

The logo of the Asian Development Bank (ADB), consisting of the letters 'ADB' in a white serif font inside a black square.

ADB

Policy Paper

February 2012

Review of the Accountability Mechanism Policy

Asian Development Bank

ABBREVIATIONS

ADB	– Asian Development Bank
BCRC	– Board Compliance Review Committee
BPMSD	– Budget, Personnel, and Management Systems Department
CRO	– complaint receiving officer
CRP	– Compliance Review Panel
DER	– Department of External Relations
DMC	– developing member country
IED	– Independent Evaluation Department
MDB	– multilateral development bank
NGO	– nongovernment organization
OCR	– Office of the Compliance Review Panel
OSPF	– Office of the Special Project Facilitator
PCR	– project completion report
RSDD	– Regional and Sustainable Development Department
SPF	– special project facilitator
TOR	– terms of reference

NOTE

In this report, “\$” refers to US dollars.

Working Group Chair	E. Westreicher, Executive Director
Members^a	S. Shamsuddin, Alternate Executive Director G.B. Thapa, Alternate Executive Director C.J. (Stan) Vandersyp, Alternate Executive Director R.M. Nag, Managing Director General
Secretariat	X. Fan, Principal Planning and Policy Economist, Strategy and Policy Department

^a D. Rookan-Smith, former Alternate Executive Director, was a working group member until May 2011.

In preparing any country program or strategy, financing any project, or by making any designation of, or reference to, a particular territory or geographic area in this document, the Asian Development Bank does not intend to make any judgments as to the legal or other status of any territory or area.

CONTENTS

	Page
EXECUTIVE SUMMARY	i
I. INTRODUCTION	1
II. ESTABLISHMENT AND EVOLUTION	1
A. The 1995 Inspection Function	1
B. The 2003 Accountability Mechanism	2
III. ASSESSMENT OF THE ACCOUNTABILITY MECHANISM	3
A. Strengths	3
B. Weaknesses	9
IV. MAJOR PROPOSED CHANGES	14
A. Enabling Direct Access to the Compliance Review Function	14
B. Establishing a Single Entry Point	15
C. Addressing Site Visit Issues	15
D. Enhancing the Independence of Compliance Review	16
E. Clarifying the Roles of Compliance Review	16
F. Clarifying the Cutoff Date	17
G. Improving Efficiency	17
H. Improving Awareness and Enhancing Learning	18
V. THE REVISED ACCOUNTABILITY MECHANISM POLICY	20
A. Objectives and Guiding Principles	20
B. Structure	20
C. Human and Financial Resources	20
D. Functions	23
E. Eligibility	28
F. How to File a Complaint	30
G. Processing Complaints	31
H. Site Visits	38
I. Transparency and Information Disclosure	39
J. Application	40
K. Awareness and Learning	40
L. Effective Date and Transition Period	41
VI. RESOURCE IMPLICATIONS	41
VII. RECOMMENDATION	42

APPENDIXES

1.	Terms of Reference for Review of the Accountability Mechanism	43
2.	Summary of the Consultation Process	45
3.	Experience Since 2003	47
4.	Summary of Eligible Complaints for the Consultation Phase, 2004–2011	50
5.	Summary of Requests for the Compliance Review Phase, 2004–2011	55
6.	Number of Cases in Different Accountability Mechanisms	60
7.	Summary Assessment of the ADB Accountability Mechanism	62
8.	Comparison of Accountability Mechanisms	65
9.	Information Disclosure Requirements Under ADB's Accountability Mechanism	69

EXECUTIVE SUMMARY

In 1995, the Asian Development Bank (ADB) established an Inspection Function to provide an independent body that people affected by ADB-assisted projects could appeal to for matters relating to ADB's compliance with its operational policies and procedures. In 2003, following an extensive review, ADB introduced the Accountability Mechanism, which built on the Inspection Function. The Accountability Mechanism was designed to enhance ADB's development effectiveness and project quality; be responsive to the concerns of project-affected people and fair to all stakeholders; reflect the highest professional and technical standards in its staffing and operations; be as independent and transparent as possible; and be cost-effective, efficient, and complementary to the other supervision, audit, quality control, and evaluation systems at ADB.

At the 43rd Annual Meeting of the ADB Board of Governors held in Tashkent, Uzbekistan in May 2010, the President announced a joint Board and Management review of the Accountability Mechanism. A Board–Management working group was established to undertake the review. The working group engaged two independent international experts to assist with the review. The objective of the review was to take stock of the ADB experience, draw from the experiences of similar mechanisms, and examine the scope for improving the Accountability Mechanism. The review included extensive public consultations.

The review concludes that the ADB Accountability Mechanism has several strengths. The mechanism was a pioneer among multilateral development banks in institutionalizing the problem solving function for public and private sector operations. The dual functions of consultation and compliance review effectively complement each other, ensure the right balance between independence and effectiveness, and are conceptually sound and practically valid. The Accountability Mechanism is transparent, participatory, credible, and effective. Both the consultation and compliance review phases have been useful and delivered effective outcomes.

The Accountability Mechanism complements other problem solving and compliance systems at ADB. It reflects ADB's philosophy that problem prevention and compliance should be maximized in its operations, and also that once problems and noncompliance occur, they should be addressed promptly at the project and operational levels. The Accountability Mechanism is the "last resort" for dealing with problems and noncompliance that were not prevented or solved at the project and operational levels. The design of the Accountability Mechanism also recognizes that ADB has several well-developed audit, evaluation, and learning systems to ensure that its operations are conducted in accordance with operational policies and procedures, and deliver the intended results. The Accountability Mechanism complements these systems by serving as a focused mechanism for project-affected people, thereby enhancing ADB's development effectiveness.

However, the review also identified several weaknesses that could be improved upon:

- (i) **Enabling direct access to compliance review.** ADB should eliminate the requirement that affected people must start with the consultation process before they can file for compliance review. This will address the perception that the problem solving function might have reduced recourse to the compliance review function. It can also shorten delays for people who want to file for compliance review directly.

- (ii) **Establishing a single entry point.** Once ADB provides direct access to both problem solving and compliance review, a complaint receiving officer should be appointed to serve as the single entry point to receive and forward all complaints. This would improve the accessibility of the Accountability Mechanism.
- (iii) **Addressing site visit issues.** ADB should use its good offices and established institutional mechanisms to assist the Compliance Review Panel (CRP) in obtaining access for site visits. When a borrowing country declines to grant access to a site, Management will submit an information paper to the Board explaining why the country declined the site visit. The CRP should complete a compliance review even if a borrowing country declines a site visit request.
- (iv) **Enhancing independence.** Several measures are required to improve the CRP's independence. For example, the Board should appoint CRP members based on the recommendation of the Board Compliance Review Committee in consultation with the President. This would improve on the current practice of having CRP members appointed by the Board based on the President's recommendation.
- (v) **Clarifying the roles of compliance review.** The compliance review should focus on findings of alleged harm and noncompliance. Management should propose remedial actions for the Board's approval. The CRP should be provided with an opportunity to comment on Management's proposed remedial actions and communicate its comments to the Board.
- (vi) **Clarifying the cutoff date.** ADB should change the cutoff date for filing complaints from the issuance date of the project completion report to two years after the loan or grant closing date. This would improve the clarity, certainty, and public awareness of the cutoff date.
- (vii) **Improving efficiency.** Because the Accountability Mechanism is demand-driven, it should have two types of operating costs: (a) fixed costs to maintain and operate the mechanism, regardless of the number of complaints; and (b) variable costs to respond to changes in demand. The monitoring time frames of the Office of the Special Project Facilitator (OSPF) and the CRP should be tailored to suit each project. These will promote the optimal use of resources, while providing effective services to affected people. The Accountability Mechanism processes should be simplified.
- (viii) **Enhancing tracking.** The current tracking by the OSPF and Office of the Compliance Review Panel (OCRCP) of the processes and results in addressing the complaints should be complemented by more systematic tracking by the operations departments of the ineligible complaints forwarded to them by the OSPF or OCRCP. This will improve the transparency and responsiveness of the Accountability Mechanism. The complaint receiving officer should have access to the tracking information by the OSPF, OCRCP, and the operations departments.
- (ix) **Improving awareness.** The OSPF and OCRCP should undertake more systematic and effective outreach activities within ADB and in developing member countries.
- (x) **Enhancing learning and promoting a culture change.** The Accountability Mechanism provides opportunities for ADB to learn lessons and do better. For the Accountability Mechanism to be viewed as a positive tool for development effectiveness, a culture change is needed.

These changes are expected to improve the accessibility, credibility, efficiency, and effectiveness of the Accountability Mechanism.

I. INTRODUCTION

1. The Asian Development Bank (ADB) created the Inspection Function in 1995 to provide an open forum for public scrutiny to ensure that ADB complies with its operational policies and procedures.¹ Building on the Inspection Function and benefiting from intensive public consultations, ADB introduced the Accountability Mechanism in 2003.² The Accountability Mechanism encompasses two mutually supportive functions: problem solving and compliance review. An effective Accountability Mechanism to address the grievances of people adversely affected by ADB-financed projects and ensure compliance with ADB operational policies and procedures is fundamental to equitable and sustainable development.

2. ADB intends to ensure that the Accountability Mechanism remains adequate and effective in keeping with international best practices. At the 43rd Annual Meeting of the ADB Board of Governors in Tashkent, Uzbekistan in May 2010, the President announced that the ADB Board of Directors and Management would jointly review the Accountability Mechanism.³ A working group was established in April 2010 comprising four members of the Board and the managing director general. The working group finalized the terms of reference (TOR) for the review in June 2010 in consultation with the Board, and engaged two international external experts to provide independent advice. Appendix 1 presents the TOR of the review.

3. The objectives of the review are to take stock of the ADB experience, draw on the experiences of similar mechanisms at other multilateral financial institutions, and examine the scope for improving the Accountability Mechanism. The review has included wide-ranging public consultations with a broad spectrum of stakeholders through face-to-face meetings, multiple stakeholder workshops, and visits to project sites. To systematically respond to stakeholder comments, ADB has produced a series of review documents: two consultation papers, two working papers, and the final paper. The consultation papers were completed in February and June 2011, and the working papers were considered by the Board in April and October 2011. The working group has sought public comments through a dedicated Accountability Mechanism review website.⁴ Appendix 2 summarizes the consultations undertaken as part of the review.

4. This paper presents key findings of the review and proposes changes to strengthen the accessibility, credibility, efficiency, and effectiveness of the Accountability Mechanism.

II. ESTABLISHMENT AND EVOLUTION

A. The 1995 Inspection Function

5. In December 1995, the ADB Board approved the establishment of an Inspection Function. ADB was the third multilateral development bank (MDB) to establish such a mechanism, following the Inspection Panel at the World Bank in 1993 and the Independent Investigation Mechanism at the Inter-American Development Bank in 1994.

¹ ADB. 1995. *Establishment of an Inspection Function*. Manila.

² ADB. 2003. *Review of the Inspection Function: Establishment of a New Accountability Mechanism*. Manila.

³ The Accountability Mechanism policy was declared effective on 12 December 2003. It envisaged a review by Management 3 years after it went into effect, i.e., by the end of 2006. The review was deferred because the Office of the Special Project Facilitator had only received four eligible complaints by the end of 2006, and the Compliance Review Panel had received only two requests (only one of which was eligible). Further, ADB has been undertaking policy reforms since 2005, including adopting the new Safeguard Policy Statement in 2009. This had implications for the Accountability Mechanism.

⁴ ADB. Accountability Mechanism Review. [http:// www.adb.org/AM-Review](http://www.adb.org/AM-Review)

6. The Inspection Function aimed to provide a forum for people affected by ADB-assisted projects to appeal to an independent body for matters relating to ADB's compliance with its operational policies and procedures. From 1995 to 2003, ADB received eight requests for inspections, of which six were deemed ineligible. Two of the requests—for the Samut Prakarn Wastewater Management Project in Thailand⁵ and for the Chashma Right Bank Irrigation Project (Stage III) in Pakistan⁶—underwent a full inspection.

7. The inspection process for these two projects raised concerns about the effectiveness of the Inspection Function. In 2002 and 2003, ADB reviewed the Inspection Function and carried out extensive external and internal consultations. The consultations reinforced support for (i) an independent accountability mechanism that addresses the complaints of people adversely affected by ADB-assisted projects, and (ii) more problem solving measures within the accountability mechanism processes. The new mechanism was expected to enhance ADB's development effectiveness and project quality. This review ushered in the new ADB Accountability Mechanism in 2003.

B. The 2003 Accountability Mechanism

8. The most significant change introduced in the 2003 policy was the establishment of two separate but complementary phases within the Accountability Mechanism: (i) a consultation phase,⁷ consisting of a special project facilitator (SPF) to respond to specific problems of people affected by ADB-assisted projects through a range of informal and flexible methods; and (ii) a compliance review phase,⁸ consisting of a Compliance Review Panel (CRP) to investigate alleged violations of ADB's operational policies and procedures that have resulted, or are likely to result, in direct and material harm to project-affected people.

9. ADB was the first MDB to establish an accountability mechanism that went beyond an inspection function by introducing the dual dimensions of problem solving and compliance review for private and public sector operations.⁹ The Accountability Mechanism policy stressed that problem solving should precede compliance review to enable immediate resolution of the concerns of project-affected people. At the same time, it provided complainants with the option to exit the consultation phase and request a compliance review.

10. Dedicated institutional support has been provided to both the consultation and compliance review phases to reflect their distinctive features and needs. The SPF handles the consultation phase, assisted by the Office of the Special Project Facilitator (OSPF), and reports directly to the President. The compliance review phase is handled by three CRP members, one of whom is the chair. The CRP is assisted by the Office of the Compliance Review Panel (OCRP). It reports directly

⁵ ADB. 1995. *Report and Recommendation of the President to the Board of Directors: Proposed Loan to Thailand for the Samut Prakarn Wastewater Management Project*. Manila (Loan 1410-THA for \$150 million, approved on 7 December 1995).

⁶ ADB. 1991. *Report and Recommendation of the President to the Board of Directors: Proposed Loan and Technical Assistance to the Islamic Republic of Pakistan for the Chashma Right Bank Irrigation Project (Stage III)*. Manila (Loan 1146-PAK for \$185 million, approved on 17 December 1991).

⁷ The 2003 policy referred to the "problem solving" phase as the "consultation process" to avoid unrealistic expectations that every problem would be resolved by ADB.

⁸ The term "compliance review" is used in the 2003 policy to avoid negative associations with the term "inspection."

⁹ The compliance advisor ombudsman of the International Finance Corporation was the first to introduce problem solving for private sector operations. ADB was the first to introduce problem solving for both public and private sector operations.

to the Board on all activities, except for some specific activities¹⁰ for which the CRP reports to the Board Compliance Review Committee (BCRC). Both the SPF and CRP are empowered to monitor the implementation of remedial actions. The Accountability Mechanism policy covers both public and private sector operations.

11. From the time the Accountability Mechanism became effective in December 2003 until the end of 2011, the OSPF received 39 complaints.¹¹ Of these, 13 were found eligible for problem solving, 24 were ineligible, and eligibility determination for 2 complaints is ongoing. The CRP received 5 requests for compliance review over the same period, of which 4 were eligible and 1 was ineligible. Appendix 3 summarizes the experience since 2003.

III. ASSESSMENT OF THE ACCOUNTABILITY MECHANISM

12. This section provides an assessment of the current Accountability Mechanism based on feedback from consultations, a review of documents, and project site visits. Both strengths and weaknesses have been identified.

A. Strengths

1. Pioneer in Introducing the Problem Solving Function

13. The 2003 Accountability Mechanism introduced a new dimension of accountability: the problem solving function. A majority of stakeholders preferred an Accountability Mechanism consisting of two functions—problem solving and compliance review—during the public consultations leading to the adoption of the 2003 policy. The adoption of the problem solving function was a significant innovation that was expected to be particularly positive and beneficial for project-affected people by addressing their problems. In addition to addressing their concerns, development agencies should empower project-affected people to participate in the problem solving process, rather than just letting them be recipients of the inspection results. Following ADB, most international financial institutions have instituted problem solving in their own accountability mechanisms.

14. At the same time, ADB continues to place high importance on compliance review. The problem solving and compliance review functions complement each other. The consultations in 2010 confirmed that these dual functions are working well and remain sound.

2. Emphasis on Independence and Effectiveness

15. The dual Accountability Mechanism functions require an appropriate institutional setup to ensure their independence and effectiveness. The 2003 Accountability Mechanism policy stipulates that the CRP should be independent from Management to ensure the credibility of its investigation of alleged ADB noncompliance with its operational policies and procedures. Therefore, under the policy, the CRP reports directly to the Board except on certain activities where it reports to the BCRC (footnote 10). The CRP members have nonrenewable terms of 5 years. This is considered appropriate for drawing on fresh experience and minimizing external influence. Thus, the CRP operates with a high degree of independence from Management.

¹⁰ See para. 102 of the 2003 Accountability Mechanism policy (footnote 2) for the specific activities.

¹¹ The cases received by OSPF are termed “complaints” in the 2003 policy.

16. The 2003 Accountability Mechanism policy requires that the SPF be independent from operations. The SPF reports directly to the President and should not be involved in the formulation, processing, or implementation of any project. This arrangement is considered appropriate for striking a balance between (i) the need for an objective and detached perspective on a project, and (ii) the need for sufficient knowledge of and experience with ADB operations.

17. Striking this balance suggests that the consultation phase should be located under Management for two reasons. First, the problem solving process is not for determining liability or apportioning blame. Rather, it is designed to address genuine complaints about ADB-assisted projects through informal, consensus-based methods. People who believe they have been adversely affected by an ADB-assisted project can use the consultation process regardless of whether ADB operational policies and procedures have been complied with.¹² Second, the SPF needs to work closely with staff in operations departments to solve problems. By reporting to the President, the OSPF has an appropriate level of independence and is sufficiently empowered, but is not isolated from operations staff.

18. The Accountability Mechanism demarcates problem solving and compliance review as separate matters. Therefore, different institutional setups have been put in place for the two functions. ADB's experience since 2003 suggests that the institutional setup is sound and suitable for maintaining the appropriate balance between the independence and effectiveness of the Accountability Mechanism.

3. Monitoring Mandate Enhancing Credibility

19. The 2003 Accountability Mechanism policy empowers the SPF and CRP to monitor the implementation of remedial actions. The CRP and SPF produce annual monitoring reports that describe the implementation of remedial actions. These reports are disclosed to the public. The SPF's and CRP's monitoring roles strengthen the credibility of the Accountability Mechanism.

4. Good Practice on Accessibility

20. The processes in the 2003 Accountability Mechanism policy conform to international good practices. The procedures for filing a complaint are clearly articulated in the policy, the *Operations Manual*, the ADB website, brochures, and other OSPF and OCRP publications. Requests for consultation and compliance review can be (i) brief; (ii) written in English or in any official or national language of a developing member country (DMC); and (iii) submitted by mail, facsimile, e-mail, or hand delivery to ADB headquarters or resident missions. The identity of complainants is kept confidential, if they so request. The requesters are encouraged to cite specific policy violations in describing a request, but that is not mandatory.

21. The OSPF and OCRP have pursued systematic outreach activities and consultations with project beneficiaries and project-affected people, governments, nongovernment organizations (NGOs), the private sector, and the public. They have regularly conducted training courses on the Accountability Mechanism to improve staff capacity in ADB. The internet is instrumental in disseminating information about the Accountability Mechanism. A joint OCRP and OSPF outreach strategy was adopted in 2010. ADB has also approved technical assistance

¹² The SPF's role is limited to ADB-related issues concerning ADB-assisted projects.

funding of \$225,000 for the OCRP to pilot a new outreach program.¹³ From 2009 to 2011, the number of complaints received by OSPF and CRP increased, which may partly reflect an increasing awareness of the Accountability Mechanism through these efforts.

5. Vertical Complementarity: The Problem Solving–Compliance Continuum

22. The continuum of problem prevention, problem solving, and compliance is a strength of the 2003 Accountability Mechanism. ADB's philosophy is that problem prevention and compliance should be maximized in ADB operations. Once problems and noncompliance occur, they should be addressed promptly at the operational level.

23. During the design and appraisal stage, all projects undergo due diligence on multiple fronts, such as technical, financial, economic, social, safeguards, and governance. Management review meetings and staff review meetings assess a project's merit, as well as its conformity with ADB policies and procedures. The Regional and Sustainable Development Department (RSDD), whose head also serves as the chief compliance officer, reviews the safeguard aspects of all proposed projects, in addition to the review of the operations departments; advises Management on the safeguard compliance status for projects with potential significant impacts; provides support to complex projects by participating in project missions and advising operations departments on safeguard-related issues; and delivers ADB-wide capacity development and training programs. The Board reviews each proposed project based on the report and recommendation of the President.

24. During implementation, a bottom-up, multilevel mechanism is in place to solve problems and ensure compliance, consisting of grievance-handling mechanisms at the project level, operations departments, and the Accountability Mechanism (Figure 1).

25. Most of the grievances are handled at the project level by the executing agencies and implementing agencies. In the Southern Transport Development Project, for example, the Government of Sri Lanka established a Land Acquisition and Resettlement Committee and Super Land Acquisition and Resettlement Committee. Most affected people resolved their problems through these mechanisms. Research by the Centre for Poverty Analysis in Sri Lanka found that the project made remarkable progress in addressing grievances.¹⁴ The ADB Safeguard Policy Statement (2009) requires the establishment of project-level grievance redress mechanisms to respond quickly to project-affected people. This requirement helps institutionalize the project-level grievance redress mechanisms.

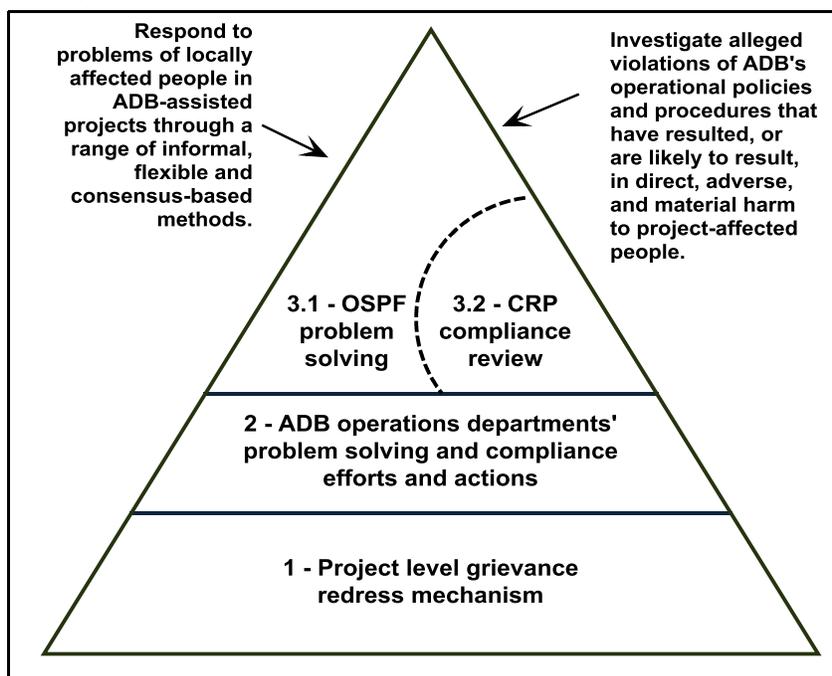
26. In addition to executing and implementing agencies, operations departments deal with implementation issues, including addressing concerns of project-affected people. ADB staff and executing agencies have progressively become more familiar with the safeguard policies and more conscious of preventing problems and ensuring compliance. They recognize that dealing with problems and compliance issues after they occur is suboptimal compared to preventing the problems and ensuring compliance in the first place. Moreover, solving problems early is better than delaying their resolution. All operations departments have dedicated safeguard teams, and some have set up dedicated safeguard units. Numerous training sessions on safeguards have

¹³ ADB. 2010. *Technical Assistance for Outreach for Good Governance and Development Effectiveness through the Accountability Mechanism*. Manila (TA 7572).

¹⁴ Centre for Poverty Analysis. 2009. *A Review of the Southern Transport Development Project (STDP) Grievance Redress Mechanisms*. Consolidated Final Report. Colombo. <http://www.adb.org/SPF/publications.asp>

been held in ADB and DMCs each year. When problems occur, operations departments are ADB's first point of entry in addressing them.

Figure 1: Problem Solving and Compliance Framework



ADB = Asian Development Bank, CRP = Compliance Review Panel, OSPF = Office of the Special Project Facilitator.

Note: The figure does not correspond to the actual proportion of issues dealt with by the different mechanisms.

Source: ADB

27. The Accountability Mechanism augments these existing systems by providing a “last resort” process for dealing with problems and compliance issues that were not prevented or solved at the project and operational levels. Research on accountability mechanisms highlights the need for multiple mechanisms within an institution to address the concerns of project-affected people. The ADB system conforms to this principle. Early problem prevention, problem solving, and compliance are beneficial for affected people, DMCs, and ADB. Where problems occur, ADB's philosophy is to respond promptly and effectively at the project and operational levels. Complaints to the SPF and CRP should only occur as exceptions. The Accountability Mechanism has been, and should continue to be, the last resort for both problem solving and compliance review.

6. Horizontal Complementarity: The Accountability Mechanism as an Integral Part of ADB's Compliance Systems

28. The design of the Accountability Mechanism recognizes that ADB already has several well-developed audit, evaluation, and learning systems. It is designed to complement these systems.

29. To address concerns of project-affected people, the Accountability Mechanism is set up as a demand-driven mechanism. Project-affected people report problems and alleged

noncompliance. ADB works with stakeholders to resolve problems and address noncompliance that has caused, or is likely to cause, direct and material harm to project-affected people.

30. To ensure lessons are learned and to enhance development effectiveness, the Independent Evaluation Department (IED) evaluates activities to help the Board of Directors, Management, and decision makers in DMCs know whether expected outcomes have been achieved. IED's evaluations cover all aspects of ADB operations, including policies, strategies, projects, practices, and procedures. These evaluations emphasize effective feedback on performance and use of lessons identified to improve the development effectiveness of ADB operations. One dimension of the evaluation is compliance with ADB policies during and after project implementation, irrespective of alleged harm. IED reviews are driven by ADB's own initiatives as well as by the demands of stakeholders.

31. To ensure that ADB resources are used economically, efficiently, and for the intended purposes, the Office of the Auditor General regularly audits ADB's financial, administrative, and information systems. The Office of Anticorruption and Integrity deals with alleged fraud and corruption in activities financed, administered, or supported by ADB. It also proactively conducts reviews related to procurement to reduce the risk of corrupt and fraudulent practices in ADB projects. The Central Operations Services Office focuses on procurement quality assurance. The Office of Risk Management is responsible for the overall management of ADB's credit, market, and operational risks.

32. In addition, the Board has various committees on oversight: Audit, Budget, Compliance Review, Development Effectiveness, and Ethics.

33. All these mechanisms are designed to ensure that ADB operations are carried out in accordance with approved operational policies and procedures, and deliver the intended results. ADB's philosophy is that accountability should be mainstreamed across all operations and activities. The Accountability Mechanism plays an important and unique role as a focused and demand-driven mechanism for project-affected people and for development effectiveness.

7. Delivering Effective Results

34. **Consultation phase.** Of the 13 eligible complaints received by the OSPF between 2004 and 2011, 7 were fully or partially resolved, 2 were withdrawn, 1 was not resolved, and 3 are still undergoing consultation and monitoring of implementation of agreements. The 2 withdrawn and 1 unresolved complaints, as well as 1 partially resolved and 1 resolved complaint, were submitted to the CRP.¹⁵

35. For the ineligible complaints, the OSPF informed the complainants how to pursue their grievances through the operations departments; they then resolved many of the issues after proper contacts were made. This is a significant aspect of OSPF operations. The OSPF has assumed an informal role in connecting complainants with the appropriate ADB staff. In all the

¹⁵ The withdrawn cases were the Melamchi Water Supply Project in Nepal and the Visayas Base-Load Power Development Project in the Philippines. The request for compliance review on the Melamchi Water Supply Project was found ineligible, while the request on the Visayas Base-Load Power Development Project was eligible. The unresolved case was the Sri Lanka Southern Transport Development Project and the partially resolved case was the People's Republic of China: Fuzhou Environmental Improvement Project. The complaint on the CAREC Transport Corridor 1 (Bishkek–Torugart Road), Project 2, in the Kyrgyz Republic was fully resolved. All these 5 cases were submitted to the CRP.

cases, the OSPF informed the complainants that they can come back to OSPF if they are still dissatisfied after working with the operations departments. When a complaint is found ineligible, the OSPF informs the complainants that they can submit a request to the CRP. Thus, in addition to directly addressing the problems of affected people, the consultation phase has also provided a useful channel to link them with operations departments and the CRP. Appendix 4 summarizes the eligible complaints dealt with by the OSPF.

36. **Compliance review phase.** Since 2004, the CRP has conducted a compliance review on the Sri Lanka Southern Transport Development Project and monitored the implementation of the Inspection Panel's recommendations on the Chashma Right Bank Irrigation Project (Stage III). The implementation of the recommendations on both of these projects was satisfactory.

37. On the Southern Transport Development Project, the CRP concluded in its fifth and final annual monitoring report that ADB had complied with all the recommendations with the exception of one that had been superseded by events.¹⁶ The CRP played an important role in bringing the project into compliance. Consultations in Sri Lanka indicated that the CRP's work helped to address the problems faced by the affected people and facilitated the government's improvement of its own systems. On the Chashma Right Bank Irrigation Project (Stage III), the CRP found that by 2009 ADB had fulfilled 24 of the 29 Board-approved recommendations and had made sufficient progress on the 4 partially complied with recommendations. One recommendation was superseded by events and could not be complied with. Appendix 5 summarizes the requests dealt with by the CRP.

8. High Degree of Transparency

38. The ADB Accountability Mechanism has maintained a high degree of transparency in information disclosure, while ensuring that the required confidentiality is also met. Both the OSPF and OCRP have proactively posted information on their websites. A review of the accountability mechanism websites across different development institutions suggests that the ADB Accountability Mechanism compares favorably in terms of its comprehensiveness and clarity of disclosed information.

9. Accountability as a Learning Mechanism

39. The Accountability Mechanism has contributed to learning by ADB as well as DMCs. The findings of both the OSPF and OCRP are widely disseminated through their websites. As a part of enhanced learning efforts, the OSPF and OCRP have started to provide training courses to staff and undertake more outreach activities in DMCs.

40. The 2003 Accountability Mechanism policy emphasizes the role of the OSPF in strengthening the internal problem solving function of the operations departments. The OSPF has developed guidelines for establishing and implementing grievance redress mechanisms in various DMCs. The OSPF also developed a project complaint tracking system in 2009 together with the Office of Information Systems and Technology and the India Resident Mission.¹⁷ This system, which is gradually being adopted by other resident missions, provides a user-friendly way of tracking complaints.

¹⁶ ADB. 2011. *Annual Monitoring Report to the Board of Directors from 15 May 2010 to 22 March 2011 on the Implementation of Remedial Actions for the Southern Transport Development Project in Sri Lanka*. Manila.

¹⁷ ADB. 2010. Office of the Special Project Facilitator, *2009 Annual Report*. Manila. p. 20.

41. To facilitate learning, the OCRP established an internet-based platform for people working on different accountability mechanisms to exchange views.¹⁸ It also established a system to track the implementation of remedial actions. In Sri Lanka, implementation of the ADB safeguard policy in the Southern Transport Development Project led to the establishment of government safeguard and grievance redress systems, and the compliance review enhanced the implementation of these systems.

42. Staff, Management, and the Board increasingly see the Accountability Mechanism as a tool for ADB to respond positively to public scrutiny. The Accountability Mechanism helps ADB to learn lessons and improve its project quality.

B. Weaknesses

43. The assessment also identifies some weaknesses in the 2003 Accountability Mechanism.

1. Lack of Direct Access to the Compliance Review Function

44. Under the 2003 Accountability Mechanism policy, complainants are required to start with the consultation phase. The 2003 policy adopted this sequential approach to address problems faced by project-affected people before addressing the question of ADB's compliance. Project-affected people were thought to be more interested in having their complaints addressed first. The 2003 Accountability Mechanism policy also provides options for complainants to exit the consultation process and request a compliance review.

45. The requirement to start with the consultation process has generated two issues. First, some stakeholders, especially NGOs, argue that the OSPF has blocked the access of complainants to the compliance review. Second, according to some stakeholders, this requirement may have prolonged the process for people who wanted to access compliance review in the first place. ADB needs to consider giving complainants direct access to the compliance review function.

46. Under the 2003 Accountability Mechanism policy, complainants can exit the consultation phase and proceed to the compliance review at various predefined points, one of which is when the complainants have serious concerns about compliance issues during step 7 of the consultation process, entitled "implementation of the course of action." At this stage, the complainants can request a parallel compliance review (paras. 42 and 88, 2003 Accountability Mechanism policy, footnote 2). However, the 2003 policy is unclear on what "implementation of the course of action" means. This lack of clarity has led to confusion in practice. The transition point between the consultation and compliance review processes should be clarified.

2. Need for a Single Entry Point

47. If project-affected people are to be able to directly access either the problem solving function or the compliance review function, ADB needs to establish a single entry point where complainants can easily access the Accountability Mechanism. This entry point should be both credible and efficient.

¹⁸ ADB. 2009. *Piloting of a Community of Practice for Independent Accountability Mechanisms*. Manila (approved for \$150,000). The network is available on <http://iamnet.adb.org>.

3. Uncertainty on Site Visits

48. Site visits to borrowing countries by the CRP are controversial.¹⁹ In both internal and external consultations, strong views were expressed that site visits are essential for the effectiveness of compliance review, stakeholder participation, and independent verification of facts and alleged policy violations. As a result, some stakeholders have suggested that ADB insist on site visits in the mechanism; otherwise, they have argued, the Accountability Mechanism process would be compromised. Some of these stakeholders suggested that site visits and general cooperation with the CRP should be included in the conditions of loan agreements for all projects. DMC governments, however, have argued that ADB has no basis to mandate site visits through loan agreements because the compliance review is about ADB's compliance with its own policies and procedures, not about a borrower's breach of any obligations, which are dealt with separately.

49. The 2003 Accountability Mechanism policy requires obtaining a borrowing country's consent for a site visit. The policy (para. 56, 2003 Accountability Mechanism policy, footnote 2) states the following: "If, as many stakeholders believe, site visits are important to the compliance review process, then a sensible approach is to enable site visits to take place in consultation with the borrowing country. When the Board approves the proposed mechanism, the policy and procedures should assume the good faith cooperation of all parties in the compliance review process, including the borrowing country. This would also contribute to a collaborative spirit of improving ADB accountability and policy compliance. Seeking prior consent of the borrowing country, under an operating assumption that such consent would be routinely given, would be preferable to the heavy-handed approach of including conditions in the loan agreement."

50. The advantage of the approach in the 2003 policy is its clarity on the requirement of the borrowing country's consent. This requirement is also consistent with those of other MDB accountability mechanisms. The disadvantage is that the policy is silent on the process and responsibility for obtaining the consent from a borrowing country. Further, it lacks clarity on how ADB should deal with a situation where a borrowing country declines a request for a site visit.

51. The opinions on site visits are deeply divided. ADB needs to address issues surrounding site visits by drawing on the extensive consultations it conducted and the experiences of ADB and other MDBs.

4. Need to Enhance the Independence and Effectiveness of the Compliance Review Panel

52. The CRP's independence can be enhanced in several areas. First, CRP members are appointed by the Board, but on the President's recommendation. Second, a senior staff member is assigned as the secretary of the OCRP. Public consultations indicate that some stakeholders see the OCRP secretary as a representative of Management. Third, the CRP does not have a formal work programming and budgeting process, reducing the opportunities for systematic work planning.

53. The effectiveness of the CRP should also be improved. The CRP has little interaction with Management and staff. Unlike with the World Bank's Inspection Panel, ADB's compliance review phase does not give Management the opportunity to respond before the eligibility of a

¹⁹ In this document, the term "borrower" includes grant recipients, and the term "loan" includes grants.

request is determined. The borrower is also not given the opportunity to respond to the draft CRP report, even though it is primarily responsible for implementing remedial actions. This gap can diminish goodwill and undermine the effectiveness of the Accountability Mechanism. CRP members are not evaluated, potentially reducing the accountability of the Accountability Mechanism. The BCRC also has little interaction with the CRP, which may reduce appropriate Board oversight and necessary dialogue.

5. Need to Clarify the Roles of the Compliance Review Panel

54. Under the 2003 Accountability Mechanism policy, the CRP has been mandated to make recommendations to bring projects into compliance. Since 2003, however, the CRP has made broad recommendations on how to bring a project into compliance, while Management has developed remedial actions in consultation with the borrower. This policy stipulation and practice have created three problems. First, the CRP recommendations are sometimes too specific and detailed, blurring the mandates between compliance review and project design and implementation by operations departments.²⁰ Second, the CRP recommendations are sometimes too broad, touching upon the adequacy and suitability of ADB policies and procedures, even though the 2003 Accountability Mechanism states that this should not be part of compliance review (para. 72, 2003 Accountability Mechanism policy, footnote 2).²¹ Third, the CRP has not been given an opportunity to comment on Management's remedial actions, limiting the CRP's sharing of its knowledge on the project. The role of the CRP needs to be clarified.

6. Lack of Clear and Predictable Cutoff Dates

55. The current cutoff date for filing a complaint is the issuance of the project completion report (PCR). Using the PCR as a cutoff date has created problems since this date is uncertain. PCRs are issued 1–2 years after project completion, but the exact dates are difficult to know in advance. In practice, the time frame in which the PCRs are issued varies significantly. The cutoff dates need to be more predictable.

7. Efficiency Improvement Possibilities

a. Time

56. For the consultation phase, the average time for determining eligibility is about 47 days. For eligible cases, the average time from receiving a complaint to starting to implement the course of action has been about 170 days. For the compliance review phase, the average time from receiving a request to the CRP informing the requesters of the eligibility was about 20 days. Only 2 requests have gone through the full compliance review process—it took an average of 367 days from receiving the requests to informing the requesters about the Board's decision on the CRP review report.²² Other MDB accountability mechanisms also customarily take more than a year to complete the problem solving or compliance review process.

²⁰ For example, in the Chashma Right Bank Irrigation Project (Stage III), it was recommended that ADB discuss with the Government of Pakistan the possibility of extending the project completion date, utilizing surplus loan proceeds to address the problems, and ensuring long-term funding (i.e., for at least 5 years) for the implementation of a full environmental management plan.

²¹ For example, in the case of the Sri Lanka Southern Transport Development Project, the CRP recommended that ADB develop additional guidance for inclusion in the handbook on resettlement (*Handbook on Resettlement*. ADB, 1998. *Handbook on Resettlement: A Guide to Good Practice*. Manila.)

²² The duration from receiving the request to providing information to the requesters about the Board's decision was 223 days for the Southern Transport Development Project and 511 days for the Fuzhou project.

57. The long duration of Accountability Mechanism processes may be attributed primarily to two factors. First, the processes are complex. Field consultations indicate that project-affected people still have difficulty filing complaints. Second, consultation and compliance review are intensive processes that often require hiring mediators or experts. The processes are initiated from Manila and field visits can only be carried out periodically. During the site visits to the Community Empowerment for Rural Development Project²³ in Indonesia, local communities expressed a strong desire to use the ADB resident mission to expedite problem solving.

58. The CRP has set its monitoring time frame at 5 years for every project, even though the 2003 Accountability Mechanism policy and the *Operations Manual* (section L1) have not prescribed such a time frame. This one-size-fits-all approach demands time and resources from the affected people, DMCs, and ADB. A more flexible time frame tailored to each project would be more efficient.

b. Costs

59. The costs associated with the Accountability Mechanism include the direct operating costs and indirect costs of staff time, the potential increases in costs of implementing projects, and the costs to affected people. ADB shoulders the operating costs. In 2009, the operating cost was \$2.1 million.²⁴ Because the Accountability Mechanism is demand driven, the operating costs vary from year to year. Some costs have to be incurred to maintain the Accountability Mechanism regardless of the number of complaints received. However, ADB needs to ensure that adequate resources are available for the Accountability Mechanism to respond effectively to the requests of project-affected people, while not putting in place large excess capacity that leads to inefficient use of scarce resources.

60. A common concern among the DMCs is that the Accountability Mechanism causes significant costs above the normal project implementation and compliance costs that they must bear. DMCs have identified the following possible costs related to the Accountability Mechanism: (i) delays in project implementation, which lead to cost escalation, cost overruns, higher commitment charges, and postponed benefits while the country repays the loan and interest as originally scheduled; (ii) changes of scope that require more funding and make project design suboptimal for the beneficiaries as a whole; (iii) higher compensation above the Safeguard Policy Statement requirements; (iv) higher administrative costs; and (v) nonfinancial costs such as risk aversion by ADB to avoid needed but complex projects, lack of innovation, and the tendency to focus on compliance rather than development results. For example, the Government of Sri Lanka estimated the costs related to the Accountability Mechanism for the Southern Transport Development Project at about \$45.0 million because of delays in project implementation and cost escalations. In the Chashma project, the PCR indicated that \$12.5 million of the total ADB loan was disbursed for implementation of the remedial action plan. DMCs expressed their uneasiness in bearing the costs resulting from ADB's noncompliance with ADB's operational policies and procedures.

61. However, the costs incurred in the Accountability Mechanism processes must be balanced against the potential benefits that the mechanism generates in solving problems of

²³ ADB. 2000. *Report and Recommendation of the President to the Board of Directors: Proposed Loans and Technical Assistance Grant to the Republic of Indonesia for the Community Empowerment for Rural Development Project*. Manila (Loan 1765-INO for \$115 million, approved on 19 October 2000).

²⁴ The operating costs include salary, benefits, relocation, consultants, business travel, and representation.

project-affected people, ensuring ADB's compliance with its policies and procedures, and contributing to the development effectiveness of ADB operations (paras. 28–37). ADB needs to be fully aware of the costs and demonstrate the benefits of the Accountability Mechanism to ensure its credibility and ownership by DMCs. Better understanding of the benefits and costs of the Accountability Mechanism will also help in designing and implementing an effective policy.

62. The Accountability Mechanism processes also require the project-affected people to spend time and resources. A protracted process demands extra time and effort, and puts a burden on their work and daily life. The transaction costs to address the problems faced by project-affected people need to be minimized. From the outset, ADB should make the utmost efforts to ensure problem prevention, problem solving, and compliance. If problems and noncompliance occur, they should be addressed as quickly as possible.

8. Inadequate Awareness and Tracking

63. Consultations revealed limited awareness of the Accountability Mechanism, especially among local communities. Reaching people with limited internet access remains a huge challenge. Awareness among staff also needs to be continually enhanced through in-house training and awareness-raising activities.

64. While the cases dealt with by the SPF and CRP have been well tracked, no system is in place to track the ineligible complaints that the OSPF forwarded to the operations departments because the complainants did not make prior good faith efforts to resolve the problems with the operations departments. This information gap should be addressed.

9. Insufficient Learning

65. Staff, Management, and the Board increasingly see the Accountability Mechanism as a tool for ADB to respond positively to public scrutiny and learn how the organization can do better. However, the perception that the compliance review is adversarial remains. More interactions are needed among the SPF, CRP, staff, Management, and DMCs for constructive dialogue and learning. Further positive interactions will change the perception of the compliance review from an adversarial process to a positive instrument for learning and development.

10. Too Few Compliance Review Requests?

66. The OSPF received 39 complaints between 2004 and 2011, while the CRP received 5 requests over the same period. Some stakeholders argued that the CRP received too few requests. However, the limited recourse to CRP is in line with the experience of other MDBs. The World Bank Inspection Panel investigated 33 eligible requests from 1994 to 2011, an average of fewer than 2 eligible cases a year for an institution whose portfolio is nearly 4 times the size of ADB's. The Office of the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency received 127 complaints from 2000 to 2010, but only 8 went through the full compliance audit process. The African Development Bank has received 7 cases since 2007, of which 2 were eligible for compliance review. Appendix 6 presents the number of cases received by different accountability mechanisms.

67. Consultations suggested various reasons for the low number of compliance review requests at ADB. A major reason is that a bottom-up, multilevel problem prevention and solving mechanism has been in place (paras. 22–27). Most of the grievances are handled at the project

and operational levels. The Accountability Mechanism is the last resort for problem solving and compliance review, and complaints submitted to it should occur as exceptions. However, awareness of the Accountability Mechanism is also limited, contributing to the low number of requests. In addition, the Accountability Mechanism process is complicated. Some stakeholders believe that the requirement that affected people start at the consultation stage—before they can request for compliance review—may also have reduced recourse to compliance review.

68. Thus, the reasons for the low number of compliance review cases are mixed. ADB needs to strengthen the positive aspect of effective problem solving and compliance at the project and operations department levels, while addressing issues related to awareness, accessibility, and the lack of direct access to the CRP.

69. Appendix 7 summarizes the Accountability Mechanism's strengths, weaknesses, and potential areas for improvement, reflecting the four desirable attributes of an accountability mechanism: accessibility, credibility, efficiency, and effectiveness.²⁵

IV. MAJOR PROPOSED CHANGES

70. This section outlines major changes to address the weaknesses identified in Section III.

A. Enabling Direct Access to the Compliance Review Function

71. The working group that reviewed ADB's Accountability Mechanism considered several options to address perceptions and issues related to the current requirement that project-affected people must start with the consultation phase.²⁶ Based on careful consideration of the pros and cons of these options, the working group recommends that complainants be given direct access to the compliance review function.

72. Under this approach, complainants may choose whether to start with the consultation or the compliance review phase. Further, they can exit the consultation phase and request compliance review at any time during the processes. Complainants can also file for compliance review upon the completion of the consultation process when all the parties have reached an agreement on the remedial actions, or when the SPF concludes that no agreement on the remedial actions can be reached. Consistent with the 2003 Accountability Mechanism policy, complainants also have the opportunity to request a compliance review during the implementation and monitoring of remedial actions if they have serious concerns on compliance issues (para. 42, 2003 Accountability Mechanism policy, footnote 2).

73. Complainants can only switch from the compliance review to the consultation process if the CRP finds the request for compliance review ineligible. The reason for this restriction is that problem solving would have limited usefulness after the compliance review. The CRP's findings may pinpoint the problems that will then be addressed by the operations departments. Alternatively, even if the CRP finds that ADB has complied with its operational policies and procedures, operations departments can still address problems as part of the project implementation process. To facilitate complainants' informed decisions in choosing problem

²⁵ E. B. Weiss. 2007. *Note on Criteria for Evaluating Accountability Institutions in MDBs*. Address to 4th Meeting of Accountability Mechanisms. London, England. 21 June 2007. Presented in World Bank. 2009. *Accountability at the World Bank: The Inspection Panel at 15 Years*. Washington, DC. pp.109-113.

²⁶ For the options on the direct access and other issues, see ADB. 2011. *Review of the Accountability Mechanism*. Second working paper. Manila. <http://www.adb.org/AM-Review/>

solving or compliance review, a basic information packet and a template should be developed and provided to complainants as soon as they seek access to the Accountability Mechanism.

B. Establishing a Single Entry Point

74. If project-affected people are given direct access to both the consultation and compliance review phases, ADB needs to establish a single entry point to receive all complaints. This focal point, the complaint receiving officer (CRO), should serve as a first contact for project-affected people when they want to access the Accountability Mechanism.

75. The single point of entry should be efficient, impartial, and capable of dealing with confidentiality requirements by complainants. To ensure that the CRO has these qualities, the working group recommends that the OSPF and OCRP jointly engage a CRO in a way similar to the engagement of the executive secretary of ADB's Administrative Tribunal.²⁷ The CRO will not be an ADB staff member. The nature of the CRO's work will demand full-time engagement, particularly since the CRO needs to respond promptly to complainants.

C. Addressing Site Visit Issues

76. The issues related to CRP site visits are sensitive and important. Any controversy on site visits harms the reputation of ADB, the CRP, and the borrowing country alike. Therefore, ADB's policy on site visits must be fair, credible, and implementable. The working group fully recognizes the sensitivities and importance of site visits. Based on careful consideration of several options, the working group recommends a partnership approach on site visits.

77. Under this approach, the CRP site visits would be handled using the same principles and practices applicable to all ADB missions, but without recourse to provisions in a loan covenant. ADB would use its good offices and established institutional mechanisms to assist the CRP in obtaining access to site visits. Management and staff would facilitate a borrowing country's concurrence for site visits. This approach aims to improve communication between ADB, the CRP, and the borrowing countries. ADB and the borrowing countries would need to work as partners to ensure the Accountability Mechanism functions smoothly.

78. This approach is underpinned by the consideration that managing country relations is a core dimension of ADB's engagement with borrowing countries, with resident missions playing a particularly important role. The CRP should also proactively seek the assistance of the ADB Board member for the borrowing country concerned.

79. The partnership approach aims to minimize the risk of a borrowing country's refusal of site visits. Intensive communications are required to gain a borrowing country's acceptance of CRP site visits, and to ensure that the borrower implements the remedial actions at the end of the compliance review. The latter point is especially important for making compliance review a positive tool for improving project quality.

80. The use of ADB's institutional mechanisms would be limited to assisting the CRP in gaining a borrowing country's acceptance for site visits. It is not designed to influence the outcomes of a compliance review, nor to compromise the CRP's independence. The independence of the CRP rests on its ability to make independent judgments, and this would not be compromised by using ADB's institutional arrangements to obtain borrowing countries' consent for site visits.

²⁷ ADB. 2006. *Statute of the Administrative Tribunal of the Asian Development Bank*. Manila.

81. All stakeholders agree that site visits will generally take place if requested by the CRP. The assumption in the 2003 Accountability Mechanism policy that site visits will be granted routinely should be maintained. In the exceptional situation of refusal, Management will discuss with the borrowing country the reasons for not accepting the requested site visit. In consultation with the BCRC and the borrowing country, Management will convey the reasons to the Board through an information paper.

82. In the unlikely event that a site visit is declined, a closure of the compliance review process will be highly desirable, especially from the perspective of the complainants. The CRP will complete its work and deliver its final report without a site visit. The CRP will use all available information, make appropriate assumptions, and draw appropriate inferences to complete its work. The CRP will present the best and most detailed analysis possible after exhausting the most cost-effective and logical alternative means to acquire necessary information. In the absence of a necessary site visit, the CRP may give added weight to the complainants' views.

D. Enhancing the Independence of Compliance Review

83. The review leading to the establishment of IED provides insights on how the independence of the CRP could be improved.²⁸ Several changes drawing from the IED model are proposed. First, CRP members should be appointed by the Board based on the recommendation of the BCRC in consultation with the President—a process similar to the appointment of the director general of IED. This would depart from the current practice of the Board appointing CRP members based on the President's recommendation. Second, the CRP chair should be the head of the OCRP with full responsibility for running the office, instead of a senior staff member serving as the secretary of the OCRP. Third, the CRP's work program and budget process should be strengthened. The CRP chair should be responsible for preparing a combined CRP and OCRP annual work plan and budget. The annual work plan and budget should be endorsed by the BCRC in consultation with the President, reviewed by the Board's Budget Review Committee, and approved by the Board.

84. The review leading to the establishment of IED also concluded that independence alone does not ensure accountability and high-quality evaluations. Appropriate Board oversight is necessary to promote effectiveness and accountability of an independent mechanism. Like the Development Effectiveness Committee's role with IED, the BCRC should be the focal point for the CRP's interaction with the Board and an avenue for regular dialogue on the Accountability Mechanism. To enhance accountability, the BCRC should provide written annual performance feedback on each CRP member, similar to the written annual performance feedback the Development Effectiveness Committee provides on the director general of IED. The BCRC will seek inputs from the CRP chair in providing performance feedback to the other two CRP members.

E. Clarifying the Roles of Compliance Review

85. To better use the expertise of the CRP and Management, the compliance review should ascertain the alleged direct and material harm, and determine whether such harm was the result of ADB's failure to comply with its operational policies and procedures. Responding to the CRP findings, Management should propose remedial actions in consultation with the borrower, and

²⁸ ADB. 2008. *Review of the Independence and Effectiveness of the Operations Evaluation Department*. Manila.

submit these to the Board for consideration. To benefit from the CRP's insights on the project, the CRP should have an opportunity to comment on Management's proposed remedial actions. The clarification of the roles of the CRP and Management will enable the CRP to use the knowledge it has acquired during the review process to comment on Management's remedial actions. It will also allow Management to utilize its competency in project design and implementation to identify remedial actions to be discussed and agreed upon with the borrower and approved by the Board. This approach will strengthen the role of the CRP in shaping remedial actions, and also clarify the specific functions of the CRP and Management. The CRP will monitor the implementation of the remedial actions.

86. The IED experience demonstrates that while independence is an important prerequisite for the credibility of a mechanism, it should not mean isolation. Consistent with the partnership principle, the CRP should seek to engage all stakeholders concerned throughout the review process. The borrower should be informed about a complaint before and after its eligibility is determined, and it should have an opportunity to respond to the draft CRP compliance review reports. This will help build understanding from early on and facilitate the implementation of remedial actions. Like the World Bank's Inspection Panel, the CRP should provide the opportunity for Management to respond before the eligibility of a request is determined. However, the CRP alone is responsible for all stages and outcomes of the compliance review process.

F. Clarifying the Cutoff Date

87. Establishing the cutoff date for filing complaints based on the PCR lacks predictability since the date of PCR is uncertain. Some stakeholders suggested extending the cutoff date to sometime beyond the issuance of the PCR. However, as the issuance of the PCR is uncertain, extending the date based on the PCR will not address this problem. A better option might be choosing a date that is known more clearly in advance. The loan or grant closing date is predictable and is disclosed to the public throughout the project cycle.²⁹ The cutoff date for filing complaints could be 2 years after the loan or grant closing date, which would provide more clarity and certainty, and is also on average longer than the current PCR-based cutoff date.³⁰

88. Appendix 8 compares the key features of accountability mechanisms in nine development agencies, including the cutoff dates.

G. Improving Efficiency

1. Improving Processes

89. The consultation phase of the Accountability Mechanism requires complainants to provide written comments on the SPF review and assessment reports. This requirement has sometimes been a burden on complainants and delays the process. Instead, it should be offered as one option for complainants, rather than as a requirement. Complainants' feedback can be obtained through more user-friendly and faster means, such as meetings, discussions, and telephone calls. While the SPF should inform the President about the complaints and

²⁹ According to the Project Administration Instruction (4.05), the loan or grant closing date is the last date for the borrowers to withdraw from the loan or grant account.

³⁰ An analysis of PCR issuance dates between 2008 and October 2011 shows a large variation, highlighting the uncertainty and unpredictability. The loan or grant closing dates plus 2 years will on average provide about 280 more days compared to the PCR issuance dates.

results, the current requirement that the SPF consult with the President on the procedural steps is unnecessary and should be dropped.

90. Operations departments and project-level grievance redress mechanisms should have more scope for problem solving. The SPF can engage the operations department concerned and the project-level grievance redress mechanism if the SPF thinks this will improve the efficiency and effectiveness of problem solving. The SPF should decide on the degree and manner of the engagement on a case-by-case basis.

91. The SPF and CRP should adopt a more flexible monitoring time frame tailored to each project. SPF monitoring should generally not exceed 2 years and CRP monitoring should generally not exceed 3 years.

92. The documentation requirements for filing a complaint can be simplified. The requirements should focus on essential information that enables the processing of a complaint, while making requirements such as specification of the complainants' desired outcomes optional. Meanwhile, requiring a minimum amount of information will help reduce the time for processing the complaint later on.

93. The Accountability Mechanism policy should enable complainants to provide additional information and evidence on their complaint during the problem solving or compliance review processes. This will increase the flexibility for the complainants to strengthen their cases.

2. Improving Cost Effectiveness

94. Because the Accountability Mechanism is demand-driven, its costs can conceptually be separated into two parts: (i) fixed costs, regardless of the number of complaints, to maintain and operate the Accountability Mechanism; and (ii) variable costs based on demand and workload.³¹ The OSPF currently has one international staff in addition to the SPF, one national staff, and one administrative staff. The OCRP has two international staff, one national staff, and two administrative staff supporting the CRP chair and two other CRP members. Based on a review of their past workloads, it is proposed that the basic structure for the OSPF and OCRP be similar.

95. The 2003 policy provides for the CRP chair to work full time for a minimum of 1 year to organize the OCRP and undertake other related tasks (para. 97, 2003 Accountability Mechanism policy, footnote 2). However, since 2003, the CRP chair has been full time in six of the seven years, while the CRP members have been part time. This has been shown to be an appropriate arrangement. To strengthen the CRP and to enable the chair to fulfill the mandate as the head of OCRP, the working group recommends that the CRP chair work full time.

H. Improving Awareness and Enhancing Learning

96. The joint OSPF and OCRP outreach strategies should support three kinds of activities: (i) improving the awareness of ADB staff; (ii) undertaking targeted outreach for government project teams; and (iii) working with resident mission staff, and undertaking regular dissemination activities in DMCs involving local communities, governments, NGOs, and other

³¹ The term "fixed costs" in this paper refers to the resources required to support the basic structure of the Accountability Mechanism regardless of the number of requests. This will include the basic number of staff, offices, and other facilities to maintain and operate the Accountability Mechanism. The term "variable costs" refers to the resources required to respond to fluctuating demand. This could be satisfied, for example, by staff consultants and contractual staff.

relevant stakeholders. Each resident mission should have focal person working with project teams on grievance handling and Accountability Mechanism outreach. Operations staff should be the main conduit for disseminating information about the Accountability Mechanism, which should be viewed as a tool for learning and development effectiveness, instead of being adversarial.

97. The OSPF and OCRP track the processes and outcomes of all the complaints they have handled. The tracking should be extended to complaints that were forwarded to the operations departments because of a lack of prior good faith efforts by complainants to solve the problems with the operations department concerned. The operations departments are also encouraged to keep records of meetings and other discussions with complainants. This should enrich the information for analyzing and reducing problems. Some good practices have already started (para. 40).

98. The OSPF and OCRP should distill lessons from their operations. The OSPF and CRP currently produce separate annual reports. A joint Accountability Mechanism annual report is recommended to promote synergy. The OSPF and OCRP currently have separate websites, leading to fragmentation and less accessibility. The OSPF and OCRP websites—and all other information related to the Accountability Mechanism—should be consolidated under a common Accountability Mechanism website within ADB's public website (adb.org). Similarly, the OSPF and OCRP (or the SPF and CRP) logos and letterheads should be placed under a common ADB Accountability Mechanism logo and letterhead.

99. The OSPF, OCRP, IED, and RSDD should produce a joint learning report every 3 years to distill lessons and insights. A collaborative effort among these departments would enhance learning, guide staff in improving project design and implementation, help ADB avoid the recurrence of common problems, and facilitate a culture change so that the Accountability Mechanism is viewed as a positive tool for learning.

100. Interactions between the Accountability Mechanism, the Board, Management, and staff will accelerate the application of lessons learned. The OCRP should provide regular (e.g., quarterly) briefings to the BCRC. One of the sessions can involve the joint OSPF and OCRP dissemination of the Accountability Mechanism annual report. The OSPF and OCRP should continue their training and workshops for ADB staff.

101. ADB should also revise some terms to sharpen the Accountability Mechanism messages. First, the “consultation phase” should be renamed the “problem solving function.” The 2003 policy used the term “consultation” because of the concern that the term “problem solving” would create the expectation that all problems would be solved by the OSPF. However, consultations undertaken as a part of this review indicate that this risk is not significant. “Problem solving” would more accurately reflect the nature and objective of this function. Second, the 2003 policy refers to cases received by the OSPF as “complaints,” while those received by the CRP are “requests.” To promote simplicity and distinguish Accountability Mechanism issues from general requests that can be raised with any part of ADB, it is proposed that the cases received by the OSPF and CRP be referred to as “complaints” and the people asking for them be referred to as “complainants.” Third, as the complainants will choose either problem solving or compliance review, the term “phase,” which implies a sequential approach, should be replaced with the term “function.”

V. THE REVISED ACCOUNTABILITY MECHANISM POLICY

102. This section uses the 2003 policy as a basis and incorporates the recommendations outlined in Section IV and other necessary changes.

A. Objectives and Guiding Principles

103. The objectives of the Accountability Mechanism will be to provide an independent and effective forum for people adversely affected by ADB-assisted projects to voice their concerns and seek solutions to their problems, and to request compliance review of the alleged noncompliance by ADB with its operational policies and procedures that may have caused, or is likely to cause, them direct and material harm.

104. The Accountability Mechanism is designed to (i) increase ADB's development effectiveness and project quality; (ii) be responsive to the concerns of project-affected people and fair to all stakeholders; (iii) reflect the highest professional and technical standards in its staffing and operations; (iv) be as independent and transparent as possible; (v) be cost-effective and efficient; and (vi) be complementary to the other supervision, audit, quality control, and evaluation systems at ADB.

105. The Accountability Mechanism will be a “last resort” mechanism. ADB must continue to strengthen its project design, implementation, and learning mechanisms to prevent problems and ensure compliance from the outset, and to deal with the legitimate concerns of project-affected people at the project and operational levels wherever possible.

B. Structure

106. The Accountability Mechanism will have two functions. The problem solving function will be led by the SPF who will respond to problems of local people affected by ADB-assisted projects through a range of informal and flexible methods. The compliance review function will be led by the CRP, which will investigate alleged noncompliance by ADB with its operational policies and procedures that has caused, or is likely to cause, direct and material harm to project-affected people.

107. To provide an easily accessible single entry point for project-affected people, this two-pronged structure will be supported by the CRO who will receive all complaints from people seeking access to the Accountability Mechanism.

C. Human and Financial Resources

1. The Problem Solving Function

108. The SPF will head the OSPF, which will have one other international staff member and two administrative or national staff members. The SPF will be a special appointee at a level equivalent to a director general. Appointed by the President after consultation with the Board, the SPF will report directly to the President. The OSPF may engage technical experts as consultants in accordance with ADB's Guidelines on the Use of Consultants (2010, as amended from time to time) and other arrangements satisfactory to ADB to assist the OSPF's work, including monitoring activities.

109. The selection criteria for the SPF will include (i) the ability to deal thoroughly and fairly with complaints; (ii) integrity and independence from the operations departments; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge of, and experience with, the operations of ADB or comparable institutions, and/or private sector experience. Mediation skills will be an asset. The SPF's term will be three years and may be renewable for another two years. The SPF must not have worked in any ADB operations departments for at least five years before the appointment. The SPF must disclose immediately to the President any personal interest or significant prior involvement in a project that is subject to problem solving procedures. The SPF will have access to all ADB staff and Management, and all ADB records that the SPF deems relevant, except personal information that is typically restricted.

110. The President will evaluate the performance of the SPF. The work planning, budgeting, and staffing of the OSPF will be processed in the same way as other ADB departments. Necessary flexibility will be ensured in the work plans and budget to accommodate the demand-driven nature of the problem solving function. Any additional human and financial resources for the OSPF, if required, will be approved through the work program and budget framework process or by the President.³² The Budget, Personnel, and Management Systems Department (BPMSD) will handle the administrative processes according to ADB guidelines.

2. The Compliance Review Function

111. **Compliance Review Panel.** The CRP will have three members, one of whom will be the chair. The CRP chair will be full time and the two CRP members will be part time and called on when required. CRP members will be appointed by the Board upon the recommendation of the BCRC in consultation with the President. The BCRC will direct the search and selection process, which may involve the use of an executive search firm if the BCRC considers it necessary. BPMSD will handle the administrative processes.

112. Each panel member will have a five-year, nonrenewable term. Two panel members will be from regional member countries, with at least one from a DMC. The third panel member will be from a nonregional member country. The selection criteria for panel members will include (i) the ability to deal thoroughly and fairly with the complaints; (ii) integrity and independence from Management; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge of, and experience with, the operations of ADB or comparable institutions, and/or private sector experience.

113. Directors, alternate directors, directors' advisors, Management, staff, and consultants will be ineligible to serve on the CRP until at least three years have elapsed from their time of employment with ADB. After serving on the CRP, panel members will be barred from any future employment at ADB. A panel member may be removed in the same way as he or she was appointed on the grounds of inefficiency and/or misconduct. A panel member will be disqualified from participating in a compliance review if he or she has a personal interest or has had significant prior involvement in a project under compliance review. A panel member must disclose immediately to the BCRC any personal interest or significant prior involvement in a project subject to compliance review.

³² Resource needs from, for example, an unanticipated rise in complaints can be addressed by hiring contractual staff or consultants.

114. The CRP will be a fact-finding body that reports to the Board through the BCRC. CRP members will not be subject to the formal annual performance review process for staff. However, the BCRC chair, in consultation with other BCRC members, will provide written annual feedback on their performance. The BCRC will seek inputs from the CRP chair in providing performance feedback on the other two CRP members.

115. The Board will determine the CRP chair's salary, upon recommendation of the BCRC in consultation with the President. The CRP chair's annual salary increase will be the average of the salary increases given to the vice-presidents. The part-time CRP members will be remunerated at levels comparable to those received by panel members of accountability mechanisms at similar institutions, or based on their experience and expertise.

116. The CRP may engage technical experts as consultants in accordance with ADB's Guidelines on the Use of Consultants (2010, as amended from time to time) and other arrangements satisfactory to ADB to assist in its work, including post-compliance review monitoring. The CRP will have access to all ADB staff and Management, and all ADB records that the CRP deems relevant, except personal information that is typically restricted.

117. **Office of the Compliance Review Panel.** The OCRP staff will support the CRP. The OCRP will be headed by the CRP chair and will have one international staff member and two administrative or national staff members. The international staff member of the OCRP will report to the CRP chair.

118. OCRP staff will be ADB staff. The terms and conditions of their employment will be the same as for other ADB staff, as provided by ADB staff regulations and administrative orders. OCRP staff can be transferred to and from other parts of ADB. As the IED experience has demonstrated, this flexibility in staff movement helps guard against the potential isolation of the CRP and enriches both compliance review and operations through the exchange of knowledge and experience.

119. The CRP chair will be responsible for preparing the combined annual work plan and budget of the CRP and OCRP. The annual work plan and budget will be endorsed by the BCRC in consultation with the President, and reviewed by the Board's Budget Review Committee. The work plan and budget proposal will then be presented to the Board for approval, separately from ADB's overall administrative budget. Necessary flexibility will be ensured in the work plan and budget to accommodate the demand-driven nature of the compliance review function. The CRP chair, in consultation with other CRP members, may request additional human and/or financial resources, if needed.³³ The BCRC, in consultation with the President, will endorse these additional resources, which will then be approved by the Board. BPMSD will handle the administrative processes in relation to OCRP staff in accordance with ADB guidelines.

120. **Board Compliance Review Committee.** The BCRC will consist of six Board members, including four regional members (at least three of whom must be from borrowing countries) and two nonregional members. The BCRC members will be appointed in accordance with the Board's Rules of Procedure. The Office of the Secretary will provide support to the BCRC.

³³ Resource needs from, for example, an unanticipated rise in complaints can be addressed by hiring contractual staff or consultants.

3. The Complaint Receiving Officer

121. The OSPF and OCRP will jointly engage a dedicated CRO from outside ADB, in a way similar to the engagement of the executive secretary of ADB's Administrative Tribunal. The CRO will be engaged on a full-time basis to respond promptly to complainants. The CRO will report to the SPF and the CRP chair.

4. Legal Advice

122. The Office of the General Counsel will advise the OSPF, SPF, OCRP, CRP, BCRC, and Board on matters concerning ADB's legal status, rights, and obligations under the Agreement Establishing the Asian Development Bank (the Charter)³⁴ and any agreement to which ADB is a party, and on any other matters relating to ADB's rights and obligations with respect to any complaint requesting problem solving or compliance review under the Accountability Mechanism policy.

123. Consistent with the current practice, the Office of the General Counsel will facilitate the CRP's access to specialist legal advice on the laws and regulations of the borrowing countries concerned as necessary.

D. Functions

1. Receiving Complaints

124. The CRO will

- (i) receive all complaints from people seeking access to the Accountability Mechanism and promptly acknowledge them;
- (ii) provide information to complainants;
- (iii) forward complaints to the OSPF or CRP based on the choice of complainants; or forward complaints that are beyond the scope of the Accountability Mechanism, such as those relating to procurement or corruption, to other relevant departments and offices;
- (iv) copy the relevant parties (e.g., the OSPF, CRP, and operations department) if the complaints are not forwarded to them, stressing the importance of maintaining confidentiality of the complainants' identities if required by complainants;
- (v) register the complaints;
- (vi) maintain the landing page of the Accountability Mechanism website within ADB's public website through working with the OSPF, OCRP, and Department of External Relations (DER);
- (vii) have access to the OSPF, OCRP, and operations departments about the status and process of complaints;
- (viii) inform the complainants about whom to contact after complaints have been registered; and
- (ix) undertake other work as assigned by the SPF and CRP chair.

125. The CRO will carry out all functions with objectivity and neutrality.

³⁴ ADB. 1966. *Agreement Establishing the Asian Development Bank*. Manila.

2. Problem Solving

126. The problem solving function will assist people directly, materially, and adversely affected by specific problems caused by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned. The general approaches will include (i) consultative dialogue, (ii) information sharing, (iii) joint fact-finding, and (iv) mediation. The SPF may suggest various specific approaches to resolve problems, such as convening meetings, organizing and facilitating consultation processes, or engaging in a fact-finding review of the situation. The problem solving function will be outcome-driven. It will not focus on the identification and allocation of blame, but on finding ways to address the problems of the project-affected people.

127. The SPF problem solving function will also aim to strengthen the internal problem solving processes of operations departments. The SPF will carry out activities designed to improve the overall internal problem solving functions of ADB.

128. The OSPF will

- (i) process complaints requesting problem solving;
- (ii) obtain from the operations departments all materials relating to the complaints;
- (iii) engage with all relevant parties, including the complainants, the borrower, the ADB Board member representing the country concerned, Management, and staff to gain a thorough understanding of the issues to be examined during problem solving;
- (iv) facilitate consultative dialogue, promote information sharing, undertake joint fact-finding, and/or facilitate the establishment of a mediation mechanism;
- (v) inform the Board and other stakeholders about the results of problem solving activities;
- (vi) monitor the implementation of the remedial actions agreed upon during the problem solving process;
- (vii) collate and integrate internal and external experiences with problem solving to be fed back into ADB's operations, including the formulation, processing, or implementation of projects;
- (viii) provide generic support and advice to operations departments in their problem prevention and problem solving activities, but not for specific cases under problem solving by the operations departments;
- (ix) work with the OCRP to produce a clear, simple, informative, and succinct information packet about the Accountability Mechanism, highlighting the different processes and remedies available under the two functions;³⁵
- (x) prepare and publish Accountability Mechanism annual reports³⁶ jointly with the OCRP;
- (xi) produce a learning report every three years through joint efforts with the OCRP, IED, and RSDD;³⁷
- (xii) conduct outreach programs within ADB and with the public that will include a holistic introduction to the Accountability Mechanism while focusing on specific subjects;

³⁵ Para. 160 provides the key points that should be contained in the information packet.

³⁶ The Accountability Mechanism annual report is approved by the President (for the OSPF section) and the BCRC (for the CRP section).

³⁷ The CRP chair, SPF, director general of IED, and director general of RSDD may rotate to chair the preparation of the learning report.

- (xiii) work with the CRO, OCRP, and DER to maintain the problem solving and compliance review interfaces in a common ADB Accountability Mechanism website within ADB's public website to improve the access, coherence, and comprehensiveness of the information; and
- (xiv) conduct other activities required to carry out the problem solving function effectively and efficiently.

129. The OSPF problem solving function will not replace the project administration and problem solving functions of operations departments which are an inherent part of their work. Operations departments have the initial responsibility for responding to the concerns of affected people. The operations departments will also continue to improve their problem prevention and problem solving capabilities. The SPF's role will be confined to ADB-related issues on ADB-assisted projects. The SPF will not interfere in the internal matters of any DMC and will not mediate between the complainants and local authorities.

3. Compliance Review

a. The Compliance Review Panel

130. The CRP will be a fact-finding body on behalf of the Board. The CRP will investigate alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affects local people. A compliance review will not investigate the borrowing country, the executing agency, or the private sector client. The conduct of these other parties will be considered only to the extent that they are directly relevant to an assessment of ADB's compliance with its operational policies and procedures. The compliance review will not provide judicial-type remedies, such as injunctions or monetary damages. Relative to a request for problem solving with the SPF, a request for compliance review is not an appeal to a higher authority.

131. The CRP will

- (i) process complaints requesting compliance review;
- (ii) engage with all relevant parties and stakeholders concerned, including the complainants, the borrower, the ADB Board member representing the country concerned, Management, and staff to gain a thorough understanding of the issues to be examined during the compliance review;
- (iii) coordinate its activities, to the extent appropriate, with those of the compliance review mechanism of any other cofinancing institution that is conducting a separate compliance review of the same project;
- (iv) conduct thorough and objective reviews of compliance by ADB;
- (v) engage all stakeholders concerned throughout the compliance review process;
- (vi) consult with the complainants, the borrower, the Board member representing the country concerned, Management, and staff on its preliminary findings; and address any resulting comments;
- (vii) issue draft reports to the complainants, the borrower, the BCRC, Management, and the operations department concerned;
- (viii) issue its final compliance review report to the Board;
- (ix) complete the compliance review even if a borrowing country refuses to grant a site visit (para. 201);
- (x) provide comments on Management's proposed remedial actions to bring a project into compliance;

- (xi) monitor the implementation of decisions made by the Board and produce annual monitoring reports;
- (xii) prepare and publish Accountability Mechanism annual reports (footnote 36) jointly with the OSPF;
- (xiii) produce a learning report every three years through joint efforts with the OSPF, IED, and RSDD;
- (xiv) develop a roster of independent technical experts who can assist the CRP in carrying out its work; and
- (xv) liaise with accountability mechanisms at other institutions.

132. The CRP chair will

- (i) perform all the functions listed for the CRP;
- (ii) serve as the head of the OCRP and have full responsibility for running the OCRP;
- (iii) manage the OCRP as an effective, efficient, and independent office, including managing the OCRP's personnel, budget, and work program under the oversight of the BCRC, and in accordance with ADB rules and procedures;
- (iv) assign member(s) of the CRP to conduct compliance review and monitoring tasks in consultation with the BCRC;
- (v) provide regular (e.g., quarterly) briefings to the BCRC, one of which may be combined with the briefing on the Accountability Mechanism annual report;
- (vi) prepare the annual work plan and budget for the CRP and OCRP;
- (vii) engage stakeholders in the compliance review process and ensure that compliance review results are communicated to them and the public;
- (viii) ensure high-quality professional work and set quality standards for OCRP outputs;
- (ix) formulate and implement the OCRP's work program as approved by the Board, and report to the Board through the BCRC on the activities of the CRP and OCRP; and
- (x) provide input to the BCRC's annual performance feedback on CRP members.

b. Office of the Compliance Review Panel

133. The OCRP will

- (i) support the work of the CRP;
- (ii) work with the OSPF to produce a clear, simple, informative, and succinct information packet about the Accountability Mechanism, highlighting the different processes and remedies available under the two functions;³⁸
- (iii) conduct outreach programs within ADB and with the public that will include a holistic introduction to the Accountability Mechanism while focusing on specific subjects;
- (iv) in coordination with the OSPF, operations departments, the NGO Center, and DER, ensure that such information dissemination and public outreach is integrated with ADB's activities to promote interaction with project beneficiaries and stakeholders, including civil society groups;
- (v) work with the CRO, OSPF, and DER to maintain the problem solving and compliance review interfaces in a common ADB Accountability Mechanism website within ADB's public website to improve the access, coherence, and comprehensiveness of the information; and

³⁸ Para. 160 provides the key points that should be contained in the information packet.

- (vi) facilitate the CRP's communication and coordination with the Board, Management, the OSPF, and staff.

c. Board Compliance Review Committee

134. The BCRC will
- (i) clear the CRP's proposed TOR for compliance review before they are released by the CRP;
 - (ii) review the CRP's draft compliance review reports;
 - (iii) review the CRP's draft reports on monitoring implementation of remedial actions approved by the Board as a result of a compliance review before the CRP finalizes them;
 - (iv) decide and adjust the CRP monitoring time frames;
 - (v) review and endorse the combined CRP and OCRP annual work plan and budget;
 - (vi) search for CRP members in consultation with the President;
 - (vii) provide written feedback to all CRP members on their performance;³⁹
 - (viii) in case of a borrowing country's rejection of a CRP site visit, dialogue with Management on the reasons for the borrowing country's refusal; and
 - (ix) serve as the focal point for the CRP's communication and dialogue with the Board on the Accountability Mechanism.

135. BCRC's function in clearing the proposed TOR and reviewing the draft compliance review reports will be to ensure that the CRP operates within the scope of the compliance review function as set out in the Accountability Mechanism policy. The BCRC will review the CRP's monitoring reports to ensure that the CRP has carried out a satisfactory process in monitoring the implementation of any remedial actions approved by the Board following the compliance review.

d. The Board of Directors

136. The key responsibilities of the Board of Directors with regard to CRP include
- (i) overseeing the CRP's work through the BCRC;
 - (ii) appointing and/or removing CRP members on the recommendation of the BCRC in consultation with the President through an open process;
 - (iii) authorizing compliance reviews;
 - (iv) considering CRP final compliance review reports;
 - (v) considering and deciding on Management's proposed remedial actions in response to the CRP's findings; and
 - (vi) approving the combined annual work plan and budget of the CRP and OCRP.

4. ADB Management and Staff

137. ADB Management and staff will
- (i) ensure that the OSPF and CRP have full access to project-related information in carrying out their functions;
 - (ii) provide assistance to the OSPF on problem solving;
 - (iii) coordinate with the CRP on compliance review;
 - (iv) propose remedial actions to bring a project into compliance in response to CRP's findings, in consultation with the borrower;

³⁹ The feedback of the CRP chair will be taken into consideration in the feedback to other CRP members.

- (v) assist in mission arrangements for the OSPF, CRP, and OCRP; and provide other assistance to them as needed;
- (vi) track the ineligible complaints that were forwarded to the operations departments because of the complainants' lack of prior good faith efforts to solve the problems and issues with the operations departments; and
- (vii) engage in problem prevention and problem solving, and seek to ensure compliance with ADB operational policies and procedures.

E. Eligibility

1. Who Can File Complaints

138. For both the problem solving and compliance review functions, complaints may be filed by (i) any group of two or more people in a borrowing country where the ADB-assisted project is located or in a member country adjacent to the borrowing country who are directly, materially, and adversely affected; (ii) a local representative of such affected persons; or (iii) a nonlocal representative of such affected persons, in exceptional cases where local representation cannot be found and the SPF or CRP agrees. If a complaint is made through a representative, it must clearly identify the project-affected people on whose behalf the complaint is made and provide evidence of the authority to represent such people.

139. For the compliance review, complaints may also be filed by any one or more ADB Board members, after first raising their concerns with Management, in special cases involving allegations of serious violations of ADB's operational policies and procedures relating to an ongoing ADB-assisted project. These alleged violations must have, or are likely to have, a direct, material, and adverse effect on a community or other grouping of individuals residing in the country where the project is being implemented or residing in a member country adjacent to the borrowing country. The conduct of the compliance review requested by a Board member will not affect or limit the existing rights of Board members to request or initiate reviews of ADB policies and procedures.

140. Compliance reviews cover only ADB-assisted projects.⁴⁰ The filing of a complaint to either the SPF or CRP will not suspend or otherwise affect the formulation, processing, or implementation of the project unless agreed to by the borrower concerned and ADB.

2. Scope and Exclusions

a. Problem Solving Function

141. The problem solving function will be outcome-driven, focusing not on the identification and allocation of blame, but on finding ways to address the problems of the people affected by ADB-assisted projects. The scope of the problem solving function will be broader than the compliance review function. People who believe they have been or will be directly, materially, and adversely affected by an ADB-assisted project can use the problem solving function regardless of whether ADB operational policies and procedures have been complied with. However, the problem solving function will be limited to ADB-related issues concerning ADB-assisted projects.

⁴⁰ The term "ADB-assisted project" refers to a project financed or to be financed, or administered or to be administered, by ADB; and covers both sovereign and nonsovereign operations.

142. Complaints will be excluded if they are
- (i) about actions that are not related to ADB's action or omission in the course of formulating, processing, or implementing ADB-assisted projects;
 - (ii) about matters that complainants have not made good faith efforts to address with the operations department concerned;
 - (iii) about matters already considered by the SPF, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint;
 - (iv) about an ADB-assisted project for which two or more years have passed since the loan or grant closing date;⁴¹
 - (v) frivolous, malicious, trivial, or generated to gain competitive advantage;
 - (vi) about decisions made by ADB, the borrower or executing agency, or the private sector client on the procurement of goods and services, including consulting services;
 - (vii) about allegations of fraud or corruption in ADB-assisted projects or by ADB staff;
 - (viii) about the adequacy or suitability of ADB's existing policies and procedures;
 - (ix) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal, or relate to ADB personnel matters; and/or
 - (x) about ADB's non-operational housekeeping matters, such as finance and administration.

143. The problem solving function will also exclude matters being dealt with or already dealt with by the CRP (including those that have completed the compliance review process), except those complaints considered ineligible for compliance review by the CRP.

144. The Accountability Mechanism policy will not require complainants' good faith efforts to solve problems with project-level grievance redress mechanisms as a precondition for their access to the Accountability Mechanism. However, complainants will be encouraged to first address their problems with the project-level grievance redress mechanisms to facilitate prompt problem solving on the ground.

b. Compliance Review Function

145. The CRP will examine whether the direct and material harm alleged by the complainants is the result of ADB's failure to follow its operational policies and procedures in the course of formulating, processing, or implementing an ADB-assisted project. The scope of compliance review will be ADB's operational policies and procedures as they relate to formulating, processing, or implementing an ADB-assisted project. The applicable operational policies and procedures will depend on whether the complaint concerns a proposed or an ongoing project. A "proposed project" refers to a project being prepared that has not been approved by the Board or the President (as delegated by the Board). An "ongoing project" refers to a project that has been approved by the Board or the President (as delegated by the Board). For a proposed project, the time frames refer to the policies and procedures that were in effect when the complaint was filed with the CRP. For an ongoing project, these refer to policies and procedures that were in effect at the time of the Board's or President's approval of the project, unless otherwise specified in the relevant project, procedural, or policy documents.

⁴¹ For programmatic operations, such as multitranches financing facilities, additional financing, and policy-based lending, the cutoff will be tranche- (or its equivalent) based. For projects whose loan or grant closing dates are kept open after project completion for purposes such as capitalizing interest payments and liquidation, the cutoff date will be two years after the project completion date.

146. The Board will decide whether a policy is an operational policy subject to compliance review,⁴² and the CRP will determine which part of the operational policies and procedures was or is not complied with after carrying out a compliance review. The ADB's operational policies and procedures subject to compliance review will not include guidelines and/or similar documents or statements.

147. The CRP must be satisfied that there is evidence of the coexistence of (i) direct and material harm caused by the ADB-assisted project, (ii) noncompliance by ADB with its operational policies and procedures, and (iii) the noncompliance as a cause for such harm.

148. All types of complaints excluded from the problem solving function will also be excluded from the compliance review function with the exception of item (iii) in para. 142. In addition, for the purpose of compliance review, the following will also be excluded:

- (i) complaints relating to actions that are the responsibility of other parties, such as a borrower, executing agency, or potential borrower, unless the conduct of these other parties is directly relevant to an assessment of ADB's compliance with its operational policies and procedures;
- (ii) complaints that do not involve ADB's noncompliance with its operational policies and procedures;
- (iii) complaints being dealt with by the SPF up to the completion of step 3 under the problem solving function (paras. 163-172);
- (iv) complaints relating to the laws, policies, and regulations of the DMC government concerned unless they directly relate to ADB's compliance with its operational policies and procedures; and/or
- (v) complaints about matters already considered by the CRP, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint.

149. The CRP will not consider the policies and procedures of other institutions except to the extent that ADB's policies and procedures have explicit reference to those of the other institutions.

F. How to File a Complaint

150. Complaints must be in writing and preferably addressed to the CRO. Complaints may be submitted by mail, facsimile, e-mail, or hand delivery to the CRO at ADB headquarters. Complaints from people seeking access to the Accountability Mechanism will also be accepted by any ADB office, such as a resident mission or representative office, which will forward them to the CRO. The working language of the Accountability Mechanism is English, but complaints may be submitted in any of the official or national languages of ADB's DMCs. In cases where the complaints are submitted in languages other than English, additional time will be required for translation. The identities of complainants will be kept confidential unless the complainants agree to disclose their identities, but anonymous complaints will not be accepted.⁴³

⁴² Whether a policy is subject to the Accountability Mechanism is generally indicated in the policy when it is submitted to the Board for its consideration. The ADB *Operations Manual* clearly indicates whether a specific section is subject to compliance review.

⁴³ The identities of representatives will not be kept confidential, but will be disclosed to ensure transparency.

151. The complaint must specify the following:
- (i) names, designations, addresses, and contact information of the complainants and their representative;
 - (ii) if a complaint is made through a representative, identification of the project-affected people on whose behalf the complaint is made and evidence of the authority to represent them;
 - (iii) whether the complainants choose to keep their identities confidential;
 - (iv) whether the complainants choose to undergo problem solving with the OSPF or compliance review with the CRP;
 - (v) a brief description of the ADB-assisted project, including the name and location;
 - (vi) a description of the direct and material harm that has been, or is likely to be, caused to the complainants by the ADB-assisted project;
 - (vii) a description of the complainants' good faith efforts to address the problems first with the operations department concerned, and the results of these efforts; and
 - (viii) if applicable, a description of the complainants' efforts to address the complaint with the OSPF, and the results of these efforts.
152. Complainants can also provide the following optional information:
- (i) an explanation of why the complainants claim that the direct and material harm alleged is, or will be, caused by the alleged failure by ADB to follow its operational policies and procedures in the course of formulating, processing, or implementing the ADB-assisted project;
 - (ii) a description of the operational policies and procedures that have not been complied with by ADB in the course of formulating, processing, or implementing the ADB-assisted project;
 - (iii) a description of the complainants' efforts to address the problems with the project-level grievance redress mechanisms concerned, and the results of these efforts;
 - (iv) the desired outcome or remedies that complainants believe ADB should provide or help through the Accountability Mechanism; and
 - (v) any other relevant matters or facts with supporting documents.

G. Processing Complaints

153. The complainants will decide and indicate whether they want to undergo the problem solving or compliance review function. They can exit the problem solving function and file for compliance review. Complainants can also request compliance review upon the completion of step 3 of the problem solving process (paras. 169–172) if they have serious concerns on compliance issues. Complainants can exit or disengage from either the problem solving or compliance review function at any time, which will terminate the process. However, complainants cannot switch from compliance review to problem solving during the compliance review process, or request problem solving upon the completion of a compliance review. Complainants can provide additional information or evidence on the complaint during the problem solving or compliance review processes. However, complaints about different issues will be filed as new complaints. The OSPF and CRP will determine independently whether the complaint meets their respective eligibility criteria. The OSPF and CRP will fully share information and analysis with each other on the complaint.

154. The indicative steps are described in paras.155–194. The term “days” refer to working days unless otherwise specified.

1. Receiving Complaints

155. **Step 1: Receiving and registering a complaint.** The complainants or their representative file a complaint with the CRO. Complaints received by any other ADB departments or offices from people seeking to access the Accountability Mechanism will be forwarded to the CRO. The CRO will inform the SPF, the CRP chair, and the operations department concerned about the complaint within 2 days of receiving it; attaching a copy of the complaint letter. In copying or forwarding the information, the CRO will take necessary measures to ensure the confidentiality of the complainants' identities (for example, by masking the names of the complainants) unless the complainants indicated that confidentiality is not required. The CRO will also stress to all parties concerned within ADB the importance of ensuring the confidentiality requested by complainants. The CRO will register the complaint on the Accountability Mechanism website within 2 days of receiving it. This is an administrative step and does not mean the complaint is admissible or eligible for problem solving or compliance review.

156. **Step 2: Acknowledging the complaint.** Within 2 days of receiving the complaint, the CRO will acknowledge receipt of the complaint and send an Accountability Mechanism information packet to the complainants. The CRO will inform the complainants that they can change their choice on whether to undergo the problem solving or compliance review within 21 calendar days from the date of the CRO's acknowledgement letter. The CRO will also ask the complainants to clarify their choice if this is not clearly indicated in the complaint letter.

157. **Step 3: Forwarding the complaint.** Within 5 days after the deadline for the complainants to notify the CRO of any change in their choice of either to undergo problem solving or compliance review, the CRO will decide whether to forward the complaint to:

- (i) the SPF, if the complainants indicated a choice to undergo problem solving; or
- (ii) the CRP chair, if the complainants indicated a choice to undergo compliance review; or
- (iii) other relevant departments and/or offices as appropriate if the complaints fall outside the mandate of the Accountability Mechanism, such as those on procurement or corruption, according to the relevant ADB policies.

158. The CRO will inform relevant parties within ADB, including the SPF, CRP chair, the operations department concerned, and any other departments or offices concerned, about the CRO's decision regarding where to forward the complaint. The CRO will give the relevant parties 3 days to raise any objections and concerns regarding the CRO's decision. The CRO will forward the complaint to the relevant party and copy other relevant parties if there is no objection.

159. The CRO will return the complaint to the complainants and seek their clarification if the complainants have not clearly indicated a choice for problem solving or compliance review, or if any party in ADB objects the CRO's decision regarding where to forward the complaint (paras. 157-158).

160. When the CRO needs to return the complaint to the complainants and seek their clarification, the CRO will include an information packet on ADB's Accountability Mechanism. The information packet will indicate that the complainants can choose to undertake either problem solving or compliance review. It will highlight the differences between the two functions, indicating that the problem solving function is intended to address the problems on the ground and facilitate resolution of the problem, while the compliance review function is to review ADB's

compliance with its operational policies and procedures. The resulting remedies (if any) to bring a project into compliance may or may not mitigate any harm. The information packet will also explain the procedural differences between these two functions. The CRO will give the complainants 60 calendar days from the date of the CRO's letter to respond. If the complainants do not respond by such deadline, their complaint will be treated as a new complaint.

161. **Step 4: Informing the complainants.** Within 2 days of forwarding the complaint to the relevant party, the CRO will notify the complainants and their authorized representative about where the complaint was forwarded to, and the contact person(s) for the subsequent steps.

2. The Problem Solving Function

162. The problem solving process is expected to take about 180 days from the registration of the complaint to an agreement on the remedial actions. This excludes translation time, any request for extension to provide information or file documents, and the time needed by the parties to facilitate the resolution of their problems. The SPF may draw on the project-level grievance redress mechanisms and/or the operations departments to resolve problems.

163. **Step 1: Determining eligibility.** After acknowledging the complaint, the SPF will screen the complaint and determine its eligibility within 21 days of receiving the complaint forwarded by the CRO.⁴⁴ To find a complaint eligible, the SPF must be satisfied with the following requirements: (i) the complaint satisfies all eligibility criteria and scope and does not fall within any of the exclusions (paras. 141-143); and (ii) the SPF believes, at his or her sole discretion, that the SPF's involvement could be useful.

164. In determining whether the complaint is eligible, the SPF will review whether the complainants made prior good faith efforts to solve the problems with the operations department concerned. The SPF will forward the complaint to the operations department concerned if the complainants did not make such efforts. The SPF will consult and seek information from relevant parties, such as the complainants, the borrower, and the operations department concerned. The SPF should also ascertain whether confidentiality is being requested by the complainants and take the necessary actions to ensure such confidentiality.

165. The SPF will report the decision on eligibility to the President, with a copy to the vice-president concerned, the operations department, and the CRO. The SPF will inform the complainants upon the determination of eligibility.

166. **Step 2: Review and assessment.** If the complaint is eligible, the SPF will review and assess the complaint to (i) understand the history of the complaint, (ii) confirm the stakeholders, (iii) clarify the issues of concern and the options for resolving them, (iv) explore the stakeholders' readiness for joint problem solving, and (v) recommend how the problem can best be solved.

167. The review may include site visits; interviews; and meetings with the complainants, the borrower, and any other people the SPF believes would be helpful and beneficial. The SPF will obtain information from the operations department and, if necessary, request the operations department's advice and support. The SPF will field fact-finding missions on his or her own

⁴⁴ The forwarding of the complaint by the CRO to the SPF does not constitute a determination of the eligibility of the complaint.

initiative; or participate, in consultation with the operations department, in special project administration missions of the operations department.

168. The SPF will complete the review and assessment, and report the findings to the President, with a copy to the vice-president concerned. The SPF will also send the findings to the complainants, the borrower, and the operations department concerned, with a request for their comments. Based on the assessment and taking into account the comments received, the SPF will decide, solely at his or her discretion, whether to (i) proceed with problem solving, or (ii) determine that no further problem solving efforts will be purposeful and conclude the process. The SPF is expected to take 120 days from determination of eligibility to complete the review and assessment.

169. **Step 3: Problem solving.** If problem solving proceeds, the SPF will assist the parties to engage in resolving the problem. The problem solving process will depend on the circumstances. The OSPF may facilitate a consultative dialogue, promote information sharing, undertake joint fact-finding, facilitate the establishment of a mediation mechanism, and/or use other approaches to problem solving. The time required for the problem solving will vary depending on the nature, complexity, and scope of the problems.

170. Implementing the problem solving process requires the consent of every party involved. Except for the SPF, a party can walk away from the process if the party does not consider it purposeful or if there is no consensus. This would formally close the problem solving process.

171. Remedial actions that are adopted as a result of the problem solving process will be reflected in a written agreement or series of agreements among the parties. Remedial actions involving a change in the project will require approval according to ADB's applicable procedures, and agreement by the borrower.

172. When the problem solving process has been completed (with or without any agreement), the SPF will submit a report to the President, with a copy to the vice-president and the operations department concerned, summarizing the complaint, steps to resolve the issues, decisions by the parties concerned, and the agreement, if any, by the parties concerned. The SPF will issue this report and furnish it to the complainants, the borrower, the CRP, and the Board for information.

173. Upon completion of this step, the complainants can also file for compliance review if they have serious concerns on compliance issues, to be carried out with the implementation and monitoring of the remedial actions (step 4).

174. **Step 4: Implementation and monitoring.** The relevant parties will implement the agreed upon remedial actions, and the SPF will monitor the implementation. The SPF will report annually to the President, with a copy to the Board, regarding the status of implementation. As part of the monitoring process, the SPF will consult with the complainants, the borrower, and the operations department concerned. The monitoring time frame will be project specific depending on the implementation of the remedial actions, but will generally not exceed 2 years. All stakeholders, including the public, may submit information regarding the status of implementation to the SPF.

175. The SPF's monitoring reports will be sent to the complainants, the borrower, and the operations department concerned; and submitted to the President and the Board for

information. The SPF will produce annual monitoring reports for a complaint if the monitoring time frame exceeds 1 year. If the monitoring time frame is about 1 year or less, the monitoring results may be included in the SPF final report described in step 5. In monitoring the remedial actions, the SPF can either produce monitoring reports for a single complaint or combined monitoring reports for multiple complaints.

176. **Step 5: Conclusion of the problem solving process.** When the monitoring has been completed, the SPF will prepare a final report and submit it to the President, the complainants, the borrower, the operations department, the CRP, the BCRC, and the Board for information. The SPF can either produce a final report for a single complaint or a combined final report for multiple complaints.

3. The Compliance Review Function

177. The complainants will be informed about whether the Board has authorized the compliance review they have requested about 70 days after receipt of the CRO's notification of registration of the complaint. They will be informed of the outcome of the Board decision on the CRP final report about 200 days after the receipt of the notification of registration of the complaint. These periods exclude time for translation, any request for extension to provide information or file documents, and the time for conducting the compliance review, which is not time-bound (paras. 183-184).

178. **Step 1: Requesting Management response.** After acknowledging the complaint, the CRP will carry out the initial assessment and confirm whether the complaint falls within the mandate of the compliance review function within 5 days of receiving the complaint forwarded by the CRO. After satisfying this, the CRP will forward the complaint to Management and request a response within 21 days. In its response, Management must provide evidence that (i) ADB has complied with the relevant ADB policies and procedures; or (ii) there are serious failures attributable exclusively to ADB's actions or omissions in complying with its policies and procedures, but Management intends to take actions to ensure compliance, as appropriate. The CRP will copy the BCRC in its correspondence with the Management. The CRP will inform the DMC and the Board member representing the DMC concerned about receipt of the complaint. The CRP should ascertain whether confidentiality is being requested by the complainants and take the necessary actions to ensure such confidentiality.

179. **Step 2: Determining eligibility.** Within 21 days of receiving the Management's response, the CRP will determine the eligibility of the complaint.⁴⁵ The CRP will review the complaint, Management's response, and other relevant documents. To find a complaint eligible, the CRP must be satisfied that the complaint meets all the eligibility criteria, satisfies the scope, and does not fall within the exclusions (para. 142 and paras. 145-149). The CRP must be satisfied that (i) there is evidence of noncompliance; (ii) there is evidence that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people; and (iii) the noncompliance is serious enough to warrant a compliance review.

180. As part of the eligibility determination, the CRP will review and determine whether the complainants made prior good faith efforts to resolve issues with the operations department concerned. The CRP will forward the complaint to the operations department concerned if the complainants did not make such efforts.

⁴⁵ The forwarding of the complaint by the CRO to the CRP does not constitute a determination of the eligibility of the complaint.

181. The CRP will inform the complainants, the borrower, the Board member representing the borrowing country, Management, and the operations department concerned of its determination concerning eligibility.

182. **Step 3: Board authorization of compliance review.** The CRP will submit its eligibility report through the BCRC to the Board, attaching the complaint and Management's response. If the CRP determines that the complaint is eligible, it will recommend, through the BCRC, that the Board authorize a compliance review. Within 21 calendar days from receipt of the CRP's recommendation, the Board will decide whether to authorize the compliance review on a no-objection basis and without making a judgment on the merits of the complaint. Within 7 days from receipt of the Board's authorization, the OCRP will inform the complainants of the Board's decision.

183. **Step 4: Conducting compliance review.** The BCRC will clear the compliance review TOR prepared by the CRP. The TOR will include the scope, methodology, estimated review time frame, budget, CRP member(s), and other necessary information for the review. Within 10 days from the receipt of the Board's authorization to conduct the compliance review, the TOR will be provided to the Board and copied to Management.

184. The CRP will begin the compliance review upon receiving the Board's authorization of the compliance review and the BCRC's clearance of the TOR. The time required for the CRP's review will vary depending on the nature, complexity, and scope of the project and the alleged noncompliance. Throughout the compliance review process, the CRP will consult, as appropriate, all relevant parties concerned, including the complainants, the borrower, the Board member representing the country concerned, Management, and staff. They will be given an opportunity to record their views, if any. The compliance review may include desk reviews, meetings, discussions, and a site visit.

185. **Step 5: Compliance Review Panel's draft report.** Upon completion of its compliance review, the CRP will issue a draft report of its findings to the complainants, the borrower, and Management for comments and responses within 45 days. The CRP will also forward the draft report to the BCRC for its review. Each party will be free to provide comments, but only the CRP's final view on these matters will be reflected in its final report.

186. The CRP compliance review report will focus on the specific complaint. It will document the CRP's findings concerning any noncompliance, and alleged direct and material harm. It will include all relevant facts that are needed to fully understand the context and basis for the CRP's findings and conclusions. It will focus on whether ADB failed to comply with its operational policies and procedures in formulating, processing, or implementing the project in relation to the alleged direct and material harm. It will also ascertain whether the alleged direct and material harm exists. If noncompliance is found and the alleged direct and material harm is confirmed, the report will focus on establishing the noncompliance as a cause for the alleged harm.

187. For assessing direct and material harm, the without-project situation will be used as the base case for comparison, taking into consideration the availability of information. Non-accomplishments and unfulfilled expectations that do not generate direct and material harm

compared to the without-project situation will be excluded.⁴⁶ Because the assessment of direct and material harm in the context of the complex reality of a specific project can be difficult, the CRP will exercise careful judgment on these matters and will be guided by ADB policies and procedures where relevant.

188. **Step 6: Compliance Review Panel's final report.** Within 14 days of receiving the responses to the CRP's draft report from the complainants, the borrower, and Management, the CRP will consider these responses and make changes as necessary before the CRP issues its final report to the Board through the BCRC. The CRP's final report will attach the responses from the complainants, the borrower, and Management, and a matrix prepared by the CRP summarizing how it has responded to such responses. The CRP's findings will be reached by consensus among the panel members. In the absence of a consensus, the majority and minority views will be stated.

189. **Step 7: Board consideration of the Compliance Review Panel Report.** Within 21 calendar days of receiving the CRP's final report, the Board will consider the report. Within 7 days after the Board's consideration, the CRP's final report, with the responses from the complainants, the borrower, and Management attached, will be released to the complainants and the borrower.

190. **Step 8: Management's remedial actions.** If the CRP concludes that ADB's noncompliance caused direct and material harm, Management will propose remedial actions⁴⁷ to bring the project into compliance with ADB policies and address related findings of harm. Because the legal ownership of the project lies with the borrower, which also has the principal responsibility for implementing the remedial actions, Management must obtain the agreement of the borrower on the remedial actions. Management may consult the CRP in developing the remedial actions. Management will refer its draft remedial actions to the CRP and seek its comments to be provided within 5 days. Upon receiving the CRP comments, Management will submit a report on the proposed remedial actions to the Board, attaching the CRP comments. The report will include the parties responsible for implementing the remedial actions, estimates of costs to implement the remedial actions, and parties to shoulder the costs. The expected duration between the Board's consideration of the CRP final compliance review report and Management's submission of the proposed remedial actions to the Board is 60 days.

191. **Step 9: Board's decision.** The Board will consider Management's proposed remedial actions within 21 calendar days of receiving them. The Board will make a decision regarding the remedial actions to bring the project into compliance and/or mitigate any harm, as appropriate. Within 7 days after the Board's consideration, the Board's decision, Management's remedial actions, and the CRP comments will be released to the complainants and the borrower.

192. **Step 10: Monitoring and conclusion.** The CRP will monitor implementation of any remedial actions approved by the Board. It will report to the Board concerning implementation of Board decisions related to remedial measures, including its determination on the progress in bringing the project into compliance.

⁴⁶ During the eligibility determination or the compliance review, if the CRP finds that the alleged direct and material adverse effect is not totally or partially caused by ADB's noncompliance, its eligibility determination and/or compliance review report will state this without analyzing the direct and material adverse effect itself or its causes.

⁴⁷ These may include an action plan.

193. Any remedial actions in relation to project scope or implementation approved by the Board will be carried out in accordance with applicable ADB policies and procedures. Unless the Board specifies a different timetable, the CRP will report on the progress annually. The CRP chair, in consultation with the BCRC, will determine which CRP member(s) will conduct the monitoring exercise each year. The monitoring time frame will be project-specific depending on the implementation of the remedial actions, but will generally not exceed 3 years. The final monitoring report will also conclude the compliance review process.

194. The methodology for monitoring may include (i) consultations with the complainants, the borrower, the Board member concerned; Management; and staff; (ii) a review of documents; and (iii) site visits. The CRP will also consider any information received from the complainants and the public regarding the status of implementation. The CRP will forward its draft monitoring reports to the BCRC for review. It will finalize the reports in consultation with the BCRC before making them available to the complainants, the borrower, the Board, Management, staff, and the public.

4. Operations Departments' Tracking of Complaints and Roles

195. Operations departments will address problems or issues relating to complaints forwarded to them by the OSPF or CRP because the complainants did not make prior good faith efforts to solve the problems or issues with the departments. Operations departments should ascertain whether confidentiality is being requested by the complainants and take the necessary actions to ensure such confidentiality. Operations departments will track the process and results in resolving these complaints. They can develop a tracking system. In doing so, they may take advantage of the existing project complaint tracking systems, such as the system developed by the OSPF in 2009 in collaboration with the Office of Information Systems and Technology and the India Resident Mission. Operations departments, including resident missions, are encouraged to keep records of meetings, correspondence, and other relevant information regarding complaints.

196. At the end of the process of addressing the ineligible complaints forwarded to the operations departments by the OSPF or CRP, the operations department will produce a report summarizing the complaint, issues, actions taken to address the problems or issues, decisions or agreements by parties concerned, results, and lessons.

197. Operations departments play an essential role in problem prevention, problem solving, and ensuring compliance, as follows:

- (i) As a part of project design and implementation, operations departments engage in day-to-day problem prevention, problem solving, and prevention of noncompliance with ADB's operational policies and procedures.
- (ii) During the Accountability Mechanism processes, operations departments contribute to smooth problem solving, and provide necessary cooperation for the effective compliance review.
- (iii) Operations departments are a key party in ensuring the implementation of the remedial actions as a result of the Accountability Mechanism processes.

H. Site Visits

198. Site visits should be a routine and noncontroversial aspect of the Accountability Mechanism. ADB will adopt a partnership approach to help ensure that necessary site visits by the CRP take place. Goodwill and collaboration between the CRP and the borrowing countries

will be necessary. Site visits will take place in consultation with the borrowing country and after obtaining the borrowing country's consent for both sovereign and nonsovereign operations. ADB expects borrowing countries to cooperate and allow site visits to take place.

199. The CRP is responsible for arranging site visits and ensuring the independence of the process. Management and staff, especially those in resident missions, will facilitate the CRP visits when required and when requested by the CRP. Resident missions may assist in obtaining the borrowing country government's consent, and may share the site visit and compliance review TOR with the borrowing country government. The TOR will clearly explain why a site visit is necessary, what will be reviewed, and how it will be conducted. The scope of the TOR will be limited to the specific complaint. The CRP is encouraged to seek the assistance of the ADB Board member representing the borrowing country, and will share the TOR with the Board member before submitting a mission request to the DMC through the resident mission.

200. If a site visit is declined, Management will discuss with the borrowing country the reasons for not accepting the requested visit. In consultation with the BCRC and the borrowing country, Management will convey the reasons to the Board through an information paper.

201. If a site visit is declined, the CRP will complete the compliance review and deliver its findings and final views without a site visit. The CRP will use all available information, and may make appropriate assumptions and draw appropriate inferences in completing the compliance review. The CRP will present the best and most detailed analysis possible after exhausting the most cost-effective and logical alternative means to acquire the necessary information. In the absence of a necessary site visit, the CRP may give added weight to the complainants' views.

I. Transparency and Information Disclosure

202. The OSPF and CRP operations will be as transparent as possible, both within ADB and with the public. Information disclosure to the public will be consistent with the fundamentals of the Public Communications Policy (2011). The proposed disclosure requirements are set out in Appendix 9.

203. A common ADB Accountability Mechanism website will be set up within the ADB website to disseminate information on both problem solving and compliance review to enable easy access and ensure synergy. The OSPF and OCRP will have their own components within this common website. Any other information related to the Accountability Mechanism will also be posted on the common Accountability Mechanism website.⁴⁸ The common pages (the so-called landing pages) linking the OSPF and OCRP components, and other information related to the Accountability Mechanism within the site, will be regularly updated and improved. The OSPF and CRP will each have distinctive logos and letterheads, but their logos and letterheads will be placed under a common ADB Accountability Mechanism logo and letterhead. The OSPF and OCRP outreach to the public will include an introduction to the Accountability Mechanism in general, while also focusing on specific subjects.

204. The nature of problem solving and compliance review demands an appropriate degree of confidentiality. For example, general descriptions about the process and final solution can be

⁴⁸ The OSPF and CRP currently have separate websites, with information on the Accountability Mechanism scattered between them and as well as other websites. This fragmented arrangement will be rectified by having one Accountability Mechanism website within ADB's public website.

made public, but substantive details about the discussions should be kept confidential. The final agreement and resolution will also be kept confidential if the parties so request. Any information submitted to the OSPF or OCRP on a confidential basis may not be released to any other parties without the consent of the party that submitted it. When requested, the SPF and CRP may withhold the identities of the complainants from other stakeholders.

205. The SPF and CRP chair will have the authority to issue press releases and public communications, as appropriate. Before doing so, the SPF or CRP will inform DER, not for purposes of review, but to provide ADB with an opportunity to prepare responses to queries from the media or the public.

206. The SPF and CRP, and all staff working on the Accountability Mechanism, will exercise discretion and maintain a low profile while making site visits or otherwise operating in the borrowing country. The SPF and CRP will not give any media interviews at any stage of the Accountability Mechanism process.

J. Application

207. The Accountability Mechanism applies to all ADB-assisted sovereign and nonsovereign operations. In cases where country safeguard systems are used for ADB-assisted projects in accordance with the Safeguard Policy Statement (2009), the use of the country safeguard systems will not alter the role and function of ADB's Accountability Mechanism, including the role of the OSPF and CRP. In the event of a claim, the CRP could examine ADB's assessment of the equivalence between ADB's policy scope, triggers, and applicable principles with the country safeguard systems (and any additional measures agreed upon to achieve equivalence) in materially achieving the objectives of the Safeguard Policy Statement, as well as ADB's project supervision in accordance with the Safeguard Policy Statement (para. 20, page 81). The Accountability Mechanism will also apply to ADB-administered cofinancing operations.

K. Awareness and Learning

208. The OSPF and OCRP should update their outreach strategies regularly (for example, every 3 years). The OSPF, OCRP, and staff should undertake three kinds of outreach activities to achieve a positive culture change.

209. **Internal.** This outreach should improve awareness and disseminate lessons to ADB staff through workshops, training courses, and orientation sessions. The Accountability Mechanism should be included as part of regular staff training. The Accountability Mechanism should be seen as an important instrument for learning, and for ensuring project quality and development effectiveness. The SPF and OSPF, the CRP and OCRP, staff, Management, and the Board should all promote a culture change to eliminate the remaining perception that the Accountability Mechanism is adversarial.

210. **National level.** The OSPF and OCRP should hold regular dissemination activities in DMCs. They should distribute simple, pictorial-based and user-friendly descriptions of the mechanism. In each resident mission, a staff member should be designated as a focal person for handling grievances caused by ADB financed projects. Some resident missions have already assigned such focal persons; this practice should be extended to all resident missions.

211. **Project level.** Improving the awareness of the Accountability Mechanism requires that ADB staff work as conduits to disseminate information. 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. The Safeguard Policy Statement requires that grievance redress mechanisms be set up at the project level. It also requires government staff and/or project proponents working on the grievance redress mechanisms to organize awareness seminars in coordination with resident missions, project teams, local government units, and executing agencies. ADB can explore the possibility of outsourcing outreach activities to credible NGOs or civil society organizations. Gender issues will be taken into consideration when designing the outreach strategy.

212. The joint learning reports by OSPF, OCRP, IED, and RSDD will distill ADB's experience, insights, and lessons, including the Accountability Mechanism's development impacts, benefits, and costs. The Accountability Mechanism annual reports will (i) outline key activities and outputs of the Accountability Mechanism; (ii) summarize the complaints; (iii) analyze the development impact of the Accountability Mechanism; (iv) discuss the benefits; (v) record and monitor the direct and indirect costs on project-affected people, the borrowers, and ADB for each project; and (vi) provide other relevant information and analysis. To guide future policy design and implementation, Management will engage expert(s) to undertake a study on the benefits and costs of the revised Accountability Mechanism.⁴⁹

L. Effective Date and Transition Period

213. The revised Accountability Mechanism will become effective 3 months after the date of the Board of Directors' approval of the policy, superseding the 2003 Accountability Mechanism policy (footnote 2).⁵⁰ Complaints and/or requests filed before the effectiveness of the revised Accountability Mechanism policy will follow the 2003 Accountability Mechanism policy and related procedures.

VI. RESOURCE IMPLICATIONS

214. The proposed changes in the Accountability Mechanism policy are expected to have resource implications for ADB in the following areas:

- (i) More outreach activities will require additional resources. The OSPF and OCRP spent about \$130,000 in 2010 on outreach. Assuming that the outreach expenditures were to double, an annual incremental cost of about \$130,000 will be required.

⁴⁹ This is akin to a regulatory impact assessment. The study will assess the impacts of both the 2003 Accountability Mechanism and the revised Accountability Mechanism policy. It will analyze the incremental impacts induced by the changes introduced in the revised policy. In analyzing the costs, the study will especially cover items (vii) and (viii) in the terms of reference on the review of the Accountability Mechanism (para. 5, Appendix 1).

⁵⁰ The 2003 policy requires the OSPF and CRP to prepare operating and administrative procedures. These procedures are not recommended under this revised policy to reduce duplication and increase transparency. Any necessary operating and administrative procedures will be reflected in the policy and/or the *Operations Manual*.

- (ii) The proposal that each resident mission assign a staff member as a focal person for handling grievances caused by ADB financed projects will mean additional costs. Some resident missions will assign existing staff as the focal persons. However, some resident missions will require additional staff. The annual incremental cost for the focal persons is estimated to be \$220,000.
- (iii) The engagement of a full-time CRO will require additional costs. The estimated annual cost will be \$50,000.
- (iv) Some costs will be reduced because the OCRP will have one fewer international staff member and one fewer administrative or national staff member. The reduction is estimated to be \$250,000.

215. The net annual cost increase from these items is estimated to be \$150,000.⁵¹ Thus, the overall budget implications from the policy changes are expected to be moderate. This estimate represents the direct operating costs to ADB. Other direct and indirect costs to project-affected people, DMCs, and ADB will depend on the number and nature of the complaints.

VII. RECOMMENDATION

216. The President recommends that the Board approve the revised Accountability Mechanism policy as described in Section V of this paper.

⁵¹ The cost estimation does not include annual increases because of inflation and salary adjustments. These incremental costs need to be added during the implementation of the revised Accountability Mechanism policy.

TERMS OF REFERENCE FOR REVIEW OF THE ACCOUNTABILITY MECHANISM

1. In 1995, the Asian Development Bank (ADB) established its Inspection Function to provide a forum for project beneficiaries to appeal to an independent body regarding matters relating to ADB's compliance with its operational policies and procedures in ADB-assisted projects.¹ In 2003, following an extensive review, ADB introduced the current Accountability Mechanism,² building on the Inspection Function. The Accountability Mechanism was designed to enhance ADB's development effectiveness and project quality; be responsive to the concerns of project-affected people and fair to all stakeholders; reflect the highest professional and technical standards in ADB staffing and operations; be as independent and transparent as possible; and be cost-effective, efficient, and complementary to the other supervision, audit, quality control, and evaluation systems already in place at ADB. The Accountability Mechanism was declared effective on 12 December 2003. At the 43rd Annual Meeting of the Board of Governors of ADB in Tashkent, Uzbekistan in May 2010, the President announced that ADB would undertake a review of its Accountability Mechanism. A joint Board and Management working group was subsequently established for this purpose.

2. The objective of the review is to examine the scope for improvements in the Accountability Mechanism. The review will be broad-based and include the following aspects:

- (i) an analysis of the effectiveness and adequacy of the Accountability Mechanism in light of its historical perspectives and objectives, and the principles contextualized in the 2003 Accountability Mechanism policy;
- (ii) an evaluation of ADB's experience with the Accountability Mechanism since 2003, reflecting the changing context of ADB operations, especially the adoption of Strategy 2020;³
- (iii) comparison and analysis of ADB's Accountability Mechanism with other relevant comparators;
- (iv) consultation with stakeholders including the public, project-affected people, governments, ADB Board members, Management, operations staff, and nongovernment and civil society organizations;
- (v) the addressing of key issues arising out of the analysis, comparison, evaluation, and consultation; and
- (vi) recommendations, based on this analysis, for changes and improvements in the policies, the functioning of the Accountability Mechanism, and its operating and administrative procedures.

3. The review will include public consultation to be carried out in three phases. The first phase will be inviting public comments on the Accountability Mechanism policy through the ADB website. The second phase will be country consultations in developed and developing member countries. The proposed locations were Frankfurt, Islamabad, Jakarta, Manila, Tokyo, and Washington, DC.⁴ Consultation will include governments, nongovernment organizations, the private sector, and, where possible, project beneficiaries and affected people. The third phase will be an invitation for public comments on the working group report through the ADB website, for which a dedicated Accountability Mechanism review website was established.

¹ ADB. 1995. *Establishment of an Inspection Function*. Manila.

² ADB. 2003. *Review of the Inspection Function: Establishment of a New Accountability Mechanism*. Manila.

³ ADB. 2008. *Strategy 2020: The Long-Term Strategic Framework of the Asian Development Bank, 2008–2020*. Manila.

⁴ Islamabad was later replaced with Colombo, Sri Lanka because of flooding in Pakistan in late 2010.

5. The following key issues were included in the external experts' terms of references:
- (i) the approach to site visits under the existing Accountability Mechanism, which requires permission from the borrowing country to carry out site visits;
 - (ii) limited recourse to the compliance review phase;
 - (iii) the mechanism's degree of independence, including reporting lines, ownership, and dissemination of Accountability Mechanism documents and materials, as well as issues of budgeting, staffing, performance assessment, access to independent legal advice, and the right to engage experts and consultants;
 - (iv) affected people's access to the mechanism;
 - (v) eligibility criteria for filing a complaint;
 - (vi) the effectiveness of the Office of the Compliance Review Panel and ADB in disseminating information and conducting public outreach, indicated by awareness of the ADB Accountability Mechanism;
 - (vii) an assessment of the implications of bringing projects into compliance in terms of time required, delays, and increased financial costs;
 - (viii) the concerns of developing member countries in particular and the broader impact that the Accountability Mechanism has had on ADB's approach to decision making and project selection;
 - (ix) from the experience of ADB and similar institutions, the extent of benefits obtained by complainants and/or adversely affected people; and
 - (x) any other issues viewed as important for improving the ADB Accountability Mechanism.

SUMMARY OF THE CONSULTATION PROCESS

1. The Asian Development Bank (ADB) is committed to consulting all stakeholders to ensure the quality of the Accountability Mechanism review. As an integral part of the review, ADB carried out intensive and extensive public consultations beginning in June 2010.
2. The consultation process included
 - (i) consulting with all Board members, Management, and a large number of staff in both headquarters and field offices;
 - (ii) consulting a broad spectrum of external stakeholders, including project-affected people, project beneficiaries, project executing and implementing agencies, governments, nongovernment organizations, the private sector, academia, think tanks, and people working on accountability mechanisms of other institutions;
 - (iii) holding in-country and regional consultations in six countries—Germany, Indonesia, Japan, the Philippines, Sri Lanka, and the United States—and consulting Canadian stakeholders through a videoconference;
 - (iv) establishing a dedicated website for the review (<http://www.adb.org/AM-Review/>) and posting four papers for public comments on the review website: (a) the 2003 Accountability Mechanism policy, which was posted for 12 weeks from June to September 2010; (b) the review's first consultation policy, posted for 8 weeks from February to April 2011; (c) the working paper posted for 1 month from April to June 2011; and (d) the second consultation paper posted from July to August 2011; and
 - (v) posting all public comments received on the review website, along with summaries of in-country consultations; and the external experts' issues paper, presentations, and various drafts of the review reports.
3. The working group on the review was highly transparent throughout the Accountability Mechanism review process. The Accountability Mechanism review website includes information on the composition of the working group, the review terms of reference, the review timetable, the external experts' issues paper, the external experts' report, and various drafts of the review paper. All the draft policy papers were released to the public on the same day as they were circulated to the Board for consideration. Important documents, such as the consultation policy paper, were translated into several languages of developing member countries (DMCs). To ensure wide participation, invitations to comment on the Accountability Mechanism policy drafts and participation in in-country workshops were extended to all interested stakeholders by posting it on the Accountability Mechanism review website. ADB provided written responses on key points received from the consultation process and released them on the review's website. ADB acknowledges with thanks the inputs of all workshop participants and all contributors who provided comments during the consultations.
4. Since June 2010, the working group has frequently held meetings to discuss the issues, public consultations, options, and the direction of the review. The Board met three times in informal Board seminars to discuss the terms of reference of the review, the external experts' review report, and the working group's consultation policy paper.
5. The review paid special attention to reaching project-affected people. The review mission met with project-affected people, project beneficiaries in general, and those who requested meetings in the DMCs it visited. To learn from similar mechanisms, the review mission met with the people working on the accountability mechanisms of the World Bank, International Finance

Cooperation, European Investment Bank, Inter-American Development Bank, Japan Bank for International Cooperation, and Overseas Investment Corporation of the United States. The mission also met with staff of the United States Agency for International Development. The outcome of all public consultations, including a summary and presentation of group findings in the workshops, are posted on the review's website.

6. Consultations were fruitful and benefited from the wide participation of stakeholders. Feedback reinforces the validity of problem solving and compliance review in the ADB Accountability Mechanism. Both functions are seen as integral parts of the Accountability Mechanism that effectively complement each other. Many stakeholders acknowledged the innovation and many other strengths of the 2003 Accountability Mechanism. While stakeholders agree on many issues, there is much debate on some others:

- (i) **Site visits.** While some stakeholders believe site visits should be mandatory, others argue they should take place only with the consent of the borrowing country.
- (ii) **Direct access to the compliance review phase.** Some stakeholders consider it desirable and logical to start with the problem solving function. Others hold that affected people should be able to choose which function to start with.
- (iii) **Eligibility criteria for filing complaints.** Some stakeholders suggest that cutoff dates for filing complaints should be clarified and extended beyond the issuance of the project completion report, that individuals should be allowed to file complaints instead of the current minimum requirement of two people, and that people who are indirectly and not materially harmed should be able to file complaints. Other stakeholders consider current eligibility criteria to be sound.
- (iv) **Mandate of the Accountability Mechanism.** Some stakeholders suggest that the mandate of the Accountability Mechanism should be expanded to cover procurement and anticorruption measures, while others argue that the Accountability Mechanism should focus on solving problems and compliance with ADB operational policies and procedures, noting that procurement and corruption issues are covered by other dedicated mechanisms.
- (v) **Number of requests to the Compliance Review Panel.** Some stakeholders believe that the sequential approach prevented some people from participating in the compliance review phase. Others argue that the sequential process is justified and that the limited number of compliance review cases is a result of the existence of other problem solving and compliance functions in projects and operational departments.
- (vi) **Costs to developing member countries.** Some believe that the Accountability Mechanism imposes significantly higher costs on DMCs than other policies, such as safeguard policies. Others believe that the cost to ensure compliance is necessary for achieving project quality.

7. More information on the consultation and other aspects of the Accountability Mechanism is available at <http://www.adb.org/AM-Review/>.

EXPERIENCE SINCE 2003

A. The Consultation Phase

1. The Office of the Special Project Facilitator (OSPF) received 39 complaints from the time the Accountability Mechanism became effective in December 2003 until the end of 2011.¹ Of these, 13 were found eligible, 24 were ineligible, and eligibility determination for 2 complaints is ongoing. On average, the OSPF received about 5 complaints a year (Table A3.1).

Table A3.1: Complaints Received by Office of the Special Project Facilitator, By Year

Year	Total Complaints	Eligible Complaints
2004	3	2
2005	1	1
2006	6	1
2007	2	1
2008	0	0
2009	13	4
2010	7	2
2011 ^a	7	2
Total	39	13

^a Two complaints are undergoing eligibility assessment.

Source: Office of the Special Project Facilitator complaints registry as of 31 December 2011.

2. Of the 24 ineligible complaints, the complainants in 15 cases had not made prior good faith efforts to solve the problems with the operations departments of the Asian Development Bank (ADB); the complainants in 3 cases were not materially and adversely affected by ADB-assisted projects; 2 complaints were filed after the project completion reports (PCRs) had been issued; concerns had been addressed or efforts were under way when 2 complaints were received; and 2 complaints were related to procurement issues, which were handled by the Central Operations Services Office. Table A3.2 presents the reasons why complaints were found ineligible.

Table A3.2: Reasons Complaints Were Found Ineligible, 2004–2011

Reasons	Number	Share of Total (%)
Complainants had not first addressed the problems with the concerned operations departments	15	62.5
Complainants were not materially and adversely affected by the project	3	12.5
Project completion report issued	2	8.3
Procurement related	2	8.3
Efforts to address problems by the operations departments were under way or concerns had been addressed	2	8.3
Total	24	100.0

Source: Office of the Special Project Facilitator complaints registry as of 31 December 2011.

3. The transportation infrastructure sector had the most complaints (17), accounting for 43.6% of the total. It was followed by water and other municipal infrastructure and services with 9 complaints. The high number of complaints in these sectors was partly the result of their large

¹ The cases received by OSPF are termed “complaints” in the 2003 policy.

portfolio of projects. Overall, the infrastructure sectors (transport, water, and energy) accounted for 79.5% of the complaints, consistent with the share of these projects in the ADB portfolio (Table A3.3).

Table A3.3: Complaints Received by Sector, 2004–2011

Sector	Total	Share of Total (%)
Transportation infrastructure	17	43.6
Water and other municipal infrastructure and services	9	23.1
Energy	5	12.8
Agriculture and natural resources	4	10.3
Industry and trade	1	2.6
Rural infrastructure	1	2.6
Education	1	2.6
Regional technical assistance	1	2.6
Total	39	100.0

Note: Percentages may not total 100% because of rounding.

Source: Office of the Special Project Facilitator complaints registry as of 31 December 2011.

4. Most of the complaints (65.9%) were related to resettlement, inadequate information, and consultation and participation. Within resettlement, the major complaints concerned insufficient compensation (Table A3.4).

Table A3.4: Issues Raised in Complaints, 2004–2011

Issues	Number of Times Raised in Complaints	Share of Total (%)
Resettlement, compensation, and land acquisition	32	36.4
Information	15	17.0
Consultation and participation	11	12.5
Agriculture, natural resources, and environment	11	12.5
Village infrastructure ^a	8	9.1
Community and social issues ^b	5	5.7
Livelihood	2	2.3
Others ^c	4	4.5
Total	88	100.0

^a This includes school reconstruction, bus stops, underpass for agricultural machinery, cattle passes, and distributary links.

^b This includes issues on gender, health, social uplift program, social impact assessment, and indigenous people.

^c This includes issues on high electricity rates, power sector reform, and procurement.

Source: Office of the Special Project Facilitator complaints registry as of 31 December 2011.

B. The Compliance Review Phase

5. The Compliance Review Panel (CRP) received five requests for compliance review during 2004–2011, of which four were eligible and one was ineligible.

6. The CRP carried out a site visit to determine eligibility in response to a request for compliance review in the Nepal Melamchi Water Supply Project.² However, the CRP could not

² ADB. 2000. *Report and Recommendation of the President to the Board of Directors: Proposed Loan to Nepal for the Melamchi Water Supply Project*. Manila (Loan 1820-NEP for \$120 million, approved on 21 December 2000).

ascertain the alleged harm and noncompliance, and the request was deemed ineligible. The CRP carried out a compliance review on the Sri Lanka Southern Transport Development Project and monitored the implementation of remedial actions for 5 years. The final monitoring mission was completed in March 2011.³

7. On the Fuzhou Environmental Improvement Project⁴ in the People's Republic of China, the CRP issued its report in October 2010 without a conclusion.⁵ The CRP stated it would be inappropriate to issue any findings or make any recommendations without a site visit. The CRP monitored the implementation of the inspection panel's recommendations on the Chashma Right Bank Irrigation Project (Stage III) in Pakistan⁶ between 2004 and 2010, although security conditions had precluded any CRP site visits since 2007. The CRP found the last two requests,⁷ from the Kyrgyz Republic⁸ and the Philippines,⁹ to be eligible.

Table A3.5: Requests for Compliance Review

Request Number	Date Received ^a	Project Name
2011/1	25 May 2011	Philippines: Visayas Base-Load Power Development Project (Loan No. 2612/7303-PHI). Eligible.
2011/2	23 May 2011	Kyrgyz Republic: CAREC Transport Corridor (Bishkek–Torugart Road) Project 2 (Loan No. 2533-KGZ(SF)). Eligible.
2009/1	3 Jun 2009	People's Republic of China: Fuzhou Environmental Improvement Project (Loan No. 2176-PRC). Eligible.
2004/2	6 Dec 2004	Nepal: Melamchi Water Supply Project (Loan No. 1820-NEP). Ineligible.
2004/1	2 Dec 2004	Sri Lanka: Southern Transport Development Project (Loan No. 1711-SRI). Eligible.

Special Monitoring Mandate: Chashma Right Bank Irrigation Project (Stage III). In August 2004, the directors approved the CRP monitoring the implementation of the Board decision on the inspection request for this project. This is a unique monitoring mandate for the CRP.

CRP = Compliance Review Panel, SF = Special Funds.

^a with requisite basic information.

Source: Compliance Review Panel registry of requests.

³ ADB. 1999. *Report and Recommendation of the President to the Board of Directors: Proposed Loan to the Democratic Socialist Republic of Sri Lanka for the Southern Transport Development Project*. Manila (Loan 1711–SRI[SF] for \$90 million, approved on 25 November 1999).

⁴ ADB. 2005. *Report and Recommendation of the President to the Board of Directors: Proposed Loan to the People's Republic of China for the Fuzhou Environmental Improvement Project*. Manila (Loan 2176-PRC for \$55.8 million, approved on 29 July 2005).

⁵ ADB. 2010. *Report to the Board of Directors on the Compliance Review Process for Request No. 2009/1, Regarding the Fuzhou Environmental Improvement Project*. Manila (Loan 2176-PRC).

⁶ ADB. 1991. *Report and Recommendation of the President to the Board of Directors: Proposed Loan and Technical Assistance to the Islamic Republic of Pakistan for the Chashma Right Bank Irrigation Project (Stage III)*. Manila (Loan 1146-PAK for \$185 million, approved on 17 December 1991).

⁷ The cases received by the CRP are referred to as “requests” in the 2003 policy.

⁸ ADB. 2009. *Report and Recommendation of the President: Proposed Loan and Asian Development Fund Grant to the Kyrgyz Republic for the CAREC Transport Corridor 1 (Bishkek–Torugart Road) Project 2*. Manila (Loan 2533-KGZ for \$28 million, approved on 14 July 2009).

⁹ ADB. 2009. *Report and Recommendation of the President to the Board of Directors: Proposed Loan for the Visayas Base-Load Power Development Project in the Philippines*. Manila (Private Sector Loan 7303-PHI for \$100 million, approved on 11 December 2009).

SUMMARY OF ELIGIBLE COMPLAINTS FOR THE CONSULTATION PHASE, 2004–2011

Projects	Complainants and Issues	Status
<p>1. Melamchi Water Supply Project in Nepal (Loan 1820-NEP [SF], approved on 21 December 2000)</p> <p>ADB: \$120 million, with seven cofinanciers</p>	<p>The complaints were received on 3 May 2004. Four individuals filed complaints regarding</p> <ul style="list-style-type: none"> (i) access to information; (ii) environmental impact assessments; (iii) land acquisition, compensation, and resettlement; (iv) indigenous people; (v) the social upliftment program; (vi) agriculture; and (vii) forestry. <p>The OSPF carried out a review and site visit. It concluded that two of the complainants were not adversely or materially affected and that the remaining two were affected but treated fairly by the project and, where appropriate, received compensation.</p>	<p>The complainants withdrew and filed a request with the CRP on 6 December 2004. After its eligibility mission, the CRP deemed the case ineligible.</p>
<p>2. Southern Transport Development Project in Sri Lanka (Loan 1711-SRI [SF], approved on 25 November 1999)</p> <p>ADB: \$90 million JBIC: \$120 million</p>	<p>Complaints were received on 9 June 2004 from three NGOs representing 25 complainants regarding</p> <ul style="list-style-type: none"> (i) environmental impact assessments, (ii) the social impact assessment, and (iii) compensation and resettlement. 	<p>The complaint was concluded without a resolution. The OSPF retained an external mediator who concluded that the complainants' grievances could not be resolved by a mediated settlement. The complainants filed a request with the CRP on 2 December 2004.</p>
<p>3. Community Empowerment for Rural Development Project in Indonesia (Loan 1765-INO, approved on 19 October 2000)</p> <p>ADB: \$65 million from OCR and \$50 million from Special Funds</p>	<p>The complaint was received on 21 February 2005. It was filed by eight people: three representing NGOs and five villagers who requested confidentiality. The issues raised regarded</p> <ul style="list-style-type: none"> (i) flaws in the design and construction of village infrastructure, (ii) the sequencing of project components, (iii) information dissemination, and (iv) participation in decision making. 	<p>The issues were resolved to the satisfaction of all parties.</p> <p>In its final report, the OSPF concluded that it was "confident that future complaints will be dealt with efficiently through [the] project's complaint mechanism at the local level."^a</p>
<p>4. National Highway Development Sector Investment</p>	<p>The complaint was received on 9 September 2006, filed by the Committee of Affecteds of</p>	<p>Issues raised in the complaint were resolved to the satisfaction of all parties.</p>

Projects	Complainants and Issues	Status
<p>Program, Tranche 1, in Pakistan (Loan 2231-PAK, approved on 15 February 2006)</p> <p>ADB: \$180 million from OCR</p>	<p>Muzaffargarh Bypass, comprising 53 members. Issues raised included</p> <ul style="list-style-type: none"> (i) the realignment of a bypass, (ii) resettlement and compensation for losses, and (iii) information dissemination and consultation. 	<p>The OSPF annual report noted: "The complainants confirmed that they were satisfied with their compensation and the underpass. This complaint was thus resolved."^b</p>
<p>5. Phnom Penh to Ho Chi Minh City Highway Project in the Greater Mekong Subregion (Loan 1659-CAM: approved on 15 December 1998)</p> <p>ADB: \$40 million the Special Funds</p>	<p>The complaint was received on 30 July 2007.</p> <p>The NGO Forum on Cambodia filed the complaint on behalf of affected people in the villages of Krang Khok, with 41 affected people, and Steung Slot, with 22 affected people, on the following issues:</p> <ul style="list-style-type: none"> (i) compensation, (ii) land titling, and (iii) livelihoods. 	<p>The OSPF annual report noted: "At the request of the complainants, [the] OSPF postponed the consultation process while the government and the ADB Cambodia Resident Mission pursued efforts to solve the problems. During 2009, ADB approved a TA for an income restoration program aimed at helping the affected persons deal with their accumulated debt burdens and reestablish their livelihood activities. This development offered an opportunity to solve the problems that the complainants had originally brought to [the] OSPF."^c</p> <p>The OSPF closed the complaint in 2010 after the TA started and issued a final report. The TA has subsequently been fully implemented.</p>
<p>6. Fuzhou Environmental Improvement Project in the PRC (Loan 2176-PRC, approved on 29 July 2005)</p> <p>ADB: \$55.8 million from OCR, with commercial financing</p>	<p>The complaint was received on 15 January 2009 from a group of seven families that were to be resettled under the Nantai Island river rehabilitation component of the project. The complaint was about resettlement.</p> <p>The complainants are not registered local residents but moved to the area in 1994 when they purchased land from local farmers and constructed their houses. The government considers the land purchase illegal and not entitled under government rules to the same compensation as for residents. The complainants felt this was inconsistent with ADB's 2004 resettlement plan.</p>	<p>In formulating a course of action, the OSPF believed a structured participatory consultation was needed. This would be assisted by an independent mediator to improve communication among the parties, help them understand one another, and support a joint search for solutions. The SPF hired a mediator from Hong Kong, China. The government agreed to provide the affected people with economy houses.</p> <p>By 31 March 2009, five of the seven households decided to accept the compensation package arrived at through the mediation, but two households did not accept it. The government extended the deadline for accepting the package twice, but the two families remained unwilling to accept it and submitted a request dated 28 April 2009 to the CRP. The government decided to change the design for</p>

Projects	Complainants and Issues	Status
		rehabilitating the river so that the houses of all seven families would not need to be demolished.
<p>7. Southern Punjab Basic Urban Services Project in Pakistan (Loan 2060/2061-PAK, approved on 18 December 2003)</p> <p>ADB: \$45 million from the ADF and \$45 million from OCR</p>	<p>The complaint was received on 27 February 2009. The signatory was an individual who claimed that he represented 58 complainants (43 men and 15 women) who were negatively affected by the wastewater treatment plant. The issues included</p> <ul style="list-style-type: none"> (i) resettlement, and (ii) the environment. 	<p>ADB closed the loan in July 2009 without construction of the wastewater treatment plant, but issues of land acquisition payments and compensation for damages remained. OSPF's consultant interviewed all the complainants, and the SPF met again with them and the other stakeholders in October 2011. It was agreed that final compensation payments would be made, and the OSPF plans to close the complaint when payments have been completed. Problem solving is ongoing.</p>
<p>8. Rawalpindi Environmental Improvement Project (Sewage Treatment Plant Component) in Pakistan (Loan 2211/2212-PAK, approved on 13 December 2005)</p> <p>ADB: \$20 million from OCR and \$40 million from the ADF</p>	<p>The complaint was received on 28 May 2009. The complainants were a group of 25 residents of affected villages.</p> <p>The issues raised included</p> <ul style="list-style-type: none"> (i) land acquisition, and (ii) compensation. 	<p>The OSPF final report stated that the national law on land acquisition stipulated that only the courts could revise land compensation rates, so the consultations were unable to resolve that issue.</p> <p>In view of this, and considering that the project had been closed with no clear indication of if or when the sewage treatment plant would be built, the SPF concluded that no further consultation would be purposeful, and the complaint was partially resolved and closed. The OSPF, however, made it clear that, should the sewage treatment plant be taken up under a new loan, and if the complainants felt they were harmed by an act or omission of ADB, they could come back to the OSPF.</p>
<p>9. CAREC Transport Corridor I (Zhambyl Oblast Section) Investment Program, Tranche 2, in Kazakhstan (Loan MFF-2562-KAZ, approved on 7 October 2009)</p> <p>ADB: \$187 million from OCR</p>	<p>The complaint was received on 5 November 2009. The two signatories claimed to represent at least 30 other villagers. An NGO, the Taraz Press Club Public Union, facilitated the complaint.</p> <p>Issues raised included</p> <ul style="list-style-type: none"> (i) information dissemination, (ii) participation, (iii) cattle passes, and (iv) an underpass for agricultural machinery. 	<p>From the OSPF's monitoring report, March 2011: The OSPF conducted a review and assessment in January 2010 and facilitated three consultations in March 2010, during which agreement was reached on the location of an underpass, an additional underpass, an approach road for agricultural machinery, the location of culverts, and information sharing. The OSPF is monitoring the ongoing implementation of the agreements, which is well advanced in all cases.^d</p>

Projects	Complainants and Issues	Status
<p>10. Education Sector Reform Project in Tajikistan (Loan 2053-TAJ, approved on 17 December 2003)</p> <p>ADB: \$7.5 million from the ADF</p>	<p>The complaint was received on 5 August 2010. Complainants requested confidentiality and claimed to file the complaint on behalf of 9,000 people. They authorized members of the NGO Forum and CSSC Kalam to represent them.</p> <p>Issues raised included (i) information, (ii) consultation, and (iii) school reconstruction.</p>	<p>A joint monitoring group agreed on rehabilitation works and monitored their implementation. The SPF joined the final monitoring visit in October 2011, which confirmed the satisfactory completion of the works. The OSPF closed the complaint and issued a final report.</p>
<p>11. CAREC Transport Corridor 1 (Bishkek–Torugart Road), Project 2, in Kyrgyz Republic (Loan 2533-KGZ, approved on 14 July 2009)</p> <p>ADB: \$28 million</p>	<p>The complaint was received on 20 September 2010. It was filed by three residents of the affected area who requested that their identities not to be published. They authorized an NGO representative to file the complaint on their behalf. Their complaint is on compensation.</p>	<p>The OSPF review and assessment was completed, and an agreement was reached and is being monitored. The complaint was thus resolved, but the complainants submitted the compliance review request to the CRP.</p> <p>The OSPF conducted capacity development in nonviolent communication and negotiation skills, and provided guidance and advice to the complainants, MOTC, and CWRD based on the agreed course of action. The complainants received their final compensation payment in August 2011. The OSPF closed the complaint and issued its final report.</p>
<p>12. Integrated Citarum Water Resources Management Investment Program, Project 1, in Indonesia (Loan 2500/2501-INO, approved 4 December 2008)</p> <p>ADB: \$500 million multitranches financing facility</p>	<p>The complaint was received on 4 January 2011. Three complainants requested that their identities be kept confidential and authorized an NGO, People's Alliance on Citarum (ARUM), to represent them.</p> <p>Issues are (i) resettlement; and (ii) compensation</p>	<p>The review and assessment was completed. The parties agreed on communication, an exchange of information, and the OSPF's role in monitoring the updating and implementation of the resettlement plan.</p> <p>Monitoring of the implementation of the agreements is ongoing.</p>
<p>13. Visayas Base-Load Power Development Project in the Philippines (Loan 2612-PHI, approved 11 December 2009)</p>	<p>The complaint was received on 28 February 2011. The signatories stated that they filed the complaint on behalf of the residents of affected communities; 6 signatories requested confidentiality. Only one resident opted to be identified together a member of Freedom from</p>	<p>Complainants withdrew after the OSPF review and assessment, and the consultation process was terminated.</p> <p>The complainants filed a request for compliance review in May 2011.</p>

Projects	Complainants and Issues	Status
ADB: \$100 million private sector loan	Debt Coalition, an NGO representing them. Issues included (i) consultation, (ii) information, and (iii) environmental impact.	

^{a.} ADB. 2005. *Final Report of the Special Project Facilitator on Community Empowerment for Rural Development in Indonesia ADB Loan 1765(SF)/1766-INO*. Manila, para. 23, p. 6.

^{b.} ADB. 2009. *Consultation Phase of the ADB Accountability Mechanism, Office of Special Facilitator Annual Report*. Manila. p. 6.

^{c.} ADB. 2008. *Consultation Phase of Accountability Mechanism Annual Report 2007*. Manila. p. 8.

^{d.} ADB. 2011. *Monitoring Report of the Special Project Facilitator on the Complaint on CAREC Transport Corridor I (Zhambyl Oblast Section) [Western Europe-Western People's Republic of China International Transit Corridor] Investment Program – Project 2 ADB Loan 2562-KAZ (22 October 2008)*. Manila. p. 2.

ADB = Asian Development Bank, ADF = Asian Development Fund, CAREC = Central Asia Regional Economic Cooperation, CRP = Compliance Review Panel, CWRD = Central and West Asia Department, JBIC = Japan Bank for International Cooperation, MOTC = Ministry of Transport and Communications, NGO = nongovernment organization, OCR = ordinary capital resources, OSPF = Office of the Special Project Facilitator, PRC = People's Republic of China, SF = Special Funds, SPF = special project facilitator, TA = technical assistance.

Source: ADB.

SUMMARY OF REQUESTS FOR THE COMPLIANCE REVIEW PHASE, 2004–2011

Projects	Requests	Responses	Results
<p>1. Chashma Right River Bank Irrigation Project, Stage 3, in Pakistan (Loan 1146-PAK, approved on 17 December 1991)</p> <p>ADB: \$185.0 million in 1991 and supplementary financing of \$33.5 million in June 1999</p>	<p>The request was received on 4 June 2002 under the previous Inspection Function of ADB.</p> <p>The complaint was lodged by four individuals authorized to represent people affected by the project.</p> <p>The requesters stated that ADB breached its operational policies and procedures in formulating and processing the supplementary financing project, with material adverse effect on Chashma-affected people. Issues included project-induced flooding and involuntary resettlement; inadequate compensation for loss of land, other assets, and livelihoods; and a lack of information sharing, consultation, and participation of affected people.</p>	<p>In March 2003, BIC submitted its report to the Board recommending that an inspection begin in December 2003. The Board approved the recommendation, and an inspection panel conducted the investigation in early 2004. The inspection panel submitted its final report in June 2004.</p> <p>The CRP noted that requesters disengaged in March 2004 when the inspection panel carried out its investigation in the project area because of their "dissatisfaction with the development and consultation processes associated with the grievance redress and settlement committee (GRSC) and its recommendations, the Board's support for the GRSC, and the development of the action plan."^a</p> <p>In August 2004, the Board approved monitoring by the CRP of the implementation of the remedial actions to bring the project into compliance.</p> <p>The CRP prepared and issued annual monitoring reports from 2005 to 2009. The 2009 report was the fifth and last monitoring report.</p>	<p>After 5 years of monitoring, the CRP concluded in June 2010 that</p> <ul style="list-style-type: none"> (i) ADB complied with 24 of the 29 recommendations, (ii) ADB partly complied with 4 recommendations, and (iii) 1 recommendation had been superseded by events. <p>Of the 4 recommendations that ADB had partially complied with, the CRP concluded that sufficient progress was made and that, under these circumstances, the CRP did not need to extend its monitoring mandate beyond 5 years.</p>

Projects	Requests	Responses	Results
<p>2. Nepal Melamchi Water Supply Project (Loan 1820-NEP [SF], approved on 21 December 2000)</p> <p>ADB: \$120 million SF loan</p>	<p>The CRP received a request from four people on 12 November 2004. The following complaints were raised:</p> <ul style="list-style-type: none"> (i) inappropriate or inadequate information disclosure, (ii) displacement and lack of adequate compensation and resettlement, (iii) loss of livelihoods with the shutting down of water-driven grain mills and micro hydroelectric generation for local use, (iv) the destruction of community forests, (v) the destruction of irrigation canals, (vi) damage to crops and livelihoods by reduced flows, and (vii) displacement and other adverse effects on indigenous people and communities. 	<p>The CRP obtained from the SPF materials relating to the complaint in the consultation phase. It carried out a desk-based review of relevant materials and consulted with stakeholders. The CRP also carried out an eligibility review mission in Nepal, including a site visit to the project area.</p>	<p>The CRP filed a mission to visit the project site and could not verify alleged direct and material harm or policy violations.</p> <p>The CRP subsequently deemed the request ineligible.</p>
<p>3. Southern Transport Development Project in Sri Lanka (Loan 1711-SRI [SF], approved on 25 November 1999)</p> <p>ADB: \$90 million JBIC: \$120 million ADB: \$90 million supplementary financing loan approved in March 2008</p>	<p>The request was submitted by the Joint Organization of the Affected Communities of the Colombo–Matara Highway on 2 December 2004, representing 28 project-affected people. The requesters stated alleged violations of ADB's operational policies and procedures that had caused harm to them. The policy violations were in the areas of</p> <ul style="list-style-type: none"> (i) the environment, (ii) involuntary resettlement, (iii) the incorporation of social dimensions in ADB operations, 	<p>The CRP conducted an extensive review of available documentation in Manila and in Colombo. It carried out interviews with the requesters and project-affected people, as well as with a wide range of current and past staff, consultants, and contractors associated with the project. With the support of the Government of Sri Lanka, project-affected people, and ADB staff, the CRP visited the project site twice to become familiar with the issues and challenges faced by all stakeholders.</p>	<p>The CRP has monitored the implementation of the remedial actions identified in the final report on the investigation.</p> <p>The CRP concludes in its 4th annual monitoring report for the Southern Transport Development Project that considerable progress was made in implementing the recommendations formulated in 2005. Of the original 19 recommendations, 17 were fully complied with, and 2 were partially complied with.</p>

Projects	Requests	Responses	Results
	<p>(iv) governance, (v) economic analysis, (vi) benefit monitoring and evaluation, (vii) gender and development in ADB operations, (viii) the processing of loan proposals, (ix) the formulation and implementation of loan covenants, (x) the procurement of goods and services, and (xi) anticorruption actions.</p> <p>The alleged harm included the loss of homes, the loss of livelihoods, damage to the environment, the degradation of wetlands, the dispersion of integrated communities, damage to five temples, the negative effects of resettlement, and human rights violations.</p>	<p>The CRP determined that the request was eligible, and the Board authorized a compliance review on 10 January 2005.</p>	
<p>4. Fuzhou Environmental Improvement Project in the PRC (Loan 2176-PRC, approved on 29 July 2005)</p> <p>ADB: \$55.8 million from OCR, with commercial financing</p>	<p>The CRP received a request signed by two individuals for compliance review on 3 June 2009. The SPF had previously dealt with a complaint from seven affected households.</p> <p>The issues raised related to ADB's Involuntary Resettlement Policy (1995), including</p> <ul style="list-style-type: none"> (i) insufficient compensation to replace lost housing for residents without legal title, (ii) the absence of rehabilitation measures to offset lost income, and 	<p>The CRP began with a desk review of documents and concluded that a site visit was necessary to corroborate the claims made by the requesting parties. The government refused the CRP's site visit for the following reasons:</p> <ul style="list-style-type: none"> (i) The resettlement plan was in accordance with relevant PRC and ADB policies. (ii) The government rerouted the river, which made the compliance review request obsolete. (iii) Previous project site visits by the OSPF should provide the 	<p>The CRP stated that it was unable to complete the compliance review for lack of a site visit.</p>

Projects	Requests	Responses	Results
	(iii) inadequate information dissemination and consultation.	<p>CRP with sufficient information for its compliance review. In the government's view, the proposed site visit was therefore no longer necessary.</p> <p>The CRP acknowledged the decision of the PRC to change the project design; however, it stated that the change was made after the compliance review request had been filed. As part of the eligibility process, the CRP stated that the change in project design would not obviate the need to investigate whether ADB had previously failed to comply with its operational policies and procedures.</p>	
<p>5. CAREC Transport Corridor (Bishkek–Torugart Road) Project 2, in Kyrgyz Republic (Loan No. 2533-KGZ, approved 14 July 2009)</p> <p>ADB: \$28 million from the ADF</p>	<p>The CRP received the request on 23 May 2011 from five alleged affected people who requested confidentiality. They are represented by NGO Forum on ADB. The issues raised are related to ADB's Involuntary Resettlement Policy, including:</p> <ul style="list-style-type: none"> (i) compensation for store demolition, (ii) registration of and registration fee for a new store, and (iii) loan repayment scheme. <p>The request was filed during the implementation of the course of action recommended by the SPF.</p>	<p>The CRP has determined that this case is eligible; and has submitted a request for the Board to authorize the compliance review.</p> <p>The terms of reference for the compliance review were provided to the Board and the requesters on 24 August 2011.</p>	Compliance review is ongoing.

Projects	Requests	Responses	Results
<p>6. Visayas Base-Load Power Development Project in the Philippines (Loan No. 2612-PHI, approved 18 August 2009)</p> <p>ADB: \$100 million private sector loan</p>	<p>The CRP received the request from alleged affected people who requested confidentiality. The requesters are represented by an NGO and an engineer. They filed a complaint on 25 May 2011. Issues include</p> <ul style="list-style-type: none"> (i) adverse impact of the project on the health of affected residents, and (ii) adverse effect of carbon dioxide emissions on the environment. 	<p>The CRP has determined that this case is eligible. The Board authorized the compliance review on 11 July 2011.</p> <p>Board Compliance Review Committee cleared the TOR on 28 July 2011.</p>	<p>Compliance review is ongoing.</p>

^a ADB. 2005. *Annual Monitoring Report 2004-2005 to the Board of Directors on Implementation of Remedial Actions on the Inspection Request on the Chashma Right Bank Irrigation Project (Stage III) in Pakistan (ADB Loan No. 1146-PAK[SF])*. Manila. para 9, p. 2.

ADB = Asian Development Bank, BIC = Board Inspection Committee, CRP = Compliance Review Panel, JBIC = Japan Bank for International Cooperation, NGO = nongovernment organization, OCR = ordinary capital resources, OSPF = Office of the Special Project Facilitator, PRC = People's Republic of China, SF = Special Funds, SPF = special project facilitator.

Source: ADB.

NUMBER OF CASES IN DIFFERENT ACCOUNTABILITY MECHANISMS

Asian Development Bank: Accountability Mechanism	2004 to October 2011	Compliance Review Panel			Special Project Facilitator			
		Total	Eligible	Ineligible	Total	Eligible	Ineligible	Eligibility determination ongoing
		5	4	1	39	13	24	2

Source: Asian Development Bank complaints registry and registry of requests.

World Bank: Inspection Panel	1994 to 21 October 2011	Total requests received	Eligible for investigation	Not eligible for investigation	No recommendation made	Eligibility ongoing
		76 ^a	33	22	6	1

^aIncluding double and triples requests in 6 projects.

Source: World Bank Inspection Panel website (various reports).

International Finance Corporation: Compliance Advisor Ombudsman	FY2000–FY2010	Total complaints/requests	Eligible for ombudsman assessment	Not eligible for ombudsman assessment	Did not go through ombudsman assessment	Eligible for compliance audit
		127	72	51	4	8

Source: Compliance Advisor Ombudsman Annual Report FY2010 and Review FY2000-10.

Inter-American Development Bank: Independent Consultation and Investigation Mechanism	Established in 1994 and reorganized in February 2010	Total cases registered May 2010–August 2011	Eligible for consultation phase	Ineligible for consultation phase	Eligible for compliance review
		17	12	5	2

Source: Inter-American Development Bank website.

African Development Bank: Independent Review Mechanism	2004–2011	Total number of cases registered since 2007	Eligible for compliance review	Eligible for problem solving	1 ineligible 1 eligibility determination ongoing
		7	2	3	

Sources: African Development Bank requests register and various reports. <http://www.afdb.org>

European Bank for Reconstruction and Development: Project Complaint Mechanism (PCM)	Independent Recourse Mechanism from 2004, replaced by PCM in March 2010	Independent Recourse Mechanism	Project Complaint Mechanism 8 complaints registered as of 22 December 2011		
		15 registered complaints	Eligible for problem solving: 3	Eligible for compliance review: 2	Ongoing eligibility assessment: 3

Sources: Independent Recourse Mechanism various reports and PCM register (website).

European Investment Bank (EIB): Complaints Mechanism	Approved in February 2010, superseding Complaints Policy of 2008	EIB include procurement cases. There were 15 complaints in 2007 and 40 in 2008, most related to procurement. There were 2 cases on environmental and social impacts in 2007 and 7 cases in 2008.
---	--	--

Source: EIB complaints office annual activity reports.

Japan Bank for International Cooperation: Office of Examiners for Environmental Guidelines	2003–2011	1 complaint received in 2007, ineligible
---	-----------	--

Source: Annual report of the Examiners for Environmental Guidelines.

US Overseas Private Investment Corporation: Office of Accountability	2005–2011	Total requests received since 30 November 2011	Eligible for compliance review	Eligible for problem solving	1 ineligible 2 eligibility determination ongoing
		6	2	1	

Sources: Overseas Private Investment Corporation public registry (website), cases and reports (<http://www.opic.gov/doing-business/accountability/registry>) and Office of Accountability 4-year report.

SUMMARY ASSESSMENT OF THE ADB ACCOUNTABILITY MECHANISM

Areas	Strengths	Weaknesses	Proposed Changes
Accessibility			
Awareness	Systematic outreach has increased.	Awareness is limited.	Enhance outreach.
Eligibility	Cutoff date is late.	Project completion report is unpredictable as a cutoff date.	Clarify cutoff date.
Process	<p>No mandatory requirement for citing specific policy violations.</p> <p>Document requirements are minimal.</p> <p>English and other national or official languages can be used.</p> <p>Submission can be through various means and to various points.</p>	The process for problem solving is complex.	Simplify the process.
Credibility			
Independence	The arrangement that the CRP reports to the Board and SPF reports to the President is well suited to the distinct nature and needs of the consultation and compliance review processes.	<p>CRP appointments are recommended by the President.</p> <p>Senior staff working as the head of OCRP.</p> <p>CRP and OCRP work planning and budgeting fragmented.</p> <p>Interaction is lacking between the CRP and Management, creating the risk of the CRP's isolation.</p>	<p>Enhance CRP independence in line with IED.</p> <p>Enhance interaction among the CRP, Management, and staff.</p>
Monitoring	The SPF and the CRP are empowered to monitor implementation of remedial actions.		
Transparency	A high degree of transparency is achieved by systematically and comprehensively disclosing information, giving due consideration to confidentiality.	Complaints referred back to operations departments are not tracked.	Track complaints referred back to operations departments.

Areas	Strengths	Weaknesses	Proposed Changes
Participation	Requesters and Management can respond to the draft CRP compliance review report. Problem solving empowers complainants with an active role in decision making.	Management response to the request is lacking at the eligibility stage. CRP reports are not shared with the borrowing country.	Introduce Management response before the eligibility determination. Inform and coordinate with the borrowing country.
Efficiency			
Time	The expected time frame is clearly specified in the policy.	Processes are lengthy. The CRP monitoring time frame of 5 years for every project is rigid and long.	Simplify processes. Fully utilize grassroots mechanisms for problem prevention, problem solving, and early compliance. Optimize the SPF and CRP monitoring time frame.
Costs	ADB has provided sufficient resources for the Accountability Mechanism.	There is no distinction between the basic cost required to maintain and operate the Accountability Mechanism and the flexible costs required to respond to fluctuating demand.	Define the fixed costs required regardless of the number of cases. Allocate variable costs at optimum levels based on demand and work requirements.
Effectiveness			
Structure	A sound dual consultation-and-compliance review structure is in place.		
Relevance	Both consultation and compliance review have been relevant.		
Sequence	Problem solving was given top priority. Complainants can exit the consultation stage and file for compliance review at multiple points.	Requiring complainants first to approach the SPF creates perception and practical issues.	Enable direct access to the CRP.
Mandate	Dedicated support exists for the consultation and compliance phases.	The practice of the CRP making broad recommendations and Management identifying remedial actions is confusing. The CRP has not been given	Focus compliance review on fact-finding, and provide an opportunity for the CRP to comment on Management's proposed remedial actions.

Areas	Strengths	Weaknesses	Proposed Changes
		an opportunity to comment on Management's remedial actions.	
Learning lessons	Systematic learning has taken place. The OSPF advisory role has been beneficial.	Learning is still limited. Compliance review is sometimes seen as adversarial.	Improve learning. Promote a change in institutional culture.
Site visits	Visit policy is defined.	No policy dealing with situations of borrowing countries' refusal. Actual implementation is problematic.	Learning from the experience of ADB and other accountability mechanisms, develop a sound approach to address problems.
Outcomes	Consultation and compliance review deliver tangible outcomes for affected people and improve project quality.		Addressing the issues above will contribute to improved outcomes.

ADB = Asian Development Bank, CRP = Compliance Review Panel, IED = Independent Evaluation Department, OSPF = Office of the Special Project Facilitator, SPF = special project facilitator.

Source: ADB.

COMPARISON OF ACCOUNTABILITY MECHANISMS

Areas	ADB ^a	World Bank	Other Institutions
Milestones	<p>Inspection Function established in 1995.</p> <p>Inspection Function reviewed in 2002 and 2003.</p> <p>Accountability Mechanism created in 2003.</p> <p>Accountability Mechanism reviewed between 2010 and 2012.</p>	<p>First among multilateral development banks to establish an inspection panel (1993).</p> <p>Inspection panel reviewed and clarified in 1996 and 1999.</p>	<p>AfDB: Independent Review Mechanism established in 2004, amended in June 2010 following a review in 2009.</p> <p>EBRD: Independent Recourse Mechanism in place between July 2004 and March 2010; new Project Complaint Mechanism became operational in March 2010.</p> <p>EIB: Complaints Mechanism approved in February 2010, superseding Complaints Mechanism Policy of June 2008.</p> <p>IADB: Independent Investigation Mechanism established in 1994, changed in 2010 to Independent Consultation and Investigation Mechanism.</p> <p>IFC: Compliance Advisor Ombudsman established in 1999. It amended its 2004 operational guidelines in 2006 and 2007.</p> <p>JBIC: Summary of procedures to submit objections concerning JBIC guidelines for confirmation of environmental and social considerations adopted in 2003. Procedures updated in October 2009.</p> <p>OPIC: Board approved general policy and guidelines on accountability and advisory mechanism and established Office of Accountability in 2005.</p>
Number of cases	<p>2004–October 2011</p> <p>SPF: Total 39; eligible 13.</p> <p>CRP: Total 5; eligible 4.</p>	<p>1994–2011</p> <p>Inspection panel: Total 76 requests; eligible for inspection 33.</p>	<p>AfDB (2004–2011): Total of 7 cases since 2007, of which 2 were eligible for compliance review and 3 for problem solving.</p> <p>EBRD (2004–2011): Total of 22 cases, 15 under Independent Recourse Mechanism and 8 under Project Complaint Mechanism.</p> <p>EIB (2007–2008): Total of 55 cases (including procurement and human resources issues) received in 2007 and 2008.</p>

Areas	ADB ^a	World Bank	Other Institutions
			<p>IADB (1994–2011): Total of 17 cases in 2010–2011.</p> <p>IFC (2000–2010). Total of 127 cases, of which 8 went through the compliance audit process.</p> <p>JBIC (2003–2011): Total of 1 case; ineligible.</p> <p>OPIC (2005–2011): Total of 6 cases, 1 eligible for problem solving and 2 for compliance review.</p>
Policy coverage	ADB's operational policies and procedures concerning formulation, processing, and implementation of ADB-financed projects.	World Bank's operational policies and procedures with respect to the design, appraisal, and/or implementation of projects.	<p>EBRD: Focused on environmental, social, and public disclosure aspects.</p> <p>EIB: Policies on institutional governance, strategy guidelines, codes of conduct, transparency and corporate responsibility, anti-fraud, thematic lending policies, geographic policies, cooperation with third parties and/or international organizations, and project-cycle-related policies and procurement.</p> <p>IADB and AfDB: Operational policies and procedures.</p> <p>IFC: Focused on environmental and social aspects.</p> <p>JBIC: The examiner for environmental guidelines is tasked with ensuring compliance with guidelines for confirmation of environmental and social considerations.</p> <p>OPIC: Environmental, social, labor, human rights, and transparency standards.</p>
Procurement and corruption	Excluded.	Excluded.	All excluded these two aspects, except EIB, which includes procurement.
Cutoff dates	Up to the issuance of the PCR.	The request to be filed before loan financing is substantially disbursed (up to 95% disbursement).	<p>AfDB: 12 months after the physical completion of a project, or 12 months after the final disbursement, or the date of cancellation of the undisbursed amount.</p> <p>EBRD: 12 months following the last disbursement (Bank still maintains a</p>

Areas	ADB ^a	World Bank	Other Institutions
			<p>financial interest).</p> <p>EIB: 1 year from the date on which the facts upon which the allegation is grounded could be reasonably known by the complainant.</p> <p>IADB: 24 months after the last disbursement.</p> <p>IFC: Not mentioned in the rules.</p> <p>JBIC: Complaints can be filed between the time a loan agreement is executed and the time when disbursement is completed.</p> <p>OPIC: Claims made before or after OPIC's support of a project are not eligible. OPIC's support is deemed to end at the termination of OPIC's contractual relationship with a project, or when a financial intermediary is no longer contractually engaged in the project.</p>
Minimum number of people	2 people.	2 people.	<p>AfDB and JBIC: 2 people.</p> <p>IFC, IADB, EIB, EBRD, and OPIC: 1 person.</p>
Direct and indirect effects	Only people who are directly, materially, and adversely affected.	Only people who are directly, materially, and adversely affected.	All requiring direct and material harm for eligibility, except EIB and IFC.
Structure	SPF and OSPF. CRP and OCRP.	Inspection Panel and its secretariat.	<p>IFC, EBRD, EIB, JBIC, and OPIC: Each with a unit or office that is responsible for both problem solving and compliance review, and reports to the president (except for EIB, which reports to the management committee).</p> <p>AfDB: Head of Compliance Review and Mediation Unit to work on problem solving and support experts on compliance review, reporting to both the Board and the president.</p> <p>IADB: Ombudsperson, panel, and executive secretary reporting to the Board.</p>

Areas	ADB ^a	World Bank	Other Institutions
Appointments and reporting	<p>The SPF appointed by the President, after consultation with the Board, and reports to the President.</p> <p>CRP members appointed by the Board upon the recommendation of the President; the CRP reports to the Board.</p> <p>Secretary of the OCRP appointed by the President.</p>	<p>Compliance review only by the inspection panel; no formal problem solving function.</p> <p>World Bank panel members appointed by the Board based on president's nomination; panel reports to the Board.</p> <p>Executive secretary appointed by the president after consultation with the Board.</p>	<p>AfDB: Head of Compliance Review and Mediation Unit appointed by the president with concurrence of Board and reports administratively to the president and functionally to the Board for projects already approved by the Board, and to the president for proposed projects not yet approved by the Board; expert panel appointed by the Board on the president's recommendation.</p> <p>IFC, OPIC, EBRD, and EIB: No secretariat; accountability mechanism unit heads appointed by, and report to, the president (except the EIB unit, which reports to the management committee).</p> <p>JBIC: Examiners appointed by and report to the president; secretary appointed by the human resources department.</p> <p>IADB: Ombudsman, panel, and executive secretary appointed by and report to the Board.</p>
Site visits	<p>Site visits after obtaining consent from the borrowing country.</p>	<p>Inspection in the territory of such country shall be carried out with its prior consent (1993 resolution, para. 21).</p> <p>Any additional site visit needs to be invited by the country (1999 clarification, para. 16).</p> <p>Uses country offices to obtain mission clearance and meetings for the Inspection Panel.</p>	<p>IADB: Any part of the process to be conducted in the territory of the borrower and/or recipient country may be conducted only after obtaining the written non-objection of the country (2010 policy, para. 49).</p> <p>AfDB, EBRD, EIB, and OPIC: Rules state that site visits may be undertaken but no details given.</p> <p>JBIC: Site visits not mentioned, but examiners can conduct interviews; the chair's summary states that JBIC "is a government institution and shall accord adequate considerations to the sovereignty of the recipient country."</p>

^aInformation for ADB is based on the 2003 Accountability Mechanism policy (footnote 2 of the main text).

AfDB = African Development Bank, CRP = Compliance Review Panel, EBRD = European Bank for Reconstruction and Development, EIB = European Investment Bank, IADB = Inter-American Development Bank, IFC = International Finance Corporation, JBIC = Japan Bank for International Cooperation, OCRP = Office of the Compliance Panel, OPIC = Overseas Private Investment Corporation (United States), PCR = project completion report, SPF = special project facilitator.

Sources: Policy, rules, and annual reports of various accountability mechanisms.

INFORMATION DISCLOSURE REQUIREMENTS UNDER ADB'S ACCOUNTABILITY MECHANISM

1. Complaints filed under the Accountability Mechanism will be registered on the Asian Development Bank (ADB) website within 2 days after the complaints are received. In cases where a complaint was forwarded to an operations department for handling, an end-of-process report prepared by the operations department will be posted on the ADB website upon completion. In case a complaint is forwarded to the Special Project Facilitator (SPF) for problem solving or to the Compliance Review Panel (CRP) for compliance review, the provisions in paras. 2–4 will apply. All days refer to working days unless otherwise specified.

A. Problem Solving Function

2. The Office of the Special Project Facilitator will post the following information and documents on the ADB website:

- (i) the complaint letter—upon the SPF's receiving the complaint letter and subject to the agreement of the complainants;¹
- (ii) a general description of the complaint—upon the SPF's receiving the complaint letter if the complainants have not consented to disclosure of the complaint letter;
- (iii) the SPF's determination of eligibility of the complaint—upon the SPF's determination of the eligibility;
- (iv) the review and assessment report prepared by the SPF—upon completion, and subject to the consent of the complainants and the borrower;
- (v) a summary of the review and assessment report—upon completion and if the relevant parties have not consented to disclosure of the full review and assessment report;
- (vi) a problem solving completion report summarizing the complaint, the steps to resolve the issues, decisions by the parties concerned, and the agreement (if any) by the parties concerned, within 2 months upon the completion of the problem solving process (with or without an agreement), and subject to the consent of the complainants, the government, and/or client;
- (vii) a summary of the problem solving completion report—upon completion and if the relevant parties have not consented to disclosure of the full problem solving completion report;
- (viii) monitoring reports—upon circulation to the President and the Board for information; and
- (ix) the SPF's final report—upon circulation to the complainants, the government, and/or client.

B. Compliance Review Function

3. The CRP will post the following information and documents on the ADB website at the times specified below:

- (i) the complaint letter (or the request for compliance review)—upon the CRP's receiving the complaint letter and subject to the agreement of the complainants—within 7 days of receipt of the complaint;

¹ "Upon" in the context of information disclosure means as soon as is reasonably practical and generally no later than 14 calendar days.

- (ii) a general description of the complaint—within 7 days from the CRP's receiving of the complaint letter if the complainants have not consented to disclosure of the complaint letter;
- (iii) the CRP report determining that the complaint is eligible and the Board decision on authorization of compliance review, together with Management's response—within 7 days of the Board decision;
- (iv) the CRP report determining that the complaint is ineligible, together with Management's response—within 7 days of circulation of the report to the Board;
- (v) the terms of reference for the compliance review within 10 days of the Board's authorization of the compliance review;
- (vi) the CRP's final compliance review report, attaching responses, if any, to the draft report from Management and, subject to their consent, from the complainants, the government, and/or client, as applicable—within 7 days of the Board's consideration of the final report;
- (vii) Management's proposed remedial actions, CRP comments on the remedial actions, and the Board's decision—within 7 days of the Board's decision; and
- (viii) monitoring reports on implementation of any remedial actions approved by the Board—upon circulation to the Board and other stakeholders.

4. The SPF and CRP will post the Accountability Mechanism annual reports on the Accountability Mechanism website within the ADB website upon completion. The Office of the Special Project Facilitator, the Office of the Compliance Review Panel, the Independent Evaluation Department, and the Regional and Sustainable Development Department will post the learning reports upon completion. The Board information paper on the reasons for a borrowing country's rejection of a CRP site visit, if applicable, will be disclosed within 21 days after the submission to the Board.