

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

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# Review of the Accountability Mechanism Policy

Asian Development Bank



## ABBREVIATIONS

ADB	– Asian Development Bank
BCRC	– Board Compliance Review Committee
COSO	– Central Operations Services Office
CRO	– complaint receiving officer
CRP	– Compliance Review Panel
DEC	– Development Effectiveness Committee
DMC	– developing member country
IADB	– Inter-American Development Bank
IED	– Independent Evaluation Department
MDB	– multilateral development bank
NGO	– nongovernment organization
OAI	– Office of Anticorruption and Integrity
OCR	– Office of the Compliance Review Panel
OSPF	– Office of the Special Project Facilitator
PCR	– project completion report
PPS	– private project sponsor
RSDD	– Regional and Sustainable Development Department
SPF	– special project facilitator
TOR	– terms of reference

## NOTE

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

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## EXECUTIVE SUMMARY

In 1995, the Asian Development Bank (ADB) established an Inspection Function to provide a forum where people affected by ADB-assisted projects could appeal to an independent body 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 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–Management review of the Accountability Mechanism. A Board–Management working group was established to oversee 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 other 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 numerous strengths. The mechanism was a pioneer among multilateral development banks (MDBs) 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 highly 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 in place 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 operational level. The Accountability Mechanism is a "last resort" mechanism 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 in place several well-developed audit, evaluation, and learning systems to ensure that ADB 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 areas for improving the Accountability Mechanism, as summarized below.

- (i) **Enabling direct access to compliance review.** The Accountability Mechanism 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 has reduced recourse to the compliance review function. It can also reduce delays for people who want to file for compliance review.

- (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) **Obtaining site visits.** ADB should use its resources and established institutional mechanisms to assist the CRP in obtaining access to site visits. In cases where a borrower declines to grant access to a site, Management would submit an information paper to the Board explaining why a borrowing country declined a site visit. The BCRC, in consultation with the Board, should provide guidance on how to complete a compliance review if a site visit cannot be undertaken.
- (iv) **Improving independence.** The CRP members should be appointed by the Board based on the recommendation of the BCRC in consultation with the President. This would improve the CRP's independence over the current practice of having CRP members appointed by the Board based on the President's recommendation.
- (v) **Clarifying the mandate of the Accountability Mechanism.** The compliance review is a fact-finding process. Management should respond to the CRP findings and recommend remedial measures for Board approval. This would help to define clearly the boundaries between compliance review, problem solving, and project administration.
- (vi) **Changing the cutoff date.** ADB should change the cutoff date for filing complaints from the date of the issuance of the project completion report to 1 year after the financing product closing date. This would improve the clarity, certainty, and public awareness of the cutoff date.
- (vii) **Improving cost and time efficiency.** Because the Accountability Mechanism is demand-driven, it should have two types of operating costs: (i) fixed costs to maintain and operate the Accountability Mechanism, regardless of the number of complaints; and (ii) variable costs to respond to changes in demand. The OSPF and CRP monitoring time frames should be tailored to suit each project. These will help to ensure optimal use of resources, while providing effective services to affected people. The Accountability Mechanism processes should be simplified.
- (viii) **Improving awareness.** The OSPF and OCRP should undertake more systematic and effective outreach activities within ADB and in developing member countries.
- (ix) **Learning lessons and engendering a cultural change.** The Accountability Mechanism provides opportunities for ADB to learn lessons and do better. A cultural change is needed towards viewing the Accountability Mechanism as a positive tool for development effectiveness.

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

## I. INTRODUCTION

1. Development effectiveness requires high standards of accountability, transparency, openness, and public participation. The Asian Development Bank (ADB), as an international development agency dedicated to eliminating poverty in Asia and the Pacific, constantly strives to enhance all of these aspects of its operations. As part of this effort, 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.<sup>1</sup> ADB also recognizes that while development is essential for eliminating poverty in Asia and the Pacific, it can also generate negative impacts. ADB needs to be aware of and mitigate these negative consequences. In 2003, ADB introduced the Accountability Mechanism.<sup>2</sup> The mechanism built on the Inspection Function and benefited from intensive public consultations. It 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 remains firmly committed to the principle of being accountable for complying with its operational policies and procedures, and solving problems of project-affected people. Therefore, ADB intends to ensure that the Accountability Mechanism remains adequate and effective in keeping with current international best practices. At the 43rd Annual Meeting of the ADB Board of Governors in Tashkent, Uzbekistan in May 2010, the President announced that ADB would review the Accountability Mechanism.<sup>3</sup> The review was a joint undertaking by the Board of Directors and Management. 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.<sup>4</sup> Appendix 1 contains the TOR of the review.

3. The objectives of the review were to take stock of the ADB experience, draw on the experiences of similar mechanisms, and examine the scope for improving the Accountability Mechanism. The review has included wide-ranging public consultations involving face-to-face meetings, multiple stakeholder workshops, and visits to project sites. A broad spectrum of stakeholders were consulted including project-affected people; project beneficiaries; governments; nongovernment organizations (NGOs); the private sector; academia and think tanks; ADB Board members, Management, and staff; and people working on accountability mechanisms of other institutions. In-country and regional consultations were held in Germany, Indonesia, Japan, the Philippines, Sri Lanka, and the United States from September to November 2010. A videoconference was held with Canadian stakeholders. The working group also sought public comments through a dedicated Accountability Mechanism review website.<sup>5</sup> All public comments received were posted on the ADB website, along with the in-country

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<sup>1</sup> ADB. 1995. *Establishment of an Inspection Function*. Manila.

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

<sup>3</sup> 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 as there were only a few cases by 2006. By the end of 2006, the Office of the Special Project Facilitator received four eligible complaints and the Compliance Review Panel received two requests. Further, ADB has been undertaking strategic and policy reforms since 2005, including adopting the Long-Term Strategic Framework in 2008 and the new Safeguard Policy Statement in 2009. These have implications on the Accountability Mechanism.

<sup>4</sup> The experts are Maartje van Putten and Ishrat Husain.

<sup>5</sup> <http://www.adb.org/AM-REview/>.

consultation summaries; and the external experts' issues paper, presentations, and review report. Appendix 2 summarizes the consultation process as a 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 (IADB) in 1994.

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. One request—for the Samut Prakarn Wastewater Management Project<sup>6</sup> in Thailand—underwent a full inspection from April 2001 to March 2002. Another request for inspection—for the Chashma Right Bank Irrigation Project (Stage III)<sup>7</sup> in Pakistan—was received in November 2002. In April 2003, the Board authorized an inspection, which started in December 2003 and was completed in June 2004.

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 by the 2003 policy was the establishment of two separate but complementary phases within the Accountability Mechanism: (i) a consultation phase,<sup>8</sup> 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,<sup>9</sup> 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.

<sup>6</sup> 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).

<sup>7</sup> 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).

<sup>8</sup> 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.

<sup>9</sup> The term "compliance review" is used in the 2003 policy to avoid negative associations in the term "inspection."

9. ADB was the first MDB to establish an accountability mechanism that went beyond a pure inspection function by introducing the dual dimensions of problem solving and compliance review for private and public sector operations.<sup>10</sup> The adoption of the problem solving function was a significant innovation that was expected to be particularly helpful for project-affected people by focusing on addressing their problems, and enabling them to participate in the problem solving process. Under the previous Inspection Function, even when the complainants were informed of what had happened to their requests, their problems could still remain unresolved.

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

11. The Accountability Mechanism policy paid particular attention to the relationship between the consultation and compliance review phases. It 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. The policy also adopted the position that site visits could only take place with the consent of the borrowing country.

### III. EXPERIENCE SINCE 2003

#### A. The Consultation Phase

12. OSPF received 35 complaints from the time the Accountability Mechanism became effective in December 2003 until March 2011.<sup>11</sup> Of these, 13 were eligible for problem solving. On average, OSPF received about 5 complaints each year (Table 1).

**Table 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	3	2
<b>Total</b>	<b>35</b>	<b>13</b>

OSPF = Office of the Special Project Facilitator.

Source: OSPF complaints registry as of 23 March 2011.

<sup>10</sup> The compliance advisor ombudsman of the International Finance Corporation was the first to introduce problem solving for the private sector operations. ADB was the first to introduce problem solving for both public and private sector operations.

<sup>11</sup> The cases received by OSPF are termed "complaints" in the 2003 policy.

13. Of the 22 ineligible complaints, the complainants in 15 cases did not make prior good faith efforts to solve the problems with the ADB operations departments; the complainants in 3 cases were not materially and adversely affected by the ADB-assisted projects, 2 cases were filed after the project completion reports (PCRs) had been issued; and 2 cases were related to procurement issues, which were handled by the Central Operations Services Office (COSO) (Table 2).

**Table 2: Reasons Complaints Were Found Ineligible, 2004–2010**

Reasons	Number	Share of Total (%)
Complainants had not addressed the problems with the concerned operations departments	15	68.2
Complainants were not materially and adversely affected by the project	3	13.6
Project completion report issued	2	9.1
Procurement related	2	9.1
<b>Total</b>	<b>22</b>	<b>100.0</b>

Source: Office of the Special Project Facilitator complaints registry as of 23 March 2011.

14. The road transport sector had the most complaints at 14, accounting for 40.0% of the total. It was followed by water and other municipal infrastructure and services with 8 complaints. The high numbers of the complaints in these sectors were partly the result of the large portfolio of projects in the sector. Overall, infrastructure sectors (transport, water, and energy) accounted for 77.2% of the complaints, consistent with their share of the ADB portfolio (Table 3).

**Table 3: Complaints Received by Sector, 2004–2010**

Sector	Total	Share of Total (%)
Road transport	14	40.0
Water and other municipal infrastructure and services	8	22.9
Energy	5	14.3
Agriculture and natural resources	4	11.4
Industry and trade	1	2.9
Rural infrastructure	1	2.9
Education	1	2.9
Regional technical assistance	1	2.9
<b>Total</b>	<b>35</b>	<b>100.0</b>

Source: Office of the Special Project Facilitator complaints registry as of 23 March 2011.

15. About two-thirds of the complaints were related to resettlement, inadequate information, and consultation and participation. Within resettlement, the major complaints concerned insufficient compensation (Table 4).

**Table 4: Issues Raised in Complaints, 2004–2010**

No.	Issues	Number of Times Raised in Complaints	Share of Total (%)
1	Resettlement	28	35.9
2	Information	13	16.7
3	Consultation and participation	11	14.1
4	Agriculture, natural resources,	10	12.8

	environment		
5	Community and social issues <sup>a</sup>	8	10.3
6	Energy	2	2.6
7	Others <sup>b</sup>	6	7.7
	<b>Total</b>	<b>78</b>	<b>100.0</b>

<sup>a</sup> This includes gender issues that were raised once.

<sup>b</sup> These include the following issues: distributary link, flooding, procurement, loan suspension, education, and termination of contract.

Source: Office of the Special Project Facilitator complaints registry as of 23 March 2011.

## B. The Compliance Review Phase

16. The CRP received three requests for compliance review between 2004 and 2010, of which two were eligible<sup>12</sup> (Table 5). 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.<sup>13</sup> Since it could not ascertain the alleged harm and noncompliance, the request was deemed ineligible. The CRP also carried out a compliance review on the Sri Lanka Southern Transport Development Project and has monitored the implementation of remedial actions for more than 4 years.<sup>14</sup> On the Fuzhou Environmental Improvement Project<sup>15</sup> in the People's Republic of China (PRC), the CRP issued its report in October 2010 without a conclusion.<sup>16</sup> 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 Pakistan (footnote 7) between 2004 and 2010, although security conditions had precluded any CRP site visits since 2007.

**Table 5: Requests for Compliance Review**

Request Number	Date Received <sup>a</sup>	Project Name
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.

SF = Special Fund.

<sup>a</sup> with requisite basic information.

Source: Compliance Review Panel registry of requests.

<sup>12</sup> The cases received by the CRP are referred to as "requests" in the 2003 policy.

<sup>13</sup> ADB. 2000. *Report and Recommendation of the President to the Board of Directors on the Proposed Loan to Nepal for the Melamchi Water Supply Project*. Manila. (Loan 1820-NEP for \$120 million, approved on 21 December 2000).

<sup>14</sup> 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).

<sup>15</sup> 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).

<sup>16</sup> 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).

#### **IV. ASSESSMENT OF THE ACCOUNTABILITY MECHANISM**

17. This section identifies the strengths and weaknesses of the Accountability Mechanism. The assessment is based on feedback from consultations, review of documents, and project site visits. It is guided by the findings of recent research on the desirable qualities of an Accountability Mechanism. The research points to four attributes for assessing an Accountability Mechanism: (i) accessibility, (ii) credibility, (iii) efficiency, and (iv) effectiveness.<sup>17</sup> The assessment indicates that the Accountability Mechanism is sound and has numerous strengths, but could be fine-tuned by addressing several issues.

##### **A. Strengths**

###### **1. Pioneer in Introducing the Problem Solving Function**

18. The 2003 Accountability Mechanism ushered in a new dimension of accountability: the problem solving function. A majority of stakeholders preferred an Accountability Mechanism consisting of two complementary functions: problem solving and compliance review during the public consultations leading to the adoption of the 2003 policy. This reflected the common recognition that ADB needs to address the complaints of people affected by ADB-assisted projects. As a development finance institution, ADB strives to ensure the success of every project it supports, and cannot walk away from problems. All stakeholders felt that ADB should strengthen its problem prevention and problem solving capabilities.

19. The consultations in 2010 suggested that the dual functions remain sound. Following ADB, most MDBs have instituted problem solving in their accountability mechanisms. The dual functions of the Accountability Mechanism highlight how development is about solving problems and improving the welfare of people. Development agencies need to minimize and resolve negative consequences from their operations. This new and positive approach is especially beneficial for project-affected people. In addition to addressing their concerns, development agencies should empower project-affected people to participate in problem solving, rather than just being recipients of the results of an inspection. Combining problem solving and compliance review also highlights the continued need for development agencies to hold themselves accountable by investigating and dealing with the noncompliance as a cause of harm to people.

###### **2. Emphasis on Independence and Effectiveness**

20. The dual Accountability Mechanism functions require an appropriate institutional setup to ensure their independence and effectiveness. The independence is multidimensional, encompassing such aspects as appointments, reporting, work planning, budgeting, and most importantly the ability to make an independent judgment. The Accountability Mechanism policy has paid particular attention to ensuring the independence and effectiveness of the problem solving and compliance review functions.

21. The 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 on all activities, except in certain activities where it reports to the BCRC.

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<sup>17</sup> E.B. Weiss. 2007. Note on Criteria for Evaluating Accountability Institutions in MDBs: Address to 4th Meeting of Accountability Mechanisms. London, England. 21 June. In World Bank. 2009. *Accountability at the World Bank: The Inspection Panel at 15 Years*. Washington, DC. pp.109–113.

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.

22. The Accountability Mechanism policy required that the SPF be independent from operations. The SPF reports directly to the President and should not be directly involved in the formulation, processing, or implementation of any project.

23. This arrangement is appropriate for striking a balance between (i) the need for an objective, detached perspective on a project; and (ii) the need for sufficient knowledge of and experience with ADB operations. Striking the appropriate balance suggests that the consultation phase should be located within the organization, directly 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 with the participation of all parties concerned. 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.<sup>18</sup> Second, the SPF needs to work closely with staff in operations departments to solve problems. Any complaint people will arise in the course of the formulation, processing, or implementation of a project—and all of these stages of the project cycle are directly under Management's responsibility. As long as the SPF reports directly to the President and is detached from a project, he or she will be in a position to take a second look at the problem submitted by complainants in a more objective manner. The SPF cannot perform the consultation function without the cooperation of staff in the operations departments, who are knowledgeable about the project and equipped with the relevant technical competence and experience. Management should facilitate the resolution of problems. By reporting to the President, the OSPF has an appropriate level of independence and is empowered with sufficient effectiveness.

24. The Accountability Mechanism demarcates problem solving and compliance review as separate matters when harm is alleged to have been caused by ADB-assisted projects. Consultation aims to foster amicable settlement. The compliance review is focused on establishing ADB's compliance with its own operational policies and procedures, and the direct and material harm caused by noncompliance. ADB's experience since 2003 suggests that the institutional setup is generally sound and suitable for maintaining the appropriate balance between the independence and effectiveness of the Accountability Mechanism.

### **3. Monitoring Mandate Enhances Credibility**

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

### **4. Good Practice on Accessibility**

26. The Accountability Mechanism processes conform to international good practices. The procedures for filing a complaint are clearly articulated in the Accountability Mechanism policy, *Operations Manual*, the ADB website, brochures, and other OSPF and OCRP publications.

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<sup>18</sup> The SPF's role is limited to ADB-related issues concerning ADB-assisted projects.

Requests for consultation and compliance review can be (i) brief; (ii) written in English or 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 will be kept confidential, if they so require. The requesters will be encouraged to cite specific policies in describing a complaint, but that is not mandatory.

27. The OSPF and OCRP have pursued systematic outreach activities and consultations with project beneficiaries and project-affected people, governments, NGOs, the private sector, and the public. They directly interact with local communities, as well as raise awareness among staff, NGOs, and governments—all of which are important conduits for informing local communities. The OSPF and OCRP have conducted training courses on conflict management and compliance in ADB to improve staff capacity. In 2009 and 2010, the number of complaints received by OSPF increased, which may be partly because of the outreach and an increasing awareness of the Accountability Mechanism. The internet is a key media for disseminating information about the Accountability Mechanism. The OSPF and OCRP websites are rich with information, including clear steps on how to file complaints. A joint OCRP and OSPF outreach strategy was adopted in 2010. ADB also approved technical assistance funding of \$225,000 for the OCRP to pilot a new outreach program.<sup>19</sup>

## **5. Vertical Complementarity: Continuum of Problem Solving and Compliance**

28. A strength of the ADB system is its continuum of problem prevention, problem solving, and compliance. 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. 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), which includes a chief compliance officer, reviews the safeguards and social aspects of all proposed projects. A project can only be submitted to the Board after obtaining the compliance officer's clearance. The Board reviews each proposed project based on the report and recommendation of the President.

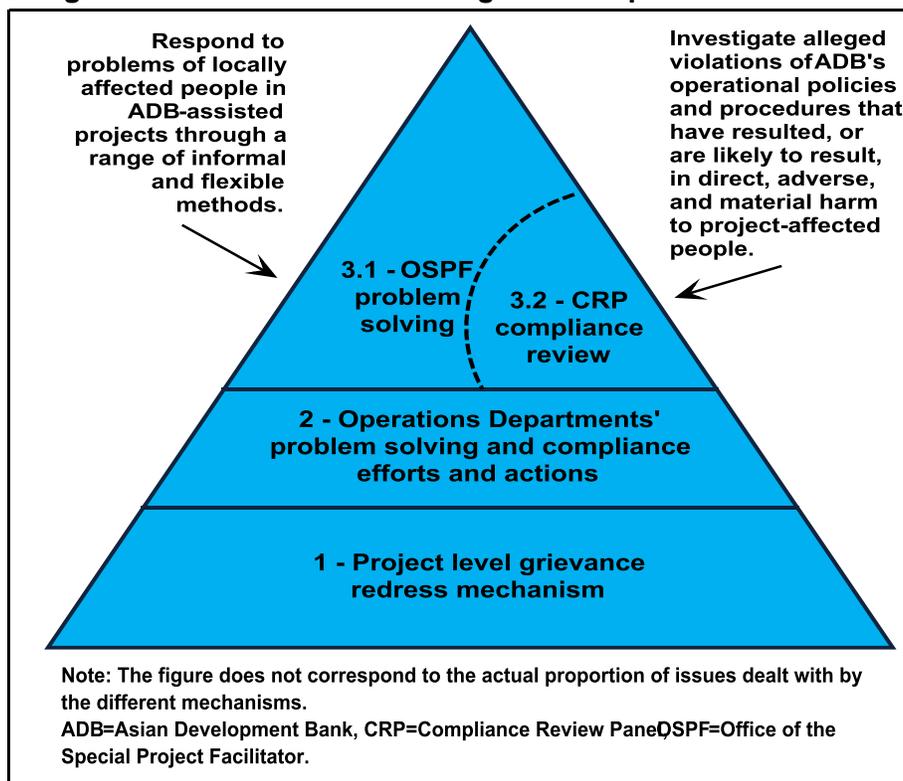
29. During implementation, a bottom-up, multilevel mechanism is in place to solve problems and ensure compliance, consisting of grievance-handling mechanisms at the project level, operations departments, and the Accountability Mechanism (Figure 1). Most of the grievances are handled at the project level 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 (footnote 14). 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.<sup>20</sup> Accessibility for affected persons improved by increasing the number of grievance redress committees and locating them in divisions instead of in districts. Affected people's perceptions of the grievance mechanisms were positively influenced by having been treated respectfully and having received higher compensation.

<sup>19</sup> ADB. 2010. *Regional Technical Assistance on Outreach for Good Governance and Development Effectiveness through the Accountability Mechanism*. Manila (TA 7572).

<sup>20</sup> Centre for Poverty Analysis. 2009. *A Review of the Southern Transport Development Project (STDP) Grievance Redress Mechanisms. Consolidated Final Report*. Colombo. [www.adb.org/SPF/publications.asp](http://www.adb.org/SPF/publications.asp).

30. The Safeguard Policy Statement (2009), which became effective in January 2010, requires the establishment of a project-level grievance redress mechanism to respond quickly to project-affected people. Well-designed, project-specific grievance mechanisms may mean that even fewer cases will be brought to the Accountability Mechanism for resolution in the future.<sup>21</sup>

**Figure 1: ADB's Problem Solving and Compliance Framework**



31. In addition to the executing and implementing agencies, operations departments deal with implementation issues, including addressing concerns of project-affected people. ADB staff and executing agencies have become more familiar with the safeguard policies, and more conscious of preventing problems and ensuring early 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. Thus, all efforts are made to prevent problems, solve them early, and ensure compliance. All operations departments have set up dedicated safeguard units to solve problems and ensure early compliance. Numerous training sessions on safeguards have been held in ADB and DMCs.

32. Ensuring compliance with ADB policies and procedures is a key responsibility of operations departments. However, problems still can occur—and operations departments are ADB's first point of entry in addressing them. For example, the Sixth Road Project in the Philippines faced land acquisition and resettlement problems arising from design deficiencies,

<sup>21</sup> The offsetting factor is that the cases may increase with the expanding size of the portfolio. With better outreach activities and greater awareness, there may be more knowledge about the Accountability Mechanism and thus more complaints.

and the adoption of new safeguard policies after the loan became effective.<sup>22</sup> ADB proposed that the Government of the Philippines take measures to comply with the new ADB resettlement policy. This was not acceptable to the government. In July 2003, ADB suspended disbursements for the road improvement component. Dialogue resulted in the government compensating affected families and preparing resettlement plans approved by ADB. Later project review and PCR missions confirmed that all affected families had achieved similar or better living conditions after the resettlement. Similarly, ADB suspended civil works on a road bypass under the Pakistan National Highway Development Sector Investment Program<sup>23</sup> while land acquisition and resettlement issues were being resolved, after a complaint was filed with OSPF.<sup>24</sup> The bypass construction was resumed after the problems were fully addressed. These actions took place without a formal intervention by means of the Accountability Mechanism.

33. 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. This is consistent with the 2003 Accountability Mechanism policy, which acknowledges that problem solving is primarily the function of the DMC government because it owns the project.

34. 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 with this principle. Early problem prevention, problem solving, and compliance are beneficial for affected people, ADB, and DMCs. Local solutions are faster and cheaper than the formal Accountability Mechanism options. Where system failure does occur, ADB's philosophy is to respond promptly and effectively at the local and operational level. 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: Accountability Mechanism as an Integral Part of ADB's Compliance Systems**

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

36. Compliance with ADB policies and procedures aims to (i) mitigate potential harm to project-affected people; (ii) enhance the development effectiveness of ADB operations; and (iii) ensure that ADB resources are used with efficiency, economy, and for the intended purposes. These three objectives are fulfilled by dedicated functions as well as the operations departments. The Accountability Mechanism focuses on mitigating and addressing harm; the Independent Evaluation Department (IED) focuses on ensuring development effectiveness; and the Office of the Auditor General, the Office of Anticorruption and Integrity (OAI), and other related offices and departments focus on ensuring ADB resources are used with efficiency, economy, and for the intended purposes.

<sup>22</sup> ADB. 1996. *Report and Recommendation of the President to the Board of Directors: Proposed Loan and Technical Assistance Grant (JSF) to the Philippines for the Sixth Road Project*. Manila. (Loan 1473-PHI for \$167 million, approved 30 September 1996)

<sup>23</sup> ADB. 1996. *Report and Recommendation of the President to the Board of Directors: Proposed Multitranchise Financing Facility and Proposed Loan to Pakistan for the National Highway Development Sector Investment Program*. Manila.

<sup>24</sup> The OSPF deemed this complaint ineligible because the complainants did not make prior good faith efforts to solve problems with the operations department concerned.

37. To mitigate harm, the Accountability Mechanism responds to project-affected people to address problems and noncompliance. It is a demand-driven mechanism—project-affected people report problems and 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. A salient feature of all the MDB accountability mechanisms is that they only intervene when project-affected people file a complaint. This is different from an audit function, which proactively undertakes random checking. For this reason, the compliance review functions of MDB accountability mechanisms require the establishment of a causal link between direct material damage and the MDB's noncompliance with its policies.<sup>25</sup>

38. To ensure lessons are learned and to enhance development effectiveness, IED evaluates activities to help the Board of Directors, Management, and decision makers in DMCs know whether planned 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. While CRP review asks what are the noncompliance issues and whether these have caused direct and material harm to people, one dimension of IED's evaluations are to examine why there are noncompliance issues and what is the effect of policy compliance on development effectiveness. The CRP review is demand driven; IED reviews are driven by ADB's own initiatives as well as by the demands of stakeholders.

39. 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, project-related and other activities, and information systems. OAI deals with alleged fraud and corruption in ADB-financed activities. COSO focuses on procurement monitoring and quality assurance. The Office of Risk Management is responsible for the overall management of ADB's credit, market, and operational risks.

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

41. 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. It is important to ensure clear, complementary relationships between these mechanisms. The Accountability Mechanism plays an important and unique role as a focused and demand-driven mechanism for project-affected people.

## 7. Delivering Effective Results

42. **Consultation phase.** Of the 11 eligible complaints received by the OSPF between 2004 and 2010, 5 are fully or partially resolved, 4 are ongoing, 1 is not resolved, and 1 was

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<sup>25</sup> For example, the 1993 World Bank resolution downplayed the panel's role in checking compliance with operational policies, while emphasizing its role in linking actual or potential harm to local populations and because of noncompliance. The second review of the World Bank Inspection Panel in 1999 reconfirmed that this requirement is essential.

withdrawn. Both the withdrawn complaints were submitted to the CRP.<sup>26</sup> For the ineligible complaints, the OSPF informed the complainants how to pursue their grievances through the operations departments. The operations departments indicated that many of the issues were resolved after proper contacts were made. This reflects a significant aspect of OSPF operations that is not readily apparent. The OSPF has assumed an informal role in connecting affected persons with the appropriate ADB staff. The increase in the number of complaints since 2009 may suggest a growing awareness that the Accountability Mechanism provides recourse in case of problems. In all the cases, the OSPF informed the affected persons 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, the consultation phase provides a useful channel to address the problems of affected people, and to link them with operations departments and the CRP. Appendix 3 summarizes the eligible complaints dealt with by the OSPF.

43. **Compliance review phase.** Since 2004, the CRP has conducted the compliance review on the 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 is satisfactory. On STDP, the CRP concluded in its fourth annual monitoring report that 17 of the 19 recommendations were fully complied and only 2 were in partial compliance.<sup>27</sup> 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 people and facilitated the government's improvement of its own systems. While the government initially viewed the CRP as an adversary, it later appreciated the CRP's work. On the Chashma Right Bank Irrigation Project, the CRP found that by 2009 ADB had fulfilled 24 of the 29 Board-approved recommendations and made sufficient progress on the 4 partially complied with recommendations. One recommendation was superseded by events and could not be complied with. Appendix 4 summarizes the processes and results of the requests dealt with by CRP.

## 8. High Degree of Transparency

44. Consistent with the requirement of the Public Communications Policy (2005), the 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 posted substantial information on their websites, including the SPF review and the assessment reports, SPF final reports, CRP review reports, CRP annual monitoring reports, and Board's decisions on compliance review. The Accountability Mechanism policy specifies steps for the consultation and compliance review processes, and the expected duration for most steps. A review of the accountability mechanism websites across different development institutions suggests that the ADB Accountability Mechanism compares favorably in terms of its comprehensive and clear disclosure of information.

## 9. Accountability as a Learning Mechanism

45. One major motivation for establishing accountability mechanisms within MDBs was that the feedback from the complaints would act as a rich resource of learning for staff,

<sup>26</sup> The case withdrawn was Melamchi Water Supply Project. It was submitted to the CRP, which found the case ineligible. The unresolved case is related to the Fuzhou Environmental Improvement Project, which was also submitted to the CRP.

<sup>27</sup> ADB. 2010. *Annual Monitoring Report to the Board of Directors from 1 March 2009 to 14 May 2010 on the Implementation of Remedial Actions for the Southern Transport Development Project in Sri Lanka*. Manila.

Management, and the Board. 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 the enhanced learning efforts, the OSPF and OCRP have started to provide training courses to staff and undertake more outreach activities in DMCs.

46. The 2003 Accountability Mechanism policy emphasizes the role of the OSPF in strengthening the internal problem solving function of the operations departments. The OSPF helped to identify best practices for setting up grievance redress mechanisms in complex and sensitive projects. For example, based on the lessons learned from the Southern Transport Development Project, the OSPF developed a guide for designing and implementing grievance mechanisms for road projects.<sup>28</sup> The OSPF has also developed guidelines for establishing and implementing grievance redress mechanisms in various DMCs. It helped the project office establish a complaint-handling mechanism for the Earthquake and Tsunami Emergency Support Project in Aceh, Indonesia, that proved effective in resolving complaints.<sup>29</sup> OSPF coordinated a meeting where several other donor agencies exchanged experience on their complaint-handling systems during the reconstruction efforts in Aceh. It subsequently published several reports describing the project's grievance mechanism, the lessons learned from it, the systems used by ADB and other agencies, and recommendations and lessons learned from these experiences.<sup>30</sup>

47. To facilitate learning, the OCRP established an internet-based platform for people working on different accountability mechanisms to exchange views.<sup>31</sup> 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 Accountability Mechanism enhanced the implementation of these systems.

48. The Accountability Mechanism is increasingly seen by staff, Management, and the Board as a tool for ADB to respond positively to public scrutiny and learn to do better.

## **B. Weaknesses**

49. The assessment suggests that ADB can benefit from improving the Accountability Mechanism in several areas.

### **1. Lack of Direct Access to the Compliance Review Function**

50. Under the Accountability Mechanism policy, complainants are required to start with the consultation phase, but can exit at various stages and proceed to compliance review. The Accountability Mechanism policy adopted this sequential approach to address direct and material harm before addressing the question of compliance. Project-affected people were thought to be more interested in having their complaints addressed first before focusing on the establishment of ADB's noncompliance with its policies and procedures, which may not

<sup>28</sup> ADB. *Designing and Implementing Grievance Redress Mechanisms: A Guide for Implementors of Road Projects in Sri Lanka*. Manila. (<http://adb.org/documents/reports/grievance-redress-mechanisms/default.asp>).

<sup>29</sup> ADB. 2005. *Report and Recommendation of the President to the Board of Directors on Proposed Grants to the Republic of Indonesia for the Earthquake and Tsunami Emergency Support Project and Contribution to the Multidonor Trust Fund (Grant 0002)*. Manila.

<sup>30</sup> ADB. *Complaint Handling in the Rehabilitation of Aceh and Nias. Summary of Lessons and Recommendations*. (<http://adb.org/Documents/Reports/Complaint-Handling-Rehabilitation-Summary.pdf>). Manila. This summary was translated into Bahasa Indonesia. This is one of several reports produced by OSPF on this subject.

<sup>31</sup> ADB. 2009. *Piloting of a Community of Practice for Independent Accountability Mechanisms* (Research and Development). Manila (approved for \$150,000). The net work is available on <http://iamnet.adb.org>.

necessarily result in a satisfactory resolution of the complainants' problems on the ground. The options to exit the consultation was to ensure the complainants can choose between consultation and compliance review.

51. However, the requirement to start with consultation has generated two problems. First, some stakeholders, especially NGOs, argue that the OSPF has blocked the access of complainants to the compliance review. It has generated the perception that this requirement has been the cause of the limited recourse to compliance review. Second, this requirement has 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.

## **2. Need for a Single Entry Point**

52. 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 access the Accountability Mechanism easily. This entry point should be both credible and efficient.

## **3. Uncertainty on Site Visits**

53. Site visits to borrowing countries by the CRP are controversial. 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, the Accountability Mechanism process will be compromised. Some of these stakeholders suggest that site visits and general cooperation with the CRP should be included in the conditions of loan agreements for all projects, like the requirement that member governments permit entrance to ADB representatives, including its officials and staff. DMC governments argue that ADB has no basis to insist on mandatory site visits because the compliance review process is about ADB's compliance with its own policies and procedures, and is not about a borrower's breach of any obligations.

54. 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. Independence and Effectiveness of the Compliance Review Panel**

55. The review leading to the establishment of IED at ADB suggested the independence of the CRP could be enhanced.<sup>32</sup> CRP members are appointed by the Board on the President's recommendation. By contrast, the Director General of IED is appointed by the Board based on the recommendation of the Board's Development Effectiveness Committee (DEC) in consultation with the President. The IED work program and budget are reviewed by DEC and approved by the Board. The CRP does not have a formal work programming and budgeting process, partly because its work is demand driven. CRP members are not evaluated, but the DEC provides written annual performance feedback to the Director General, IED. While the Director General is the executive head of the department, a senior staff member is assigned as the Secretary of OCRP. Public consultations indicate that some stakeholders see the Secretary of OCRP as a representative of Management.

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<sup>32</sup> ADB. 2008. *Review of the Independence and Effectiveness of the Operations Evaluation Department*. Manila.

56. The IED experience also highlights that while independence is an important prerequisite for the credibility of a mechanism, independence should not mean isolation. The CRP interacts little with Management and staff, leading to its perceived and actual isolation. The IED experience suggests that appropriate interactions help in sharing lessons and best practices. Unlike the World Bank's Inspection Panel, the compliance review phase does not give Management the opportunity to respond before the eligibility of a request is determined. The borrowing country 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 affect goodwill and the effectiveness of the Accountability Mechanism.

57. 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 facilitate effectiveness and ensure accountability of an independent mechanism. Like the DEC's role with IED, the BCRC should be a focal point for the CRP's interaction with the Board and an avenue for regular dialogue on the Accountability Mechanism.

## 5. Unclear Mandate for Compliance Review Panel

58. Under the Accountability Mechanism policy, the CRP has three mandates: (i) to conduct compliance review, (ii) to make recommendations to bring projects into compliance, and (iii) to monitor the implementation of the recommendations. The mandate to recommend remedial actions after compliance review contrasts with the World Bank's Inspection Panel, which is a fact-finding body.<sup>33</sup> The Inspection Panel does not make recommendations on remedial measures to its Board; it only passes judgment on the World Bank's noncompliance and its related harm. World Bank's management makes recommendations to the Board for remedial measures based on the panel's findings.

59. The mandate of the CRP to make recommendations creates two problems. First, this blurs the boundaries between compliance review and problem solving. It creates the perception that the CRP is a higher level appeal body, which is contrary to the intention of the 2003 policy (footnote 2, para. 41). Second, this also blurs the boundary between compliance review and project administration. Recommendations touch upon project design and implementation. For example, the Inspection Panel recommended extending the closing date for the Chashma Project by several years, and that ADB discuss with the Government of Pakistan arrangements to ensure funding of at least 5 years to implement an environmental management plan. The Inspection Panel also recommended that ADB put in place adequate human resources "to ensure a satisfactory level of support for, and monitoring of, the implementation of any resettlement plans, environmental management plans or other measures required under ADB's safeguard policies."<sup>34</sup> These are typical project implementation actions. In its latest annual monitoring report, the CRP addressed this issue and stated that it did not have the institutional knowledge to make a judgment on this issue and that it would have been better left to Management.<sup>35</sup> Further, remedial actions must be agreed upon by the borrower, which is the legal owner of the projects and is principally responsible for implementing the actions. The compliance review mandate does not include discussing or negotiating actions with the borrower. Any recommendations without the borrower's agreement would not be meaningful.

<sup>33</sup> World Bank. 1999. *Clarification of the Board's Second Review of the Inspection Panel*. Washington, DC.

<sup>34</sup> ADB. 2010. Annual Monitoring Report to the Board of Directors 2008–2009 on the Implementation of Remedial Actions for the Chashma Right Bank Irrigation Project (Stage III) in Pakistan. Manila. Para. 36.

<sup>35</sup> ADB. 2010. *Annual Monitoring Report to the Board of Directors 2008–2009 on the Implementation of Remedial Actions for the Chashma Right Bank Irrigation Project (Stage III) in Pakistan*. Manila.

## 6. Lack of Clear and Predicable Cutoff Dates

60. The Accountability Mechanism's cutoff date for filing a complaint is the issuance of the PCR. Some stakeholders argue that adverse environmental or social effects of some projects may become apparent only several years after its closure. While complaints could technically be filed many years beyond project completion, ADB would not have leverage on the borrowing country to rectify the adverse effect long after completion. Accurately attributing the harm to the project long after its completion would also be difficult. ADB is ahead of most MDBs in allowing the complaints to be filed until the issuance of the PCR. Appendix 5 compares the key features of accountability mechanisms in nine development agencies including the cutoff dates.

61. However, using the PCR as a cutoff date creates problems since that date is often not clear. PCRs are issued within 1–2 years after project completion, and the exact dates are difficult to know in advance. The clarity and predictability of the cutoff dates need to be improved.

## 7. Efficiency Improvement Possibilities

### a. Time

62. 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 is about 170 days. For the compliance review phase, the average time from receiving a request to the CRP informing the requesters of the eligibility is about 20 days. Only two 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.<sup>36</sup> With other MDB accountability mechanisms, it is customary to take more than a year to complete the problem solving or compliance review process, especially for large and complex projects.

63. The long duration of Accountability Mechanism processes may be attributed to several factors. First, the processes are complex. Consultations undertaken as part of this review indicate that project-affected people still have difficulty filing complaints. Second, the consultation and compliance review are intensive processes that often require hiring mediators or experts. The processes are initiated from Manila. Missions can only be fielded periodically. During the site visits to the Community Empowerment for Rural Development Project<sup>37</sup> in Indonesia as a part of the Accountability Mechanism review consultation, local communities expressed a strong desire to use the ADB resident mission to expedite problem solving.

64. The CRP has set its monitoring time frame at 5 years for every project, even though the 2003 policy and the *Operations Manual* (L1) have not prescribed such a time frame. This one-size-fits-all approach demands time and resources from the affected people, ADB, and the borrowing countries without commensurate value added. A more flexible time frame tailored to each project would be more efficient.

<sup>36</sup> The duration from receiving the request to providing information to the requesters about the Board decision was 223 days for the Southern Transport Development Project, and 511 days for the Fuzhou project.

<sup>37</sup> 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).

65. Without compromising their independence, the OSPF and OCRP should draw on the work already done by each other and by the operations departments to reduce duplication and time and costs to complainants, DMCs, and ADB.

#### **b. Costs**

66. 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. The operating costs are borne by ADB. In 2009, the operating cost for the ADB Accountability Mechanism was \$2.1 million. Because the Accountability Mechanism is demand driven, the operating costs vary from year to year. Some costs have to be incurred to maintain an Accountability Mechanism regardless of the number of complaints received. Reflecting this nature, ADB needs to ensure that there are adequate resources 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.

67. A common concern of 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 administration 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.

68. Accurately attributing costs to the Accountability Mechanism may not always be possible because of the interplay and dynamics of multiple factors. However, the Accountability Mechanism does often entail costs to DMCs. In its 2007–2008 annual monitoring report, for example, the CRP stated that the panel is “aware that all remedial works that may be required to correct any issues of non-compliance in a project will entail additional time, and may well entail additional costs, including costs to be borne on the part of the borrower.”<sup>38</sup> These costs resulting from ADB’s noncompliance with its operational policies and procedures are ultimately borne by the borrowers, which is a major reason for borrowers’ uneasiness and reluctance in accepting compliance review, including site visits. ADB needs to be fully aware of this and demonstrate the benefits of the Accountability Mechanism to ensure the credibility of the Accountability Mechanism and its ownership by DMCs.

69. 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

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<sup>38</sup> ADB. 2009. *Annual Monitoring Report 2007–2008 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*. Manila (Loan No. 1146-PAK[SF]). Para. 41.

project-affected people need to be minimized. ADB should encourage the full utilization of country systems, project-level grievance redress mechanisms, and operations departments' efforts in problem prevention, problem solving, and early compliance. If problems and noncompliance occurred, they should be addressed quickly.

## **8. Inadequate Awareness and Learning**

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

71. While the cases dealt with by the SPF and CRP have been well tracked, no system is in place to document the 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 departments. This information gap affects learning and should be addressed.

72. The Accountability Mechanism has been increasingly seen by staff, Management, and the Board as a tool for ADB to respond positively to public scrutiny and learn how it can do better. However, the perception that the compliance review process is adversarial remains. More interactions and sharing of information and experiences are needed among OSPF, CRP, the staff and 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.

## **9. Too Few Compliance Review Requests?**

73. The OSPF received 35 complaints between 2004 and March 2011, while the CRP received 3 requests. Some stakeholders argued that the CRP received too few requests. Before analyzing possible reasons for the limited recourse to CRP, the experience of other MDBs can help set the context. The World Bank Inspection Panel investigated 31 requests from 1994 to 2010, an average of fewer than 2 cases a year for an institution whose portfolio is nearly four times the size of ADB's. The Office of the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency dealt with 22 compliance review cases from 2000 to 2010, but only 6 were eligible and went through the full compliance audit process; there are 2 ongoing cases. The African Development Bank has received 6 cases since 2007, of which 2 were eligible for compliance review. The data show that the low volume of complaints is a common phenomenon. Appendix 6 presents the number of cases received by different accountability mechanisms.

74. 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, consisting of grievance handling mechanisms at the project level, operations departments, and the Accountability Mechanism (paras. 28–33). Most of the grievances are handled at the project and operations levels. The Accountability Mechanism is the last resort for problem solving and compliance review, and complaints submitted to it should occur as exceptions. However, the awareness on the Accountability Mechanism is also limited, contributing to the low number of requests. In addition, the Accountability Mechanism process is complicated. The requirement that affected people start at the consultation stage, before they can request for compliance review, also may have reduced access to compliance review.

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

### C. Summary

76. The assessment suggests that the ADB Accountability Mechanism is sound. It stands out as a pioneer in instituting problem solving for both public and private sector operations. It is also highly transparent, participatory, credible, and effective. The assessment suggests that drastic changes are not required, but that ADB can benefit from fine-tuning the Accountability Mechanism in the following areas:

- (i) Affected people should be provided with direct access to the compliance review function.
- (ii) Project-affected people should be given a single entry point to file complaints once direct access to both problem solving and compliance review is provided.
- (iii) The controversy on site visits by the CRP should be addressed.
- (iv) The independence of the CRP should be enhanced.
- (v) The boundaries between compliance review and problem solving, and between compliance review and project management, should be clarified.
- (vi) The cutoff date should be clarified.
- (vii) Time and cost efficiency should be improved.
- (viii) The awareness of Accountability Mechanism should be improved.
- (ix) Accountability Mechanism as a learning instrument should be enhanced.

77. Appendix 7 summarizes the Accountability Mechanism's strengths, weaknesses, and potential areas for improvements.

## V. MAJOR PROPOSED OPTIONS AND CHANGES

78. This section outlines the major options to address the weaknesses identified in Section IV.

### A. Enabling Direct Access to the Compliance Review Function

79. Several options have been considered to address perceptions and problems relating to the current requirement that project-affected people must start with the consultation phase.

80. **Option 1: Status quo.** This approach requires complainants to start with the consultation phase, but be given the option to exit and proceed to the compliance review phase at multiple points. The advantage of this approach is that it prioritizes addressing the problems of project-affected people. Experience since 2003 shows that most concerns involved specific problems of consultation, participation, information sharing, and compensation. This approach can effectively address these problems. However, by maintaining this approach, the existing perception problems will be prolonged and people who want to request a compliance review directly will face delays.

81. **Option 2: Parallel processes.** Under this approach, consultation and compliance review would be pursued simultaneously. The advantage is that it allows the concerns of project-affected people and compliance review to be dealt with at the same time. However, the parallel processes can be confusing and complex. They can also be costly and inefficient. The

two sets of investigations may interfere with each other, and demand much time and resources from the affected people, ADB, and the concerned DMC. Running two processes in parallel risks compromising the effectiveness of each process. Consultation aims to reach consensus, while compliance review seeks to identify ADB's noncompliance with its operational policies and procedures. In the Sri Lanka Southern Transport Development Project, when the parallel process with CRP was initiated, the complainants and other parties lost interest in the consultation phase, rendering the consultation ineffective.<sup>39</sup> For these reasons, none of the MDB accountability mechanism policies prescribe parallel processes.

**82. Option 3: Joint decisions by the Special Project Facilitator and Compliance Review Panel.** This approach involves a joint review of the complaint by the SPF and CRP, and a joint structuring of a course of action. Unless the complainants prefer a different course of action or an immediate compliance review by the CRP is clearly needed, the problem solving process is launched, while the CRP can begin planning for a possible compliance review at the end of the consultation phase. At the conclusion or termination of the consultation, the CRP reviews the situation and judges whether (i) compliance issues exist or remain, and (ii) the issues warrant a compliance review. The advantages of this approach are that it (i) utilizes the expertise of the CRP and SPF from the entry stage of a complaint, (ii) ensures transparency within and outside the Accountability Mechanism, and (iii) enables the CRP to plan and implement compliance review within a shorter period. The disadvantage is that the CRP's proactive approach is inconsistent with the Accountability Mechanism mandate and could create a conflict of interest. Compliance review is driven by demands from complainants; it is not an auditing function. The supply-driven approach would duplicate ADB's auditing and supervision mechanisms. Further, project-affected people would have limited choice under this approach, as the SPF and CRP would decide whether to proceed with problem solving or compliance review.

**83. Option 4: Choices for complainants.** This approach allows the complainants to choose whether they want to start with the consultation or the compliance review phase. They can exit the consultation phase and request compliance review at any time. Complainants can also file for compliance review upon the completion of the consultation process, but not vice versa. Complainants can only switch from the compliance review to the consultation process if the CRP finds the request for compliance review ineligible. This restriction is needed because compliance review is a formal process and should not be switched to problem solving once it has started. The advantage of this approach is that it provides the complainants with the choice of direct access to either consultation or the compliance review phase. According to some stakeholders, the asymmetric nature of this approach mitigates the risk of forum shopping and the misuse of the Accountability Mechanism for pecuniary gains. The disadvantage of this approach is that it does not allow complainants to switch to consultation when the compliance review is ongoing. Complainants may not have sufficient information about which phase they should start with. Under this approach, they will have limited opportunity to reconsider their decisions if they have started with the compliance review. A basic information packet and a template should be developed to facilitate informed decisions by complainants from the outset.

84. After careful consideration of all the options, the working group recommended option 4.

## **B. Establishing a Single Entry Point**

85. If ADB provides direct access to both the consultation and compliance review phases, ADB should establish a single entry point to receive all complaints. This focal point, the

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<sup>39</sup> ADB. 2005. Office the Special Project Facilitator Annual Report 2005. Manila.

complaint receiving officer (CRO), should serve as a first contact point for project-affected people. The CRO will forward the complaints to the SPF, CRP, and the operations departments according to the preferences of the complainants. The CRO will forward the complaints that are beyond the scope of the Accountability Mechanism, such as those relating to procurement and corruption, to other relevant departments and offices.

86. To enhance independence and neutrality, the secretary for BCRC should serve as CRO. This would be more efficient than setting up a new office that would incur additional administrative costs. The alternative of combining the OSPF and OCRP might weaken the dedicated support required by both the SPF and CRP for their distinct functions.

### **C. Addressing Site Visit Issues**

87. The issues related to CRP site visits are sensitive and important. Although compliance review is about ADB's compliance with its operational policies and procedures, the review almost always touches upon the borrower's compliance with ADB policies. Borrowers are the legal owners of ADB-financed projects and handle project implementation. When noncompliance is found, the perception that the borrower failed to comply with ADB policies cannot be entirely avoided. A borrower may also have concerns about the delays and other costs brought about by the compliance review. Further, DMCs stress that compliance review is about ADB's compliance with its operational policies and procedures, not about a borrower's obligations under a loan agreement. Thus, the borrowers perceive site visits imposed on them as negating this premise of the Accountability Mechanism. This issue is sensitive also because projects are implemented in the territory of DMCs, and the governments consider it their right to decide whether to accept CRP site visits. Other stakeholders believe the DMC should be obligated to accept CRP site visits because the project under review was funded by ADB.

88. Any controversy on site visits harms the reputation of ADB, CRP, and the borrower alike. Therefore, ADB's policy on site visits must be fair, credible, and implementable. The working group is aware of the sensitivities and importance of site visits, and has considered several options to address these issues.

89. **Option 1: Status quo.** The existing policy arrangement for site visits requires obtaining a borrowing country's consent: "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" (footnote 2, para. 56).

90. The advantage of the status quo is its clarity on the principle of requiring the borrowing country's consent. This requirement is 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 borrower declines a request for a site visit.

91. **Option 2: Loan covenant approach.** Under this approach, a provision would be included in loan agreements requiring a borrower to accept site visits by the CRP.

92. The advantage of this approach is that it prescribes acceptance of site visits as an obligation of borrowing countries along with other terms and conditions applicable to an ADB-financed project. This approach makes a borrower's refusal of CRP site visits subject to ADB's standard remedies (sanctions) when a borrower breaches an obligation under loan agreements. These remedies include suspension of disbursement, cancellation of the loan, acceleration of repayment, and cross default. Thus, this approach is clear on how to deal with a borrower's refusal.

93. The disadvantage of this approach is that DMCs see it as negating the premise of the Accountability Mechanism. They consider it an arbitrary and heavy-handed approach to force a borrower to accept site visits, the purpose of which is to investigate ADB's compliance with its own policies. DMCs argue that the loan agreement is a contractual arrangement between ADB and the borrower—third parties are outside the purview of this contractual arrangement. Under this contractual arrangement, remedies are available in the loan agreement if a borrower fails to perform its obligations. However, ADB cannot penalize a borrower if ADB does not comply with its own policies. ADB's noncompliance cannot be grounds for suspension or cancellation of the loan when the borrower is not at fault. Such punitive prescriptions also conflict with the partnership spirit of the Paris Declaration on Aid Effectiveness. Further, the sanctions resulting from a borrower declining site visits may not resolve the issues, but instead intensify the existing problems. Thus, none of the MDB accountability mechanism policies prescribes accepting CRP site visits as a loan covenant.

94. Some DMCs argue that adopting this approach would infringe upon their sovereignty and contradict the premise of the Accountability Mechanism. However, other stakeholders argue that including borrowers' acceptance of CRP site visits in the loan agreements is not about sovereignty as loan agreements cover many obligations by the borrowers. They suggest that once site visits are included in the loan agreement, any sanctions, if applied, would not be because of a borrower's noncompliance with ADB policy, but because of its refusal to allow site visits as agreed in the loan agreement.

95. Some stakeholders have proposed modifications to enhance this approach. For example, as sanctions may not resolve the problems faced by the complainants and could place the entire project at risk, they suggest that ADB should favor the most constructive approach possible if a borrower refuses site visits. They propose that a collaborative approach should guide all discussions with a DMC. Some are of the opinion that sanctions should only be applied at the discretion of the Board rather than being automatic; and the extent and nature of these sanctions should not be symbolic or disproportionate, but would need to be realistic.

96. **Option 3: Partnership approach.** Under this approach, CRP site visits would be handled using the same principles and practices applicable to all ADB missions, but without recourse to provisions in the loan covenant. ADB would use its resources 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 and its DMCs. It will require strong institutional support from staff and Management, and particularly resident missions, coupled with effective communications between ADB, the CRP, and the borrowers. ADB and the borrowing countries will need to work as partners to ensure the smooth functioning of the Accountability Mechanism. 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

executive director for the borrowing country concerned. The purpose of using ADB's institutional mechanisms would be limited to assisting the CRP in gaining a borrower's acceptance for site visits. It is not intended to influence the outcomes of a compliance review, and should not compromise the CRP's independence. The independence of the CRP rests on its ability to make independent judgments, and this ability would not be compromised by using ADB's established institutional arrangements to obtain borrowers' consent for site visits.

97. The advantage of this approach is that it can minimize the risk of a borrower's refusal for several reasons. First, this approach is aligned with the common interests of ADB, the borrowers, and the CRP to ensure the smooth functioning of the Accountability Mechanism. Second, it is consistent with ADB's experience. ADB staff undertake many missions each year, and virtually all of them are accepted by DMCs. Third, this approach is consistent with the policies, practices, and experiences of other MDB accountability mechanisms. None of the MDB accountability mechanisms has mandatory site visits, and very few have encountered difficulties in undertaking site visits.<sup>40</sup> Finally, the approach is sensitive to DMC concerns. It can address the communication issues resulting in part from the current policy's lack of a clear delineation of responsibility and ways of seeking a borrower's consent. It is conducive to conflict resolution by allowing clarification of misunderstandings. A rigid approach may lead to hardened positions, leaving no room for further discussion. Intensive communications are often required to gain a borrower's acceptance of CRP site visits, and to ensure that the borrower implements the recommended measures at the end of the compliance review. This final point is especially important for making compliance review a positive tool for improving project quality. The disadvantage of this approach is that intensive communication and dialogue between ADB, CRP, and DMCs require time and resources. Further, some DMCs, especially small countries, may see this as ADB Management and staff unduly pressuring them to accept site visits.

98. A borrower is generally expected to allow a site visit. While there was one exception in the past 8 years, the assumption of the current Accountability Mechanism policy that site visits will be granted routinely should be maintained. In the exceptional situation of refusal, the partnership approach would also allow a greater understanding of the reasons for not allowing the site visit. Management will discuss with the borrower the reasons for not accepting the requested site visit. In consultation with the BCRC and the borrower, Management will convey the reasons to the Board through an information paper.

99. **Option 4: Site visits by Board Compliance Review Committee, Compliance Review Panel, and borrowing country Board members.** Under this approach, if a borrowing country declines a CRP request for a site visit, a team consisting of a CRP member, a BCRC member, and the Board member representing the borrowing country could undertake the visit. The team would seek the assistance of the concerned operations departments and resident missions to facilitate their site visit. The advantage of this approach is that the borrowing country is more likely to accept it. The disadvantage is that it could place the BCRC and borrowing country Board members in a conflict of interest situation. Furthermore, elevating the problems to the Board may politicize and intensify them.

100. **Option 5: Third party site visits.** Under this approach, the CRP would engage a third party to conduct the site visit. The advantage of this approach is that it provides an alternative

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<sup>40</sup> The World Bank's Inspection Panel received 70 complaints between 1994 and 2010. It faced country rejection of one of its site visits in the late 1990s. This incident generated a debate in the World Bank about whether to adopt mandatory site visits. The World Bank maintained its policy that site visits should be conducted after obtaining a borrower's consent. The Inspection Panel's site visits have been arranged by the World Bank's country offices. None of the Inspection Panel's site visits has been refused by countries since the late 1990s.

channel to address the problem and reach mutual agreement between the CRP and the borrower. The disadvantage is that the CRP is already a third party. Engaging another third party may circumvent the problems or create further contention, rather than solving the problems.

101. After careful consideration, the working group recommended option 3.

#### **D. Completing Compliance Review If Site Visits Cannot Take Place**

102. All shareholders agree that site visits will generally take place if requested by the CRP. However, in the unlikely event that a site visit is declined, the CRP still may be able to provide some findings on compliance and possibly also on harm. In this context, a closure to the compliance review process would be highly desirable. If the BCRC determines, in consultation with the Board, that a site visit will not be permitted, it may direct the CRP to complete its work and deliver its final report without a site visit. The CRP would use all available information and make appropriate assumptions and inferences. The CRP would present the best analysis possible after exhausting the most cost-effective and logical alternative means to acquire necessary information. In the absence of a site visit, the CRP may have to rely more heavily on available information, including that provided by the complainants, than would otherwise be the case.

#### **E. Enhancing the Independence of Compliance Review**

103. Several changes drawing from the IED model are proposed to improve the independence of the CRP. First, CRP members should be appointed by the Board based on the recommendation of the BCRC in consultation with the President. This would depart from the current practice of the Board appointing CRP members based on the President's recommendation. Second, the Chair, CRP 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, who can be misperceived as a representative of Management. The Chair, CRP should be supported by OCRP staff. Third, the work programming and budgeting process should be strengthened. The Chair, CRP 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, reviewed by the Board's Budget Review Committee, and approved by the Board. Fourth, to enhance accountability, the BCRC should provide written annual performance feedback to all CRP members. The BCRC will seek inputs of the Chair, CRP in providing the performance feedback to the other two CRP members.

#### **F. Clarifying the Mandate of Compliance Review**

104. To clearly define the relationships between compliance review, problem solving, and project administration, the compliance review should be fact-finding in nature. It should focus on ascertaining the alleged direct and material harm, and whether such harm is because of ADB's failure to comply with its operational policies and procedures. After receiving the CRP findings, Management will make recommendations agreed upon by the borrower. The Board will consider Management's recommendations. The CRP should monitor the implementation of the recommendations.

105. Consistent with the partnership principle, the CRP should seek to engage all stakeholders concerned throughout the review process. The borrowing country 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 if it so wishes. This will help to build understanding from early on and facilitate CRP access to the DMC concerned. The Accountability Mechanism should also provide the opportunity for Management to respond before the eligibility of a request for compliance review is determined.

## **G. Clarifying the Cutoff Date**

106. Determining the cutoff date for filing complaints based on the PCR lacks clarity and certainty. One alternative is to extend 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 is to use the loan/grant closing date as the benchmark. The cutoff date for filing complaints could be 1 year after the loan/grant closing date. Using the loan/grant closing date provides more clarity and certainty. Further, financing product closing date information is readily available to the public throughout project cycles.

## **H. Improving Efficiency**

### **1. Streamlining Processes**

107. The consultation phases of the Accountability Mechanism currently require complainants to provide written comments on OSPF review and assessment reports. This requirement has sometimes been a burden on complainants that delays the process. It should be offered as one option for complainants, rather than as a compulsory requirement. Complainants' feedback can be obtained through more user-friendly and faster means, such as meetings, discussions, and telephone calls. While the OSPF should inform the President about the complaints and results, the current requirement that OSPF consult with the President on the procedural steps is unnecessary.

108. Operations departments and local grievance redress mechanisms should have more scope for problem solving. The OSPF can engage the concerned operations department and the project level grievance redress mechanism if it 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. The SPF and CRP should explore all means to utilize problem solving and compliance capacity at the country, project, and operations department levels to improve efficiency and reduce transaction costs.

109. 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.

### **2. Improving Cost Effectiveness**

110. 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.<sup>41</sup> Based on a thorough review of their past workloads, it is proposed that the basic structure for

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<sup>41</sup> 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.

both the OSPF and OCRP, reflecting the fixed costs, be identical. This can be one international staff member and two administrative or national staff members, in addition to the SPF and the three CRP members. Currently, the OSPF has one international staff and two administrative or national staff members in addition to the SPF. The OCRP has two international staff members and three administrative or national staff members in addition to the three CRP members.

111. The 2003 policy provides for the Chair, CRP “to work fulltime for a minimum of 1 year”, to organize the OCRP and undertake other related tasks (footnote 2, para. 97). To strengthen the CRP and to enable the Chair to fulfill the mandate as the head of OCRP, the Chair, CRP will work full time.

## **I. Improving Awareness and Enhancing Learning**

112. Improving awareness is a key to enhancing the effectiveness of the Accountability Mechanism. 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 programs in DMCs involving local communities, governments, and NGOs. Each resident mission should have a grievance redress focal person, either part time or full time, 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.

113. All the complaints processed by the SPF and CRP should be tracked or documented to strengthen learning. Documentation should be extended to complaints that were forwarded to the operations departments. This should enrich the information for analyzing the problems. The insights gained from this analysis would be useful for training and sensitizing project teams.

114. The OSPF and OCRP should distill lessons from their operations. Common lessons derived from the Accountability Mechanism would shed light on project design and implementation. The OSPF and CRP currently produce separate annual reports. To promote synergy, they should provide a joint Accountability Mechanism annual report. OSPF and OCRP websites—and other information related to the Accountability Mechanism—should be consolidated under a common ADB Accountability Mechanism website to ensure easy accessibility and reduce fragmentation. Similarly, the OSPF and OCRP logos and letterheads should be placed under a common ADB Accountability Mechanism logo and letterheads.

115. To facilitate learning, OSPF, OCRP, IED, and RSDD (chief compliance officer) should produce a joint learning report (for example, every 3–5 years) to distill lessons and insights. A collaborative effort among these departments would enhance learning and guide staff in improving project design and implementation. These interactions would also help ADB avoid the recurrence of common problems, as well as facilitate a cultural change so that the Accountability Mechanism is viewed as a positive tool for learning.

116. 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 be the joint OSPF and OCRP dissemination of the Accountability Mechanism annual report. The OSPF and OCRP should continue their training and workshops for staff.

117. ADB should also revise some terms to sharpen and clarify 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. Using “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.”

## **VI. THE REVISED ACCOUNTABILITY MECHANISM POLICY**

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

### **A. Objectives and Guiding Principles**

119. The objectives of the Accountability Mechanism are 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 reviews of alleged ADB’s noncompliance with its operational policies and procedures that may have caused them direct and material harm.

120. The Accountability Mechanism is designed to (i) enhance 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.

### **B. The Structure**

121. The Accountability Mechanism has two functions. The problem solving function is led by the SPF, who responds to problems of local people affected by ADB-assisted projects through a range of informal and flexible methods. The compliance review function is led by the CRP, which reviews alleged noncompliance by ADB with its operational policies and procedures that have resulted, or are likely to result, in direct and material harm to project-affected people.

122. To provide an easily accessible single entry point for project-affected people, this two-pronged structure will be complemented by the CRO who will receive all complaints and forward them to the OSPF or CRP based on the preference of the complainants. The CRO will forward complaints that are beyond the scope of the Accountability Mechanism, such as those relating to procurement and corruption, to other relevant departments and offices. The CRO will copy the information to all the relevant departments and offices concerned.<sup>42</sup>

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<sup>42</sup> The CRO will take measures to ensure the required confidentiality is met in forwarding and copying the information.

## C. Human and Financial Resources

### 1. The Problem Solving Function

123. The OSPF is headed by the SPF and also has one international staff member and two administrative or national staff members. The SPF is a special appointee at a level equivalent to a director general. Appointed by the President after consultation with the Board, the SPF reports directly to the President. Any additional human and financial resources for the OSPF, if required, are approved through the work program and budget framework process or by the President. The Budget, Personnel, and Management Systems Department handles the administrative processes, according to ADB guidelines. 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 OSPF work, including monitoring activities.

124. The selection criteria for the SPF includes (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. The SPF's term is 3 years and is renewable. The SPF must not have worked in any ADB operations departments for at least 5 years before the appointment. The SPF must disclose immediately upon learning of any personal interest or significant prior involvement in the matter. 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.

125. The President will evaluate the performance of the SPF. The work planning and budgeting of the OSPF will be the same as other ADB departments. Sufficient flexibility will be ensured in the work plans and budget to accommodate the demand-driven nature of the work.

### 2. The Compliance Review Function

126. **Compliance Review Panel.** The CRP has three members, one of whom is the chair. The Chair, CRP is full time and the two CRP members are part time and called on as and when required. CRP members are appointed by the Board upon the recommendation of the BCRC in consultation with the President. The BCRC directs the search and selection process, which may involve the use of an executive search firm if the BCRC considers that necessary.

127. Each panel member has a 5-year, nonrenewable term. Two panel members are from regional countries, with at least one from a DMC. The third panel member is from a nonregional country. The selection criteria for panel members include (i) the ability to deal thoroughly and fairly with the complaints brought to them; (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. Directors, alternate directors, directors' advisors, Management, staff, and consultants are ineligible to serve on the CRP until at least 3 years have elapsed from their time of employment with ADB. After serving on the CRP, former panel members will be barred from 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. A panel member must disclose immediately upon learning of any personal interest or significant prior involvement in the matter.

128. The CRP is a fact-finding body which reports to the Board through the BCRC, except on specific activities where the CRP reports to the BCRC. CRP members are exempt from the formal annual performance review process. However, the BCRC chair, in consultation with other BCRC members, provides written annual feedback on their performance. The BCRC will seek inputs of the Chair, CRP in providing the performance feedback to the other two CRP members.

129. The Board determines the Chair, CRP's salary, upon recommendation of the BCRC in consultation with the President. The Chair, CRP's annual salary increase is the average of the pay increases given to the vice-presidents. The part-time CRP members are remunerated on comparable levels with other Accountability Mechanism panel members and/or their experience and expertise.

130. 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 CRP deems relevant, except personal information that is typically restricted.

131. **Office of the Compliance Review Panel.** The OCRP supports the CRP. The OCRP is headed by the Chair, CRP and also has one international staff member and two administrative or national staff members. The Chair, CRP, in consultation with other CRP members, may request additional human and/or financial resources if needed. The BCRC, in consultation with the President, endorses these additional resources, which are then approved by the Board. The international staff of the OCRP is a level 5 or 6 staff member who reports to the Chair, CRP. The Budget, Personnel, and Management Systems Department handles the administrative processes in relation to OCRP staff, in accordance with ADB guidelines.

132. OCRP staff are ADB staff. The terms and conditions of their employment is the same as for other ADB staff, as provided by ADB staff regulations and administrative orders. OCRP staff are not banned from transferring to and from other parts of ADB because of the importance of maintaining the right balance between "insiders" and "outsiders." As demonstrated by IED, this flexibility in staff movement helps guard against the potential isolation of the CRP and enriches both compliance review and operations through exchange of knowledge and experience.

133. The Chair, CRP is 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 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. Sufficient flexibility will be ensured in the work plan and budget to accommodate the demand-driven nature of the work of the CRP and OCRP.

134. **Board Compliance Review Committee.** The BCRC consists 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 are appointed in accordance with the Board's Rules of Procedure. The Office of the Secretary provides secretariat support to the BCRC. The secretary to the BCRC will also work as the CRO.

### 3. Legal Advice

135. The Office of the General Counsel is responsible for advising the OSPF, SPF, OCRP, CRP, BCRC, and Board concerning ADB's legal status, rights, and obligations under the ADB Charter 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 request for problem solving or compliance review under the policy.

#### D. Functions

##### 1. Problem Solving

136. The problem solving function assists people affected by specific problems caused by ADB-assisted projects through informal, consensus-based methods with the consent and participation of all parties concerned. The general approaches include (i) consultative dialogue, (ii) information sharing, (iii) joint fact-finding, and (iv) mediation. The SPF may suggest various specific approaches to resolve problems, for example convening meetings, organizing and facilitating consultation processes, or engaging in a fact-finding review of the situation. The problem solving function is outcome-driven. It does not focus on the identification and allocation of blame, but on finding ways to address the problems of the project-affected people. The SPF problem solving function also aims to strengthen the internal processes of operations departments, and is designed to improve the overall internal problem solving functions of ADB.

137. The OSPF will

- (i) obtain from the operations departments all materials relating to the complaints;
- (ii) facilitate consultative dialogues, use its good offices, and/or facilitate the establishment of a mediation mechanism;
- (iii) inform the Board about the results of problem solving activities;
- (iv) collate and integrate internal and external experiences of problem solving to be fed back into ADB's operations, including the formulation, processing, or implementation of projects;
- (v) provide generic support and advice to operations departments in their problem prevention and problem solving activities, but not for specific cases under review by the operations departments;
- (vi) work with the OCRP to produce a clear, simple, informative, and succinct basic information pack about the Accountability Mechanism—highlighting the different remedies available under the two functions—to be sent to the complainants when acknowledging the receipt of the complaint;<sup>43</sup>
- (vii) prepare and publish annual Accountability Mechanism reports<sup>44</sup> in coordination with the OCRP;
- (viii) produce a learning report every 3–5 years through joint efforts with the OCRP, IED, and RSDD;<sup>45</sup>

<sup>43</sup> The information pack will highlight the differences under 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 resultant remedies (if any) to bring a project into compliance may or may not mitigate any harm. The information pack will also highlight the procedural and other differences between these two functions.

<sup>44</sup> The Accountability Mechanism annual report is approved by the President (for the OSPF section) and the BCRC (for the CRP section).

<sup>45</sup> The Chair, CRP, SPF, director general of IED, director general of RSDD may rotate to chair the preparation of the learning report.

- (ix) conduct outreach programs within ADB and to the public, which will include a holistic introduction to the Accountability Mechanism, while focusing on specific subjects;
- (x) improve the interface of the Accountability Mechanism websites with the OSPF and OCRP websites included as separate sub-sites under a common ADB Accountability Mechanism website within the ADB website to improve the access, coherence, and comprehensiveness of the information; and
- (xi) conduct other activities required to carry out problem solving effectively.

138. The problem solving function will not replace the project administration and problem solving functions inherent in operations departments, which have the initial responsibility for responding to the concerns of affected communities. 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.

## **2. Compliance Review**

### **a. The Compliance Review Panel**

139. The CRP is a fact-finding body on behalf of the Board. The CRP reviews 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 is not intended to investigate the borrowing country, the executing agency, or the private project sponsor (PPS). 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 is not intended to provide judicial-type remedies, such as injunctions or monetary damages. Relative to a request for problem solving with SPF, a request for compliance review is not an appeal to a higher body of authority in the form of an appellate jurisdiction.

140. The CRP will

- (i) process requests for compliance review;
- (ii) engage with all relevant parties, including Management and staff, the complainants, the DMC government or the PPS, and the Board member representing the country concerned 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 Management and staff, the complainants, the DMC government or the PPS, and the Board member representing the country concerned on its preliminary findings; and deal with any resulting comments;
- (vii) issue draft reports to Management, complainants, and the borrower;
- (viii) issue final reports to the Board with its findings;
- (ix) monitor the implementation of decisions made by the Board and produce annual monitoring reports;
- (x) prepare and publish annual Accountability Mechanism reports (footnote 44) in coordination with the OSPF;

- (xi) provide regular (e.g., quarterly) briefing sessions to the BCRC; one of these briefings may be combined with the briefing on the Accountability Mechanism annual report;
- (xii) produce a learning report every 3–5 years through the joint efforts with the OSPF, IED, and RSDD;
- (xiii) develop a roster of independent technical experts who can assist the CRP in carrying out its work; and
- (xiv) liaise with accountability mechanisms at other institutions.

141. The Chair, CRP 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) assign member(s) of the CRP to conduct compliance reviews and monitoring tasks in consultation with the BCRC;
- (iv) prepare the annual work plan and budget for the CRP and OCRP;
- (v) report to the Board through the BCRC on CRP activities; and
- (vi) provide input to the BCRC's annual performance feedback on CRP members.

**b. Office of the Compliance Review Panel**

142. OCRP will

- (i) support the work of CRP;
- (ii) work with the OSPF to produce a clear, simple, informative, and succinct basic information pack about the Accountability Mechanism—highlighting the different remedies available under the two functions—to be sent to the complainants when acknowledging the receipt of the complaint (footnote 43);
- (iii) conduct outreach programs internally and to the public, which 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 the Department of External Relations, ensure that such information dissemination and public outreach is integrated with ADB's activities to promote interaction with project beneficiaries or stakeholders, including civil society groups; and
- (v) facilitate the CRP's communication and coordination with the Board, Management, OSPF, and staff.

**c. Complaint Receiving Officer**

143. The CRO will

- (i) receive all complaints and promptly acknowledge them;
- (ii) forward the complaints to the OSPF or CRP based on the preference of complainants; and forward complaints that are beyond the scope of the Accountability Mechanism, such as those relating to procurement and corruption, to other relevant departments and offices;
- (iii) 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 if required by complainants;
- (iv) register the complaints; and
- (v) inform the complainants about whom to contact subsequently.

144. The CRO will carry out the functions with objectivity and neutrality.

**d. Board Compliance Review Committee**

145. The BCRC will

- (i) clear the CRP's proposed TOR for compliance reviews 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 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;<sup>46</sup>
- (viii) in case of a borrower's rejection of a CRP's site visit, dialogue with Management on the reasons for the borrower's refusal and direct the CRP on how to complete the compliance review without a site visit; and
- (ix) serve as the focal point for the CRP's communication and dialogue with the Board on the Accountability Mechanism.

146. BCRC's function in clearing the proposed TOR and reviewing the draft compliance review reports is to ensure that the CRP operates within the scope of the compliance review. The BCRC reviews 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.

**e. The Board of Directors**

147. 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;
- (iii) authorizing compliance reviews;
- (iv) considering CRP final compliance review reports;
- (v) considering and deciding on Management's recommendations in response to the CRP's findings; and
- (vi) considering and approving the Accountability Mechanism policy.

**3. ADB Management and Staff**

148. 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) recommend measures to bring projects into compliance in response to compliance review findings; the borrower should agree to the recommended measures;

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<sup>46</sup> The feedback of the Chair, CRP 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; and
- (vi) document the complaints that were forwarded to the operations departments because the complainants did not make prior good faith efforts by to solve the problems with the operations departments.

## **E. Eligibility**

### **1. Who Can File Complaints**

149. For both the problem solving and compliance review functions, requests 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 and who are directly, materially, and adversely affected; (ii) a local representative of the affected persons; or (iii) a nonlocal representative, 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 it is made and provide evidence of its authority to represent such people.

150. For the compliance review, requests 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.

151. Compliance review covers both public sector and private sector ADB assisted projects.<sup>47</sup> 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 DMC or PPS concerned and ADB.

### **2. Scope and Exclusions**

#### **a. Problem Solving Function**

152. The consultation phase is 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 is broader than the compliance review function. People who believe they have been 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 is limited to ADB-related issues concerning ADB-assisted projects.

153. Complaints will be excluded if they are

- (i) about actions that are not related to ADB's action or omission in the course of

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<sup>47</sup> The term "ADB-assisted project" refers to a project financed or to be financed, or administered or to be administered, by ADB.

- (ii) formulating, processing, or implementing ADB-assisted projects; about matters that complainants have not made good faith efforts to address with the operations department concerned and with the project-specific grievance mechanism concerned;
- (iii) about matters already considered by the SPF (unless the complainants have discovered new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint);
- (iv) about matters being dealt with or already dealt with by the CRP (including those that have completed the compliance review process), except those cases considered ineligible for compliance review by the CRP;
- (v) about an ADB-assisted project for which the financing product closing date<sup>48</sup> has passed for 1 year or more;
- (vi) frivolous, malicious, trivial, or generated to gain competitive advantage;
- (vii) about decisions made by ADB, the borrower or executing agency, or the PPS on procurement of goods and services, including consulting services;
- (viii) about allegations of fraud or corruption in ADB-assisted projects and by ADB staff;
- (ix) about the adequacy or suitability of ADB's existing policies and procedures;
- (x) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal, or relate to ADB personnel matters; and/or
- (xi) about ADB's non-operational housekeeping matters, such as finance and administration.

#### **b. Compliance Review Function**

154. The CRP examines 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. All types of complaints excluded from the problem solving function are also excluded from the scope of the compliance review function with the exception of item (iii) in para. 153. In addition, for the purpose of compliance reviews, the following complaints 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 relate to ADB's noncompliance with its operational policies and procedures;
- (iii) 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
- (xii) complaints about matters already considered by the CRP (unless the complainants have discovered new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint).

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<sup>48</sup> For programmatic operations, such as multitranche financing facilities, additional financing, and program clusters, the cutoff will be tranche- (or its equivalent) based. The cutoff date is 1 year after the financing product closing date of the tranche (or its equivalent). This will be before the combining of the financing product closing date with later tranches (or its equivalent) in some cases. For projects whose financing product closing dates are kept open after the project completion for purposes such as capitalizing interest payments and liquidation; the cutoff date will be 1 year after the project completion date.

155. The scope of compliance reviews is ADB's operational policies and procedures as they relate to formulating, processing, or implementing an ADB-assisted project.<sup>49</sup> It excludes matters relating to the procurement of goods and services, including consulting services; corruption; and nonoperational housekeeping matters, such as finance and administration. The Board decides whether a policy is an operational policy subject to compliance review, and the CRP determines which part of the operational policies and procedures was or is not complied with after carrying out a compliance review. In determining the eligibility of a complaint, the CRP must be satisfied that there is sufficient evidence of the coexistence of (i) direct and material harm caused by the ADB-assisted project, (ii) noncompliance of ADB with its operational policies and procedures, and (iii) the noncompliance as a cause for such harm. The compliance review will focus on whether there is noncompliance by ADB with its operational policies and procedures with respect to project formulation, processing and/or implementation. The report will discuss those material adverse effects alleged in the complaint that have totally or partially resulted from ADB's noncompliance with its policies and procedures.

156. For a compliance review, the applicable operational policies and procedures will depend on whether the complaint concerns a proposed or an ongoing project.<sup>50</sup> 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 approval of the project, unless otherwise specified in the relevant project, procedural, or policy documents.

157. The CRP will not consider the policies and procedures of other institutions except to the extent that ADB's policies and procedures expressly refer to those of the other institutions.

## **F. How to File a Complaint**

158. Complaints must be in writing and preferably addressed to the CRO. Complaints can be submitted by mail, facsimile, e-mail, or hand delivery to CRO at ADB headquarters. Complaints will also be accepted by any ADB office, such as a resident mission or representative office, which will forward them to 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.

159. The complaint must specify the following:

- (i) names, designations, addresses, and contact information of the complainants and any representatives;
- (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 prefer to first undergo problem solving with the OSPF or compliance review with CRP;

<sup>49</sup> The operational policies and procedures do not include guidelines and similar documents or statements.

<sup>50</sup> A "proposed project" refers to a project under preparation 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).

- (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) if known, an explanation of why the complainants claim that the direct and material harm alleged is, or will be, the result of ADB's alleged failure to follow its operational policies and procedures in the course of formulating, processing, or implementing the ADB-assisted project;
- (viii) if known, 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;
- (ix) a description of the complainants' good faith efforts to address the problems first with the operations department and the project-specific grievance mechanism concerned, and the results of these efforts;
- (x) if applicable, a description of the complainants' efforts to address the complaint with the OSPF or CRP, and the results from these efforts;
- (xi) an explanation of why any of the above information cannot be provided; and
- (xii) any other relevant matters or facts with supporting documents.

160. Complainants can also describe the desired outcome or remedies that they believe ADB should provide or help through the Accountability Mechanism to facilitate a clear understanding of their preferences from early on.

161. If the CRO, SPF, or CRP believe that it is impossible to keep the complainants' identity confidential, they should inform the complainants of the risk and give them an opportunity to reconsider the complaint.

## **G. Processing Complaints**

162. The complainants will decide and indicate whether they want to start with the problem solving or compliance review function. They can exit the problem solving function and file for compliance review at any time. Complainants can also file a request for compliance review upon the completion of the problem solving process. Requesters can exit either the problem solving or compliance review function at any time. The ongoing process they are in will be terminated if the complainants exit or disengage. However, complainants cannot switch from compliance review to problem solving, or request for problem solving upon the completion of compliance review. The CRP will ask Management to respond after receiving the complaint and before the determination of eligibility. Responding to CRP findings, Management will recommend measures and/or actions to bring the project into compliance. 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. They will draw on the work done by each other, and by information from the operations departments, to reduce time and costs to the complainants, DMCs, and ADB.

163. The indicative steps are described in paras. 164-194. All the days refer to working days unless otherwise specified.

### **1. Receiving Complaints**

164. **Step 1: Receiving a complaint.** The complainants or their representative file a complaint with the CRO. Complaints received by any other ADB departments or offices will be forwarded to the CRO, who will immediately acknowledge receipt of the complaint and send a

basic Accountability Mechanism information pack to the complainants. The CRO will inform the SPF, Chair, CRP, and the operations department concerned about the receipt of the complaint.

165. **Step 2. Forwarding the complaint.** Within 2 days of receiving the complaint, the CRO will forward the complaint to (i) the SPF if the complainants indicated a preference to undergo problem solving; (ii) the Chair, CRP if the complainants indicated a preference to undergo compliance review; (iii) OAI if the complaint concerns corruption; (iv) COSO and/or OAI if the complaint concerns procurement; and (v) other departments or offices as appropriate.

166. The CRO will contact the complainants and seek their clarification if the complainants have not indicated a preference for problem solving or compliance review. Complainants may need advice. The CRO will inform the complainants that they can choose to undertake either problem solving or compliance review. The CRO will highlight the differences under 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 resultant remedies (if any) to bring a project into compliance may or may not mitigate any harm. The CRO will also explain the procedural differences between these two functions.

167. In forwarding the complaint, the CRO will prepare and include a memo on why the complaint was forwarded to a certain department or office with a copy sent to other relevant parties (e.g., BCRC, the Chair, CRP, SPF, and the operations department concerned). The CRO will also send a copy of the complainants' letter to them. In copying the information, the CRO will stress the importance for all the parties concerned to ensure confidentiality and take necessary measures to ensure confidentiality (for example, by blanking out the names of the complainants), unless the complainants indicated that confidentiality is not required.

168. **Step 3: Registration of the complaint and informing the complainants.** Within 2 days after forwarding the complaint to relevant parties, the CRO will register it on the Accountability Mechanism website. The registration is administrative in nature and does not mean that the complaint is admissible or eligible for problem solving or compliance review. 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. Operations Departments' End-of-Process Reports**

169. For complaints forwarded to operations departments because complainants did not make prior good faith efforts to solve the problems with the departments, the operations departments will address the issues or problems. The operations department should explore whether confidentiality is being requested and take the necessary actions. At the end of the process, the operations department will produce a report summarizing the complaint, issues, steps taken to resolve the issues, decisions or agreements by concerned parties, results, and lessons. The operations department will post the report on the department webpage within the ADB website. The operations department will copy the report to the CRO and OSPF. The CRO will post the report on the ADB Accountability Mechanism website.

## **3. The Problem Solving Function**

170. The problem solving process is expected to take about 160 days from the date of the registration of the complaint to reaching an agreement on the remedial actions. This period excludes translation time, any request for extension to provide information or file documents,

and the time needed by the parties to facilitate resolution of their problems during the implementation of the agreed course of action. The SPF may draw on the project grievance redress mechanisms and/or the operations departments to resolve problems.

171. **Step 1: Determining eligibility.** After acknowledging the complaint, the SPF will screen the complaint and determine its eligibility within 21 days of receipt of the complaint.<sup>51</sup> To find a complaint eligible, the SPF must be satisfied that the complaint meets all the eligibility criteria and does not fall within the exclusions listed in Section E. The SPF will review whether the complainants made prior good faith efforts to solve the problems with the operations department and the project-specific grievance mechanism concerned. The SPF will forward the complaint to the operations department if the complainants did not make prior good faith efforts to solve the problems with the operations department and the project-specific grievance mechanism concerned. In addition, the SPF must also be satisfied, in his or her sole discretion, that the SPF's involvement would be useful. One factor to consider is whether ADB has the leverage to influence change. The SPF should also explore whether confidentiality is being requested and take the necessary actions. 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.

172. **Step 2: Review and assessment.** 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 (iv) recommend how the problem can best be solved.

173. The review may include site visits, interviews, and meetings with the complainants, the government or the PPS, and any other people the SPF believes would be useful. The SPF will obtain information from the operations department and, if necessary, will request the operations department's advice and support. The SPF will field fact-finding mission(s) on his or her own initiative; or participate, in consultation with the operations department, in a special project administration mission of the operations department. 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 refer the findings to the complainants, the operations department, and the government or PPS, and request their comments. Based on the assessment and taking into account the comments received, the SPF will decide 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.

174. **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, or use other approaches to problem-solving

175. Implementing the problem solving process requires the consent of every party involved. Except for the SPF, the parties can walk away from the process if they do not consider it purposeful or if there is no consensus on the course of action. This would formally close the problem solving process.

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<sup>51</sup> The forwarding of the request by the CRO to the SPF does not preclude the SPF from independently assessing the eligibility of the request.

176. Remedial actions that are adopted as a result of the problem solving process will reflect an agreement among the parties. In most cases, the actions will be specified in a written agreement or series of agreements made by the stakeholders. Remedial actions involving a change in the project will require approval according to ADB's applicable procedures, and agreement by the borrower.

177. When the problem solving process has been completed (with or without a resolution), the SPF will submit a report to the President, with a copy to the vice-president and the operations department concerned, summarizing the complaint, the steps to resolve the issues, decisions by the concerned parties, and the settlement agreement (if any) by the concerned parties. The SPF will issue this report and furnish it to the complainants, the government or the PPS, the CRP, and the Board for information. Upon submission to the Board, the report will be released to the public, subject to the consent of the complainants and the government or PPS.

178. **Step 4: Monitoring.** The SPF will monitor the implementation of any agreed upon remedial actions. The SPF will report annually to the President, with a copy to the Board, regarding the status of implementation. As part of this monitoring, the SPF will consult with the operations department, the complainants, and the government or the PPS. The monitoring time frame will be project specific, but will generally not exceed 2 years. All stakeholders, including the public, may submit information regarding the status of implementation to the SPF. The SPF's monitoring reports will be sent to the complainants and the government or PPS. They will be posted on the ADB Accountability Mechanism website (subject to consent of the complainants and the government or PPS), after being submitted to the President and furnished to 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 shorter or about 1 year, the monitoring results can be included in the SPF final report described in step 5. In carrying out the monitoring function, the SPF can either produce monitoring reports for single complaint or combined monitoring reports for multiple complaints.

179. **Step 5: Conclusion of the problem solving process.** When implementation of the remedial action has been completed, the SPF will prepare a final report and submit it to the President, the complainants, the operations department, the government or PPS, CRP, BCRC, and the Board for information. The final report will be made public, subject to the consent of the complainants and the government or PPS. The SPF can either produce final reports for single complaint or combined final reports for multiple complaints.

#### **4. The Compliance Review Function**

180. The complainants will know whether the Board has authorized the compliance review they have requested about 70 days after receipt of the notification of registration of the complaint. They will know the outcome of the Board decision on the CRP final report about 170 days after the receipt of the notification of registration of the complaint. These periods exclude time for translation, and any request for extension to provide information or file documents.

181. **Step 1: Requesting Management response.** The CRP will carry out the initial assessment and confirm that the complaint falls within the mandate of the compliance review function. The CRP will review whether the complainants made prior good faith efforts to solve the problems with the operations department and the project-specific grievance mechanism concerned. The CRP will forward the complaint to the operations department concerned if the complainants did not make prior good faith efforts to solve the problems with the operations

department and the project-specific grievance mechanism concerned.

182. After satisfying these basic requirements, the CRP will forward the complaint to Management and request a response within 21 days. The CRP will also inform the DMC and/or Board member representing the DMC concerned about receipt of the complaint. 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 own actions or omissions in complying with its policies and procedures, but Management intends to take actions to ensure compliance; or (iii) the serious failures are exclusively attributable to the borrower or other factors external to ADB; or (iv) the serious failures that may exist are attributable to ADB's noncompliance and to the borrower or other external factors. The CRP will copy the BCRC in its correspondence with the Management.

183. **Step 2: Determining eligibility.** Within 21 days of receiving the Management response, the CRP will determine the eligibility of the complaint.<sup>52</sup> The CRP will review the complaint, Management response, and other relevant documents. To find a complaint eligible, the CRP must be satisfied that the complaint meets all the eligibility criteria and does not fall within the exclusions listed in Section E. In addition, the CRP must also be satisfied that (i) there is evidence of noncompliance; (ii) 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. The CRP should also explore whether confidentiality is being requested and take the necessary actions. The CRP will inform the DMC and/or Board member representing the borrowing country upon determination of the eligibility.

184. **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 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 complainants will be informed of the Board's decision, and the eligibility report and the Board's decision will be posted on the ADB Accountability Mechanism website.

185. **Step 4: Conducting compliance review.** The CRP will begin the compliance review as soon as the Board authorizes it. The Chair, CRP, in consultation with the BCRC, will decide the panel member(s) to conduct the review. The CRP's review is not time bound because the amount of time will vary depending on the nature, complexity, and scope of the project and the potential noncompliance. The BCRC will clear the compliance review TOR, which includes the scope, methodology, estimated review time frame, budget, and CRP member(s) for the review. Within 10 days from the receipts of the Board's authorization, the TOR will be provided to the Board, copied to Management, and posted on the ADB Accountability Mechanism website.

186. Throughout the compliance review process, the CRP will consult all relevant parties concerned, including Management and staff, the complainants, the DMC government or the PPS, and the Board member representing the country concerned. They will be given an opportunity to record their views. The compliance review may include desk reviews, meetings, discussions, and a site visit.

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<sup>52</sup> The forwarding of the request by the CRO to the CRP does not preclude the CRP from independently assessing the eligibility of the request.

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

188. The CRP compliance review report documents its findings concerning any noncompliance, and alleged direct and material harm. It will include all relevant facts that are needed to understand fully the context and basis for the CRP's findings and conclusions. It focuses 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 also ascertains 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.<sup>53</sup> For assessing direct and material adverse effects, the without-project situation should 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. If the CRP finds that alleged direct and material adverse effect is not totally or partially caused by ADB's noncompliance with ADB policies and procedure, the report will state this without entering into analysis of the material adverse effect itself or its causes. As 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 be guided by ADB policies and procedures where relevant.

189. If the BCRC determines, in consultation with the Board, that a site visit will not be permitted for a compliance review, the BCRC may direct the CRP to complete its work and deliver its final report without a site visit (paras. 195-196).

190. **Step 6: CRP's final report.** Within 14 days of receiving the responses to the CRP's draft report from Management, the borrower, and the complainants, the CRP will consider their responses and make changes as necessary before issuing its final report to the Board through the BCRC, attaching the responses from Management, the borrower, and the complainants. The CRP will also prepare a matrix summarizing how it has responded to the comments by Management, the complainants, and the borrower, and submit this to the Board through the BCRC with its final report. 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.

191. **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 Management, the borrower, and the complainants attached, will be released to the complainants and the borrower, and then posted on the ADB Accountability Mechanism website (posting of the complainants' and borrower's responses will be subject to their agreement).

192. **Step 8: Management recommendations.** If the CRP concludes that ADB's

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<sup>53</sup> 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 or draft review report will state this without entering into analysis of the direct material adverse effect itself or its causes.

noncompliance caused direct and material harm, Management will recommend measures to bring the project into compliance with ADB policies and address related findings of harm.<sup>54</sup> Because the legal ownership of the project lies with the DMC government or PPS, which also has the principle responsibility of implementing the recommendations, the government or PPS must agree to the recommendations. Within 60 days after the Board's consideration of the CRP final report, Management will submit its recommendations to the Board through the BCRC.

193. **Step 9: Board's decision.** Within 21 calendar days of receiving Management's recommendations, the Board will consider and make a decision regarding the recommendations on how to bring the project into compliance and/or mitigate any harm, if appropriate. Within 7 days after the Board's consideration, the Board's decision and Management's recommendations will be released to the complainants and the borrower, and then posted on the ADB Accountability Mechanism website.

194. **Step 10. Monitoring and conclusion.** The CRP will monitor implementation of any remedial actions approved by the Board as a result of a compliance review. Any remedial actions in project scope or implementation approved by the Board will be carried out in accordance with applicable ADB procedures. Unless the Board specifies a different timetable, the CRP will report on the progress annually. The Chair, CRP, 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, but will generally not exceed 3 years. The final monitoring report will also conclude the compliance review process. The methodology for monitoring may include (i) consultations with Management, the complainants, the executing agency and/or DMC government or the PPS, and Board members; (ii) document review; 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 Board, Management, the complainants, the DMC government or the PPS, and the public.

## H. Site Visits

195. 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, and will be arranged in the same way as other ADB missions. Management and staff, especially those in resident missions, will make all efforts to facilitate the visits. Resident missions will assist in obtaining the borrowing country government's consent, and will share the site visit and compliance review TORs with the borrowing country government. The TORs will clearly explain why a site visit is necessary, what will be reviewed, and how it will be conducted. The scope of the TORs will be limited to a specific complaint. The CRP will also seek the assistance of the Board member representing the borrowing country, and share the TORs with the Board member before submitting a mission request to the DMC through the resident mission. Similarly, ADB expects borrowing countries to cooperate and allow site visits to take place, except in exceptional cases (e.g., to protect their essential security interests). When a site visit is declined, Management will discuss with the borrower the reasons for not accepting the requested visit. In consultation with the BCRC and the borrower, Management will convey the reasons to the Board through an information paper.

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<sup>54</sup> These may include an action plan.

196. If a site visit does not take place, the BCRC will determine whether the CRP can complete its work and report on its findings. The CRP will use all available information, and may make appropriate assumptions and inferences in completing the compliance review. CRP will present the best analysis possible after having exhausted the most cost effective and logical alternative means to acquire necessary information. In the absence of a necessary site visit, CRP may have to rely more heavily on the available information, including that provided by the complainants, than would otherwise be the case.

## **I. Transparency**

197. 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 Public Communications Policy (2005).<sup>55</sup>

198. An integrated ADB Accountability Mechanism website will be set up within the ADB website, where the OSPF and OCRP will maintain their own sub-sites. Other information related to the Accountability Mechanism will also be posted on the Accountability Mechanism website to enable easy access and ensure synergy. The common pages linking the OSPF and OCRP sites, and other information related to the Accountability Mechanism within the ADB Accountability Mechanism sites will be regularly updated and improved. The OSPF and OCRP 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.

199. 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 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, OCRP, or CRO 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, CRP, and CRO may withhold the identities of the complainants from other stakeholders.

200. The SPF and CRP will have the authority to issue press releases and public communications. Before releasing any news releases or other media communications, the SPF or CRP will inform the Department of External Relations, not for purposes of review, but to provide ADB with an opportunity to prepare responses to queries from the media or the public.

201. 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**

202. The Accountability Mechanism applies to ADB-assisted projects in both the public and private sectors. It also applies to operations that use country systems. The use of country systems does not alter the need and nature for problem solving. The compliance review will

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<sup>55</sup> The Public Communications Policy is currently under review.

focus on the roles and responsibilities assumed by ADB in formulating, processing, and implementing the project according to the policies providing the scope for using country systems, such as the Safeguard Policy Statement.<sup>56</sup> The Accountability Mechanism also applies to ADB-administered cofinancing operations.

## VII. IMPLEMENTATION AND RESOURCE REQUIREMENTS

### A. Awareness and Learning

203. The OSPF and OCRP should update their outreach strategies regularly (for example, every 3 years) and undertake three kinds of outreach activities:

- (i) **Internal audience.** This outreach should improve awareness and disseminate lessons to staff through workshops, training courses, and orientation sessions. The Accountability Mechanism should be included as a part of regular staff training course.
- (ii) **Targeted project level.** The Safeguard Policy Statement requires setting up of grievance redress mechanisms at the project level. ADB and government staff working on the grievance handling mechanisms should organize awareness seminars in conjunction with resident missions, project teams, local government units, and executing agencies. Pamphlets in national or official languages, community notice boards, and audiovisual materials should be used to inform people. The intensity and format of this activity will vary with the nature of the project. ADB can explore the possibility of outsourcing outreach activities to reputable NGOs or civil society organizations. Gender issues should be taken into consideration when designing the outreach strategy.
- (iii) **National Level.** The OSPF and OCRP should hold regular dissemination activities in DMCs. They should distribute simple, pictorial-based, user-friendly descriptions of the mechanism. In each resident mission, a staff member should be designated as a focal person for grievance handling, either on a full-time or part-time basis. Some resident missions have already assigned focal persons for handling grievances; this practice should be extended to all resident missions.

204. Improving the awareness of the Accountability Mechanism requires that ADB staff work as a conduit to disseminate information. Operations departments should focus on projects with a high likelihood of generating complaints, such as projects with heavy resettlement. Staff should disseminate information early in the project cycle about the Accountability Mechanism and its availability as recourse in case other methods of dealing with harmful project effects are not successful. The Accountability Mechanism should be seen as an important instrument for learning, and for ensuring project quality and development effectiveness. The SPF and OSPF, CRP and OCRP, staff, Management, and the Board should all promote a cultural change to eliminate the remaining perception that the Accountability Mechanism is adversarial.

### B. Costs and Resource Needs

205. The proposed changes in the Accountability Mechanism will have resource implications in the following areas:

- (i) More outreach activities will require additional resources.

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<sup>56</sup> The statement clarifies (i) the conditions for applying country safeguard systems, (ii) the methodology of country safeguard system assessments, (iii) the consultation and validation processes, (iv) the roles and responsibilities of ADB and the borrowers, and (v) the procedures and other related requirements such as gap filling.

- (ii) The proposal that each resident mission assign a staff member as a full-time or part-time focal person for grievance handling will mean additional costs.
- (iii) There will be some reduction in costs because OCRP will have one fewer international staff member and one fewer administrative or national staff member.

206. The overall budget implications from the policy changes are expected to be moderate.

### **C. Effective Date and Transitional Period**

207. The updated Accountability Mechanism will become effective 3 months from the date of Board approval of the policy. Upon the Board's approval of the policy, the relevant section of the *Operations Manual* will be revised and will supersede the current *Operations Manual* section on the Accountability Mechanism.<sup>57</sup>

## **VIII. REQUEST FOR BOARD GUIDANCE**

208. The Board's guidance is sought on the proposed revisions of the 2003 policy set out in sections V, VI, and VII of this paper.

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<sup>57</sup> The 2003 Accountability Mechanism policy requires the OSPF, CRP, and BCRC 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 should be reflected in policy and the operations manual.

## TERMS OF REFERENCE FOR THE REVIEW OF THE ACCOUNTABILITY MECHANISM

1. In 1995, the Asian Development Bank (ADB) established its Inspection Function to provide a forum through which project beneficiaries could appeal to an independent body regarding matters relating to ADB's compliance with its operational policies and procedures in ADB-assisted projects.<sup>1</sup> In 2003, following extensive review, ADB introduced the current Accountability Mechanism,<sup>2</sup> 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, from 1 to 4 May 2010, the President of ADB announced that ADB would undertake a review of its Accountability Mechanism, and the joint Board and Management Working Group was subsequently established for this purpose.

2. The objective of the review was to examine the scope for improvements in the Accountability Mechanism. The review was to 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;<sup>3</sup>
- (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, operational 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 was to include public consultation planned in three phases. The first phase would be inviting public comments on existing Accountability Mechanism policy through the ADB website. The second phase would be country consultations in developed and developing member countries. The proposed locations were Washington, Frankfurt, Tokyo, Jakarta, Islamabad, and Manila. Consultation would include governments, nongovernment organizations, the private sector, and, where possible, project beneficiaries and affected people. The third phase would 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.

<sup>1</sup> ADB. 1995. *Establishment of an Inspection Function*. Manila.

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

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

4. The review was expected to be undertaken from April 2010 to April 2011.
5. The following key issues were included in the external experts' terms of references:
  - (i) the approach to site visits required under the existing Accountability Mechanism, which required borrowing country permission to carry out site visits;
  - (ii) relatively 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) taking on board the concerns of developing member countries in particular, and observing the broader impact that the Accountability Mechanism has had on ADB's approach to decision making and project selection;
  - (ix) examining 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 firmly committed to consulting all stakeholders to ensure the quality of the Accountability Mechanism review (AMR). As an integral part of the review process, ADB carried out intensive and extensive public consultations beginning in June 2010.
2. The consultation process has included
  - (i) establishing a dedicated AMR website at <http://www.adb.org/AM-REview/>;
  - (ii) consulting with all Board members, management, and a large number of staff in both headquarters and field offices;
  - (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 video conference;
  - (iv) consulting a broad spectrum of stakeholders, including project-affected people, project beneficiaries, governments, nongovernment organizations, the private sector, academia, and think tanks; and
  - (v) posting the 2003 Accountability Mechanism policy for public comments for 12 weeks and the AMR consultation policy for public comments for 8 weeks.
3. The working group to review the Accountability Mechanism maintained a high degree of transparency throughout the process by posting information on the AMR website. This website includes information on the composition of the working group, the review terms of references, review timetable, external experts' issues paper, external experts' report, and the ADB consultation policy paper. All written comments from external stakeholders have been posted on the website. 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 Accountability Mechanism policy and participation in in-country workshops were posted to all interested stakeholders. ADB provided written responses on key points received from the consultation process and released them on the AMR 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 AMR working group has met frequently 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, with project beneficiaries in general, and, in particular, with 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 various workshops, are posted on the AMR website.
6. Consultations were fruitful and benefited from the wide participation of stakeholders. Feedback reinforces the validity of the 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 Accountability Mechanism displays. While there is consensus among stakeholders on many issues, there is much debate on some other issues:

- (i) **Site visits.** While some stakeholders consider that site visits should be mandatory, others hold that 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 phase. Others hold that affected people should be able to choose which phase 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 hold 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 was a result of the existence of other problem-solving and compliance functions at projects and operational departments.
- (vi) **Costs to developing member countries.** Some consider that the Accountability Mechanism imposes significant costs on DMCs over and above those of other policies, such as safeguard polices. Others consider 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/>.

## SUMMARY OF ELIGIBLE COMPLAINTS FOR PROBLEM SOLVING, 2004–March 2011

Projects	Complainants and Issues	Status
<p><b>1. Loan 1820-NEP (SF): Melamchi Water Supply Project</b>, approved on 21 December 2000 (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"> <li>(i) access to information;</li> <li>(ii) environmental impact assessments;</li> <li>(iii) land acquisition, compensation, and resettlement;</li> <li>(iv) indigenous people;</li> <li>(v) the social upliftment program;</li> <li>(vi) agriculture; and</li> <li>(vii) forestry.</li> </ul> <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 cases ineligible.</p>
<p><b>2. Loan 1711-SRI (SF): Southern Transport Development Project</b>, approved on 25 November 1999 (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"> <li>(i) environmental impact assessments,</li> <li>(ii) the social impact assessment, and</li> <li>(iii) compensation and resettlement.</li> </ul>	<p>The complaint was concluded without settlement. 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 Dec 2004.</p>
<p><b>3. Loan 1765-INO: Community Empowerment for Rural Development Project</b>, approved on 19 October 2000 (ADB: \$65 million from OCR and \$50 million from the Special Fund)</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"> <li>(i) flaws in the design and construction of village infrastructure,</li> <li>(ii) the sequencing of project components,</li> <li>(iii) information dissemination, and</li> <li>(iv) participation in decision making.</li> </ul>	<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."</p>
<p><b>4. Loan 2231-PAK: National Highway Development Sector Investment Program, Tranche 1</b>, approved on 15 February 2006 (ADB: \$180 million)</p>	<p>The complaint was received on 9 September 2006, filed by the Committee of Affectees of Muzaffargarh Bypass, comprising 53 members. Issues raised included</p> <ul style="list-style-type: none"> <li>(i) the realignment of a bypass,</li> <li>(ii) resettlement and compensation</li> </ul>	<p>Issues raised in the complaint were resolved to the satisfaction of all parties.</p> <p>The OSPF annual report noted: "The complainants confirmed that they were satisfied with their</p>

Projects	Complainants and Issues	Status
from OCR)	for losses, and (iii) information dissemination and consultation.	compensation and the underpass. This complaint was thus resolved.”
<p><b>5. Loan 1659–CAM: Greater Mekong Subregion: Phnom Penh to Ho Chi Minh City Highway Project</b>, approved on 15 December 1998 (ADB: \$40 million the Special Fund)</p>	<p>The complaint was received on 30 July 2007.</p> <p>The NGO Forum on Cambodia filed complaints 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"> <li>(i) compensation,</li> <li>(ii) land titling, and</li> <li>(iii) livelihoods.</li> </ul>	<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.”</p> <p>In view of this, and considering that consultation had been held in abeyance for nearly 2 years, the OSPF informed the complainants in late 2009 that the complaint would be closed.</p>
<p><b>6. Loan 2176-PRC: Fuzhou Environmental Improvement Project</b>, approved on 29 July 2005 (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 who 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 there was a need for structured participatory consultation assisted by an independent mediator to improve communication among the parties and 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. Five families agreed and two did not. The government later changed the project design and ceased to request the resettlement of the families. The two families filed a compliance review request with the CRP.</p>
<p><b>7. Loan 2060/2061-PAK: Southern</b></p>	<p>The complaint was received on 27 February 2009. The signatory was an</p>	<p>From the 2011 OSPF Annual Report: “ADB closed the loan in</p>

Projects	Complainants and Issues	Status
<p><b>Punjab Basic Urban Services Project</b>, approved on 18 December 2003 (ADB: \$45 million from the ADF and \$45 million from OCR)</p>	<p>individual who claimed that he represented 58 complainants (43 men and 15 women) who were negatively affected by the waste water treatment plant. The issues included</p> <ul style="list-style-type: none"> <li>(i) resettlement and</li> <li>(ii) the environment.</li> </ul>	<p>July 2009 without construction of the plant, while holding open the possibility of including the plant in a new financing package. The devastating floods that hit Pakistan in July and August 2010 prevented the planned follow-up on the complaint, but in November 2010 OSPF's consultant conducted interviews with all the complainants to ascertain their status as a basis for further problem-solving efforts in 2011..”</p>
<p><b>8. Loan 2211/2212-PAK: Rawalpindi Environmental Improvement Project (Sewage Treatment Plant Component)</b>, approved on 13 December 2005 (ADB: \$20 million from OCR and \$40 million from the ADF)</p>	<p>The complaint was received on 28 May 2009. Information about the complainants is not public yet.</p> <p>The issues raised included</p> <ul style="list-style-type: none"> <li>(i) land acquisition and</li> <li>(ii) compensation.</li> </ul>	<p>From the OSPF Final Report: 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. In view of this, and considering that the project had been closed with no clear indication of if or when the sewage treatment plant (STP) would actually be built, the SPF concluded that no further consultation would be purposeful, and the complaint was closed. OSPF, however, made it clear that, should the STP 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 OSPF.</p>
<p><b>9. Loan MFF-2562-KAZ: CAREC Transport Corridor I (Zhambyl Oblast Section) Investment Program, Tranche 2</b>, approved on 7 October 2009 (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"> <li>(i) information dissemination,</li> <li>(ii) participation,</li> <li>(iii) cattle passes, and</li> <li>(iv) an underpass for agricultural machinery.</li> </ul>	<p>From OSPF's Monitoring Report, March 2011: 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. OSPF is monitoring the ongoing implementation of the agreements.</p>
<p><b>10. Loan 2053-TAJ: Education Sector</b></p>	<p>The complaint was received on 5 August 2010. Complainants requested</p>	<p>Consultation continues.</p>

Projects	Complainants and Issues	Status
<p><b>Reform Project</b> (approved on 17 December 2003 (ADB: \$7.5 million from the ADF)</p>	<p>for confidentiality of their identities 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 are in the areas of: (i) Information; (ii) Consultation; (iii) School reconstruction.</p>	
<p><b>11. Loan 2533-KGZ: CAREC Transport Corridor 1 (Bishkek-Torugart Road), Project 2</b>, approved on 14 July 2009 (ADB: \$28 million)</p>	<p>The complaint was received on 20 September 2010. It was filed by two residents of the affected area who requested that their identities not to be published. They authorized a representative: Naamatbekov Ulanbek, to file the complaint on their behalf. Their complaint is on compensation.</p>	<p>Consultation continues.</p>
<p><b>12. Loan 2500/2501-INO: Integrated Citarum Water Resources Management Investment Program - Project 1</b>, approved 4 December 2008, \$500.0 million Multitranchise Financing Facility.</p>	<p>Complaint received, 4 January 2011. Three complainants requested that their identities be kept confidential and authorized an NGO, People’s Coalition for the Rights to Water (KRUHA), to represent them.</p> <p>Issues are on: (i) Resettlement (ii) Compensation</p>	<p>Consultation continues.</p>
<p><b>13. PS 7303-PHI: Visayas Based-Load Power Project. Approved 11 December 2009.</b> \$100 million Private Sector Loan.</p>	<p>Complaint received, 28 February 2011. The signatories claimed that they filed the complaint on behalf of the residents of affected communities, 6 signatories requested for confidentiality. Only one resident opted to be identified together a member of Freedom from Debt Coalition, an NGO representing them.</p> <p>Issues included: (i) Consultation (ii) Information (iii) Environmental impact.</p>	<p>Consultation continues.</p>

ADB = Asian Development Bank, ADF = Asian Development Fund, CAM = Cambodia, CAREC = Central Asia Regional Economic Cooperation, CRP = Compliance Review Panel, INO = Indonesia, JBIC = Japan Bank for International Cooperation, KAZ = Kazakhstan, KGZ = Kyrgyzstan, NEP = Nepal, NGO = nongovernment organization, OCR = ordinary capital resources, OSPF = Office of the Special Project Facilitator, PAK = Pakistan, SF = Special Fund, SPF = special project facilitator, SRI = Sri Lanka, TA = Technical assistance, TAJ = Tajikistan.  
Source: ADB.

## SUMMARY OF REQUESTS FOR COMPLIANCE REVIEW, 2004–MARCH 2011

Projects	Requests	Responses	Results
<p><b>1. Loan 1146-PAK: Chashma Right River Bank Irrigation Project, Stage 3,</b> approved on 17 December 1991 (ADB: \$185.0 million in 1991 and additional 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 project affectees.</p> <p>The requesters claimed that ADB breached its operational policies and procedures in formulating and processing the supplementary financing project, with material adverse effect on Chashma affectees. 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 commence in December 2003. The Board approved the recommendation, and an inspection panel conducted the investigation in early 2004. The inspection panel final report was submitted in June 2004.</p> <p>CRP noted that requesters disengaged in March 2004 when the inspection panel carried out its investigation in the project area due to 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."</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 in 2005, 2006, 2007, and 2008. The fifth monitoring report, covering 2009, was the last report made.</p>	<p>After 5 years of monitoring, the CRP concluded in June 2010 that</p> <ul style="list-style-type: none"> <li>(i) ADB complied with 24 of the 29 recommendations,</li> <li>(ii) ADB partly complied with 4 recommendations, and</li> <li>(iii) 1 recommendation had been superseded by events.</li> </ul> <p>Of the 4 recommendations for which ADB had achieved partial compliance, the panel concluded that sufficient progress was made and that, under these circumstances, there was no need for the panel to extend its monitoring mandate beyond 5 years.</p>
<p><b>2. Loan 1820-NEP (SF): Nepal Melamchi Water Supply</b></p>	<p>The CRP received requests from four requesters on 12 November 2004. The following complaints were</p>	<p>The CRP obtained from the SPF materials relating to the complaint in the consultation phase. It carried out a desk-based</p>	<p>The CRP filed a mission to visit the project site and could not verify alleged direct and material harm or policy</p>

Projects	Requests	Responses	Results
<p><b>Project,</b> approved on 21 December 2000 (ADB loan of \$120 million)</p>	<p>raised:</p> <ul style="list-style-type: none"> <li>(i) inappropriate or inadequate information disclosure,</li> <li>(ii) displacement and the lack of adequate compensation and resettlement,</li> <li>(iii) loss of livelihoods with the shutting down of water-driven grain mills and micro hydroelectric generation for local use,</li> <li>(iv) the destruction of community forests,</li> <li>(v) the destruction of irrigation canals,</li> <li>(vi) damage to crops and livelihoods by reduced flows, and</li> <li>(vii) displacement and other adverse effects on indigenous people and communities.</li> </ul>	<p>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>violations.</p> <p>The CRP deemed the request ineligible.</p>
<p><b>3. Loan 1711-SRI (SF): Southern Transport Development Project,</b> approved on 25 November 1999 (ADB: \$90 million; JBIC: \$120 million; ADB: \$90 million as a supplementary 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 the environment, involuntary resettlement, the incorporation of social dimensions in ADB operations, governance, economic analysis, benefit monitoring and evaluation, gender and development in ADB operations, the processing of loan proposals, the formulation</p>	<p>The CRP conducted an extensive review of available documentation in Manila and in Colombo. It carried out interviews with the requesters and project affectees, as well as with a wide range of current and past staff, consultants, and contractors associated with the project. With the support 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 determined that the request was eligible, and the Board authorized a compliance review.</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 partly complied with.</p>

Projects	Requests	Responses	Results
	<p>and implementation of loan covenants, the procurement of goods and services, and 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><b>4. Loan 2176-PRC: Fuzhou Environmental Improvement Project,</b> approved on 29 July 2005 (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"> <li>(i) insufficient compensation to replace lost housing for residents without legal title,</li> <li>(ii) the absence of rehabilitation measures to offset lost income, and</li> <li>(iii) inadequate information dissemination and consultation.</li> </ul>	<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 site visit for the following reasons:</p> <ul style="list-style-type: none"> <li>(i) The resettlement plan was in accordance with relevant PRC and ADB policies.</li> <li>(ii) The government re-routed the river, which made the compliance review request obsolete.</li> <li>(iii) A senior government official who visited the project site confirmed that the requesting parties no longer lived in the area.</li> <li>(iv) Previous project site visits by the OSPF should provide the CRP with sufficient information for its compliance review. In the government's view, the proposed site visit was therefore no longer necessary.</li> </ul> <p>The CRP acknowledged the decision of the PRC to</p>	<p>The CRP stated that it was unable to complete the compliance review for lack of a site visit.</p>

Projects	Requests	Responses	Results
		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.	

ADB = Asian Development Bank, BIC = Board Inspection Committee, CRP = Compliance Review Panel, JBIC = Japan Bank for International Cooperation, NEP = Nepal, PAK = Pakistan, OCR = ordinary capital resources, OSPF = Office of the Special Project Facilitator, PRC = People's Republic of China, SF = Special Fund, SPF = special project facilitator, SRI = Sri Lanka.

Source: ADB.

## COMPARISON OF ACCOUNTABILITY MECHANISMS

Areas	ADB	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 currently under review, since 2010</p>	<p>First among multilateral development banks to establish an inspection panel, which was created in 1993</p> <p>Inspection panel reviewed in 1996 and 1999, resulting in clarifications in 1996 and 1999</p>	<p><b>IFC:</b> Compliance advisor ombudsman, established in 1999, amended its 2004 operational guidelines in 2006 and 2007</p> <p><b>IADB:</b> Established Independent Investigation Mechanism in 1994, changed in 2010 to Independent Consultation and Investigation Mechanism</p> <p><b>AfDB:</b> Independent Review Mechanism established in 2004, amended in June 2010 following a review in 2009</p> <p><b>EBRD:</b> Independent Recourse Mechanism in place between July 2004 and March 2010; new Project Complaint Mechanism became operational in March 2010.</p> <p><b>EIB:</b> Complaints Mechanism approved in February 2010, superseding Complaints Mechanism Policy of June 2008</p> <p><b>JBIC:</b> Adopted in 2003 summary of procedures to submit objections concerning JBIC guidelines for confirmation of environmental and social considerations; procedures updated in October 2009</p> <p><b>OPIC:</b> Board approved general policy and guidelines on accountability and advisory mechanism for OPIC and established Office of Accountability in 2005</p>
Number of cases	<p><b>2004–March 2011</b></p> <p><b>SPF:</b> Total 35; eligible 13</p> <p><b>CRP:</b> Total 4; eligible 3</p>	<p><b>1994–2010</b></p> <p><b>Inspection panel:</b> Total 70; eligible for assessment 31</p>	<p><b>IFC (2000–2010):</b> Total 127; eligible for assessment 72.</p> <p><b>IADB (1994–2010):</b> Total of 19 cases since 2002</p> <p><b>AfDB (2004–2010):</b> Total of 6 cases since 2007</p> <p><b>EBRD (2004–2010):</b> Total of 16 cases</p>

Areas	ADB	World Bank	Other Institutions
			<p><b>EIB (2007–2008):</b> Total of 55 cases</p> <p><b>JBIC (2003–2010):</b> Total of 1 case; ineligible</p> <p><b>OPIC (2005–2010):</b> Total of 7 cases, 3 of which problem solving, 3 under compliance review, and 1 ineligible.</p>
Policy coverage	ADB operational policies and procedures concerning formulation, processing, and implementation of ADB financed projects	World Bank's own operational policies and procedures with respect to the design, appraisal and/or implementation of projects	<p><b>IFC:</b> Focused on environmental and social aspects</p> <p><b>IADB and AfDB:</b> Operational policies and procedures</p> <p><b>EBRD:</b> Focused on environmental, social, and public disclosure aspects</p> <p><b>EIB:</b> 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><b>JBIC:</b> The examiner for environmental guidelines is specifically tasked with ensuring compliance with guidelines for confirmation of environmental and social considerations</p> <p><b>OPIC:</b> Environmental, social, labor, human rights, and transparency standards</p>
Procurement and corruption	Excluded	Excluded	All excluded these two aspects, except EIB including 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)	Ranges from project completion to 12 months after completion, except EIB and IFC; complaints to EIB to be lodged within 1 year from the date when the facts upon which the allegation is grounded could be reasonably known by the complainant; IFC with cutoff date
Minimum number of	2 people	2 people	<b>AfDB and JBIC:</b> 2 people

Areas	ADB	World Bank	Other Institutions
people			<b>IFC, IADB, EIB, EBRD, and OPIC:</b> 1 person
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 & OSPF  CRP & OCRP	Inspection Panel and its secretariat	<b>IFC, EBRD, EIB, JBIC, and OPIC:</b> Each with a unit or office that is responsible for both problem solving and compliance review and reports to the president or, in the case of EIB, to the management committee  <b>AfDB:</b> 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  <b>IADB:</b> Ombudsperson, panel, and executive secretary reporting to the Board
Appointments and reporting	The SPF appointed by the President, after consultation with the Board, and reporting to the President  CRP members appointed by the Board upon the recommendation of the President; the CRP reporting to the Board  Secretary of the OCRP appointed by the President	Compliance review only by the inspection panel; no formal problem-solving stage  World Bank panel members appointed by the Board based on president's nomination; panel reports to the Board  Executive secretary appointed by the president after consultation with the Board	<b>AfDB:</b> Head of Compliance Review and Mediation Unit appointed by president with concurrence of Board and reporting 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.  <b>IFC, OPIC, EBRD, and EIB:</b> No secretariat; accountability mechanism unit heads appointed by, and reporting to, the president, except the EIB unit reporting to the management committee  <b>JBIC:</b> Examiners appointed by and reporting to the president; secretary appointed by the human resources department  <b>IADB:</b> Ombudsman, panel, and executive secretary appointed by and reporting to the Board

Areas	ADB	World Bank	Other Institutions
Site visits	Site visits after obtaining consent from the borrowing country	<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 (same as other missions)</p>	<p><b>IADB:</b> Any part of the process to be conducted in the territory of the borrower/recipient country may be conducted only after obtaining the written non-objection of the country (2010 policy, para. 49).</p> <p><b>AfDB, EBRD, EIB, and OPIC:</b> Rules stating that site visits may be undertaken but giving no details.</p> <p><b>JBIC:</b> Site visits not mentioned, but examiners can conduct interviews; the Chairman's Summary stating that JBIC "is a government institution and shall accord adequate considerations to the sovereignty of the recipient country."</p>

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.

### NUMBER OF CASES IN DIFFERENT ACCOUNTABILITY MECHANISMS

Asian Development Bank: Accountability Mechanism	2004 to 2010	Compliance Review Panel			Special Project Facilitator			
		Total	Eligible	Ineligible	Total	Eligible	Ineligible	Eligibility Being Determined
		3	2	1	32	10	20	2

Source: Complaints Registry as of 15 November 2010 (<http://www.adb.org/SPF/registry.asp>).

World Bank: Inspection Panel	1994 to 8 November 2010	Total Requests Received	Eligible for Investigation	Not Eligible for Investigation	No Recommendation Made	Eligibility Ongoing
		70	31	14	8	2

Source: World Bank Inspection Panel website as of 8 November 2010.

International Finance Corporation: Compliance Advisor Ombudsman	2000–2010	Total New Complaints	Eligible for Assessment
		127	72

Source: Annual report for FY2010 and review of FY2000–2010.

Inter-American Development Bank: Independent Consultation and Investigation Mechanism	Established in 1994; reorganized in February 2010	Total Cases Registered Since 2002
		19

Source: Annual reports.

African Development Bank: Independent Review Mechanism	2004–2010	Total Number of Cases in Register Since 2007
		6

Sources: 2009 Annual Report and Requests Register website. <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/requests-register/>.

European Bank for Reconstruction and Development: Project Complaint Mechanism (PCM)	Independent Recourse Mechanism in place from 2004 replaced by PCM in March 2010	Project Complaint Mechanism	Independent Recourse Mechanism
		1 registered as of 23 June 2010	15 registered complaints

Source: Independent Recourse Mechanism annual reports.

European Investment Bank (EIB): Complaints Mechanism	Approved in February 2010, superseding Complaints Policy of 2008	EIB cases include procurement cases. There were 15 complaints in 2007 and 40 in 2008, most of which regarded procurement issues. There were 2 cases related to environmental and social impacts in 2007 and 7 cases in 2008.
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Source: Complaints office annual activity report, 2008.

Japan Bank for International Cooperation: Office of Examiners for Environmental Guidelines	2003–2010	1 complaint received in 2007, ineligible
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Source: Annual report of the Examiners for Environmental Guidelines, FY2009.

Overseas Private Investment Corporation: Office of Accountability	2005–2010	Problem Solving Requests	Total Compliance Review Requests	Ineligible in 2007
		3	3	1

Sources: Public Registry (website), Cases and Reports (website <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
<b>Accessibility</b>			
<b>Awareness</b>	Systematic outreach has increased.	Awareness is limited.	Enhance outreach.
<b>Eligibility</b>	Cutoff date is late.	Project completion report is unclear as a cutoff date.	Clarify cutoff date.
<b>Process</b>	<p>No requirement exists 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.
<b>Credibility</b>			
<b>Independence</b>	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 process.	<p>CRP appointments are recommended by the President.</p> <p>CRP and OCRP work planning, budgeting fragmented.</p> <p>Senior staff working as the head of OCRP.</p> <p>Interaction is lacking between the CRP and management, leaving staff isolated.</p>	<p>Enhance CRP independence through appointments in line with the IED.</p> <p>Enhance interaction among the CRP, management, and staff.</p>
<b>Monitoring</b>	The SPF and the CRP are empowered to monitor action implementation.		
<b>Transparency</b>	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 documented.	Document complaints referred back to operations departments.
<b>Participation</b>	Requesters and management respond to the draft CRP report.	Management response to the request is lacking at the eligibility stage.	Introduce management response.

Areas	Strengths	Weaknesses	Proposed changes
	Problem solving empowers complainants with an active role in decision making.	CRP reports are not shared with the borrowing country.	Inform and coordinate with the borrowing country.
<b>Efficiency</b>			
<b>Time</b>	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.
<b>Costs</b>	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.
<b>Effectiveness</b>			
<b>Structure</b>	A sound dual consultation-and-compliance review structure is in place.		
<b>Relevance</b>	Both consultation and compliance review have been relevant.		
<b>Sequence</b>	Problem solving was given top priority.  Complainants can exit the consultation stage and file compliance reviews throughout the process.	Requiring a compliance review after complainants first approach the SPF creates perception and practical problems.	Enable direct access to the CRP.
<b>Mandate</b>	Dedicated support exists for the consultation and compliance phases.	The CRP mandate to make recommendations blurs the distinction between problem solving and compliance review, and between compliance review and project management.	Clarify the mandate regarding problem solving, compliance review, and project administration.
<b>Learning lessons</b>	Systematic learning has taken place.	Learning is still limited.	Improve learning.

<b>Areas</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Proposed changes</b>
	The OSPF advisory role has been beneficial.	Compliance review is sometimes seen as adversarial.	Promote a change in institutional culture.
<b>Site visits</b>	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.
<b>Outcomes</b>	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.