy](#) See "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."

⁶ 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](#).

⁷ Article 10, [UN Declaration on Rights of Indigenous Peoples](#).

the language of communities, (b) respect community norms around decision making, and (c) require community agreement for the appointment of mediators and independent evaluators.

3. *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 RAP⁸ even though communities are directly impacted by noncompliance with safeguards.⁹
4. *The OCRP should have a mandate to recommend substantive remedial actions for inclusion in a RAP.* Under the current AM policy, the scope of CRP's compliance review report is limited to providing a finding on ADB's non-compliance.¹⁰ 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.¹¹
5. *The AM Policy should redefine its monitoring mandate.* Monitoring mandates for the OSPF and OCRP 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.¹² This is a failing of ADB management that cannot be permitted to continue.
6. *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 ensure that there are plans to support complainants when reprisals do occur.

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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⁸ Para 190-191 of the [Accountability Mechanism Policy 2012](#).

⁹ 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](#).

¹⁰ Para 186 of the [Accountability Mechanism Policy 2012](#).

¹¹ For an example of good policy, See Para 67 (iii), [The Independent Recourse Mechanism - Operating Rules and Procedures January 2015 \(Updated July 2021\)](#).

¹² [Common Threads: Lessons from Compliance Review](#) (2022), Page 21.

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.		✓	✓	✓	✓*			✓	✓	✓
Does not require complainants to allege that adverse impacts are material		✓	✓	✓	✓				✓	✓
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 date of final loan disbursement.			✓	✓	✓				✓	✓

*unless under project appraisal

^ allows advisors

indirectly through the IAM