

The logo for 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
DMC	– developing member country
IED	– Independent Evaluation Department
MDB	– multilateral development bank
NGO	– nongovernment organization
OAI	– Office of Anticorruption and Integrity
OCRP	– Office of the Compliance Review Panel
OSPF	– Office of the Special Project Facilitator
PCR	– project completion report
RSDD	– Regional and Sustainable Development Department
SPF	– special project facilitator
TOR	– terms of reference

## **NOTE**

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

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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 was to take stock of the ADB experience, draw from the experiences of similar mechanisms, and examine the scope for improving the Accountability Mechanism. The review also included extensive public consultations.

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

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

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

- (i) **Enabling direct access to compliance review.** ADB should eliminate the Accountability Mechanism requirement that affected people must start with the consultation process before they can file for compliance review. This will address the perception that the problem solving function might have reduced recourse to the compliance review function. It can also 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) **Enabling site visits.** ADB should use its good offices and established institutional mechanisms to assist the Compliance Review Panel (CRP) in obtaining access for site visits. When a borrower declines to grant access to a site, Management would submit an information paper to the Board setting out the facts and explaining why the country declined the site visit. The Board Compliance Review Committee (BCRC), in consultation with the Board, should task the CRP to complete a compliance review even if a site visit cannot be undertaken.
  - (iv) **Improving independence.** Several measures are required to improve CRP independence. For example, the Board should appoint CRP members based on the recommendation of the BCRC in consultation with the President. This would improve on the current practice of having CRP members appointed by the Board based on the President's recommendation.
  - (v) **Clarifying the roles of the Compliance Review.** The compliance review should focus on findings of alleged harm and noncompliance. It may also include broad recommendations to bring a project into compliance. Management should recommend remedial actions for the Board's approval. While this point has not been clearly specified in the 2003 policy, it has been the practice since 2003. This practice should be reflected in the revised Accountability Mechanism policy.
  - (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 loan or grant 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: (a) fixed costs to maintain and operate the mechanism, regardless of the number of complaints; and (b) variable costs to respond to changes in demand. The monitoring timeframes of the Office of the Special Project Facilitator (OSPF) and the CRP should be tailored to suit each project. These will promote the optimal use of resources, while providing effective services to affected people. The Accountability Mechanism processes should be simplified.
  - (viii) **Improving responsiveness and transparency.** The current tracking by the OSPF and Office of the Compliance Review Panel (OCRCP) of the processes and results in addressing the complaints should be complemented by more systematic tracking by the operations departments of the complaints forwarded to them by the OSPF or OCRCP. This will improve the transparency and responsiveness of the Accountability Mechanism. The complaint receiving officer should have access to the tracking information by the OSPF, OCRCP, and the operations departments.
  - (ix) **Improving awareness.** The OSPF and OCRCP should undertake more systematic and effective outreach activities within ADB and in developing member countries.
  - (x) **Learning lessons and promoting a culture change.** The Accountability Mechanism provides opportunities for ADB to learn lessons and do better. For the Accountability Mechanism to be viewed as a positive tool for development effectiveness, a culture change is needed.

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

## I. INTRODUCTION

1. 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 was 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 the ADB Board of Directors and Management would jointly review the Accountability Mechanism.<sup>3</sup> 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 presents the TOR of the review.

3. The objectives of the review are to take stock of the ADB experience, draw on the experiences of similar mechanisms at other multilateral financial institutions, and examine the scope for improving the Accountability Mechanism. The review has included wide-ranging public consultations involving face-to-face meetings, multiple stakeholder workshops, and visits to project sites. A broad spectrum of stakeholders have been 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 has 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 summaries of in-country consultations; and the external experts' issues

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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 because, by the end of 2006, the Office of the Special Project Facilitator had only received four eligible complaints and the Compliance Review Panel had received only two requests. Further, ADB has been undertaking policy reforms since 2005, including adopting the new Safeguard Policy Statement in 2009. This has implications for the Accountability Mechanism.

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

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

paper, presentations, and review report. Appendix 2 summarizes the consultation process undertaken 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 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.

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<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 with the term "inspection."

9. ADB was the first MDB to establish an accountability mechanism that went beyond simply being an 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 also 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<sup>11</sup> for which the CRP reports to the Board Compliance Review Committee (BCRC). Both the SPF and CRP are empowered to monitor the implementation of remedial actions. The Accountability Mechanism policy covers both public and private sector operations.

11. 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 August 2011.<sup>12</sup> Of these, 13 were found 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>

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

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

<sup>11</sup> See para. 102 of the 2003 Accountability Mechanism policy (footnote 2) for the specific activities.

<sup>12</sup> The cases received by OSPF are termed “complaints” in the 2003 policy.

13. Of the 22 ineligible complaints, the complainants in 15 cases had not made 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 ADB-assisted projects; 2 complaints were filed after the project completion reports (PCRs) had been issued; and 2 complaints were related to procurement issues, which were handled by the Central Operations Services Office (COSO) (Table 2).

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

Reasons	Number	Share of Total (%)
Complainants had not first 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 31 August 2011.

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

**Table 3: Complaints Received by Sector, 2004–2011**

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 31 August 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, 2004–2011**

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, environment	10	12.8
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 31 August 2011.

## B. The Compliance Review Phase

16. The CRP received five requests for compliance review between 2004 and 2011, of which four were eligible and one was ineligible (Table 5).

17. 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> However, the CRP could not ascertain the alleged harm and noncompliance, and the request was deemed ineligible. The CRP carried out a compliance review on the Sri Lanka Southern Transport Development Project and monitored the implementation of remedial actions for five years. The final monitoring mission was completed in March 2011.<sup>14</sup>

18. On the Fuzhou Environmental Improvement Project<sup>15</sup> in the People's Republic of China, 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. The CRP found the last two requests,<sup>17</sup> from the Kyrgyz Republic<sup>18</sup> and the Philippines,<sup>19</sup> to be eligible.

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

<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).

<sup>17</sup> The cases received by the CRP are referred to as "requests" in the 2003 policy.

<sup>18</sup> ADB. 2009. *Report and Recommendation of the President: Proposed Loan and Asian Development Fund Grant to the Kyrgyz Republic for the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 2*. Manila. (Loan 2533-KGZ for \$28 million, approved on 14 July 2009).

<sup>19</sup> ADB. 2009. *Report and Recommendation of the President to the Board of Directors: Proposed Loan for the Visayas Base-Load Power Development Project in the Philippines*. Manila. (Private Sector Loan 7303-PHI for \$100 million, approved on 11 December 2009).

**Table 5: Requests for Compliance Review**

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

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

CRP = Compliance Review Panel, SF = Special Fund.

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

Source: Compliance Review Panel registry of requests.

#### IV. ASSESSMENT OF THE ACCOUNTABILITY MECHANISM

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

##### A. Strengths

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

20. 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. 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. All stakeholders felt that ADB should strengthen its problem prevention and problem solving capabilities. Following ADB, most MDBs have instituted problem solving in their own accountability mechanisms.

21. The dual functions of the Accountability Mechanism highlight that ADB continues to place high importance on compliance review. The problems solving and compliance review functions complement each other. There is the continued need for development agencies to hold themselves accountable by investigating and dealing with noncompliance as a cause of harm to people. The consultations in 2010 confirmed that the dual functions of problem solving and compliance review are working well and remain sound.

## 2. Emphasis on Independence and Effectiveness

22. 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 2003 Accountability Mechanism policy has paid particular attention to ensuring the independence and effectiveness of the problem solving and compliance review functions.

23. The 2003 Accountability Mechanism policy stipulates that the CRP should be independent from Management to ensure the credibility of its investigation of alleged ADB noncompliance with its operational policies and procedures. Therefore, under the policy, the CRP reports directly to the Board on all activities, except in certain activities where it reports to the BCRC (footnote 11). 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.

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

25. Striking this balance suggests that the consultation phase should be located within the organization, 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>20</sup> Second, the SPF needs to work closely with staff in operations departments to solve problems. Complaints from project-affected people can 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, but is not a member of the project staff of ADB, he or she will be in a position to take a second, more objective look at the problem submitted by complainants. At the same time, 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, and who should facilitate the resolution of problems. By reporting to the President, the OSPF has an appropriate level of independence and is sufficiently empowered, and yet is not isolated from operations staff.

26. 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 an amicable settlement. The compliance review is focused on establishing ADB's compliance with its 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.

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<sup>20</sup> The SPF's role is limited to ADB-related issues concerning ADB-assisted projects.

### 3. Monitoring Mandate Enhances Credibility

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

### 4. Good Practice on Accessibility

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

29. 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 interact directly 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. From 2009 to 2011, the number of complaints received by OSPF and CRP 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 has also recently approved technical assistance funding of \$225,000 for the OCRP to pilot a new outreach program.<sup>21</sup>

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

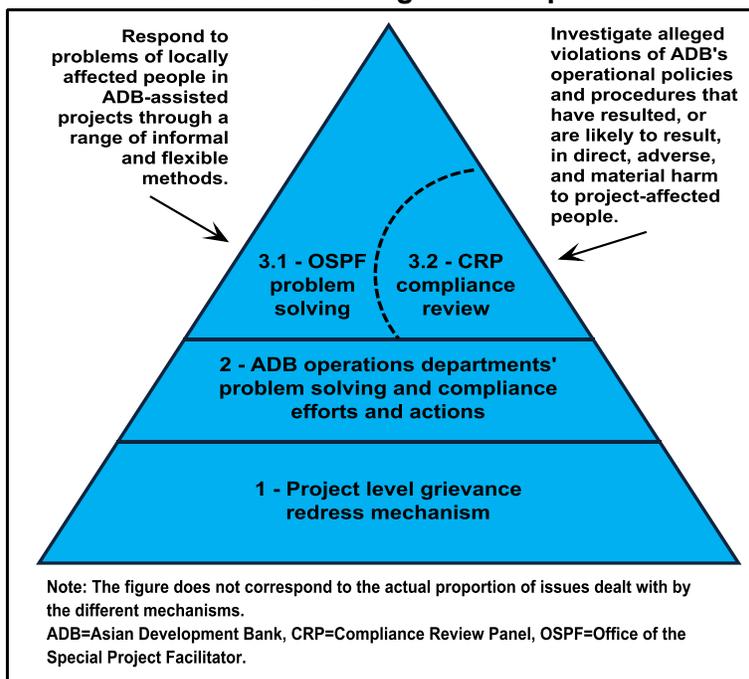
30. The continuum of problem prevention, problem solving, and compliance is a strength of the current ADB Accountability Mechanism. ADB's philosophy is that problem prevention and compliance should be maximized in ADB operations. Once problems and noncompliance occur, they should be addressed promptly at the operational level. During the design and appraisal stage, all projects undergo due diligence on multiple fronts, such as technical, financial, economic, social, safeguards, and governance. Management review meetings and staff review meetings assess a project's merit, as well as its conformity with ADB policies and procedures. The Regional and Sustainable Development Department (RSDD) whose head also serves as the chief compliance officer, reviews the safeguard aspects of all proposed projects, in addition to the review of the operations departments; advises Management on the safeguard compliance status for projects with potential significant impacts; provides support to complex projects by participating in project missions and advising operations departments on safeguard-related issues; and develops and delivers ADB-wide capacity development and training programs. The

<sup>21</sup> ADB. 2010. *Technical Assistance for Outreach for Good Governance and Development Effectiveness through the Accountability Mechanism*. Manila (TA 7572).

Board reviews each proposed project based on the report and recommendation of the President.

31. 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).

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



Source: ADB.

32. 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>22</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. The ADB Safeguard Policy Statement (2009), which became effective in January 2010, requires the establishment of project-level grievance redress mechanisms to respond quickly to project-affected people. This requirement helps to institutionalize the local grievance redress mechanisms.

33. In addition to executing and implementing agencies, operations departments deal with implementation issues, including addressing concerns of project-affected people. ADB staff and executing agencies have progressively become more familiar with the safeguard policies, and

<sup>22</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).

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 dedicated safeguard teams, and some 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 each year.

34. Ensuring compliance with ADB policies and procedures is a key responsibility of operations departments. However, problems can still 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, and the adoption of new safeguard policies after the loan became effective.<sup>23</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.

35. 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.

36. 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, DMCs, and ADB. 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**

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

38. 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. The Accountability Mechanism focuses on addressing harm; the Independent Evaluation Department (IED) focuses on ensuring development effectiveness; and the Office of the Auditor

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<sup>23</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)

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.

39. To address harm, the Accountability Mechanism responds to complaints of project-affected people. It is a demand-driven mechanism—project-affected people report problems and alleged noncompliance. ADB works with stakeholders to resolve problems and address noncompliance that has caused, or is likely to cause, direct and material harm to project-affected people.

40. 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. IED reviews are driven by ADB's own initiatives as well as by the demands of stakeholders.

41. To ensure that ADB resources are used economically, efficiently, and for the intended purposes, the Office of the Auditor General regularly audits ADB's financial, administrative, and information systems. OAI deals with alleged fraud and corruption in activities financed, administered, or supported by ADB, as well as proactively conducts reviews related to project procurement to reduce the risk of corrupt and fraudulent practices in ADB projects. 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.

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

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

## 7. Delivering Effective Results

44. **Consultation phase.** Of the 13 eligible complaints received by the OSPF between 2004 and August 2011, 5 are fully or partially resolved, 5 are ongoing, 2 were withdrawn, and 1 was not resolved. Both the withdrawn and unresolved complaints were submitted to the CRP.<sup>24</sup>

45. For the ineligible complaints, the OSPF informed the complainants how to pursue their grievances through the operations departments, who then resolved many of the issues 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

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<sup>24</sup> The case withdrawn was the Melamchi Water Supply Project. It was submitted to the CRP, which found the case ineligible. The unresolved case is related to the Sri Lanka Southern Transport Development Project, which was submitted to the CRP.

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.

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

47. On the Southern Transport Development Project, the CRP concluded in its fifth and final annual monitoring report that ADB has complied with all the recommendations with the exception of specific recommendation 5 which had been superseded by events. The CRP recommended that the monitoring be brought to an end and that there is no need to monitor beyond the fifth report.<sup>25</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. On the Chashma Right Bank Irrigation Project (Stage III), the CRP found that by 2009 ADB had fulfilled 24 of the 29 Board-approved recommendations and had made sufficient progress on the 4 partially complied with recommendations. One recommendation was superseded by events and could not be complied with. Appendix 4 summarizes the requests dealt with by CRP.

## 8. High Degree of Transparency

48. Consistent with the requirement of the Public Communications Policy (2005), the ADB Accountability Mechanism has maintained a high degree of transparency in information disclosure, while ensuring that the required confidentiality is also met. Both the OSPF and OCRP have 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 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

49. One major motivation for establishing accountability mechanisms within MDBs was that the feedback from the complaints would act as a rich learning resource for staff, 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 enhanced learning efforts, the OSPF and OCRP have started to provide training courses to staff and undertake more outreach activities in DMCs.

<sup>25</sup> ADB. 2011. *Annual Monitoring Report to the Board of Directors from 15 May 2010 to 22 March 2011 on the Implementation of Remedial Actions for the Southern Transport Development Project in Sri Lanka*. Manila.

50. The 2003 Accountability Mechanism policy emphasizes the role of the OSPF in strengthening the internal problem solving function of the operations departments. The OSPF has developed guidelines for establishing and implementing grievance redress mechanisms in various DMCs. For example, based on the lessons learned from the Sri Lanka Southern Transport Development Project, the OSPF developed a guide for designing and implementing grievance mechanisms for road projects.<sup>26</sup> It helped the project office establish a complaint-handling mechanism for the Earthquake and Tsunami Emergency Support Project in Aceh, Indonesia, which was effective in resolving complaints.<sup>27</sup> The OSPF published several reports describing the project's grievance mechanism and the lessons learned.<sup>28</sup> The OSPF developed a project complaint tracking system in 2009 together with the Office of Information Systems and Technology and the India Resident Mission to enable resident missions (and headquarters divisions) to record and track complaints they receive.<sup>29</sup> This system, which is gradually being adopted by other resident missions, provides a user-friendly way to implement the review's recommendations for tracking complaints.

51. To facilitate learning, the OCRP established an internet-based platform for people working on different accountability mechanisms to exchange views.<sup>30</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 compliance review enhanced the implementation of these systems.

52. Staff, Management, and the Board increasingly see the Accountability Mechanism as a tool for ADB to respond positively to public scrutiny and learn to do better. The Accountability Mechanism helps ADB to learn lessons, reduce noncompliance and other problems, and improve its project quality.

## **B. Weaknesses**

53. The assessment also identifies some weaknesses in the Accountability Mechanism.

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

54. Under the 2003 Accountability Mechanism policy, complainants are required to start with the consultation phase. The 2003 policy adopted this sequential approach to address direct and material harm faced by project affected people before addressing the question of ADB's compliance which may not result in a satisfactory resolution of the complainants' problems on the ground. Project-affected people were thought to be more interested in having their complaints addressed first. The 2003 policy provides options for complainants to exit the consultation process and request compliance review.

<sup>26</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>27</sup> ADB. 2005. *Report and Recommendation of the President to the Board of Directors: Proposed Grants to the Republic of Indonesia for the Earthquake and Tsunami Emergency Support Project and Contribution to the Multidonor Trust Fund*. Manila (Grant 0002).

<sup>28</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 the OSPF on this subject.

<sup>29</sup> See ADB. 2010. OSPF's 2009 Annual Report. Manila (p. 20).

<sup>30</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>.

55. The requirement to start with the consultation process 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 caused the limited recourse to compliance review. Second, according to some stakeholders, this requirement may have prolonged the process for people who wanted to access compliance review in the first place. ADB needs to consider giving complainants direct access to the compliance review function.

56. Under the 2003 Accountability Mechanism policy, complainants can exit the consultation process and proceed to the compliance review when (i) the SPF finds the complaint ineligible; or (ii) the complainants find the consultation process no longer serves their purpose after the SPF has completed the review and assessment report; or (iii) the complainants have serious concerns about compliance issues during step 7 of the consultation process, entitled “implementation of the course of action.” At this stage, the complainants can request a parallel compliance review (paras. 42 and 88 of the 2003 Accountability Mechanism policy).

57. However, the 2003 policy is unclear on what “implementation of the course of action” means. This lack of clarity has led to confusion in practice. In some cases, parallel processes were filed before the agreement on remedial actions was reached. This practice may contradict the intention of the 2003 policy, which states in para. 88 the following: “Proceeding to file a request for compliance review will still be consistent with the purpose of the new ADB accountability mechanism in first addressing the problems of the complainants on the ground, followed by a compliance review.” The transition point between the consultation and compliance review processes should be clarified.

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

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

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

59. 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, they have argued, the Accountability Mechanism process would be compromised. Some of these stakeholders suggested that site visits and general cooperation with the CRP should be included in the conditions of loan agreements for all projects. DMC governments, however, have argued that ADB has no basis to 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 which are dealt with separately.

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

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

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

62. The effectiveness of the CRP should also be improved. The CRP interacts little with Management and staff, leading to its isolation. Unlike with the World Bank's Inspection Panel, ADB's compliance review phase does not give Management the opportunity to respond before the eligibility of a 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 diminish goodwill and undermine the effectiveness of the Accountability Mechanism. CRP members are not evaluated, potentially reducing the accountability of the Accountability Mechanism. The BCRC also has little interaction with the CRP, which may reduce appropriate Board oversight and necessary dialogue.

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

63. Under the 2003 Accountability Mechanism policy, the CRP has been mandated to make recommendations to bring projects into compliance. The policy has not made a distinction between broad recommendations and remedial actions. Since 2003, however, the CRP has made broad recommendations to bring a project into compliance, while Management has developed remedial actions in consultation with the borrower. This practice should be reflected in the new policy.

#### **6. Lack of Clear and Predictable Cutoff Dates**

64. The Accountability Mechanism's cutoff date for filing a complaint is the issuance of the PCR. Using the PCR as a cutoff date has created problems since this date is uncertain. PCRs are issued within 1–2 years after project completion, and the exact dates are difficult to know in advance. The predictability of the cutoff dates needs to be improved.

#### **7. Efficiency Improvement Possibilities**

##### **a. Time**

65. 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>31</sup> Other MDB accountability mechanisms also customarily take more than a

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<sup>31</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.

year to complete the problem solving or compliance review process, especially for large and complex projects.

66. 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 and field visits can only be carried out periodically. During the site visits to the Community Empowerment for Rural Development Project<sup>32</sup> in Indonesia as part of the consultations for the Accountability Mechanism review, local communities expressed a strong desire to use the ADB resident mission to expedite problem solving.

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

## **b. Costs**

68. The costs associated with the Accountability Mechanism include the direct operating costs and indirect costs of staff time, the potential increases in costs of implementing projects, and the costs to affected people. ADB bears the operating costs. In 2009, the operating cost for the ADB Accountability Mechanism was \$2.1 million.<sup>33</sup> 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. ADB needs to ensure that adequate resources are available for the Accountability Mechanism to respond effectively to the requests of project-affected people, while not putting in place large excess capacity that leads to inefficient use of scarce resources.

69. 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 administrative costs; and (v) nonfinancial costs such as risk aversion by ADB to avoid needed but complex projects, lack of innovation, and the tendency to focus on compliance rather than development results. For example, the Government of Sri Lanka estimated the costs related to the Accountability Mechanism for the Southern Transport Development Project at about \$45.0 million because of delays in project implementation and cost escalations. In the Chashma project, the PCR indicated that \$12.5 million of the total ADB loan was disbursed for implementation of the remedial action plan. During consultations as a part of the current Accountability Mechanism review, DMCs

<sup>32</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).

<sup>33</sup> The operating costs include salary, benefits, relocation, consultants, business travel, and representation.

expressed their uneasiness in bearing the costs resulting from ADB's noncompliance with its operational policies and procedures.

70. The costs incurred in the Accountability Mechanism processes, however, must be balanced against the potential benefits that the mechanism generates in solving problems of project-affected people, ensuring ADB's compliance with its own policies and procedures, and contributing to the development effectiveness of ADB operations (paras. 37-47). ADB needs to be fully aware of the costs and demonstrate the benefits of the Accountability Mechanism to ensure the credibility of the mechanism and its ownership by DMCs.

71. The Accountability Mechanism processes also require the project-affected people to spend time and resources. A protracted process demands extra time and effort, and puts a burden on their work and daily life. The transaction costs to address the problems faced by project-affected people need to be minimized. ADB should make the utmost efforts in problem prevention, problem solving, and compliance from the outset. If problems and noncompliance occurred, they should be addressed quickly. Simplification of Accountability Mechanism processes would reduce the costs for project-affected people (paras. 121-124).

## **8. Inadequate Awareness**

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

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

## **9. Insufficient Learning**

74. Staff, Management, and the Board increasingly see the Accountability Mechanism as a tool for ADB to respond positively to public scrutiny and learn how the organization can do better. However, the perception that the compliance review process is adversarial remains. More interactions and sharing of information and experiences are needed among SPF, CRP, 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.

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

75. The OSPF received 35 complaints between 2004 and August 2011, while the CRP received 5 requests over the same period. Some stakeholders argued that the CRP received too few requests. However, the limited recourse to CRP is in line with the experience of other MDBs. The World Bank Inspection Panel investigated 32 eligible requests from 1994 to 2011, an average of fewer than 2 cases a year for an institution whose portfolio is nearly 4 times the size of ADB's. The Office of the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency dealt with 22 compliance review cases from 2000 to 2011, but only 6 were eligible and went through the full compliance audit process; 2 cases are ongoing. The African Development Bank has received 6 cases since 2007,

of which 2 were eligible for compliance review. Appendix 5 presents the number of cases received by different accountability mechanisms.

76. Consultations suggested various reasons for the low number of compliance review requests at ADB. A major reason is that a bottom-up, multilevel problem prevention and solving mechanism has been in place (paras. 30–35). 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, awareness on the Accountability Mechanism is also limited, contributing to the low number of requests. In addition, the Accountability Mechanism process is complicated. Some stakeholders said the requirement that affected people start at the consultation stage, before they can request for compliance review, also may have reduced recourse to compliance review.

77. 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**

78. 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) The transition point between the consultation and compliance review processes should be clarified.
- (iii) 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.
- (iv) The controversy on site visits by the CRP should be addressed.
- (v) The independence and effectiveness of the CRP should be enhanced.
- (vi) The role of the CRP to make broad recommendations to bring a project into compliance and Management to propose specific remedial actions should be clarified.
- (vii) The cutoff date should be clarified.
- (viii) Time and cost efficiency should be improved.
- (ix) The awareness of Accountability Mechanism should be improved.
- (x) The use of the Accountability Mechanism as a learning instrument should be expanded.

79. Appendix 6 summarizes the Accountability Mechanism's strengths, weaknesses, and potential areas for improvements.

## V. MAJOR PROPOSED OPTIONS AND CHANGES

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

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

81. The working group on the Review of ADB's Accountability Mechanism considered several options to address perceptions and problems related to the current requirement that project-affected people must start with the consultation phase.

82. **Option 1: Status quo.** This approach requires complainants to start with the consultation phase, but give complainants the option to exit and proceed to the compliance review phase when (i) the SPF finds the complaint ineligible; or (ii) the complainants find the consultation process no longer serves their purpose after the SPF has completed the review and assessment report; or (iii) the complainants have serious concerns about compliance issues during the implementation of the "course of action." The advantage of this approach is that it prioritizes addressing the problems of project-affected people. Since 2003 most concerns have 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. The status quo also allows for a partial parallel process at step 7 of the 8 steps of the consultation process, entitled "implementation of the course of action." However, what constitutes the "course of action" is not clearly defined. This lack of clarity has caused confusion about when complainants can request compliance review during the consultation phase (para.57).

83. **Option 2: Parallel processes.** Under this approach, consultation and compliance review would be pursued simultaneously. This would allow 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 investigations may interfere with each other, and demand much time and resources from the affected people, ADB, and the DMC concerned. Running two processes in parallel risks compromising the effectiveness of each one. 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, for example, when the parallel process with the CRP was initiated, the complainants and other parties lost interest in consultation, rendering that process ineffective.<sup>34</sup> For these reasons, none of the MDB accountability mechanism policies prescribe parallel processes from the beginning. Under the ADB Accountability Mechanism policy, a partial parallel process is allowed at the late stage of the consultation process.

84. **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

<sup>34</sup> ADB. 2005. *Office the Special Project Facilitator Annual Report 2005*. Manila.

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 of this option is that it would be inconsistent with the philosophy that compliance review is driven by demands from complainants; it is not an auditing or evaluation function. 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.

85. **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 during the processes. Complainants can also file for compliance review upon the completion of the consultation process when all the parties have reached an agreement on the remedial actions, or when the SPF concludes that no agreement on the remedial actions can be reached. Complainants should be given the opportunity to request a compliance review in parallel during the implementation and monitoring of remedial actions. Complainants can only switch from the compliance review to the consultation process if the CRP finds the request for compliance review ineligible. Complainants' concerns will be addressed either by the CRP's findings and broad recommendation (if appropriate) as a part of compliance review, or by operations departments as a part of the project implementation process. Thus, the usefulness of problems solving through the Accountability Mechanism may be limited. Some stakeholders also believe the asymmetric nature of this approach mitigates the risk of forum shopping and the misuse of the Accountability Mechanism for pecuniary gains. The advantage of this approach is that it provides the complainants with the choice of direct access to either consultation or the compliance review. The disadvantage of this approach is that it does not allow complainants to switch to consultation if their request for compliance review is eligible. 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. To reduce this possibility, a basic information packet and a template should be developed to facilitate informed decisions by complainants from the outset.

86. After careful consideration of all the options, the working group recommends option 4.

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

87. If project-affected people are given 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 complaint receiving officer (CRO), should serve as a first contact for project-affected people when they seek to access the Accountability Mechanism. The single point of entry should be efficient, impartial, and capable of dealing with confidentiality requirements.

88. While most stakeholders acknowledge the usefulness of the CRO as a single point of entry, there has been much debate about the placement of the CRO. Several options have been considered.

89. **Option 1: Status quo.** The current entry point to the Accountability Mechanism is the OSPF. The advantage of this option is that the OSPF has established experience and expertise in receiving and processing complaints. The disadvantage is that this CRO may not be seen as independent from the OSPF and may be perceived as biased towards problem solving.

90. **Option 2: Office of the Compliance Review Panel.** The advantage of this option is that the OCRP has the required expertise to receive and screen complaints. The CRO in the OCRP would also be independent from Management. The disadvantage is that, similar to option 1, the CRO may not be seen as independent from the OCRP and may be perceived as biased towards compliance review.

91. **Option 3. Secretary of the Board Compliance Review Committee.** The advantage of this option is that it is independent from both the OSPF and OCRP. The disadvantage is that the secretary of BCRC, a staff member of the Office of the Secretary, may be seen as not independent from Management.

92. **Option 4. The Independent Evaluation Department.** The advantage of this option is that the director general of IED reports to the Board and is independent from Management. The disadvantage is that the work of the IED is different from that of the Accountability Mechanism, and it would be desirable to keep them distinct.

93. **Option 5. Other Departments in ADB.** Other possible departments to place the CRO include the Department of External Relations, which is the external face of ADB; and the President's Office, which would assure a high profile. Despite the various advantages of these departments, a key disadvantage is that they might not be seen as being independent from Management.

94. **Option 6. Joint engagement by the Office of the Special Project Facilitator and Office of the Compliance Review Panel.** Under this option, the OSPF and OCRP would engage a CRO who would not be an ADB staff member. The CRO would be engaged in a similar way as the executive secretary of the Administrative Tribunal.<sup>35</sup> However, the nature of the CRO's work will demand full-time engagement. In particular, the CRO will need to respond promptly to the complainants, and carry out his or her other duties in a timely manner. This option has various advantages. The first is that the CRO would report to both the SPF and chair of the CRP, thereby ensuring impartiality. The second is the flexibility in ensuring that the CRO would have the exact expertise, experience, and qualification required for this position. The third is that the workload could be tailored to the job requirement, thus promoting the efficient use of ADB resources.

95. After careful consideration, the working group recommends option 6, because of the impartiality, flexibility, and efficiency it provides.

### C. Addressing Site Visit Issues

96. The issues related to CRP site visits are sensitive and important. Any controversy on site visits harms the reputation of ADB, the CRP, and the 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.

97. **Option 1: Status quo.** The existing policy arrangement for site visits requires obtaining a borrowing country's consent. The 2003 policy (footnote 2, para. 56) states the following: "If, as many stakeholders believe, site visits are important to the compliance review process, then

<sup>35</sup> ADB. 2006. *Statute of the Administrative Tribunal of the Asian Development Bank*. Manila.

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.”

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

99. **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.

100. 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.

101. The disadvantage of this approach is that DMCs see it as negating the premise of the Accountability Mechanism that compliance review is about ADB’s compliance with its operational policies and procedures. 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. 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 with its operational policies and procedures 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.

102. Some DMCs also argue that adopting this approach would infringe upon their sovereignty. 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.

103. 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 believe 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.

104. **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 a loan covenant. ADB would use its good offices and established institutional mechanisms to assist the CRP in obtaining access to site visits. Management and staff would facilitate a borrowing country's concurrence for site visits. This approach aims to improve communication between ADB and its DMCs. It would 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 would need to work as partners to ensure the Accountability Mechanism functions smoothly.

105. 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.

106. 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.

107. 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. Finally, this approach is sensitive to DMCs' 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. 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.

108. 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.

109. **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 operations department concerned 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 the

borrowing country Board member in a conflict of interest situation. Furthermore, elevating the problems to the Board may politicize and intensify them.

110. **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 channel to address the problem and reach 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.

111. After careful consideration, the working group recommends option 3 as this best reflects the nature of ADB as a multinational institution and an institution that seeks to work with, and build capacities in, DMCs.

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

112. All stakeholders agree that site visits will generally take place if requested by the CRP. The assumption of the 2003 Accountability Mechanism policy that site visits will be granted routinely should be maintained. In the exceptional situation of refusal, Management will discuss with the 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.

113. In the unlikely event that a site visit is declined, the BCRC, in consultation with the Board, may decide that the CRP should still provide its findings. In this context, a closure to the compliance review process will be highly desirable, especially from the perspective of the complainants. If the BCRC determines, in consultation with the Board, that it is unlikely that a site visit will be permitted, the BCRC will then task the CRP to complete its work and deliver its final report without a site visit. The CRP will use all available information, make appropriate assumptions, and draw appropriate inferences to complete its work. The CRP will present the best detailed 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 on available information, including that provided by the complainants, than would otherwise be the case.

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

114. The review leading to the establishment of IED provides some insights on how the independence of the CRP could be improved.<sup>36</sup> Several changes drawing from the IED model are therefore proposed. First, CRP members should be appointed by the Board based on the recommendation of the BCRC in consultation with the President, a process similar to the appointment of the director general of IED. This would depart from the current practice of the Board appointing CRP members based on the President's recommendation. Second, the CRP chair should be the head of the OCRP with full responsibility for running the office, instead of a senior staff member serving as the secretary of the OCRP, who can be misperceived as being a representative of Management. The CRP chair should be supported by OCRP staff. Third, the work programming and budgeting process should be strengthened. The CRP chair should be responsible for preparing a combined CRP and OCRP annual work plan and budget. The annual work plan and budget should be endorsed by the BCRC in consultation with the President, reviewed by the Board's Budget Review Committee, and approved by the Board.

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<sup>36</sup> ADB. 2008. *Review of the Independence and Effectiveness of the Operations Evaluation Department*. Manila.

115. 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 Development Effectiveness Committee'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. To enhance accountability, the BCRC should provide written annual performance feedback to all CRP members, similar to the written annual performance feedback the Development Effectiveness Committee provides to the director general of IED. The BCRC will seek inputs from the CRP chair in providing performance feedback to the other two CRP members.

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

116. To consistently reflect the practice since 2003, and to better use the expertise of the CRP and Management, the compliance review should focus on ascertaining the alleged direct and material harm, and determining whether such harm is the result of ADB's failure to comply with its operational policies and procedures. The CRP may also recommend broad directions to bring a project into compliance. The recommendations should focus on the specific complaint. After receiving the CRP findings and its broad recommendations, Management will propose specific remedial actions in consultation with the borrower, and submit these to the Board for its consideration. This clarification of the roles of the CRP and Management will enable the CRP to use the knowledge it has accumulated during the review process to provide broad recommendations, while also allowing Management to utilize its competency in project design and implementation to identify specific actions that will be discussed and agreed upon with the borrower, and approved by the Board. The CRP will monitor the implementation of the remedial actions.

117. The IED experience highlights that while independence is an important prerequisite for the credibility of a mechanism, it should not mean isolation. Consistent with the partnership principle, the CRP should seek to engage all stakeholders concerned throughout the review process. The 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. This will help build understanding from early on and facilitate the implementation of remedial actions.

118. Like the World Bank's Inspection Panel, the CRP should provide the opportunity for Management to respond before the eligibility of a request for compliance review is determined. However, the CRP alone is responsible for all stages and outcomes of the compliance review process.

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

119. Determining the cutoff date for filing complaints based on the PCR lacks certainty since the date of PCR is uncertain. Some stakeholders suggested that 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 might be choosing a date that is known more clearly in advance. The loan or grant closing date is predictable and is disclosed for public information throughout the project cycle.<sup>37</sup> The cutoff

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<sup>37</sup> The loan or grant closing date is the last date for the borrowers to withdraw from the loan account.

date for filing complaints could be 1 year after the loan or grant closing date, which would provide more clarity and certainty. Further, it would ensure that the public is well informed.

120. 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's cutoff date is similar to those of most other similar institutions. Appendix 7 compares the key features of accountability mechanisms in nine development agencies, including the cutoff dates.

## **H. Improving Efficiency**

### **1. Streamlining Processes**

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

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

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

124. The documentation requirements for filing a complainant can be simplified. The requirements should focus on essential information that enables the processing of a complaint, while making requirements such as specification of the complainants' desired outcomes optional. However, requiring a minimum amount of information will help reduce the time for processing the complaint later on. If a complaint is filed properly from the beginning, the following phases would be clearer and faster. Without this, the time used for the OSPF or CRP to obtain the basic information may prolong the problem solving or compliance review process, undermining the complainants' benefits.

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

125. 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>38</sup> The OSPF currently has one international staff in addition to the SPF, one national staff, and one administrative staff. The OCRP has two international staff, one national staff, and two administrative staff supporting the CRP chair and two other CRP members. Based on a review of their past workloads, it is proposed that the basic structure for the OSPF and OCRP be similar.

126. The 2003 policy provides for the CRP chair to work full time for a minimum of 1 year in order to organize the OCRP and undertake other related tasks (footnote 2, para. 97). However, since 2003, the CRP chair has been full time in 6 of the 7 years, while the CRP members have been part time. This is an appropriate arrangement, as shown in practice. To strengthen the CRP and to enable the chair to fulfill the mandate as the head of OCRP, the working group recommends that the CRP chair work full time.

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

127. 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 activities in DMCs involving local communities, governments, and NGOs. Each resident mission should have a grievance redress focal person working with project teams on grievance handling and Accountability Mechanism outreach. Operations staff should be the main conduit for disseminating information about the Accountability Mechanism, which should be viewed as a tool for learning and development effectiveness, instead of being adversarial.

128. The processes and outcomes of all the complaints dealt with by the SPF and CRP have been tracked. To strengthen learning, the tracking should be extended to complaints that were forwarded to the operations departments because of a lack of prior good faith efforts by complainants to solve the problems with the operations department concerned. The operations departments are also encouraged to keep records of meetings and other discussions with complainants. This should enrich the information for analyzing problems. The insights gained from this analysis would be useful for training and sensitizing project teams. Some good practices have already started. One example is the project complaint tracking system jointly developed by the OSPF, the Office of Information Systems and Technology, and the India Resident Mission in 2009 (para. 50).

129. 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, a joint Accountability Mechanism annual report would be more useful. The OSPF and OCRP websites—and all other information related to the Accountability Mechanism—should be consolidated under a common Accountability Mechanism website within ADB's public website (adb.org) to increase accessibility and reduce fragmentation. Similarly, the OSPF and OCRP (or the SPF and CRP) logos and letterheads should be placed under a common ADB Accountability Mechanism logo and letterhead.

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<sup>38</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.

130. To further 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.<sup>39</sup> 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 culture change so that the Accountability Mechanism is viewed as a positive tool for learning.

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

132. 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**

133. 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**

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

135. The Accountability Mechanism is designed to (i) increase ADB’s development effectiveness and project quality; (ii) be responsive to the concerns of project-affected people and fair to all stakeholders; (iii) reflect the highest professional and technical standards in its staffing and operations; (iv) be as independent and transparent as possible; (v) be cost-effective and efficient; and (vi) be complementary to the other supervision, audit, quality control, and evaluation systems at ADB. The Accountability Mechanism will be a “last resort” mechanism. ADB must continue to strengthen its project design, implementation, and learning mechanisms

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<sup>39</sup> The frequency of this report will, in practice, depend on the number and frequency of the complaints that are received by the Accountability Mechanism. The report may analyze various aspects such as the impact of these mechanisms on development effectiveness and their benefits and costs.

to prevent problems and ensure compliance from on the outset, and to deal with the legitimate concerns of project-affected peoples at the project and operations levels wherever possible.

## **B. The Structure**

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

137. 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 these to the OSPF or CRP based on the preference of the complainants.

## **C. Human and Financial Resources**

### **1. The Problem Solving Function**

138. The SPF will head the OSPF, which will have one other international staff, one national staff, and one administrative staff. The SPF will be a special appointee at a level equivalent to a director general. Appointed by the President after consultation with the Board, the SPF will report directly to the President. Any additional human and financial resources for the OSPF, if required, will be approved through the work program and budget framework process or by the President.<sup>40</sup> The Budget, Personnel, and Management Systems Department will handle the administrative processes related to the foregoing, 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.

139. The selection criteria for the SPF will include (i) the ability to deal thoroughly and fairly with complaints; (ii) integrity and independence from the operations departments; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge of and experience with the operations of ADB or comparable institutions, and/or private sector experience. Mediation skills will be an asset. The SPF's term will be 3 years and may be renewable for another 2 years. 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 a project under consideration. 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.

140. The President will evaluate the performance of the SPF. The work planning, budgeting, and staffing of the OSPF will be processed in the same way as other ADB departments. Necessary flexibility will be ensured in the work plans and budget to accommodate the demand-driven nature of the work.

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<sup>40</sup> Resource needs due to, for example, an unanticipated rise in complaints can be addressed by hiring consultants or contractual staff.

## 2. The Compliance Review Function

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

142. Each panel member will have a 5-year, nonrenewable term. Two panel members will be from regional countries, with at least one from a DMC. The third panel member will be from a nonregional country. The selection criteria for panel members will 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 will be 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 any future employment at ADB. A panel member may be removed in the same way as he or she was appointed on the grounds of inefficiency and/or misconduct. A panel member will be disqualified from participating in a compliance review if he or she has a personal interest or has had significant prior involvement in a project under review. A panel member must disclose immediately upon learning of any personal interest or significant prior involvement in a project under review.

143. The CRP will be a fact-finding body that reports to the Board through the BCRC, except on specific activities where the CRP reports to the BCRC. CRP members will be exempt from the formal annual performance review process. However, the BCRC chair, in consultation with other BCRC members, will provide written annual feedback on their performance. The BCRC will seek inputs from the CRP chair in providing performance feedback to the other two CRP members.

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

145. 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.

146. **Office of the Compliance Review Panel.** The OCRP will support the CRP. The OCRP will be headed by the CRP chair and will have one international staff member and two administrative or national staff members. The international staff of the OCRP will report to the CRP chair. The CRP chair, in consultation with other CRP members, may request additional

human and/or financial resources, if needed.<sup>41</sup> The BCRC, in consultation with the President, will endorse these additional resources, which will then be approved by the Board. The Budget, Personnel, and Management Systems Department will handle the administrative processes in relation to OCRP staff, in accordance with ADB guidelines.

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

148. The CRP chair will be responsible for preparing the combined annual work plan and budget of the CRP and OCRP. The annual work plan and budget will be endorsed by the BCRC in consultation with the President, and reviewed by the Board’s Budget Review Committee. The work plan and budget proposal will then be presented to the Board for approval, separately from ADB’s overall administrative budget. Necessary flexibility will be ensured in the work plan and budget to accommodate the demand-driven nature of the work of the CRP and OCRP.

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

### 3. The Complaint Receiving Officer

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

151. The CRO will receive all complaints relating to the Accountability Mechanism and will forward them based on the preference of the complainants to one of the following options:

- (i) a complaint requesting problem solving to OSPF;
- (ii) a complaint requesting compliance review to OCRP;
- (iii) a complaint without indicating the complainants’ preference and/or a complaint that has been disputed by any party in ADB back to the complainants and/or their representatives, together with an information pack on the ADB Accountability Mechanism; or
- (iv) a complaint that is beyond the scope of the Accountability Mechanism, such as that relating to procurement and corruption, to other relevant departments and/or offices according to relevant ADB policies.

152. The CRO will prepare a memo outlining the reasons for sending the complaint to one of the options described in para. 151. The CRO will copy the information to the OSPF, OCRP, the operations department concerned, and other relevant departments or offices concerned.<sup>42</sup>

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<sup>41</sup> Resource needs due to, for example, an unanticipated rise in complaints can be addressed by hiring consultants or contractual staff.

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

#### **4. Legal Advice**

153. The Office of the General Counsel will be responsible for advising the OSPF, SPF, OCRP, CRP, BCRC, and Board concerning ADB's legal status, rights, and obligations under the Agreement Establishing the Asian Development Bank (the 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. Receiving Complainants**

154. The CRO will receive complaints that seek access to the Accountability Mechanism. The CRO will

- (i) receive all complaints seeking to access the Accountability Mechanism and promptly acknowledge them;
- (ii) forward the complaints to the OSPF or CRP based on the preference of complainants; or 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;
- (v) maintain the landing page of the Accountability Mechanism website within ADB's public website;
- (vi) have access to the OSPF, OCRP, and operations departments about the status and process of complaints; and
- (vii) inform the complainants about whom to contact after complaints have been registered.

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

##### **2. Problem Solving**

156. The problem solving function will assist 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 will include (i) consultative dialogue, (ii) information sharing, (iii) joint fact-finding, and (iv) mediation. The SPF may suggest various specific approaches to resolve problems, such as convening meetings, organizing and facilitating consultation processes, or engaging in a fact-finding review of the situation. The problem solving function will be outcome-driven. It will not focus on the identification and allocation of blame, but on finding ways to address the problems of the project-affected people.

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

158. The OSPF will

- (i) obtain from the operations departments all materials relating to the complaints;

- (ii) engage with all relevant parties, including Management and staff, the complainants, the DMC government or the private sector client, and the Board member representing the country concerned to gain a thorough understanding of the issues to be examined during the problem solving;
- (iii) facilitate consultative dialogues, promote information sharing, undertake joint fact-finding, and/or facilitate the establishment of a mediation mechanism;
- (iv) monitor the implementation of the remedial actions agreed through the problem solving process;
- (v) inform the Board and other stakeholders about the results of problem solving activities;
- (vi) 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;
- (vii) 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;
- (viii) 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>
- (ix) prepare and publish annual Accountability Mechanism reports<sup>44</sup> in coordination with the OCRP;
- (x) produce a learning report every 3–5 years through joint efforts with the OCRP, IED, and RSDD;<sup>45</sup>
- (xi) conduct outreach programs within ADB and to the public, which will include a holistic introduction to the Accountability Mechanism, while focusing on specific subjects;
- (xii) improve the interface of the Accountability Mechanism websites with the problem solving and compliance review under the Accountability Mechanism and other related information included as components under a common ADB Accountability Mechanism website within the ADB's public website to improve the access, coherence, and comprehensiveness of the information; and
- (xiii) conduct other activities required to carry out problem solving effectively.

159. 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 operations departments will also continue to improve their problem prevention and problem solving capabilities. The SPF's role will be confined to ADB-related issues on ADB-assisted projects. The SPF will not interfere in the internal matters of any DMC and will not mediate between the complainants and local authorities.

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<sup>43</sup> The information pack will highlight the differences under the two functions. It will indicate 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 CRP chair, SPF, director general of IED, and director general of RSDD may rotate to chair the preparation of the learning report. The actual frequency of the report will depend on the number and frequency of the cases received by the Accountability Mechanism.

### 3. Compliance Review

#### a. The Compliance Review Panel

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

161. 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 private sector client, 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 private sector client, and the Board member representing the country concerned on its preliminary findings; and address any resulting comments;
- (vii) issue draft reports to Management, the complainants, the borrower, and the BCRC;
- (viii) issue final reports to the Board with its findings, and broad recommendations to bring a project into compliance (if any);
- (ix) complete the compliance review upon receiving the task to do so from the BCRC in case a borrowing country refuses to grant a site visit (para. 226);
- (x) monitor the implementation of decisions made by the Board and produce annual monitoring reports;
- (xi) prepare and publish annual Accountability Mechanism reports (footnote 44) in coordination with the OSPF;
- (xii) 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;
- (xiii) produce a learning report every 3–5 years through joint efforts with the OSPF, IED, and RSDD;
- (xiv) develop a roster of independent technical experts who can assist the CRP in carrying out its work; and
- (xv) liaise with accountability mechanisms at other institutions.

162. The CRP chair will

- (i) perform all the functions listed for the CRP;
- (ii) serve as the head of the OCRP and have full responsibility for running the

- OCRP;
- (iii) manage the OCRP as an effective, efficient, and independent office, including managing the OCRP's personnel, budget, and work program under the oversight of the BCRC, and in accordance with ADB rules and procedures;
  - (iv) assign member(s) of the CRP to conduct compliance review and monitoring tasks in consultation with the BCRC;
  - (v) prepare the annual work plan and budget for the CRP and OCRP;
  - (vi) engage stakeholders in the compliance review process and ensure that compliance review results are communicated to them and the public;
  - (vii) ensure high-quality professional work and set quality standards for OCRP outputs;
  - (viii) formulate and implement the OCRP's work program as agreed by the Board, and report to the Board through the BCRC on the activities of the OCRP; and
  - (ix) provide input to the BCRC's annual performance feedback on CRP members.

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

163. OCRP will
- (i) support the work of the 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;
  - (v) improve the interface of the Accountability Mechanism websites with problem solving and compliance review under the Accountability Mechanism and other related information included as components under a common ADB Accountability Mechanism website within ADB's public website to improve the access, coherence, and comprehensiveness of the information; and
  - (vi) facilitate the CRP's communication and coordination with the Board, Management, the OSPF, and staff.

**c. Board Compliance Review Committee**

164. The BCRC will
- (i) clear the CRP's proposed TOR for compliance review before they are released by the CRP;
  - (ii) review the CRP's draft compliance review reports;
  - (iii) review the CRP's draft reports on monitoring implementation of remedial actions approved by the Board as a result of a compliance review before the CRP finalizes them;
  - (iv) decide and adjust the CRP monitoring timeframes;
  - (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 site visit, dialogue with Management on the reasons for the borrower's refusal and task the CRP 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.

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

#### **d. The Board of Directors**

166. The key responsibilities of the Board of Directors with regard to CRP include
- (i) overseeing the CRP's work through the BCRC;
  - (ii) appointing and/or removing CRP members on the recommendation of the BCRC in consultation with the President through an open process;
  - (iii) authorizing compliance reviews;
  - (iv) considering CRP final compliance review reports;
  - (v) considering and deciding on Management's recommendations in response to the CRP's findings; and
  - (vi) considering and approving the Accountability Mechanism policy.

#### **4. ADB Management and Staff**

167. 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 specific remedial actions to bring projects into compliance in response to CRP's findings in consultation with the borrower;
  - (v) assist in mission arrangements for the OSPF, CRP, and OCRP; and provide other assistance to them as needed;
  - (vi) track the ineligible complaints that were forwarded to the operations departments because of the complainants' lack of prior good faith efforts to solve the problems with the operations departments;
  - (vii) engage in problem solving and provide assistance to the compliance review during the Accountability Mechanism processes as required; and
  - (viii) engage in problem prevention and problem solving, and seek to ensure compliance with ADB operational policies and procedures before and after the Accountability Mechanism processes.

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<sup>46</sup> The feedback of the CRP chair will be taken into consideration in the feedback to other CRP members.

## **E. Eligibility**

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

168. 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.

169. 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.

170. Compliance review covers 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 private sector client concerned and ADB.

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

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

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

172. Complaints will be excluded if they are

- (i) about actions that are not related to ADB's action or omission in the course of formulating, processing, or implementing ADB-assisted projects;
- (ii) about matters that complainants have not made good faith efforts to address with the operations department concerned;
- (iii) about matters already considered by the SPF, unless the complainants have new evidence previously not available to them and unless the subsequent complaint

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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; and covers both sovereign and nonsovereign operations.

- (iv) can be readily consolidated with the earlier complaint;
- (v) 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;
- (vi) about an ADB-assisted project for which the loan or grant closing date<sup>48</sup> has passed for 1 year or more;
- (vii) frivolous, malicious, trivial, or generated to gain competitive advantage;
- (viii) about decisions made by ADB, the borrower or executing agency, or the private sector client on the procurement of goods and services, including consulting services;
- (ix) about allegations of fraud or corruption in ADB-assisted projects and by ADB staff;
- (x) about the adequacy or suitability of ADB's existing policies and procedures;
- (xi) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal, or relate to ADB personnel matters; and/or
- (xii) about ADB's non-operational housekeeping matters, such as finance and administration.

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

173. The CRP will examine whether the direct and material harm alleged by the complainants is the result of ADB's failure to follow its operational policies and procedures in the course of formulating, processing, or implementing an ADB-assisted project. All types of complaints excluded from the problem solving function will also be excluded from the compliance review function with the exception of items (iii) and (iv) in para. 172. In addition, for the purpose of compliance review, the following will also be excluded:

- (i) complaints relating to actions that are the responsibility of other parties, such as a borrower, executing agency, or potential borrower, unless the conduct of these other parties is directly relevant to an assessment of ADB's compliance with its operational policies and procedures;
- (ii) complaints that do not involve ADB's noncompliance with its operational policies and procedures;
- (iii) complaints 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
- (iv) complaints about matters already considered by the CRP, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint.

174. The scope of compliance review will be ADB's operational policies and procedures as they relate to formulating, processing, or implementing an ADB-assisted project. For a compliance review, the applicable operational policies and procedures will depend on whether the complaint concerns a proposed or an ongoing project. A "proposed project" refers to a project 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

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

Board or the President (as delegated by the Board). For a proposed project, the timeframes 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. The operational policies and procedures of ADB will not include guidelines and similar documents or statements. The scope of compliance review will exclude matters relating to the procurement of goods and services, including consulting services; corruption; and non-operational housekeeping matters, such as finance and administration.

175. The Board will decide whether a policy is an operational policy subject to compliance review,<sup>49</sup> and the CRP will determine which part of the operational policies and procedures was or is not complied with after carrying out a compliance review. In determining the eligibility of a complaint, the CRP must be satisfied that there is evidence of the coexistence of (i) direct and material harm caused by the ADB-assisted project, (ii) noncompliance 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 ADB has not complied with its operational policies and procedures with respect to project formulation, processing, and/or implementation; and whether those material adverse effects alleged in the complaint have totally or partially resulted from ADB's noncompliance with its policies and procedures.

176. 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**

177. 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 seeking access to the Accountability Mechanism will also be accepted by any ADB office, such as a resident mission or representative office, which will forward them to the CRO. The working language of the Accountability Mechanism is English, but complaints may be submitted in any of the official or national languages of ADB's DMCs. In cases where the complaints are submitted in languages other than English, additional time will be required for translation. The identities of complainants will be kept confidential unless the complainants agree to disclose their identities, but anonymous complaints will not be accepted.

178. 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;
- (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,

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<sup>49</sup> Whether a policy is subject to the Accountability Mechanism is generally indicated in the policy when it is submitted for the Board's consideration. ADB operations Manuals clearly indicate whether a specific Operations Manual section is subject to compliance review.

- caused to the complainants by the ADB-assisted project;
  - (vii) a description of the complainants' good faith efforts to address the problems first with the operations department concerned, and the results of these efforts;
  - (viii) if applicable, a description of the complainants' efforts to address the complaint with the SPF or CRP, and the results from these efforts; and
  - (ix) an explanation of why any of the above information cannot be provided.
179. Complainants can also provide the following optional information:
- (i) an explanation of why the complainants claim that the direct and material harm alleged is, or will be, 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;
  - (ii) a description of the operational policies and procedures that have not been complied with by ADB in the course of formulating, processing, or implementing the ADB-assisted project;
  - (iii) 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 early on; and
  - (iv) any other relevant matters or facts with supporting documents.
180. An indicative template for filing complaints is included in Appendix 8.

## **G. Processing Complaints**

181. 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. Complainants can also file a request for compliance review upon the completion of step 3 of the problem solving process (paras. 194–198). Complainants can walk away from 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 during the compliance review process, or request problem solving upon the completion of a compliance review.

182. The CRP will ask Management to respond after receiving the complaint and before the determination of eligibility. Responding to CRP findings and broad recommendations, Management will recommend remedial 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.

183. The indicative steps are described in paras.184-219. The term “days” refer to working days unless otherwise specified.

### **1. Receiving Complaints**

184. **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 that seek to access the Accountability Mechanism will be forwarded to the CRO, who will within 2 days acknowledge receipt of the complaint and send a basic Accountability Mechanism information pack to the complainants.

185. **Step 2: Forwarding the complaint.** The CRO will inform the SPF, the CRP chair, and the operations department concerned about the receipt of the complaint. Within 5 days of receiving the complaint, the CRO will decide where to forward the complaint based on the following options:

- (i) to the SPF if the complainants indicated a preference to undergo problem solving; or
- (ii) to the CRP chair if the complainants indicated a preference to undergo compliance review; or
- (iii) to other relevant departments and/or offices as appropriate if the complaints fall outside the mandate of the Accountability Mechanism, such as those on procurement and corruption, according to relevant ADB policies; or
- (iv) to the complainants and/or their representatives if the complainants have not clearly indicated a preference for problem solving or compliance review; and/or if any relevant party within ADB disputes the CRO's intention on where the complaint should be forwarded to (para. 187).

186. The CRO will forward the complaint to the relevant department or office together with a memorandum that will explain why the complaint is forwarded to that department or office. The CRO will also copy the complainants' letter and the memorandum to the OSPF, the OICRP, the operations department concerned, and any other departments or offices concerned within ADB. In copying the information, the CRO will take necessary measures to ensure confidentiality (for example, by masking the names of the complainants) unless the complainants indicated that confidentiality is not required. The CRO will also stress to all parties concerned within ADB the importance to ensure confidentiality. The CRO will give relevant parties within ADB 3 days to raise any objections and concerns regarding the decision about where to forward or send the complaint.

187. When the CRO needs to send the complaint back to the complainants and/or their representatives (para. 185(iv)), the CRO will include an information pack on ADB's Accountability Mechanism in the response to the complainants. The information pack will indicate that the complainants can choose to undertake either problem solving or compliance review. It 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 explain the procedural differences between these two functions. The CRO will give the complainants 60 calendar days to respond, beyond which date the complaint will be considered a new case.

188. **Step 3: Registration of the complaint and informing the complainants.** Within 2 days of forwarding the complaint to relevant parties, the CRO will register it on the Accountability Mechanism website. This is an administrative step and does not mean 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. The Problem Solving Function

189. The problem solving process is expected to take about 160 days from the registration of the complaint to 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.

190. **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>50</sup> To find a complaint eligible, the SPF must be satisfied with the following requirements: (i) the complaint satisfies the all eligibility criteria and scope, and does not fall within any of the exclusions; and (ii) the SPF believes, at his or her sole discretion, that the SPF's involvement could be useful.

191. The SPF will review whether the complainants made prior good faith efforts to solve the problems with the operations department concerned. The SPF will consult and seek information from relevant parties, such as the complainants, the government or the private sector client, and the operations department 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 concerned. 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.

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

193. The review may include site visits, interviews, and meetings with the complainants, the government or the private sector client, and any other people the SPF believes would be helpful and beneficial. 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 send the findings to the complainants, the operations department, and the government or private sector client, with a request for their comments. Based on the assessment and taking into account the comments received, the SPF will decide, solely at his or her discretion, whether to (i) proceed with problem solving, or (ii) determine that no further problem solving efforts will be purposeful and conclude the process. The SPF is expected to take 120 days from determination of eligibility to complete the review and assessment.

194. **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.

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<sup>50</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.

195. 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. This would formally close the problem solving process.

196. 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.

197. When the problem solving process has been completed (with or without an agreement), the SPF will submit a report to the President, with a copy to the vice-president and the operations department concerned, summarizing the complaint, the steps to resolve the issues, decisions by the parties concerned, and the settlement agreement (if any) by the parties concerned. The SPF will issue this report and furnish it to the complainants, the government or private sector client, the CRP, and the Board for information.<sup>51</sup>

198. Upon completion of this step, the complainants can also file for compliance review, to be carried out in parallel with the implementation and monitoring of the remedial actions described in step 4.

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

200. The SPF's monitoring reports will be sent to the complainants and the government or private sector client, and submitted to the President and the Board for information. The SPF will produce annual monitoring reports for a complaint if the monitoring timeframe exceeds 1 year. If the monitoring time frame is about 1 year or less, the monitoring results can be included in the SPF final report described in step 5. In monitoring the remedial actions, the SPF can either produce monitoring reports for a single complaint or combined monitoring reports for multiple complaints.

201. **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 private sector client, the CRP, the BCRC, and the Board for information. The SPF can either produce final reports for a single complaint or combined final reports for multiple complaints.

### 3. The Compliance Review Function

202. The complainants will be informed about 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 be informed of the outcome of the Board decision on the

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<sup>51</sup> The disclosure requirements on the Accountability Mechanism Policy are in Appendix 8.

CRP final report about 170 days after the receipt of the notification of registration of the complaint. These periods exclude time for translation, any request for extension to provide information or file documents, and the time for conducting the compliance review, which is not time-bound (para. 207).

203. **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 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 concerned.

204. 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 the 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 actions or omissions in complying with its policies and procedures, but Management intends to take actions to ensure compliance. The CRP will copy the BCRC in its correspondence with the Management.

205. **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's response, and other relevant documents. To find a complaint eligible, the CRP must be satisfied that the complaint meets all the eligibility criteria, satisfies the scope, and does not fall within the exclusions. In addition, the CRP must 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 the Board member representing the borrowing country upon determination of the eligibility.

206. **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.

207. **Step 4: Conducting compliance review.** The CRP will begin the compliance review upon receiving the Board's authorization. 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 receipt of the Board's authorization, the TOR will be provided to the Board, and copied to Management.

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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.

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

209. **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 will be free to provide comments, but only the CRP's final view on these matters will be reflected in its final report.

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

211. For assessing direct and material adverse effects, the without-project situation will be used as the base case for comparison, taking into consideration the availability of information. Non-accomplishments and unfulfilled expectations that do not generate direct and material harm compared to the without-project situation will be excluded.<sup>53</sup> Because the assessment of direct and material harm in the context of the complex reality of a specific project can be difficult, the CRP will exercise careful judgment on these matters and will be guided by ADB policies and procedures where relevant. The CRP report may also include broad recommendations to bring the project into compliance.

212. If the BCRC determines, in consultation with the Board, that it is unlikely that a site visit will be permitted for a compliance review, the BCRC will task the CRP to complete its work and deliver its final report without a site visit (para. 226).

213. **Step 6: CRP's final report.** Within 14 days of receiving the responses to the CRP's draft report from the complainants, the borrower, and Management, the CRP will consider 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 the complainants, the borrower, and Management; 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.

214. **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

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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 analyzing the direct material adverse effect itself or its causes.

Management, the borrower, and the complainants attached, will be released to the complainants and the borrower.

215. **Step 8: Management's remedial actions.** If the CRP concludes that ADB's noncompliance caused direct and material harm, Management will propose specific 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 private sector client, which also has the principal responsibility of implementing the recommendations, the government or private sector client must agree to the remedial actions. Within 60 days after the Board's consideration of the CRP final report, Management will submit its recommendations to the Board through the BCRC.

216. **Step 9: Board's decision.** Within 21 calendar days after receiving Management's remedial actions, the Board will consider and make a decision regarding the remedial action 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 remedial actions will be released to the complainants and the borrower.

217. **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. It will report to the Board concerning implementation of Board decisions related to remedial measures, including its determination on the progress in bringing the project into compliance.

218. 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 CRP chair, in consultation with the BCRC, will determine which CRP member(s) will conduct the monitoring exercise each year. The monitoring timeframe will be project-specific depending on the implementation of the remedial actions, but will generally not exceed 3 years. The final monitoring report will also conclude the compliance review process.

219. The methodology for monitoring may include (i) consultations with Management, the complainants, the executing agency and/or DMC government or the private sector client, and Board members; (ii) a 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 private sector client, and the public.

#### 4. Operations Departments' Tracking of Complaints and Roles

220. For complaints forwarded to operations departments because the 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. The operations departments will track the process and results in resolving the complaints. The operations departments, including resident missions, are encouraged to keep records of meetings, correspondence, and other relevant information regarding eligible and ineligible complaints.

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

221. At the end of the process of resolving the complaints forwarded to the operations departments by the SPF or CRP, the operations department will produce a report summarizing the complaint, issues, steps taken to resolve the issues, decisions or agreements by parties concerned, results, and lessons.

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

- (i) As a part of project design and implementation, the operations departments play a central role in day-to-day problem prevention, problem solving, and prevention of noncompliance with ADB's operational policies and procedures.
- (ii) Before any Accountability Mechanism processes are triggered and after the completion of the SPF's facilitation of problem solving and CRP's compliance review, the operations departments are a key party in problem solving and ensuring compliance with ADB's operational policies and procedures.
- (iii) During the Accountability Mechanism processes, the operations departments contribute to smooth problem solving, and provide necessary cooperation for the effective compliance review.

## **H. Site Visits**

223. 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. A borrower is expected to allow site visits. Site visits will take place in consultation with the borrowing country and after obtaining the borrowing country's consent for both sovereign and nonsovereign operations, and will be arranged in the same way as other ADB missions.

224. Management and staff, especially those in resident missions, will facilitate the CRP 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).

225. If a site visit is declined and cannot take place, 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.

226. If a site visit is declined and cannot take place, the BCRC will, in consultation with the Board, task the CRP to complete the compliance review and deliver their findings and final views even without a site visit. The CRP will use all available information, and may make appropriate assumptions and draw appropriate inferences in completing the compliance review. CRP will present the best detailed 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 on the available information, including that provided by the complainants, than would otherwise be the case.

## **I. Transparency and Information Disclosure**

227. The OSPF and CRP operations will be as transparent as possible, both within ADB and with the public. Information disclosure to the public will be consistent with the fundamentals of the Public Communications Policy (2005). The proposed disclosure requirements are set out in Appendix 9.

228. An integrated ADB Accountability Mechanism website will be set up within the ADB website. The OSPF and OCRP will maintain their own component within the Accountability Mechanism website. Any 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 (the landing pages) linking the OSPF and OCRP sites, and other information related to the Accountability Mechanism within the ADB Accountability Mechanism site, will be regularly updated and improved. The OSPF and CRP will each have distinctive logos and letterheads, but their logos and letterheads will be placed under a common ADB Accountability Mechanism logo and letterhead. The OSPF and OCRP outreach to the public will include an introduction to the Accountability Mechanism in general, while also focusing on specific subjects.

229. 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.

230. The SPF and CRP chair will have the authority to issue press releases and public communications, as appropriate. Before doing so, the SPF or CRP will inform 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.

231. 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**

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

## K. Awareness and Learning

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

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

235. **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. Some resident missions have already assigned focal persons for handling grievances; this practice should be extended to all resident missions.

236. **Project level.** Improving the awareness of the Accountability Mechanism requires that ADB staff work as a conduit to disseminate information. Staff should disseminate information early in the project cycle about the Accountability Mechanism and its availability as recourse in case other mechanisms of dealing with harmful project effects are not successful. The intensity and format of this activity will vary with the nature of the project. Operations departments should focus on projects with a high degree of safeguard risks, such as projects with heavy resettlement. Pamphlets in national or official languages, community notice boards, and audiovisual materials should be used to inform people. The Safeguard Policy Statement requires that grievance redress mechanisms be set up at the project level. It also requires government staff and/or project proponents working on the grievance handling mechanisms to organize awareness seminars in coordination with resident missions, project teams, local government units, and executing agencies. ADB can explore the possibility of outsourcing outreach activities to credible NGOs or civil society organizations. Gender issues should be taken into consideration when designing the outreach strategy.

## VII. COSTS AND RESOURCE NEEDS

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

- (i) More outreach activities will require additional resources.
- (ii) The proposal that each resident mission assigns a staff member as a focal person for grievance handling will mean additional costs.
- (iii) The engagement of the CRO will require additional costs.
- (iv) Some costs will be reduced because the OCRP will have one fewer international staff member and one fewer administrative or national staff member.

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

### **VIII. EFFECTIVE DATE AND TRANSITIONAL PERIOD**

239. The revised 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>55</sup> Complaints and/or requests filed prior to the effectiveness of the revised Accountability Mechanism will follow the 2003 Accountability Mechanism policy and related procedures.

### **IX. REQUEST FOR BOARD GUIDANCE**

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

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<sup>55</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 the policy and/or 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 for project beneficiaries to appeal to an independent body regarding matters relating to ADB's compliance with its operational policies and procedures in ADB-assisted projects.<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, Uzbekistan in May 2010, the President of ADB announced that ADB would undertake a review of its Accountability Mechanism, and a joint Board and Management working group was subsequently established for this purpose.

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

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

3. The review will include public consultation to be carried out in three phases. The first phase would be inviting public comments on the 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 under the existing Accountability Mechanism, which requires permission from the borrowing country to carry out site visits;
  - (ii) limited recourse to the compliance review phase;
  - (iii) the mechanism's degree of independence, including reporting lines, ownership, and dissemination of Accountability Mechanism documents and materials, as well as issues of budgeting, staffing, performance assessment, access to independent legal advice, and the right to engage experts and consultants;
  - (iv) affected people's access to the mechanism;
  - (v) eligibility criteria for filing a complaint;
  - (vi) the effectiveness of the Office of the Compliance Review Panel and ADB in disseminating information and conducting public outreach, indicated by awareness of the ADB Accountability Mechanism;
  - (vii) an assessment of the implications of bringing projects into compliance in terms of time required, delays, and increased financial costs;
  - (viii) 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. As an integral part of the review, ADB carried out intensive and extensive public consultations beginning in June 2010.
2. The consultation process included
  - (i) establishing a dedicated website for the review 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 review’s 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 review’s 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 the Accountability Mechanism policy and participation in in-country workshops were extended to all interested stakeholders through posting it on the Accountability Mechanism Review. ADB provided written responses on key points received from the consultation process and released them on the review’s website. ADB acknowledges with thanks the inputs of all workshop participants and all contributors who provided comments during the consultations.
4. Since June 2010, the working group has 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 workshops, are posted on the review’s website.

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

- (i) **Site visits.** While some stakeholders believe site visits should be mandatory, others hold argue they should take place only with the consent of the borrowing country.
- (ii) **Direct access to the compliance review phase.** Some stakeholders consider it desirable and logical to start with the problem solving 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 believe that the sequential approach prevented some people from participating in the compliance review phase. Others argue that the sequential process is justified and that the limited number of compliance review cases is a result of the existence of other problem solving and compliance functions in projects and operational departments.
- (vi) **Costs to developing member countries.** Some consider that the Accountability Mechanism imposes significantly higher costs on DMCs than other policies, such as safeguard polices. Others believe that the cost to ensure compliance is necessary for achieving project quality.

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

### Summary of Eligible Complaints for the Consultation Phase, 2004–August 2011

Projects	Complainants and Issues	Status
<p><b>1. Melamchi Water Supply Project in Nepal</b> (Loan 1820-NEP [SF], approved on 21 December 2000)</p> <p>ADB: \$120 million, with seven cofinanciers</p>	<p>The complaints were received on 3 May 2004. Four individuals filed complaints regarding</p> <ul style="list-style-type: none"> <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. Southern Transport Development Project in Sri Lanka</b> (Loan 1711-SRI [SF], approved on 25 November 1999)</p> <p>ADB: \$90 million JBIC: \$120 million</p>	<p>Complaints were received on 9 June 2004 from three NGOs representing 25 complainants regarding</p> <ul style="list-style-type: none"> <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. Community Empowerment for Rural Development Project in Indonesia</b> (Loan 1765-INO, approved on 19 October 2000)</p> <p>ADB: \$65 million from OCR and \$50 million from Special Funds</p>	<p>The complaint was received on 21 February 2005. It was filed by eight people: three representing NGOs and five villagers who requested confidentiality. The issues raised regarded</p> <ul style="list-style-type: none"> <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. National Highway Development Sector Investment Program, Tranche 1,</b></p>	<p>The complaint was received on 9 September 2006, filed by the Committee of Affectees of Muzaffargarh Bypass, comprising 53</p>	<p>Issues raised in the complaint were resolved to the satisfaction of all parties.</p>

Projects	Complainants and Issues	Status
<p><b>in Pakistan</b> (Loan 2231-PAK, approved on 15 February 2006)</p> <p>ADB: \$180 million from OCR</p>	<p>members. Issues raised included</p> <ul style="list-style-type: none"> <li>(i) the realignment of a bypass,</li> <li>(ii) resettlement and compensation for losses, and</li> <li>(iii) information dissemination and consultation.</li> </ul>	<p>The OSPF annual report noted: “The complainants confirmed that they were satisfied with their compensation and the underpass. This complaint was thus resolved.”</p>
<p><b>5. Phnom Penh to Ho Chi Minh City Highway Project in the Greater Mekong Subregion</b> (Loan 1659-CAM: approved on 15 December 1998)</p> <p>ADB: \$40 million the Special Funds</p>	<p>The complaint was received on 30 July 2007.</p> <p>The NGO Forum on Cambodia filed 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. Fuzhou Environmental Improvement Project in the PRC</b> (Loan 2176-PRC, approved on 29 July 2005)</p> <p>ADB: \$55.8 million from OCR, with commercial financing</p>	<p>The complaint was received on 15 January 2009 from a group of seven families that were to be resettled under the Nantai Island river rehabilitation component of the project. The complaint was about resettlement.</p> <p>The complainants are not registered local residents but moved to the area in 1994 when they purchased land from local farmers and constructed their houses. The government considers the land purchase illegal and not entitled under government rules to the same compensation as for residents. The complainants felt this was inconsistent with ADB's 2004 resettlement plan.</p>	<p>In formulating a course of action, the OSPF believed a need structured participatory consultation was needed 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.</p> <p>By 31 March 2009, five of the seven households decided to accept the compensation package arrived at through the mediation, but two households did not accept it. The government extended the deadline for accepting the package twice, but the two families remained unwilling to accept it and submitted a complaint dated 28 April 2009 to the Compliance Review Panel. The government</p>

Projects	Complainants and Issues	Status
		decided to change the design for rehabilitating the river so that the houses of all seven families would not need to be demolished.
<p><b>7. Southern Punjab Basic Urban Services Project in Pakistan</b> (Loan 2060/2061-PAK, approved on 18 December 2003)</p> <p>ADB: \$45 million from the ADF and \$45 million from OCR</p>	<p>The complaint was received on 27 February 2009. The signatory was an individual who claimed that he represented 58 complainants (43 men and 15 women) who were negatively affected by the 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>From the 2011 OSPF Annual Report: “ADB closed the loan in 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. Rawalpindi Environmental Improvement Project (Sewage Treatment Plant Component) in Pakistan</b> (Loan 2211/2212-PAK, approved on 13 December 2005)</p> <p>ADB: \$20 million from OCR and \$40 million from the ADF</p>	<p>The complaint was received on 28 May 2009. The complainants were a group of 25 residents of affected villages.</p> <p>The issues raised included</p> <ul style="list-style-type: none"> <li>(i) land acquisition, and</li> <li>(ii) compensation.</li> </ul>	<p>The OSPF final report stated that the national law on land acquisition stipulated that only the courts could revise land compensation rates, so the consultations were unable to resolve that issue. 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. CAREC Transport Corridor I (Zhambyl Oblast Section) Investment Program, Tranche 2, in Kazakhstan</b> (Loan MFF-2562-KAZ, approved on 7 October 2009)</p> <p>ADB: \$187 million from OCR</p>	<p>The complaint was received on 5 November 2009. The two signatories claimed to represent at least 30 other villagers. An NGO, the Taraz Press Club Public Union, facilitated the complaint.</p> <p>Issues raised included</p> <ul style="list-style-type: none"> <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. Education Sector Reform Project in</b></p>	<p>The complaint was received on 5 August 2010. Complainants</p>	<p>Consultation continues.</p>

Projects	Complainants and Issues	Status
<p><b>Tajikistan</b> (Loan 2053-TAJ, approved on 17 December 2003)</p> <p>ADB: \$7.5 million from the ADF</p>	<p>requested confidentiality and claimed to file the complaint on behalf of 9,000 people. They authorized members of the NGO Forum and CSSC Kalam to represent them.</p> <p>Issues raised included</p> <ul style="list-style-type: none"> <li>(i) information,</li> <li>(ii) consultation, and</li> <li>(iii) school reconstruction.</li> </ul>	
<p><b>11. CAREC Transport Corridor 1 (Bishkek–Torugart Road), Project 2, in Kyrgyz Republic</b> (Loan 2533-KGZ, approved on 14 July 2009)</p> <p>ADB: \$28 million</p>	<p>The complaint was received on 20 September 2010. It was filed by three residents of the affected area who requested that their identities not be published. They authorized an NGO representative to file the complaint on their behalf. Their complaint is on compensation.</p>	<p>The review and assessment was completed; an agreement was reached and is being monitored.</p>
<p><b>12. Integrated Citarum Water Resources Management Investment Program, Project 1, in Indonesia</b> (Loan 2500/2501-INO, approved 4 December 2008)</p> <p>ADB: \$500 million multitranches financing facility</p>	<p>The complaint was received on 4 January 2011. Three complainants requested that their identities be kept confidential and authorized an NGO, People's Alliance on Citarum (ARUM), to represent them.</p> <p>Issues are</p> <ul style="list-style-type: none"> <li>(i) resettlement; and</li> <li>(ii) compensation</li> </ul>	<p>The review and assessment was completed and the consultation continues.</p>
<p><b>13. Visayas Base-Load Power Development Project in the Philippines</b> (Loan 2612-PHI, approved 11 December 2009)</p> <p>ADB: \$100 million private sector loan</p>	<p>The complaint was received on 28 February 2011. The signatories stated that they filed the complaint on behalf of the residents of affected communities; 6 signatories requested confidentiality. Only one resident opted to be identified together a member of Freedom from Debt Coalition, an NGO representing them. Issues included</p> <ul style="list-style-type: none"> <li>(i) consultation,</li> <li>(ii) information, and</li> <li>(iii) environmental impact.</li> </ul>	<p>Complainants withdrew after the review and assessment, and the consultation process was terminated.</p>

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

Source: ADB.

### Summary of Requests for the Compliance Review Phase, 2004–August 2011

Projects	Requests	Responses	Results
<p><b>1. Chashma Right River Bank Irrigation Project, Stage 3, in Pakistan</b> (Loan 1146-PAK, approved on 17 December 1991)</p> <p>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 people affected by the project.</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-affected people. Issues included project-induced flooding and involuntary resettlement; inadequate compensation for loss of land, other assets, and livelihoods; and a lack of information sharing, consultation, and participation of affected people.</p>	<p>In March 2003, BIC submitted its report to the Board recommending that an inspection begin in December 2003. The Board approved the recommendation, and an inspection panel conducted the investigation in early 2004. The inspection panel final report was submitted in June 2004.</p> <p>The CRP noted that requesters disengaged in March 2004 when the inspection panel carried out its investigation in the project area because of their “dissatisfaction with the development and consultation processes associated with the grievance redress and settlement committee (GRSC) and its recommendations, the Board's support for the GRSC, and the development of the action plan.”</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 that ADB had partially complied with, the panel concluded that sufficient progress was made and that, under these circumstances, the panel did not need to extend its monitoring mandate beyond 5 years.</p>
<p><b>2. Nepal Melamchi Water Supply Project in Nepal</b></p>	<p>The CRP received requests from four people on 12 November 2004. The following complaints were raised:</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</p>

Projects	Requests	Responses	Results
<p>(Loan 1820-NEP [SF], approved on 21 December 2000)</p> <p>ADB: \$120 million loan</p>	<ul style="list-style-type: none"> <li>(i) inappropriate or inadequate information disclosure,</li> <li>(ii) displacement and 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>harm or policy violations.</p> <p>The CRP deemed the request ineligible.</p>
<p><b>3. Southern Transport Development Project in Sri Lanka</b> (Loan 1711-SRI [SF], approved on 25 November 1999)</p> <p>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</p> <ul style="list-style-type: none"> <li>(i) the environment,</li> <li>(ii) involuntary resettlement,</li> <li>(iii) the incorporation of social dimensions in ADB operations,</li> <li>(iv) governance,</li> <li>(v) economic analysis,</li> <li>(vi) benefit monitoring and evaluation,</li> <li>(vii) gender and development in ADB operations,</li> <li>(viii) the processing of loan proposals,</li> <li>(ix) the formulation and implementation of loan</li> </ul>	<p>The CRP conducted an extensive review of available documentation in Manila and in Colombo. It carried out interviews with the requesters and project-affected people, as well as with a wide range of current and past staff, consultants, and contractors associated with the project. With the support 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 partially complied with.</p>

Projects	Requests	Responses	Results
	<p>covenants,  (x) the procurement of goods and services, and  (xi) anticorruption actions.</p> <p>The alleged harm included the loss of homes, the loss of livelihoods, damage to the environment, the degradation of wetlands, the dispersion of integrated communities, damage to five temples, the negative effects of resettlement, and human rights violations.</p>		
<p><b>4. Fuzhou Environmental Improvement Project in the PRC</b>  (Loan 2176-PRC, approved on 29 July 2005)</p> <p>ADB: \$55.8 million from OCR, with commercial financing</p>	<p>The CRP received a request signed by two individuals for compliance review on 3 June 2009. The SPF had previously dealt with a complaint from seven affected households.</p> <p>The issues raised related to ADB's Involuntary Resettlement Policy (1995), including</p> <ul style="list-style-type: none"> <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 rerouted the river, which made the compliance review request obsolete.</li> <li>(iii) 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 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</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
		in project design would not obviate the need to investigate whether ADB had previously failed to comply with its operational policies and procedures.	
<p><b>5. CAREC Transport Corridor (Bishkek–Torugart Road) Project 2, in Kyrgyz Republic</b> (Loan No. 2533-KGZ, approved 14 July 2009)</p> <p>ADB: \$28 million from the ADF</p>	<p>The CRP received the request on 23 May 2011 from five alleged affected people who requested confidentiality. They are represented by NGO Forum on ADB. The issues raised are related to ADB's Involuntary Resettlement Policy, including:</p> <ul style="list-style-type: none"> <li>• compensation for store demolition,</li> <li>• registration of and registration fee for a new store, and</li> <li>• loan repayment scheme.</li> </ul> <p>The request was filed during the implementation of the course of action recommended by the SPF.</p>	<p>The CRP has determined that this case is eligible; and has submitted a request for the Board to authorize the compliance review.</p>	<p>Not yet available.</p>
<p><b>6. Visayas Base-Load Power Development Project</b> (Loan No. 2612-PHI, approved 18 August 2009)</p> <p>ADB: \$100 million private sector loan</p>	<p>The CRP received the request from alleged affected people who requested confidentiality. The requesters are represented by an NGO and an engineer. They filed a complaint on 25 May 2011. Issues raised include</p> <ul style="list-style-type: none"> <li>• adverse impact of the project on the health of affected residents, and</li> <li>• adverse effect of carbon dioxide emissions on the environment.</li> </ul>	<p>The CRP has determined that this case is eligible. The Board authorized the compliance review on 11 July 2011. The CRP is preparing the terms of reference for the compliance review.</p>	<p>Not yet available.</p>

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

Source: ADB.

### Number of Cases in Different Accountability Mechanisms

Asian Development Bank: Accountability Mechanism	2004 to July 2011	Compliance Review Panel			Special Project Facilitator		
		Total	Eligible	Ineligible	Total	Eligible	Ineligible
		5	4	1	35	13	22

Source: Asian Development Bank complaints registry (<http://www.adb.org/SPF/registry.asp>).

World Bank: Inspection Panel	1994 to July 2011	Total Requests Received	Eligible for Investigation	Not Eligible for Investigation	No Recommendation Made	Eligibility Ongoing
		73 <sup>a</sup>	32	16	18	2

<sup>a</sup>Including double requests in 5 projects.

Source: World Bank Inspection Panel website.

International Finance Corporation: Compliance Advisor Ombudsman	2000–2011	Total New Complaints	Eligible for Assessment
		127	72

Source: Compliance Advisor Ombudsman annual reports.

Inter-American Development Bank: Independent Consultation and Investigation Mechanism	Established in 1994; reorganized in February 2010	Total Cases Registered Since 2002
		15

Source: Inter-American Development Bank annual reports.

African Development Bank: Independent Review Mechanism	2004–2011	Total Number of Cases in Register Since 2007
		6

Sources: African Development Bank 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 were relating to procurement. There were 2 cases related to environmental and social impacts in 2007 and 7 cases in 2008.

Source: EIB complaints office annual activity reports.

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

Source: Annual report of the Examiners for Environmental Guidelines.

Overseas Private Investment Corporation: Office of Accountability	2005–2011	Problem Solving Requests	Total Compliance Review Requests
		3	3

Sources: Overseas Private Investment Corporation 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 and 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 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>Areas</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Proposed Changes</b>
<b>Participation</b>	Requesters and Management respond to the draft CRP report.  Problem solving empowers complainants with an active role in decision making.	Management response to the request is lacking at the eligibility stage.  CRP reports are not shared with the borrowing country.	Introduce Management response.  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 review 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 2003 policy has not clearly specified that the CRP would make broad recommendations to bring a project into compliance, and Management identify specific remedial actions. In practice, this has	Clarify the mandate regarding problem solving, compliance review, and project administration.

<b>Areas</b>	<b>Strengths</b>	<b>Weaknesses</b>	<b>Proposed Changes</b>
		been the case since 2003. This practice should be reflected in the revised policy.	
<b>Learning lessons</b>	Systematic learning has taken place.  The OSPF advisory role has been beneficial.	Learning is still limited.  Compliance review is sometimes seen as adversarial.	Improve learning.  Promote a change in institutional culture.
<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.

### 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 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 and clarified in 1996 and 1999</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>IADB:</b> Independent Investigation Mechanism established in 1994, changed in 2010 to Independent Consultation and Investigation Mechanism.</p> <p><b>IFC:</b> Compliance Advisor Ombudsman, established in 1999, amended its 2004 operational guidelines in 2006 and 2007.</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–July 2011</b></p> <p><b>SPF:</b> Total 35; eligible 13</p> <p><b>CRP:</b> Total 5; eligible 4</p>	<p><b>1994–2011</b></p> <p><b>Inspection panel:</b> Total 73; eligible for inspection 32</p>	<p><b>AfDB (2004–2011):</b> Total of 6 cases since 2007.</p> <p><b>EBRD (2004–2011):</b> Total of 20 cases (15 under Independent Recourse Mechanism and 5 under Project Complaint Mechanism).</p> <p><b>EIB (2007–2008):</b> Total of 55 cases (includes procurement and human resources issues).</p>

Areas	ADB	World Bank	Other Institutions
			<p><b>IADB (1994–2011):</b> Total of 15 cases since 2002.</p> <p><b>IFC (2000–2011):</b> Total 127; eligible for assessment 72.</p> <p><b>JBIC (2003–2011):</b> Total of 1 case; ineligible.</p> <p><b>OPIC (2005–2011):</b> Total of 6 cases, 3 under problem solving (1 eligible, 1 ineligible, and 1 eligibility determination ongoing), 3 under compliance review (2 eligible and 1 eligibility determination ongoing).</p>
Policy coverage	ADB operational policies and procedures concerning formulation, processing, and implementation of ADB-financed projects	World Bank's operational policies and procedures with respect to the design, appraisal, and/or implementation of projects	<p><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>IADB and AfDB:</b> Operational policies and procedures.</p> <p><b>IFC:</b> Focused on environmental and social aspects.</p> <p><b>JBIC:</b> The examiner for environmental guidelines is 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, which includes procurement
Cutoff dates	Up to the issuance of the PCR	The request to be filed before loan financing is substantially disbursed (up to 95% disbursement)	<b>AfDB:</b> 12 months after the physical completion of a project, or 12 months after the final disbursement, or the date of cancellation of the undisbursed amount.

Areas	ADB	World Bank	Other Institutions
			<p><b>EBRD:</b> 12 months following the last disbursement (Bank still maintains a financial interest).</p> <p><b>EIB:</b> 1 year from the date on which the facts upon which the allegation is grounded could be reasonably known by the complainant.</p> <p><b>IADB:</b> 24 months after the last disbursement.</p> <p><b>IFC:</b> Not mentioned in the rules.</p> <p><b>JBIC:</b> complaints can be filed between the time when a loan agreement is executed and the time when disbursement is completed.</p> <p><b>OPIC:</b> Claims made prior to or after OPIC's support of a project are not eligible. OPIC's support is deemed to end at the termination of OPIC's contractual relationship with a project, or when a financial intermediary is no longer contractually engaged in the project.</p>
Minimum number of people	2 people	2 people	<p><b>AfDB and JBIC:</b> 2 people.</p> <p><b>IFC, IADB, EIB, EBRD, and OPIC:</b> 1 person.</p>
Direct and indirect effects	Only people who are directly, materially, and adversely affected	Only people who are directly, materially, and adversely affected	All requiring direct and material harm for eligibility, except EIB and IFC.
Structure	SPF and OSPF CRP and OCRP	Inspection Panel and its secretariat	<p><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 (except for EIB, which reports to the management committee).</p> <p><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.</p> <p><b>IADB:</b> Ombudsperson, panel, and</p>

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

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.

**INDICATIVE TEMPLATE FOR FILING A COMPLAINT  
UNDER THE ADB ACCOUNTABILITY MECHANISM**

<b>A. Complainants' Preferences and Contact Information</b>	
<b>1. Complainants' Preferences</b>	
<p>(1) Do you want to file your complaint under the problem solving or compliance review function? Please check one:</p> <p><input type="checkbox"/> Problem-Solving                      <input type="checkbox"/> Compliance Review</p>	
<p>(2) Do you wish to nominate an authorized representative?</p> <p><input type="checkbox"/> Yes (please fill out both section #1 and #2)                      <input type="checkbox"/> No (please fill out section #1)</p>	
<p>(3) Do you want your identities to be kept confidential?</p> <p><input type="checkbox"/> Yes                      <input type="checkbox"/> No</p>	
<b>2. Complainants' Information</b>	
Names:	
Organizations/Positions (if any):	
Addresses:	
Telephone numbers:	
Mobile numbers:	
E-mails:	
<b>3. Authorized Representative (if any)</b>	
Name(s)	
Organizations/Positions (if any):	
Addresses:	
Telephone numbers:	
Mobile numbers:	
E-mails:	

<b>B. Project Information</b>	
Project Name:	
Project Location:	
Brief Description of the Project:	

<b>C. The Complaint</b> (Please provide an explanation if any of the information cannot be provided).	
(1) Description of the direct and material harm that has been, or is likely to be, caused to the complainants by the ADB-assisted project.	
(2) Have the complainants made good faith efforts to address their concerns first with the operations department concerned?	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, please provide a description of the good faith efforts and the results of these efforts.	
(3) Have the complainants approached the Office of the Special Project Facilitator (OSPF) or Compliance Review Panel (CRP) about your concern?	
<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, please provide a description of the efforts to address the complaint with the OSPF or CRP, and the results from these efforts.	

<b>D. Optional Information</b> (please provide the following information if you can or want to)
(1) What is your desired outcome or what remedies do you seek from the ADB Accountability Mechanism?
(2) Why do you believe that the direct and material harm alleged is, or will be, the result of ADB's failure to follow its operational policies and procedures?
(3) Describe the operational policies and procedures that have not been complied with by ADB.
(4) Any other relevant matters or facts with supporting documents

## Information Disclosure Requirements under the ADB Accountability Mechanism

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

### A. Problem Solving Function

2. The Office of the SPF shall post the following information and documents on the ADB website, as specified below:

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

### B. Compliance Review Function

3. The Compliance Review Panel (CRP) shall post the following information and documents on the ADB website at the times specified below:

- (i) the request for compliance review—within 7 working days of receipt of the complaint;

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

- (ii) the CRP report determining whether the complaint is eligible and the Board decision on authorization of compliance review together with Management's response—within 7 working days of the Board decision;
- (iii) the CRP report determining whether the complaint is ineligible together with Management's response—within 7 working days of circulation of the report to the Board;
- (iv) the terms of reference for the compliance review within 10 working days of the Board's authorization of the review;
- (v) the CRP's final report, attaching responses, if any, to the draft report from Management and, subject to their consent, from the complainants, the government, and/or client, as applicable—within 7 working days of the Board's consideration of the final report;
- (vi) Management's recommendations for remedial measures and the Board's decision—within 7 working days of the Board's decision; and
- (vii) monitoring reports on implementation of any remedial actions approved by the Board—upon circulation to the Board and other stakeholders.

4. The SPF and CRP shall post their joint annual reports on the ADB website upon completion. The Office of the Special Project Facilitator, Office of the Compliance Review Panel, Independent Evaluation Department, and Regional and Sustainable Development Department shall post the learning reports upon completion.