

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

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Further Strengthening the Accountability Mechanism

Asian Development Bank

ABBREVIATIONS

ADB	– Asian Development Bank
AM	– accountability mechanism
AfDB	– African Development Bank
BCRC	– Board Compliance Review Committee
BIC	– Board Inspection Committee
BPMSD	– Budget, Personnel, and Management Systems Department
CAO	– Compliance Advisor Ombudsman
COSO	– Central Operations Services Office
CRO	– Complaint Receiving Officer
CRP	– Compliance Review Panel
DEC	– Development Effectiveness Committee
DG	– Director General
DMC	– developing member country
EA	– executing agency
EIB	– European Investment Bank
EBRD	– European Bank for Reconstruction and Development
IA	– implementing agency
IADB	– Inter-American Development Bank
IED	– Independent Evaluation Department
JBIC	– Japan Bank for International Cooperation
MDB	– multilateral development bank
NGO	– nongovernmental organization
OCR	– Office of the Compliance Review Panel
OM	– operations manual
OPIC	– Overseas Private Investment Corporation
OSPF	– Office of the Special Project Facilitator
PCR	– project completion report
PPS	– private project sponsor
RAR	– review and assessment report
RSDD	– Regional and Sustainable Development Department
SPF	– Special Project Facilitator
SPS	– Safeguard Policy Statement
STDP	– South Transport Development Project (Sri Lanka)
TOR	– Terms of reference
WPBF	– Working Program and Budget Framework

NOTE

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

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EXECUTIVE SUMMARY

1. In 1995, the Asian Development Bank (ADB) established an Inspection Function to provide a forum in which project-affected people could appeal to an independent body for matters relating to ADB's compliance with its operational policies and procedures in ADB-assisted projects. In 2003, following an extensive review process, ADB introduced the current Accountability Mechanism (AM), building on the Inspection Function. The AM 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 already in place at ADB.
2. At the 43rd Annual Meeting of the Board of Governors of ADB held in Tashkent in May 2010, the President of ADB announced that ADB would undertake a joint Board Management Review of its AM (the Review). A joint Board and Management Working Group was established for this purpose. The Working Group engaged two independent international experts to assist in the Review. The objective of the Review is to take stock on the experience of ADB, draw from the experience of other similar mechanisms, and examine the scope for improving the AM. The Review has encompassed an extensive public consultation process.
3. The Review uses the well recognized framework of accessibility, credibility, efficiency, and effectiveness (ACEE) to assess the AM. It concludes that the ADB AM stands out as a pioneer in institutionalizing the problem solving function among multilateral development banks (MDBs) for both 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 AM enjoys a high degree of transparency, participation, credibility, and effectiveness. Both the consultation and compliance review phases have proven useful, and delivered effective outcomes.
4. The Review also suggests that ADB can further strengthen the AM through changes in several areas. The requirement that requesters first approach the OSPF creates a perception that the OSPF has reduced the recourse to the compliance review phase and caused delays for people who want to directly request compliance review. The division of mandates between problem solving, compliance review, and project administration functions is not sufficiently clear. The issue of site visits can be controversial and demands a practical solution. The CRP is appointed by the Board upon the recommendation of the President, which may reduce its independence from the Management. The ADB AM is one of the most costly mechanisms among similar institutions. The issuance of the project completion report as the cut-off date for filling requests results in a lack clarity and certainty. Further, the awareness of the AM is still limited and many local communities find the AM process lengthy and complex. The compliance review phase is still being operated and seen as adversarial. The learning value of the AM has not been fully utilized.
5. Drawing on the experience of the ADB and similar institutions, the Review proposes changes to further strengthen the AM. The major changes are summarized below.

6. Improving Accessibility.

- (i) *Establishing one point of entry.* A staff member in OCRP to serve as the Complaint Receiving Officer to receive all requests. This will improve the interface between the AM and the public.
- (i) *Changing the cut-off date.* ADB should change the cut-off date for filing complaints from the date of the issuance of PCR to one year after the loan closing date. This will improve the clarity and certainty of the cut-off date.
- (ii) *Improving awareness and engendering a cultural change.* The OSPF and OCRP should undertake more systematic and effective outreach activities within ADB, on projects, and in DMCs. There should be a cultural change towards operating and viewing the AM as a positive tool for learning and development effectiveness. ADB staff should be the main conduits for disseminating information on the AM.

7. Strengthening Credibility.

- (i) *Improving independence.* The CRP members should be appointed by the Board based on the recommendation of the Board Compliance Review Committee in consultation with the President. This will improve the CRP's independence from the Management compared to the current practice in which CRP members are appointed by the Board based on the President's recommendation.
- (ii) *Improve responsiveness and transparency.* The operations departments should track the status of requests forwarded to them by OSPF or OCRP, complementing the tracking currently done by OSPF and OCRP. This will improve the transparency and responsiveness of the AM.

8. Improving Efficiency.

- (i) *Optimizing the use of resources.* The AM is one of the most costly mechanisms among similar institutions. Conceptually, the AM costs should consist of two parts: (i) a 'fixed cost' element to support a basic structure to maintain and operate the AM, regardless of the number of requests; and (ii) a 'variable cost' to respond to changes in demand. This will help to ensure optimal use of resources, while providing effective services to affected people. The OSPF and CRP monitoring time frame should be tailored to suit each project.
- (ii) *Simplify the AM processes.* Redundant steps in the AM processes should be eliminated and the time frame should be realistically set to reduce transaction costs.
- (iii) *Improve the coordination and potential synergies between OSPF and CRP.* The OSPF and OCRP should fully share information with each other to avoid unnecessary duplication of work.

9. Enhancing Effectiveness.

- (i) *Enabling direct access to compliance review.* The AM should eliminate the requirement that affected people must first go through the consultation process before they can file for compliance review. This will provide a greater choice to project affected people.
- (ii) *Site Visits.* The uncertainty in obtaining the consent for site visits from borrowing countries should be minimized. Given the sensitivity and importance of site visits, several options have been considered.
- (iii) *Clarify the mandate of the AM.* The compliance review is fact finding in nature. Management should respond to the CRP findings and make recommendations for remedial measures for Board approval. This will help to clearly define the boundaries between compliance review, problem solving, and project administration.

I. INTRODUCTION

1. Accountability is a core dimension of good governance. The Asian Development Bank (ADB), as an international development agency focusing on fighting poverty in Asia and the Pacific, strives to achieve high standards of accountability, transparency, openness, and public participation. Maintaining an effective accountability mechanism to address the grievances of people adversely affected by ADB financed projects is instrumental for achieving equitable and sustainable development. It is in this spirit that ADB created the Inspection Function¹ in 1995 to provide an independent forum for project-affected people to voice and resolve problems arising from ADB's noncompliance with its operational policies and procedures. Building on the Inspection Function, ADB introduced the current accountability mechanism (AM)² in 2003 following an extensive review process. The AM policy was declared effective on 12 December 2003.

2. The AM policy envisaged a review of its implementation by the Management three years after it came into effect, i.e., by the end of 2006. The review was deferred as there were only a few cases by 2006.³ Further, ADB has been undertaking strategic and policy reforms since 2005, including adopting the Long Term Strategic Framework in 2008 and the new Safeguard Policy Statement (SPS) in 2009. In early 2010, the Board of Executive Directors (the Board) and Management considered that it was time for the review and decided to carry this out as a joint Board-Management exercise. The President announced the Review at the 43rd Annual Meeting of the Board of Governors of ADB in Tashkent in May 2010. A Working Group was established in April 2010, consisting of 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 independent external experts⁴ to assist the Review. Appendix 1 contains the TOR of the Review.

3. The objectives of the Review are to take stock of the experiences of ADB, draw on the experiences of similar mechanisms, and examine the scope for improving the AM. The Review has encompassed an extensive public consultation process, including face to face meetings, multiple stakeholder workshops, and visits to project sites. The stakeholders consulted included project-affected people; project beneficiaries; governments; nongovernmental organizations (NGOs); the private sector; academia and think tanks; ADB Board members, the Management, and staff; and people working on AMs of other institutions. In-country and regional consultations were held in Sri Lanka, Japan, the United States, Germany, Indonesia, and the Philippines from September to November 2010. The Working Group has also sought public comments through a dedicated AM review website⁵. All public comments received were posted on the ADB website, along with the in-country consultation summaries; and external experts' issues paper, presentations, and their review report.

4. This paper presents key findings from the review process and proposes changes to further strengthen the accessibility, credibility, efficiency, and effectiveness of the AM.

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

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

³ By the end of 2006, the Compliance Review Panel received two requests and the Office of the Special Project Facilitator received four eligible complaints.

⁴ The experts are Dr. Maartje van Putten and Dr. Ishrat Husain.

⁵ <http://www.adb.org/AM-REview/>.

II. ESTABLISHMENT AND EVOLUTION OF THE ACCOUNTABILITY MECHANISM POLICY

A. The 1995 Inspection Function

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

6. The Inspection Function aimed at providing a forum for project-affected people to appeal to an independent body for matters relating to ADB's compliance with its operational policies and procedures in ADB-assisted projects. From 1995 to 2003, ADB received eight requests for inspections, of which six were deemed ineligible. One request—the Samut Prakarn Wastewater Management Project⁶ in Thailand—went through a full inspection process from April 2001 to March 2002. The eighth request for inspection on the Chashma Right Bank Irrigation Project (Stage III) in Pakistan⁷ was received in November 2002. In April 2003, the Board authorized an inspection, which commenced in December 2003 and was completed in June 2004. The Compliance Review Panel (CRP), established after the adoption of the 2003 AM policy, monitored the implementation of the Inspection Panel's recommendations from 2004/05 to 2008/09.

7. It became evident during the inspection of the Samut Prakarn Wastewater Management Project that the inspection process was complex. The inspection also raised concerns about the independence, credibility, transparency, and effectiveness of the Inspection Function. The ad hoc nature of the panel selected from the roster of experts on a case-by-case basis was not conducive to accumulating knowledge and expertise, and ensuring the continuity of the panel of experts. Since the panel of experts reported to the Board Inspection Committee (BIC), the relationships between the panel and the BIC, and between the BIC and the Board had affected the independence of the panel. The perceived lack of independence threatened the credibility of the inspection process. The lack of scope for solving problems hampered the effective redress of problems faced by people on the ground. Thus, in 2002 and 2003, ADB reviewed the Inspection Function and carried out extensive external and internal consultations.

8. Consultations reinforced support for (i) an independent AM that addresses the complaints of adversely affected people in ADB-assisted projects, and (ii) increasing problem-solving measures within the AM processes. There was a strong expectation that the new mechanism should enhance ADB's development effectiveness and project quality. The review ushered in the new ADB AM in 2003.

B. The 2003 Accountability Mechanism

9. The most significant change introduced by the 2003 policy was the establishment of two separate but complementary phases within the AM. These are (i) a consultation phase⁸,

⁶ ADB. 1995. *Report and Recommendation of the President to the Board of Directors on Proposed Loan to Thailand for the Samut Prakarn Wastewater Management Project*. Manila. (Loan 1410-THA for \$150 million, approved on December 1995).

⁷ 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 December 1991).

⁸ The 2003 policy referred to the "problem-solving" phase as the "consultation process" to avoid unrealistic

consisting of a special project facilitator (SPF) who will respond to specific problems of locally affected people in ADB-assisted projects through a range of informal and flexible methods; and (ii) a compliance review phase⁹, consisting of the 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.

10. The ADB AM was the first MDB mechanism to go beyond the pure inspection function by implementing the dual dimensions of problem-solving and compliance review for both private and public sector operations.¹⁰ The adoption of a problem solving function was a significant innovation that was emulated by other institutions. This approach was expected to be particularly helpful for project-affected people by focusing on addressing their problems, and enabling them to actively participate in the problem solving process. Under the previous Inspection Function, the complainants were finally informed of what happened to their requests at the end of a long process, but their problems could still remain unresolved.

11. Dedicated institutional support has been provided to both the consultation and compliance review phases to reflect their distinctive features and needs. The consultation phase consists of the SPF who is assisted by the Office of the Special Project Facilitator (OSPF). The SPF reports directly to the President. The compliance review phase consists of three CRP members, one of whom is the chair. CRP is assisted by the Office of the Compliance Review Panel (OCRCP). CRP reports directly to the Board on all activities, except in specific activities of clearing the CRP's review TOR and timeframes, and reviewing the CRP's draft monitoring reports where the CRP reports to the Board Compliance Review Committee (BCRC). Both SPF and CRP are empowered with monitoring mandates on the implementation of remedial actions.

12. The policy paid particular attention to the relationship between the consultation and compliance review phases, and site visits. On the relationship, it stressed that problem solving should precede compliance review to enable immediate actions for resolving the concerns of project-affected people. At the same time, it provided choices for complainants to exit the consultation phase and request a compliance review. On site visits, the policy adopted the approach that site visits should only take place with the consent of the borrowing country.

III. EXPERIENCE SINCE 2003

A. The Consultation Phase

13. OSPF received 32 complaints since the AM became effective in December 2003 until the end of 2010,¹¹ 11 of which were eligible for problem solving. The complaints were highest in 2009 and 2010, at 13 and 7 respectively. On average, OSPF receives about 5 complaints each year (Table 1).

Table 1. Complaints Received by OSPF – By Year

Year	Total complaints	Eligible Complaints
2004	3	2
2005	1	1

expectations that every problem will be resolved by ADB.

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

¹⁰ The Compliance Advisory Ombudsman (CAO) of the International Finance Corporation (IFC) was the first to introduce problem solving for the private sector operations. The ADB was the first in introducing problem solving for both public and private sector operations.

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

2006	6	1
2007	2	1
2008	0	0
2009	13	4
2010	7	2
Total	32	11

OSPF = Office of the Special Project Facilitator.

Source: OSPF Complaints Registry as of 31 December 2010.

14. Among the 21 ineligible complaints, in 14 cases the complainants did not make prior good faith efforts to solve problems with the operations departments, 2 were related to procurement issues which were handled by the Central Operations Services Office (COSO), 2 were filed after the project completion reports (PCRs) had been issued, and 3 were not related to ADB projects (Table 2).

Table 2. Reasons Why Complaints Were Found Ineligible (2004-2010)

Reasons	Number	Share of Total (%)
Complainants have yet to address the problems with the concerned operations departments	14	66.7
Complainants are not materially and adversely affected by the project	3	14.3
Project completion report issued	2	9.5
Procurement related	2	9.5
Total	21	100.0

Source: OSPF Complaints Registry as of 31 December 2010.

15. More than half the complaints (17 out of 32), came from the Central and West Asian subregion. This is followed by the complaints from South Asia (8), and Southeast Asia (6) (Table 3).

Table 3. Complaints Received by OSPF – By Region

Regions	Number	Share of Total (%)
South Asia	8	25.0
Central and West Asia*	17	53.1
Southeast Asia	6	18.8
East Asia	1	3.1
Total	32	100.0

* This includes Pakistan.

Source: OSPF Complaints Registry as of 31 December 2010.

16. The road transport sector had the highest number of complaints. At 14 complaints, it accounted for 43.8% of the total complaints; followed by water and other municipal infrastructure and services. Overall, infrastructure sectors (transport, water, and energy) accounted for 75% of the total complaints (Table 4).

Table 4. Complaints Received by Sector, 2004-2010

Sector	Total	Share of Total (%)
Road Transport	14	43.8
Water and Other Municipal Infrastructure and Services	6	18.8
Energy	4	12.5

Agriculture and Natural Resources	4	12.5
Industry and Trade	1	3.1
Rural Infrastructure	1	3.1
Education	1	3.1
Regional Technical Assistance	1	3.1
Total	32	100.0

Source: OSPF Complaints Registry as of 31 December 2010.

17. About two-thirds of the complaints are related to resettlement, inadequate information, consultation and participation. Within resettlement, the major complaints were on the adequacy of the compensation rates (Table 5).

Table 5. Issues Raised in Complaints, 2004-2010

No.	Issues	Number of Times Raised in Complaints	Share of Total (%)
1	Resettlement	26	35.6
2	Information	12	16.4
3	Consultation and Participation	10	13.7
4	Agriculture, Natural Resources, Environment	9	12.3
5	Community and Social Issues*	8	11.0
6	Energy	2	2.7
7	Others**	6	8.2
	Total	73	100.0

* This includes gender issues which were raised once.

** These include the following issues: distributary link, flooding, procurement, loan suspension, education, and termination of contract.

Source: OSPF Complaints Registry as of 31 December 2010.

18. Over half of the complaints were filed with the assistance of NGOs (Table 6). The active roles of the NGOs in representing the requesters are consistent with other MDBs. In the African Development Bank (AfDB), for example, all 3 complaints received by the Independent Review Mechanism (IRM) in 2009 were submitted by NGOs on behalf of requesters.¹²

Table 6. Complaints Received from Affected Persons and NGOs

Complaints	Number	Share of Total (%)
Affected Persons	14	43.8
NGOs and Affected Persons	18	56.3
Total	32	100.0

Source: OSPF Complaints Registry as of 31 December 2010.

B. The Compliance Review Phase

19. CRP has received three requests¹³ for compliance review since 2004, of which two were eligible (Table 7). On the request for compliance review in the Nepal Melamchi Water Supply Project, CPR carried out a site visit to determine eligibility. It could not ascertain alleged harm and noncompliance, and thus deemed the request ineligible. CRP carried out a

¹² African Development Bank Compliance Review and Mediation Unit. 2009. *The Independent Review Mechanism Annual Report 2009*. Tunis.

¹³ The cases received by the CRP are referred to as 'requests' in the 2003 policy.

compliance review on the Sri Lanka: Southern Transport Development Project (STDP)¹⁴ and has monitored the implementation of remedial actions for more than four years. On the Fuzhou Environmental Improvement Project¹⁵ in PRC, the CRP issued its report¹⁶ in October 2010 without a conclusion. The CRP indicated that without a site visit it was unsafe to issue any findings or make any recommendations. CRP monitored the implementation of the Inspection Panel's recommendations on the Chashma Right Bank Irrigation Project (Stage III)¹⁷ in Pakistan between 2004/05 and 2008/09, although security conditions have precluded any CRP site visits since 2007.

Table 7. Requests for Compliance Review

Request number	Date received*	Project name
2009/1	3 Jun 2009	People's Republic of China: Fuzhou Environmental Improvement Project - Loan No. 2176-PRC. <i>Eligible.</i>
2004/2	6 Dec 2004	Nepal: Melamchi Water Supply Project - Loan No. 1820-NEP (SF). <i>Ineligible.</i>
2004/1	2 Dec 2004	Sri Lanka: Southern Transport Development Project - Loan No. 1711-SRI (SF). <i>Eligible.</i>
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.		

*with requisite basic information.
Source: CRP Registry of Requests.

IV. ASSESSMENT OF THE ACCOUNTABILITY MECHANISM

20. Recent research points to four attributes¹⁸ that can be used to guide the design and assessments of an AM. These are accessibility, credibility, efficiency, and effectiveness, commonly referred to as ACEE criteria. Each criterion has multiple subcomponents. Accessibility includes awareness, eligibility for filing requests, and process of AM. Credibility includes independence, transparency, and participation. Efficiency has both time and cost dimensions; while effectiveness encompasses a broad array of characteristics relating to the ability and performance in delivering the desired objectives. The ACEE criteria are interrelated, are not exhaustive, and do not

¹⁴ ADB. 1999. *Report and Recommendation of the President to the Board of Directors on a Proposed Loan to the Democratic Socialist Republic of Sri Lanka for the Southern Transport Development Project*. Manila. (Loan 1711-SRI[SF]).

¹⁵ ADB. 2005. *Report and Recommendation of the President to the Board of Directors on the 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).

¹⁶ Compliance Review Panel, *Report to the Board of Directors, on the Compliance Review Process For, Request No. 2009/1, Regarding the Fuzhou Environmental Improvement Project*. Manila. (Asian Development Bank Loan No. 2176-PRC).

¹⁷ 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 December 1991).

¹⁸ Weiss, Edith Brown, Note on Criteria for Evaluating Accountability Institutions in MDBs: Address to 4th Meeting of Accountability Mechanisms, London, England, 21 June 2007; in World Bank. 2009. *Accountability at the World Bank: The Inspection Panel at 15 Years (pp.109-113)*. Washington, D.C.

have a hierarchical order in importance. This paper uses ACEE as an analytical framework to assess the ADB AM and identify issues.

A. Accessibility

1. Awareness

21. Both OSPF and OCRP have pursued systematic outreach and consultation with project beneficiaries and project affected persons, governments, civil society groups, NGOs, the private sector, and the public. They apply multiple approaches to reach out to local communities, including direct interactions, as well as raising awareness among staff, NGOs, and governments, all of which are important conduits for informing local communities. OSPF and OCRP have worked with the ADB's Budget, Personnel, and Management Systems Department (BPMSD) in developing courses on conflict management and compliance review to improve staff capacity. The past two years have seen an increase in complaints to OSPF, which may in part be due to the outreach and an increasing awareness of the AM. The internet is a key media for disseminating knowledge on AM. OSPF and OCRP websites contain a rich amount of information, including clear steps on how to file complaints. A joint OCRP and OSPF outreach strategy was adopted in 2010. ADB also approved technical assistance¹⁹ funding of \$225,000 for OCRP to cover a pilot program of outreach at a sub-regional level in 2010. The program has started with the Pacific subregion and is expected to extend to other DMCs if successful.

22. However, consultations reveal that the awareness of the AM is still limited, especially among local communities. Reaching people with limited internet access remains a key challenge.

2. Eligibility Criteria

23. The AM eligibility criteria are similar to those of other MDB mechanisms. The three criteria that attracted most debate during the consultations are (i) currently a minimum of two people are required to file a complaint, (ii) the cut-off date for filing complaints is the issuance of the PCR, and (iii) only people who are directly, materially, and adversely affected can file complaints.

24. **Minimum Number of People Required.** ADB, along with the World Bank, AfDB, and Japan Bank for International Cooperation (JBIC) require a minimum of two people to file a complaint. The International Finance Corporation (IFC), IADB, European Investment Bank (EIB), European Bank for Reconstruction and Development (EBRD), and the United States Overseas Private Investment Corporation (OPIC) allow requests from only one individual. The two person requirement was intended to help filter out frivolous complaints. Some argue that there should be no restriction on the minimum number of people who can file complaints. On the other hand, it may be argued that if any material problem exists, finding at least two individuals to file a complaint should not be a major constraint. The vast majority of complaints received so far by OSPF and OCRP have been filed by more than two persons, and both OSPF and OCRP have not come across any requesters who claim that the two person requirement caused any problems to them.

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

25. **Cut-off Dates.** The AM's cut-off date for filing a complaint is the issuance of the PCR. Some argue that the adverse environmental or social effects of the project may become apparent several years after the closure of the project. 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 the project was completed. It would also be difficult to accurately attribute the harm to the project long after the project's completion. Among the prevailing practices, ADB is ahead of most MDBs by allowing the complaints to be filed until the issuance of the PCR. Appendix 2 compares the key features of AMs in nine development agencies including the cut-off dates of different AMs.

26. However, the use of the PCR as a cut-off date creates problems since the dates are often not clear.²⁰ PCRs are issued within 1-2 years after project completion, and the exact dates are difficult to know in advance. There is a need to improve the clarity of the cut-off dates.

27. **Direct and Material Harm.** Some argue that since the SPS (2009) acknowledges indirect environmental impacts, the AM should also consider complaints on indirect harm. However, the SPS cannot be used as a basis to extend the eligibility criteria to indirect harm. In fact, indirect impacts on the environment have long been included in the safeguard policies of ADB and similar institutions. For example, the 2002 ADB Environment Policy²¹ took cognizance of indirect impacts of the projects on environment. These *indirect environmental impacts* nevertheless can *directly harm* people. AM is a derived policy based on other ADB operational policies. There is no policy basis to extend the eligibility criteria to include indirect and nonmaterial harm. Similarly, the conceptual, methodological, and measurement problems prevent a strong rationale for extending the criteria to include indirect and nonmaterial harm.

3. Process of Filing Complaints

28. The procedures for filing a complaint are clearly articulated in the policy, the operations manual (OM Section L1), the ADB website, brochures, and other OSPF and OCRP publications. Requests for consultation and compliance review can be brief; can be written in English or any DMC official or national languages; and can be submitted by mail, facsimile, electronic mail, or hand delivery to ADB headquarters or resident missions. The identity of complainants will be kept confidential if they prefer. The requesters are encouraged to cite specific policies in describing a complaint, but this is not a mandatory requirement. This is a crucial point in easing the burden of filing a request.

29. Consultations undertaken as part of this review indicate that project-affected people still find it difficult to file complaints. ADB needs to further explore means to simplify the process.

B. Credibility

1. Independence

30. The independence of AM is multi-dimensional. It encompasses such aspects as appointments, reporting, work planning, budgeting, and above all, the ability to make independent judgment.

²⁰ In the Philippines, a complaint was ineligible as it missed the PCR date by a small margin.

²¹ *Environment Policy of the Asian Development Bank*. ADB. 2002. Manila.

31. **CRP and OCRP.** CRP reports directly to the Board on all activities, except in specific activities of clearing CRP compliance review TOR and timeframes, and reviewing CRP draft monitoring reports where the CRP reports to the BCRC. CRP members have non-renewable terms. This is considered appropriate for drawing on fresh experience and minimizing external influence. CRP requires BCRC's clearance,²² but not approval, of its TOR on compliance review. The BCRC reviews CRP reports and makes comments, but does not change the reports and it is up to the CRP to decide how to respond to the comments. These aspects highlight that the CRP enjoys a high degree of independence from the Management and even from the Board.

32. Drawing on the review leading to the establishment of the Independent Evaluation Department (IED)²³ at ADB, it is argued that the independence of the CRP could be further enhanced in the areas of CRP members' appointment, work planning, budgeting, and performance feedback. The CRP members are currently appointed by the Board on the President's recommendation. By contrast, the Director General (DG) of IED is appointed by the Board based on the recommendation of the Board Development Effectiveness Committee (DEC) in consultation with the President. The IED work program and budget is reviewed by DEC and approved by the Board, but there is no formal work programming and budgeting process for CRP, partly due to the demand driven nature of its work. The CRP members are currently not evaluated, but the DEC provides written annual performance feedback to the DG, IED.

33. The IED experience also highlights that while independence is an important prerequisite for the credibility of the mechanism, independence need not and should not translate into isolation. Currently, there is little interaction between CRP, and the Management and staff. The IED experience indicates that appropriate interactions help on sharing lessons and best practices. The IED review also suggests that independence alone does not ensure accountability and good quality evaluations. Thus appropriate Board oversight is needed to facilitate the effectiveness of an independent mechanism. In a similar manner to the DEC's role on IED, the BCRC should be a focal point for the CRP's interaction with the Board and an avenue for regular dialogue on the AM.

34. **OSPF.** The 2003 policy required that the SPF be independent from operations, but not from Management. The SPF reports directly to the President. He/she should not be directly involved in any aspect of the formulation, processing, or implementation of a project.

35. This arrangement is warranted for two reasons. First, the problem solving process is not for determining liability or apportioning blame or fault. Rather it is designed to have genuine complaints in ADB-assisted projects addressed through informal, consensus-based methods with the consent and 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 or not.²⁴ Second, the OSPF needs to work closely with staff in operations departments in problem solving. Striking an appropriate balance between the need for an objective, detached perspective on a project;

²² The use of the term "clearance" in the 2003 policy allows the BCRC to emphasize and exercise its neutrality. By distinguishing between "clearance" and "approval", the policy indicates that CRP needs BCRC's positive response before proceeding but that this does not necessarily imply that BCRC approves (or disapproves) of the content of what is submitted. BCRC's function in clearing the proposed TOR and commenting on the draft compliance review report is to ensure that CRP operates within the scope of the compliance review.

²³ *Review of the Independence and Effectiveness of the Operations Evaluation Department.* ADB. 2008. Manila.

²⁴ The SPF's role is limited to ADB-related issues concerning ADB-assisted projects.

and the need for sufficient knowledge with bank operations and close interactions with staff, suggests that the consultation phase is best placed under the Management. Reporting to the President ensures an appropriate level of independence, and empowers the OSPF with sufficient effectiveness.

36. **Overall.** The AM demarcates problem solving and compliance review as separate matters when harm is alleged to be caused by ADB assisted projects. Consultation is outcome driven. It does not focus on fault by any party and aims to foster amicable settlement. The compliance review is focused on the ADB's compliance with its own operational policies and procedures and the direct and material harm caused by noncompliance. Retaining a clear distinction between the two phases is necessary to ensure the independence and effectiveness of AM.

2. Transparency

37. The ADB AM clearly specifies steps for the consultation and compliance review processes and the expected duration for most steps. Consistent with the requirement of the Public Communication Policy, the AM has maintained a high degree of transparency in disclosing its findings and recommendations, while ensuring that the required confidentiality is met. Both OSPF and OCRP have posted a rich amount of information on their websites, including the SPF review and assessment reports, SPF final reports, CRP review reports, CRP annual monitoring reports, and Board's decisions on compliance review.

38. However, there is currently no system for tracking the complaints that the OSPF forwarded to the operations departments due to a lack of prior good faith efforts by the complainants in resolving the problems with the departments. As such, there is no systematic information on the processes and outcomes of these complaints. This information gap may hinder the AM's transparency and responsiveness.

3. Participation

39. Participation and due process demand that the affected people not to be excluded from the decision-making process. In this aspect, the most significant change of the AM policy was the introduction of the consultation phase. This offers opportunity for affected people to actively participate in problem solving, rather than just being a recipient of results from an inspection. It is a cornerstone of the new approach, and enables increased participation by requesters.

40. The scope for participation in the AM can be further enhanced. First, the AM requires that complaints are first filed with OSPF before complainants can request the compliance review process. A participatory approach suggests that requesters should be able to decide which phase they want to start first. Second, unlike the World Bank's Inspection Panel, the compliance review phase does not provide the opportunity for the Management to respond before the eligibility of a request is determined. Third, the borrowing country is not given the opportunity to respond either before the compliance review eligibility is decided, or at the draft CRP report stage (even though it has the principal responsibilities in implementing any remedial actions). This gap can affect goodwill and effectiveness of AM.

4. Monitoring of Remedial Actions

41. The ADB AM empowers the OSPF and CRP with the mandate of monitoring implementation of remedial actions. This monitoring role strengthens the AM's credibility.

C. Efficiency

1. Time

42. The 2003 policy expected that it would take 21 days for the SPF and CRP to determine the eligibility for consultation or compliance review respectively. The consultation process is expected to take about 3 months from the date when the complaint is filed with ADB. This period excludes translation time, any request for extension of time to provide information or file documents, and the time needed by the parties to facilitate resolution of their problems during the implementation of the course of action. For the compliance review, the 2003 policy expected that “The requester will know the outcome of the Board decision after at least 128 days from receipt of the request for compliance review by ADB.” These periods exclude the time taken by the parties in the consultation phase, translation time, any request for extension of time to provide information or file documents, and the duration of CRP’s review, which is not time bound (para. 16).

43. For the consultation phase, the average time for determining the eligibility is about 45 days, and the average time from receiving a complaint to starting to implement the course of action is about 170 days for the eligible cases. For the compliance review phase, the average time from receiving a request to CRP informing the requesters of the eligibility is about 20 days... Only two requests had gone through the full compliance review process. It took an average of 367²⁵ days from receiving the requests to informing the requesters about the Board’s decision on the CRP review report. The experiences of other MDB AMs show that it is customary to take more than one year to complete the problem solving and compliance review processes.. This is especially true for large and complex projects.

44. The relatively long duration of AM processes may be attributed to several factors. First the processes are complex. This calls for continued efforts to simplify the processes. Second, limited resources to fund the AM. However, consultation with people working on ADB AM indicates that the resources have so far not been a constraint. Third, the nature of the AM. Both the consultation and compliance review are intensive processes that often require hiring mediators or experts. The processes are initiated from Manila. Missions can only be fielded periodically. During the site visits to the Community Empowerment for Rural Development Project CERD in Indonesia,²⁶ for example, local communities expressed a strong desire to use the local systems and ADB resident missions to expedite problem solving.

45. The CRP has set its monitoring time frame at five years for each project. The 2003 policy and the current OM Section L1 have not prescribed a time frame of five years for every project. This one-size fits all time frame is rigid, and demands time and resources from the affected people, ADB, and the borrowing countries without commensurate value added. A more flexible time frame tailored to each specific project will be more efficient.

46. An important aspect of efficiency is the avoidance of unnecessary duplication of work. There is limited coordination between the work of SPF and CRP. There is a need to improve the coordination of the SPF and CRP work, without diluting or endangering their independence.

²⁵ The duration from receiving the request to providing information to the requesters about the Board decision was 223 days in the case of STDP, and 511 days in the case of the Fuzhou project.

²⁶ ADB. 2000. *Report and Recommendation of the President to the Board of Directors on 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, approved on October 2000)

2. Costs

47. The costs associated with the AM are of widespread concern—not only the direct operating costs but also the indirect costs of staff time, the potential increases in costs of implementing projects, and costs to affected people. The operating costs are borne by ADB. The estimated costs for inspecting the Samut Prakarn Wastewater Management Project were approximately \$1.7 million in ADB staff time and resources and \$200,000 for the Inspection Panel. The TOR for inspecting the Chashma project estimated the costs for the Panel alone at \$500,000 in 2003.

48. Table 9 presents the operating costs of different mechanisms. The IFC CAO has the highest operating costs at \$3.3 million in 2009. This was followed by the World Bank's Inspection Panel at \$3.1 million. The cost for the ADB AM was the third highest, at \$2.1 million.

Table 9. Operating Costs (\$000)

Year	ADB - Consultation (Actual)	ADB Compliance Review (Actual)	World Bank Inspection Panel (Actual)	IFC - Compliance Advisor Ombudsman (budget)	AfDB - Independent Review Mechanism (Actual)	OPIC - Office of Accountability (Budget)
2004	686.3	919.3	2,649.2	1,900.9		
2005	609.7	1,136.4	2,808.9	1,965.9		
2006	602.5	1,045.2	2,976.9	2,537.2	243.7	28.9
2007	703.8	1,209.8	3,068.2	2,618.4	373.7	22.6
2008	861.8	994.5	3,235.5	2,721.4	462.2	44.4
2009	904.9	1,197.9	3,091.5	3,306.9	520.6	60.5

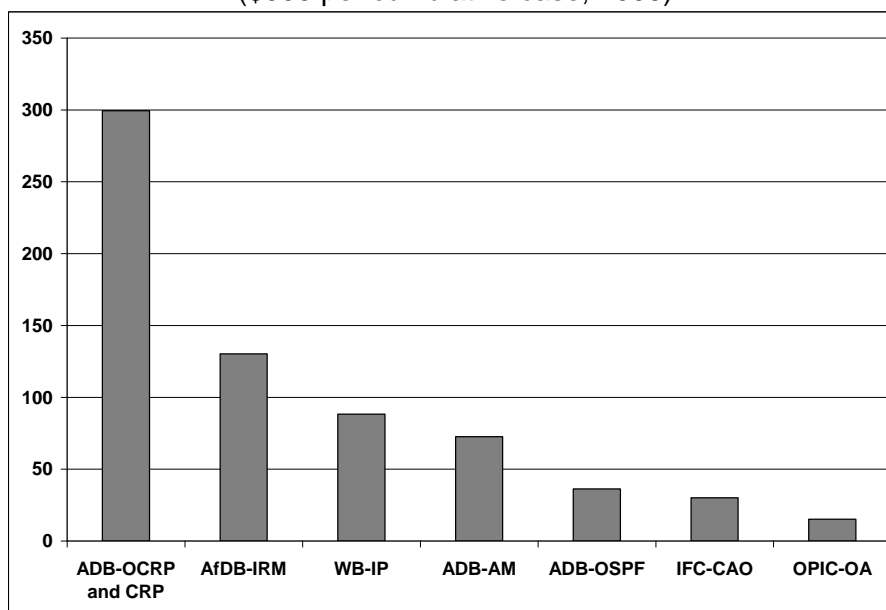
ADB = Asian Development Bank, AfDB = African Development Bank, IFC = International Finance Corporation, OPIC = Overseas Private Investment Corporation.

Source: The data for ADB is from BPMSD and for other AMs are from their annual reports.

49. A comparison of the operating costs relative to the number of cases across similar institutions suggests that the ADB compliance review phase has relatively high operating cost per cumulative case. The cumulative cases refer to the total number of complaints received each year from 2004 to 2009. Using this number as the denominator underestimates the cost per case as some cases have already been resolved or terminated and do not incur costs. Data is not available for an accurate comparison for cases being handled with by each AM each year (Figure 1). However, using aggregate operating costs throughout the years as a numerator yielded the same conclusion that the ADB AM's operating costs are relatively high in relation to its case load among different AMs.

50. As the AM is a demand driven mechanism, the operating costs per case vary from year to year, and some costs have to be incurred to maintain an effective AM regardless of the number of complaints received. ADB needs to ensure that there are adequate resources to effectively respond to the requests of project-affected people, yet not to put in place large excess capacity which leads to inefficient use of scarce resources.

Figure 1. Operating Cost per Cumulative Case
(\$000 per cumulative case, 2009)



ADB = Asian Development Bank, AfDB = African Development Bank, AM = Accountability Mechanism, CAO = Compliance Advisory Ombudsman, CRP= Compliance Review Panel, ICIM = Independent Consultation and Investigation Mechanism, IFC = International Finance Corporation, IP= Inspection Panel, IRM = Independent Review Mechanism, OA = Office of Accountability, OCRP = Office of the Compliance Review Panel, OSPF = Office of the Special Project Facilitator, OPIC = Overseas Private Investment Corporation (US), WB=World Bank.
Source: BPMSD, ADB; and annual reports of various accountability mechanisms.

51. A common concern of the DMCs is that AM causes significant costs which are ultimately borne by DMCs. The DMCs identified that the possible costs include (i) delays in project implementation which lead to cost escalation, cost overruns, and delayed benefits while the country repays the loans and interests as originally scheduled; (ii) changes of scope which require more funding and make project design suboptimal for the beneficiaries as a whole; (iii) higher compensation; (iv) higher administration costs; and (v) non-financial costs such as risk aversion by ADB to avoid needed but complex projects, lack of innovation, and tendency to focus on compliance rather than development results. The Government of Sri Lanka estimated the costs relating to the AM on STDP at about Rs.5 billion (\$45 million) due to several factors. First, delay in handing over project sites and awarding construction contracts. The contract signed between the Ministry of Highways (MOH, the employer) and the contractor (Kumagai Gumi) in December 2002 required that the MOH hand over the ADB part of the project sites to the contractor in early 2004. However, the actual handing over took place in 2006. The Government of Sri Lanka stated that some project affected people refused to move out even after receiving their compensation, until a fiscal order from the Supreme Court was issued. It argued that a CRP review was not necessary after the Appeal Court decision in 2002 and the Supreme Court judgment in January 2004, and after the ADB's Inspection Panel deemed the request by the same requesters ineligible in 2001. Due to the delay in handing over the project sites, the contractor has submitted three claims on the employer's failure to give site possession. The total value of these three claims is around Rs.3.8 Billion (\$36 million). These claims are now going through the International Arbitration process. The Government noted that similar problems did not occur in the JBIC cofinanced part of the same road. Second, the extensions of the contracts of the contractor, the construction supervision consultants, the maintenance of engineers' facilities, and other related costs due to the employer's failure to hand over project sites. Third, cost escalation due to price increases. The annual average

inflation rate in Sri Lanka was about 12% from 2004 to 2009. The project completion date was extended by four years to the end of 2010. Implementation delays and other factors led to significant cost overruns. The Government requested and ADB approved \$90 million of supplementary financing loan on 6 March 2008.²⁷ In the Chashma project, the project was due for completion at the end of 2004 at the onset of the inspection, with 99% of project construction complete and 80% of ADB loan having been disbursed. Based on the recommendation of the Inspection Panel, the loan closing date was extended for five years. The PCR indicated that \$12.5 million of the total ADB loan was actually disbursed for implementation of the remedial action plan. Additional resources to establish the Complaint Center established by the Water and Power Development Authority was covered by the Government.

52. While it may not always be possible to accurately attribute costs to AM due to the dynamics of multiple factors at play, it is true that the AM often entail costs to DMCs. In its 2008-09 Annual Monitoring Report²⁸, for example, the CRP stated that the Panel is “aware that all remedial works that may be required to correct any issues of non-compliance in a project will entail additional time, and may well entail additional costs, including costs to be borne on the part of the borrower. The Panel also assumes that there were other consequential costs incurred by the borrower that were related to implementation of Board-approved recommendations” (para. 41). The anomaly is that the costs resulting from ADB’s noncompliance with its operational policies and procedures are borne by the borrowers. This is a major reason for the borrowers’ uneasiness and reluctance in accepting compliance review, including the CRP site visits. ADB needs to confront this anomaly to ensure the credibility of the AM and its ownership by DMCs.

53. The AM processes also require project-affected people to spend time and resources. A protracted process demands people’s time and effort, and puts a heavy burden on their work and daily life. There is a need to ensure transaction costs in addressing the problems faced by project-affected people are minimized. For this reason, the AM should encourage the full utilization of country systems, project level grievance redress mechanisms, and operation departments’ efforts in problem prevention, problem solving, and encouraging early compliance.

D. Effectiveness

1. Structure of the Accountability Mechanism

54. The AM ushered in a new dimension of accountability. It consists of two separate but related functions: the consultation phase and compliance review phase. This structure was adopted in 2003 after widespread consultation. Consultations in 2010 suggest that this basic structure remains sound and is being increasingly followed by other development agency AMs.

2. Relevance

55. OSPF has received 32 complaints, and CRP received 3 requests since 2004. Some argued that the requests received by CRP were too low. Before analyzing possible reasons for the limited recourse to the CRP, the experience of other MDBs can set the context. The World

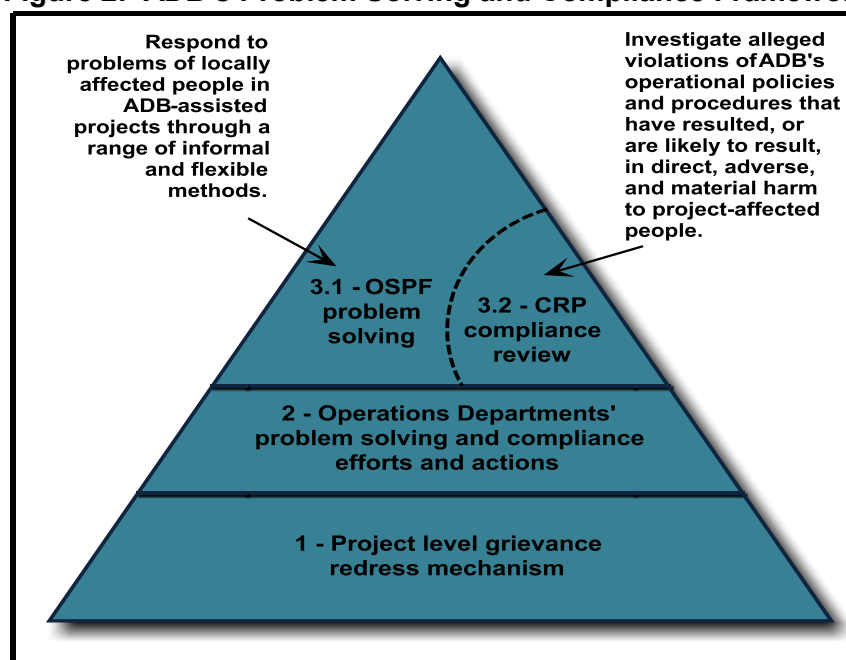
²⁷ ADB. 2008. *Proposed Supplementary Loan and Technical Assistance Grant Southern Transport Development Project (Sri Lanka)*. Manila.

²⁸ ADB Compliance Review Panel. 2009. *Annual Monitoring Report 2007-2008 to the Board of Directors on Implementation of Remedial Actions on the Inspection Request on the Chashma Right Bank Irrigation Project (Stage III) in Pakistan (ADB Loan No. 1146-PAK[SF])*. Manila.

Bank Inspection Panel has investigated 32 requests during its 17 year existence from 1993 to 2010, an average number of less than 2 cases each year for an Institution whose portfolio is nearly four times the size of ADB's. The IFC Compliance Division has dealt with 18 compliance review cases since 2000, among which 9 went through the initial compliance appraisal but were deemed as ineligible for compliance audit, 6 went through the full compliance audit process, and 3 are ongoing. The AfDB received 6 cases since 2007 of which 2 were eligible for compliance review. These data show that the low volume of complaints is a common phenomenon. Appendix 3 presents number of cases received by different AMs.

56. The consultation process suggests various reasons for the relatively low compliance review requests at ADB. First, a bottom-up, multiple level problem prevention and solving mechanism have been in place, consisting of grievance handling mechanisms at the project level, operations departments, and the AM. Most of the grievances are tackled at the project level by the executing agencies (EAs) and implementing agencies (IAs). In STDP, for example, the Government of Sri Lanka has established a Land Acquisition and Resettlement Committee and Super Land Acquisition and Resettlement Committee. Most affected people received a satisfactory resolution of their problems through these mechanisms. The SPS explicitly requires the establishment of project level grievance redress mechanisms to quickly respond to project-affected people. This aspect of the SPS policy became effective in January 2010. Well designed project specific grievance mechanisms may mean that in the future even fewer cases are brought to the AM for resolution (Figure 2).²⁹

Figure 2: ADB's Problem Solving and Compliance Framework



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

CRP = Compliance Review Panel, OSPF = Office of Special Project Facilitator.

²⁹ The offsetting factor is that the causes may increase with the expanding size of the portfolio. Further, with better outreach and greater awareness, there may be more knowledge about the AM and more complaints.

57. In addition to the EAs and IAs, operations departments deal with implementation issues, including addressing concerns of project-affected people on a daily basis. Over time, Bank staff and EAs have become more familiar with the safeguard policies, and more conscious of preventing problems. Dealing with the consultation and compliance review processes requires a considerable amount of staff time and resources. Thus all efforts have been made to prevent problems, and solve them early on. In recent years, all regional departments have set up dedicated safeguard units to solve problems and ensure early compliance. Numerous training sessions on safeguards have been held in ADB and DMCs. Thus the complaints to SPF and CRP should only occur as exceptions.

58. Operations departments' role as the first instance problem-solving and compliance mechanism should be fully recognized within the AM Framework. Ensuring compliance with ADB policies and procedures is a key responsibility of operations departments. Sometimes, drastic measures are taken. For example, the Sixth Road Project³⁰ in the Philippines faced major land acquisition and resettlement problems arising from design deficiencies; and the adoption of new safeguard policies after the loan became effective. As a remedy, ADB proposed that the Government of 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. Dialogues finally resulted in the Government compensating affected families and preparing resettlement plans approved by ADB. It was confirmed during later project review and PCR missions that all affected families had achieved similar or better living conditions after resettlement arising from the Project. Similarly, ADB suspended some civil works' components under the Pakistan National Highway Development Sector Investment Project³¹ due to delays in compensation payments and construction of an under path tunnel, and, after a complaint was filed to OSPF. These components were only resumed after the problems were fully addressed. These actions took place without a formal compliance review process.

59. Research on AM points to the need for multiple mechanisms within an institution to address the concerns of project-affected people. The ADB system is in conformity with this principle. Problem prevention, problem solving, and early compliance are beneficial for affected people, ADB, and DMCs. Local solutions are faster, cheaper, and incur lower transaction costs than AM options. Indeed, the consultation suggests that a particular strength of the ADB system is its continuum of problem solving bodies. The multiple layer structure helps to optimize the use of scarce resources of affected people, the DMC, and ADB.

60. The second factor behind the relatively low requests for compliance review is limited awareness and accessibility (see paras. 21-22). The time consuming procedures involved with the AM may deter potential complainants from using it.

61. The third reason may be the current requirement that affected people first need to start from the consultation stage, before they can file a request for compliance review. Although the complainants can easily exit the consultation phase and file for compliance review after their initial contact with OSPF, some argue that this requirement may have diverted attention from compliance review. There is a need to revisit the rationale for starting with the problem solving

³⁰ 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.

³¹ ADB. 1996. *Report and Recommendation of the President to the Board of Directors: Proposed Multitranchise Financing Facility and Proposed Loan to Pakistan for the National Highway Development Sector Investment Program*. Manila.

first, and clarifying the mandate and relationship between problem solving and compliance review.

3. Clarity of Mandate

62. **Relationship between Problem Solving and Compliance Review.** Under the current AM policy, complainants are required to start with the consultation phase, but they can exit the consultation phase and proceed to compliance review at pre-defined stages. AM policy adopted this sequence to address the urgent claims of direct, material harm before addressing the question of compliance. It is believed that project-affected people are more interested in having their complaints addressed first rather than focusing on the establishment of ADB's noncompliance with its policies, which may not necessarily result in a satisfactory resolution of the complainants' problems. The provision of options to exit the consultation was to ensure the complainants have freedom to choose between consultation and compliance review.

63. The requirement to start with consultation has generated two problems. First, some stakeholders, especially NGOs, argue that the OSPF has blocked the access of complainants to the compliance review phase. It has generated the perception that the limited recourse to compliance review was due to this requirement. Second, this requirement has prolonged the process for people who wanted to access compliance review in the first place. ADB needs to consider enabling complainants' direct access to the compliance review phase.

64. The 2003 AM recognizes that ADB is not in a position to undertake parallel problem solving and compliance review from the onset. Indeed, parallel processes suffer from many procedural and practical problems, and run the risk of making both processes ineffective. The two sets of investigations may interfere with each other, require different mind sets, and demand much time and resources from both the ADB and affected people.

65. **Relationship between Compliance Review, Problem Solving, and Project Administration.** The AM policy provides three mandates for the CRP: to conduct compliance review, to recommend remedial actions, and to monitor the implementation of the recommendations. The mandate to recommend remedial actions after compliance review contrasts with the World Bank's Inspection Panel which is a fact finding body.³² The Inspection Panel does not make any recommendations about remedial measures to the Board. It only passes judgment on the World Bank's noncompliance and its related harm. The World Bank's Management makes recommendations to the Board for remedial measures on the basis of the panel's findings.

66. The mandate of the CRP to make recommendations creates two problems. First, this blurs the boundaries between compliance review and problem solving. Because of this blurred boundary, there is a perception that the CRP is a higher level appeal body which is contrary to the intention of the 2003 policy. Second, this also blurs the boundary between compliance review and project administration. Recommendations by nature touch upon project design and implementation. For example, in the Chashma project, the Inspection Panel recommended extending the project closing date by several years, and that ADB discuss with the Government of Pakistan arrangements to ensure long term funding (at least for five years) to implement an environmental management plan. The Inspection Panel also recommended that ADB put in place adequate human resources "...to ensure a satisfactory level of support for, and monitoring of, the implementation of any resettlement plans, environmental management plans or other

³² World Bank. 1999. *Clarification of the Board's Second Review of the Inspection Panel*. Washington, D.C.

measures required under ADB's safeguard policies." In its annual monitoring report,³³ the CRP stated that it did not have the institutional knowledge to make a judgment on this issue and that this issue would have been better left for Management. Further, remedial actions must be agreed by the borrower who has the principal responsibility for implementing the actions. It is beyond the mandate of the compliance review to discuss and negotiate actions with the borrower. On the other hand, any recommendations without the borrower's agreement would not be meaningful.

4. Accountability Mechanism as an Integral Part of ADB's Quality Assurance Mechanisms

67. The design of the AM recognizes that ADB already has in place several well-developed supervision, audit, evaluation, and learning systems. The AM augments the Bank's existing system by providing a demand driven mechanism for project-affected people to resolve problems and for ADB to address noncompliance that has caused, or is likely to cause, direct and material harm.

68. The AM fully reflects ADB's philosophy that problem prevention and early compliance should be used to the maximum. During project design, ADB has an established system of carrying out due diligence on multiple fronts, for example, technical, financial, economic, safeguards, and governance. In addition, Management Review Meetings and Staff Review Meetings review the proposed projects, with respect to both the project's merit and its conformity with Bank policies and procedures. The Regional and Sustainable Development Department (RSDD), which includes a Chief Compliance Officer, reviews the safeguards and social aspects of all proposed projects. A project can only be submitted to the Board after the CCO's clearance. The Office of Risk Management is responsible for the overall management of ADB's credit, market, and operational risks. The Board itself reviews each proposed project on the basis of a Report and Recommendation of the President. During implementation, multiple supervision, audit, and evaluation systems are in place. COSO focuses on procurement issues. The Office of the Auditor General regularly audits the Bank's financial, administrative, project-related and other activities, and information systems. The Office of Anticorruption and Integrity deals with alleged fraud and corruption in ADB-financed activities. The Administrative Tribunal is an external mechanism to review personnel decisions by Management. During and post project implementation, IED selectively conducts performance evaluation of completed ADB-financed projects, impact evaluations, and special evaluation studies which include completed as well as ongoing projects. There are various Board committees on oversights, for example, Audit, Budget, Human Resources, Compliance Review, Development Effectiveness and Ethics. All these mechanisms are designed to ensure that the Bank's operations are conducted in accordance with approved operational policies and guidelines and that accountability is mainstreamed across all bank activities. Where system failure does occur, the Bank's philosophy is to respond promptly and effectively to mitigate problems when they arise.

69. The AM has a distinctive and important role by responding to the demand of project affected people and dealing with real issues occur during implementation. For this reason, a salient feature of all the AMs is that they only intervene when project-affected people file a request. This is different from an auditing function which proactively undertakes random

³³ ADB Accountability Mechanism Compliance Review Panel. 2010. Annual Monitoring Report to the Board of Directors 2008–2009 on the Implementation of Remedial Actions for the Chashma Right Bank Irrigation Project (Stage III) in Pakistan. Manila.

checking. For this reason, all MDB AMs require the establishment of a causal link between material damage and the MDB's noncompliance with its policies and procedures.³⁴

70. To ensure lessons learned even without alleged harm, various departments such as IED and RSDD, also review compliance with ADB policies during and after project implementation even without alleged harm. These reviews examine compliance, and analyze why there are noncompliance issues, including whether the policies themselves are sound in the first place. While the CRP review is demand driven, the IED and RSDD reviews are driven by ADB's own initiatives, as well as demand by stakeholders. For example, IED undertakes evaluation activities to help the Board of Directors, ADB Management, and decision makers in DMCs to know whether resources have been well spent, and whether the planned outcomes have been achieved. IED's evaluations cover all aspects of ADB operations, including the policies, strategies, practices, and procedures. These evaluations emphasize effective feedback on performance and use of lessons identified to improve the development effectiveness of ADB operations and to enhance their contribution to the development of DMCs. It would be unnecessary and undesirable to duplicate the activities of these existing mechanisms. Clarifying this relationship helps to retain the AM as a focused mechanism for project-affected people, and from there, for ADB's development effectiveness.

5. Site Visits

71. A site visit by the CRP is not possible if the borrowing country declines a CRP request for such a visit. To ensure that site visits can always take place, some stakeholders voiced the strong preference that site visits should be made mandatory through a clause in the loan agreement. They argue that a borrowing country's refusal to allow CRP site visits undermines the credibility and effectiveness of the AM. Others argue that there is no basis for ADB to insist on mandatory site visits, as the compliance review process is about ADB's compliance with its own policies and procedures, not about a borrower's breach of any obligations, and the borrower has every right to turn down a site visit. They stress that a mandatory requirement would be a serious infringement of a DMC's sovereignty, and that there are many legal and practical difficulties in enforcing mandatory site visits.

72. The uncertainty and other issues over site visits have caused controversy, divided opinion both within and outside ADB, and created reputational risks to ADB, CRP, and DMCs. Drawing from the experience of ADB and other MDBs, ADB needs to work out a sound approach to effectively address issues surrounding site visits.

6. Learning Lessons

73. One main motivation of establishing AMs within MDBs was that the feedback from the complaints would act as a rich resource for learning lessons for staff, Management, and the Board. Indeed, AM has contributed to learning lessons by ADB as well as DMCs. The findings of both OSPF and OCRP are widely disseminated through the ADB website.

74. One particular strength of the 2003 policy is its emphasis of the role of OSPF in improving and strengthening the internal problem-solving function of the operations departments. OSPF helped to identify best practices for setting up and running grievance

³⁴ The Second Review of the World Bank Inspection Panel in 1999 reconfirmed the essentiality of this requirement. The World Bank Resolution downplayed the panel's role in checking compliance with operational policies', while emphasizing its role in linking actual or potential harm to local populations and due to the noncompliance.

redress mechanisms in complex and sensitive projects. For example, based on the lessons learned from the STDP, OSPF developed a guide for designing and implementing grievance mechanisms for road projects. Research conducted by the Centre for Poverty Analysis found that STDP had made remarkable progress in addressing grievances. Accessibility for affected persons had been improved by increasing the number of grievance redress committees and locating them at the divisional instead of the district level. Affected persons' perceptions of the grievance mechanisms were positively influenced by having been treated respectfully and having received higher compensation. OSPF has also developed guidelines for establishing and implementing grievance redress mechanisms in various DMCs. These OSPF knowledge products provide useful resources for learning from and improving ADB operations. To facilitate learning, the OCRP established a platform through the internet for people working on different AMs to exchange views.³⁵ It has also established a system to track the implementation of remedial actions. In Sri Lanka, implementation of the ADB safeguard policy in STDP led to the establishment of government safeguard and grievance redress systems, and the AM enhanced the implementation of these systems. As a part of the enhanced learning and dissemination efforts, both the OSFP and OCRP have started to provide regular training to staff and undertake increased outreach in DMCs.

75. As ADB grows as a development institution, and those using the mechanism gather increasing experience, the AM has been increasingly seen by staff, Management, and the Board as a tool for ADB to positively respond to public scrutiny, and learn how it can do better. However, the feeling that the compliance review is adversarial still exists. There needs to be more interactions and sharing of information between the OSPF, CRP, and the staff and Management for constructive dialogues and learning. Further positive interactions will contribute to a cultural change from considering the compliance review as adversarial to one which is a positive instrument for learning and development.

7. Outcomes of Consultation and Compliance Review

76. **The Consultation Phase.** Of the 11 eligible complaints received by OSPF, 5 are fully or partially resolved, 4 are still ongoing; 1 was not resolved, and 1 was withdrawn. Both the unresolved and withdrawn complaints were submitted to CRP.³⁶ For the ineligible complaints, OSPF informs complainants how to pursue their grievances through the operations departments. Communications with the operations departments indicates that many of the issues were resolved after proper contacts were made. This reflects an aspect of OSPF operations that is not readily apparent, but is nonetheless significant. OSPF has assumed an informal role in connecting affected persons with the appropriate ADB staff. The increase in the number of complaints since 2009 suggests a growing awareness that the AM provides recourse in case of problems. In all the cases, 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, OSPF also informs the complainants that they have the option to submit a request to the CRP. The consultation phase thus provides a useful channel to address the problems of affected people; and link them with operations departments and the CRP. A summary of the consultation processes and results on eligible complaints is included in Appendix 4.

³⁵ 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>.

³⁶ The case withdrawn was Melamchi Water Supply Project. It was submitted to CRP which found the case ineligible. The unresolved case is related to the Fuzhou Environmental improve case which was also submitted to CRP.

77. **The Compliance Review Phase.** Since 2004, CRP has reviewed the compliance review on STDP and monitored the implementation of the Inspection Panels' recommendations on the Chashma Right Bank Irrigation Project (Stage III). The implementation of recommendations on both of these projects is satisfactory. On the Chashma Right Bank Irrigation Project (Stage III), CRP found that by 2009, ADB had fulfilled 24 of the 29 Board-approved recommendations, made sufficient progress on the 4 partially complied with recommendations, and 1 recommendation was superseded by events so compliance could not be achieved. CRP undertook the compliance review on STDP in 2005, and has monitored its implementation since then. The CRP concludes in its Fourth Annual Monitoring Report³⁷ that of the 19 recommendations, 17 were fully complied with and only 2 were in partial compliance. Consultation in Sri Lanka indicates that the CRP's work helped to address the problems faced by the people, and is important in facilitating Government improvement of its own systems. While the CRP was initially viewed as adversarial, its work was later appreciated when CRP was perceived as balanced. Appendix 5 includes a summary of processes and results of the requests dealt with by CRP.

E. Summary

78. The ADB AM stands out as a pioneer in instituting problem solving in the AM for both the public and private sector operations. The AM enjoys a high degree of transparency, participation, credibility, and effectiveness. The AM has various strengths:

- (i) The positive approach of focusing on problem solving has enriched the AM and especially benefited project-affected people.
- (ii) The reporting of the OSPF to the President and the CRP to the Board are well suited for their mandates and needs; and ensure a sound balance between independence and effectiveness.
- (iii) The AM has facilitated learning in ADB and by DMCs.
- (iv) The monitoring mandates of the OSPF and CRP enhance the AM's credibility.
- (v) Systematic public disclosures have contributed to a high degree of transparency, with appropriate consideration of confidentiality.
- (vi) The AM is participatory. The problem solving function enables the project-affected people to actively participate in decision-making, rather than just being recipients of results from inspections.
- (vii) Both the consultation and compliance review phases have been relevant, and delivered effective outcomes.

79. ADB can further strengthen the AM in several areas, as outlined below.

- (i) Affected people do not have direct access to the compliance review phase.
- (ii) There need to be a single point of entry for project-affected people in filing complaints.
- (iii) Using a project's PCR as the cut-off date for filing complaints lacks certainty and clarity.
- (iv) Site visits by the CRP may be controversial.
- (v) The independence of the CRP can be enhanced.

³⁷ ADB Accountability Mechanism Compliance Review Panel. 2010. *Annual Monitoring Report to the Board of Directors from 1 March 2009 to 14 May 2010 on the Implementation of Remedial Actions for the Southern Transport Development Project in Sri Lanka*. Manila.

- (vi) The boundaries between compliance review and problem solving; and between compliance review and project management are not sufficiently clear.
- (vii) The AM's value as a learning function should be strengthened.
- (viii) The AM processes can be simplified.
- (ix) The AM is the one of the most costly mechanisms per case among similar institutions.
- (x) The awareness of the AM is still limited.

80. Appendix 6 summarizes the AM's strengths, weaknesses, and potential areas for improvements following the ACEE framework.

V. MAJOR PROPOSED OPTIONS AND CHANGES

81. This section outlines the major options and recommendations that the Working Group is considering.

A. Enabling Direct Access to the Compliance Review Phase

82. Several options have been considered to address the perception and actual problems relating to the current policy requirement that project affected people must first start with the consultation phase.

83. **Option I: Status Quo.** Under this approach, requesters must start with the consultation phase first, but they, may exit this phase and proceed to the compliance review phase at any time. This approach focuses on addressing the problems of project-affected people as the first priority. It is suitable for most complaints based on experience since 2003, which indicates that most concerns involved specific problems of consultation, participation, information sharing, and compensations rates. However, maintaining this approach will prolong the existing perception problems, and cause delays for people who want to directly request a compliance review.

84. **Option II. Parallel Processes.** This approach encompasses simultaneous pursuits of problem solving and compliance review. It will encounter significant procedural and practical problems. Problem solving and compliance review require different mindsets and approaches. Problem solving aims to reach consensus, while compliance review is to identify ADB's noncompliance with ADB operational polices. The parallel processes can be confusing and complex. It can also be costly and inefficient for requesters, ADB, and the DMC. Simultaneously pursuing both problem solving and compliance review is also inconsistent with experience since 2003 which indicates that most requests are related to specific problems. In the case of STDP, when the parallel process with CRP was initiated, the requesters lost interest in the facilitation that had been ongoing under OSPF, thus rendering the facilitation ineffective (OSPF Annual Report 2005, Foreword). For these reasons, virtually no MDB AMs undertake parallel processes.

85. **Option III. Joint Decisions by the SPF and CRP.** This approach foresees a joint review of the request by the SPF and CRP and a joint structuring of the most effective and efficient course of action. The decision is communicated to the requesters and unless the requesters prefer a different course of action or unless there is a clear need for an immediate compliance review by CRP, there will be an immediate launch of the consultation process while CRP can begin to plan for a possible compliance review at the end of the consultation phase. At the conclusion or termination of the consultation, the CRP will review the situation and make a

judgment on (i) whether compliance issues still remain, and (ii) whether the issues are serious enough to warrant a compliance review. The advantages of this approach are that it (i) utilizes the expertise of CRP and SPF right from the entry stages of a request, (ii) ensures transparency within and outside the AM, and (iii) enables CRP to plan and implement inspections within a shorter and more efficient time horizon. However, CRP's proactive approach is inconsistent with the AM mandate and will potentially create a conflict of interest. The AM is not an auditing function. Compliance review is focused on (i) ascertaining noncompliance, (ii) ascertaining alleged harm, and (iii) linking harm with the noncompliance. All these aspects must coexist. The supply driven approach will duplicate the auditing and supervision mechanisms already in place. Furthermore, this approach is driven by the SPF and CRP, while project-affected people are given very limited choice.

86. **Option IV. Partial Choices for Requesters.** This approach allows the requesters to choose whether they want to start with the consultation or the compliance review phase. They can exit the consultation phase at any time. However, requesters can only exit the compliance review phase if the CRP finds the requester ineligible; or in cases where the requester is eligible, when the compliance review phase is completed. The rationale for this restriction is that compliance review is a formal process which is costly, and should not be abandoned once it is started. This approach provides the requesters with the choice of direct access to either consultation or the compliance review phase. However, it does not allow requesters to exit the compliance review when the process is ongoing. A requester may not have sufficient information about which phase they should start with. Under this approach, they will have limited opportunity to review their decisions if they have started with the compliance review first.

87. **Option V. Full Choices for Requesters.** The AM should be driven by the demands of the project-affected people. It should provide direct access to compliance review for project-affected people. Under this approach, requesters will decide which phase they want to start first. Requesters can exit either the consultation or compliance review phase at any time. The ongoing process they are in will be terminated if the requesters exit. The merit of this approach is that it empowers the requesters to make a choice. It is consistent with the AM mandate as a demand-driven mechanism. The approach is participatory and is simple to implement. It also allows the requesters to review and reconsider their decisions. This aspect is especially important as information on the complaint may be limited at the initial stage and decisions may need to be changed after new information becomes available. The drawback of this approach is that the consultation or compliance review may be terminated during the process and after the requesters, ADB, and DMC have incurred costs in carrying out the process. However, the strengths of this approach outweigh its weaknesses. A basic information pack and a template should also be developed to facilitate informed decisions by requesters.

88. This approach is recommended after careful consideration of the four other alternative approaches.

B. Establishing a Single Point of Entry

89. To enable easy access for requesters, ADB should establish a single point of entry to receive all requests. This focal point, the Complaint Receiving Officer (CRO) should serve as a first contact point for project-affected people. The CRO will forward the requests to SPF, CRP, and the operations departments (or other relevant departments or offices), according to the preferences of the requesters and nature of the problem.

90. The CRO should be placed in OCRP. Having the CRO in the OCRP will provide it with

a higher degree of independence compared to placing it within OSPF or other departments. It is also more efficient than setting up a new office which would incur additional administrative costs. The alternative of combining the OSPF and OCRP, may weaken the dedicated support required by both SPF and CRP for their distinct functions. The CRO will support the existing functions of the SPF and CRP, without affecting their independence and effectiveness.

C. Clarifying the Cut-Off Date

91. The current approach in determining the cut-off date based on the PCR lacks clarity and certainty. One option that has been considered is to extend the cut-off date for filing requests sometime beyond the issuance of the PCR. However, as the issuance of the PCR itself is uncertain, extending the date using the PCR as a basis will not address this problem. A better option is to use the loan closing date as the bench mark. The cut-off date for filing requests can be one year after the loan closing date. Using the loan closing date provides more clarity and certainly. Further, loan closing date information is readily available to the public.

D. Site Visits

92. Issues on site visits are sensitive and important. The Working Group has considered several options to address these issues. .

93. **Option I: Status Quo.** The existing policy arrangement for site visits is set out in paragraphs 55 and 56 of the policy. It states that "a sensible approach is to enable site visits to take place in consultation with the borrowing country 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" (para. 56). While the policy is clear on the principle of requiring the borrowing country's consent, it is silent on the process and responsibility for obtaining the consent from a borrowing country. In practice, the CRP is responsible for obtaining the consent. The combination of (i) requiring borrowing countries' consent, and (ii) placing the responsibility for acquiring the consent on the CRP has not worked in all cases.

94. **Option II: Mandatory Site Visits.** This option involves inserting a mandatory site visit provision into loan agreements. The advantage of this approach is that it clearly prescribes accepting site visits as an obligation of borrowing countries. The approach can in theory remove the uncertainty. However, this approach faces numerous practical and legal problems. Mandatory visits have been seen as infringing upon national sovereignty, and contradict ADB's established principles and practices of working in partnership with DMCs. It also represents the antithesis of the spirit of the Paris Declaration and the Accra Agenda with their emphasis on partnership between donor and recipient institutions.

95. While ADB has the option of suspending or canceling loans when a borrower is in breach of the loan covenants, this penalty does not solve the problems faced by complainants, and yet can put the entire project at risk. Moreover, cancelation of loans due to a borrowing country's rejection of site visits suffers from a major conceptual weakness: it penalizes the borrower when the objective of compliance review is to investigate the noncompliance of ADB, the lender; not the DMC as the borrower. With or without a loan agreement clause, missions to a DMC usually require visas. Mandatory site visits will not be enforceable if such visas cannot be obtained. This option will thus not resolve the issue, and may in fact intensify the existing problems. For all these reasons, no MDB AM policies prescribe mandatory site visits.

96. **Option III: A Collaborative Approach.** Under this approach, site visits of the CRP will be dealt with using the same principles and practices applying to all ADB missions without recourse to legal provisions. This new approach is aimed at enhancing effective communication between ADB and DMCs. It addresses relationship and behavioral issues in the current approach that have arisen in part due to a lack of clear definition of responsibility and ways of seeking borrower's consent in the current policy. It is based on positive experience in conducting missions by ADB Management and staff. This approach is also necessary because civil society's expectations about the comprehensiveness of the recourse mechanisms of international financial institutions have increased since the adoption of the policy in 2003. The position of the 2003 policy that "site visits are essential for the effectiveness of compliance review, stakeholder participation, and independent verification of facts and alleged policy violations" (para. 55) is probably more widely held by them than it was in 2003. In addition, since the adoption of the SPS in 2009, the importance of compliance with ADB's safeguard policies has been highlighted. In view of these developments, it is important to recognize why it is relatively convenient for ADB to field missions in borrowing countries as against site visits for compliance review.

97. Relationship management is one of the core elements of ADB Management and staff's engagement with borrowing member countries. Resident missions are the particular focus of this engagement, and one of their key responsibilities is managing country relations. This extensive goodwill asset is used by staff in obtaining mission clearances. This asset should be leveraged to enable the CRP to conduct site visits. Under this collaborative arrangement, Management and staff will facilitate, assist, and leverage their relationship with borrowing countries in arranging mission clearance and smooth conduct of site visits. This is an obligation of Management which would entail meaningful, effective, and concerted effort with borrowing countries. The CRP should also proactively seek the assistance of the executive director of the borrowing country concerned. The merits of this option are outlined below.

- (i) **Alignment with common interests.** It is in the mutual interests of ADB, DMCs, and CRP to ensure the smooth functioning of the AM. These common interests lay a foundation for a collaborative approach.
- (ii) **Consistence with ADB evidence.** ADB staff undertake a large number of missions each year. Virtually all missions are accepted by DMCs. This is also applicable to visits by OSPF. This highlights the effectiveness of a collaborative approach. While there may be some differences on the evidence in CRP cases, the assumption of the previous policy that site visits would be granted routinely should be maintained.
- (iii) **Consistent with other MDB approaches.** No MDBs AMs have mandatory site visits, yet virtually no MDB AMs have encountered difficulties in arranging site visits.³⁸ This collaborative approach has worked well in other MDB AMs.
- (iv) **Conducive to conflict resolution.** This approach enables site visits to be discussed and misunderstandings clarified when disagreements arise. In the few cases where there was reluctance by DMCs for staff or Management missions' proposals, effective communications have always been able to solve problems. The communication channel

³⁸ The World Bank's Inspection Panel has received 70 complaints since 1994. While it faced country opposition to one of its site visits in the late 1990s, there have been no refusals by countries since then. The Inspection Panel's site visits and many meetings are arranged by the World Bank's country offices.

will be blocked if a collaborative approach is not employed. A hardened approach will lead to hardened positions and an impasse, leaving no room for further discussions

- (v) **Sensitive to DMC concerns.** The AM policy emphasizes that the CRP is to review ADB's noncompliance with ADB operational policies and procedures. This point should be continuously stressed. Doing so will help to gain DMC acceptance on compliance review. However, it may not eliminate all their concerns. The major DMC concerns involve two aspects. First, the DMC may be implicated in the compliance review. The reality is that ADB does not implement projects, the borrowers implement the projects. After a project is approved, ADB's responsibility is to ensure that the borrower implements the project in compliance with the relevant ADB policies and procedures. The perception that it is the government's failure to comply with the policies of ADB that they have agreed to cannot be entirely removed. Second, the government may also have concerns about the delays and other costs brought about by the review. Governments may also be concerned that loans may be suspended or cancelled following the CRP review. Regular and frequent communications are required to work with the borrower to gain their acceptance of CRP site visits. An approach that consists of a one-off interaction and does not allow for more intensive communication is not likely to be successful.

98. Option IV: Site Visits by BCRC, CRP, and Borrowing Country Board Members.

Under this approach, when a borrowing country declines a CRP request for a site visit, the site visit will be undertaken by a team consisting of a CRP member, a BCRC member, and the Board member representing the borrowing country. The CRP, the BCRC, and the Board representative of the borrowing country will seek the assistance of country departments/resident missions of the ADB to facilitate their visits to the countries where the compliance review is taking place. This approach may have a higher likelihood of acceptance by the borrowing country. However, it potentially places the BCRC and borrowing country board members in a conflict of interest situation. Furthermore, elevating the problems to the Board may intensify the problems.

99. Option V: Third Party Site Visits. Under this approach, CRP will engage a third party to conduct the site visit. The advantage of this approach is that it provides a channel to address the problem and reach mutual agreement between the CRP and the borrower. The disadvantage is that CRP is already a third party. Engaging a third party for a third party may be circumventing or even compromising the issues, rather than solving them.

100. The Working Group is considering all the above options and their variations thereof. It will develop its views in light of the comments received to date and from further consultations. While the Working Group is attracted to Option III, it will consider how this option could respond to situations where a site visit is still refused.

E. Enhancing the Independence and Effectiveness of Compliance Review

101. **Independence.** Several changes drawing from the IED model are proposed to improve the independence of the CRP. First, the CRP members should be appointed by the Board based on the recommendation of the BCRC in consultation with the President, departing from the current practice of their appointment by the Board upon the President's recommendation. Second, the work planning and budgeting process should be strengthened. The Chair of the CRP should be responsible for preparing a combined CRP and OCRP annual work plan and

budget. These should be endorsed by BCRC, reviewed by the Board Budget Committee, and approved by the Board.

102. To enhance accountability, the BCRC should provide written annual performance feedback to all the CRP members. The CRP Chair's input should be taken into consideration in the BCRC's feedback to the other two CRP members.

103. **Effectiveness.** The AM should provide the opportunity for Management to respond before the eligibility of a request for compliance review is determined. Consistent with the partnership principle, the CRP should also seek to engage DMC governments and other stakeholders concerned throughout the review process. The borrowing country should be informed about a request before its eligibility is determined, and it should have an opportunity to respond to the draft CRP report.

104. To clearly define the relationships between compliance review, problem solving, and project administration, and to ensure that the AM is focused and effectively complements existing project management systems, it is desirable that the compliance review is clearly fact finding in nature. It should focus on ascertaining the alleged direct and material harm and whether such harm is due to ADB's failure to comply with its operational policies and procedures. After receiving the CRP findings, the Management will develop measures and/or an action plan agreed by the borrower. Such recommendations and/or action plan will be approved by the Board. The CRP should monitor the implementation of the recommendations and/or action plan.

F. Improving Efficiency

1. Streamlining Processes

105. The AM processes should be simplified and clarified. The consultation process currently requires complainants to provide written comments on the OSPF review and assessment reports. Experience shows that this is a burden to complainants and delays the processes and should be made an optional based on the preference of complainants. The complainants' feedback can be obtained through more user-friendly and faster means, such as meetings, discussions, and telephone calls. While the OSPF should inform the President about the complaints and results, the current requirement that the OSPF consult with the President on the procedural steps is not necessary.

106. To reduce duplication, the OSPF and CRP should continue to fully share their information and analysis with each other concerning the request. However, the OSPF and CRP will determine independently how to use the information and analysis.

107. There should be increased scope for problem solving by operations departments and local grievance redress mechanisms. During in-country consultations in 2010, local communities expressed their desire for problems to be solved locally to expedite the process. Reflecting this, OSPF can, at any stage, fully or partially delegate the problem solving to the concerned operations department if it considers that this will improve the efficiency and effectiveness of problem solving. The SPF should decide on the degree and manner of its engagement on a case by case basis. The SPF and CRP should explore all ways to fully utilize problem solving and compliance capacity at the country, project, and operations department levels to improve efficiency and reduce transaction costs.

108. The SPF and CRP should adopt a more flexible monitoring time frame tailored to each specific project. The SPF monitoring should generally not exceed two years and the CRP monitoring should generally not exceed three years.

2. Improving Cost Effectiveness

109. Given the demand-driven nature of the AM, the AM costs can conceptually be separated into two parts: (i) a 'fixed cost'³⁹, regardless of the number of complaints, to maintain and operate the AM, and (ii) a 'variable cost' based on demand and workload. The basic structure for both the OSPF and OCRP can be one international staff member and two administrative/national staff members, in addition to the SPF and three CRP members. Currently, the OSPF has one international staff and two administrative/national staff members in addition to the SPF. The OCRP has two international staff members and three administrative/national staff members in addition to the three CRP members. The 2003 policy provided that the CRP Chair is "to work fulltime for a minimum of 1 year" to organize OCRP, prepare the operating and administrative procedures, and undertake other related tasks (para. 97). In practice, the Chair, CRP has been working either full time or part time over the past seven years. The revised AM policy will retain this flexibility. Prior to each appointment of a new CRP Chair, the BCRC will review the need for the Chair to work on a full-time or part-time basis and make a recommendation to the Board accordingly.

G. Improving Awareness and Enhancing Learning

110. Improving awareness is a key factor in enhancing the effectiveness of the AM. The joint OSPF and OCRP outreach strategies should support three different kinds of activities: first, improving the awareness of ADB staff; second, undertaking targeted outreach for government project teams; third, working with resident mission staff, and undertaking regular dissemination programs in DMCs, involving local communities, governments, and NGOs. Each resident mission should have a grievance redress focal person, either part time or full time, working with project teams for grievance handling and AM outreach. The AM should be operated and viewed as a tool for learning and development effectiveness, instead of being adversarial. Operational staff should be the major conduit for disseminating information about the AM.

111. The AM should also adjust some terms to sharpen and clarify the AM messages. First, the "consultation phase" should be renamed the "problem solving function". The reason the 2003 policy adopted the term 'consultation' was because of the concern that using the term "problem solving" would raise the expectation that all problems would be solved by OSPF. However, consultations undertaken as a part of this review indicate there is no significant risk in this regard. Using the term "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 referred to as 'requests'. To ensure simplicity and distinguish these issues from general complaints that can be raised with any part of ADB, it is proposed that both the cases received by OSPF and CRP be referred to as 'requests' and the people asking for these processes be referred to as 'requesters'. Third, as the requesters will have choices to request either problem solving or compliance review, the term 'phase' which implying a sequential approach will be replaced with the term 'function'.

³⁹ The term fixed cost in this paper refers to the resources required to support the basic structure of the AM regardless of the number of requests. This will include the basic number of staff, offices, and other facilities to maintain and operate the AM. The variable costs are related to the resources required to respond to fluctuating demand. This could be satisfied for example by staff consultants and contractual staff.

112. All the requests processed by the SPF and CRP should be tracked to enhance learning. The tracking should be extended to those requests that are forwarded to the operations departments. This should provide a rich source of information for analyzing trends, patterns, frequency, and nature of problems. The insights gained from this analysis would be useful for training and sensitizing the project teams on where the incidence of requests is the highest.

113. The OSPF and OCRP should also actively distill lessons from their operations. Common patterns and lessons derived from the AM would shed light on project design and implementation. OSPF and CRP currently produce separate annual reports. To promote synergy, a common AM annual report should be produced, providing systematic analysis of the requests received every year. The AM annual report should contain an analysis of key issues to emerge and lessons learned. The AM annual report should include insights from IED and RSDD (Chief Compliance Officer) on AM related issues. A collaborative effort between these departments in drawing up the lessons learned and insights gained would enrich the AM and guide staff in designing new projects of a similar nature.

114. Interactions between the AM, the Board, the Management, and staff will accelerate the application of lessons learned. The OSPF and OCRP should provide regular briefing sessions to the BCRC (for example, quarterly). One of the sessions can be combined with the joint dissemination of the AM annual report by OSPF, OCRP, IED, and RSDD. The AM annual report should also be jointly presented to Management by OSPF, OCRP, IED, and RSDD. The OSPF and OCRP should continue their training and workshops for staff. The OSPF and OCRP websites should be better integrated under a common AM framework. These interactions will benefit ADB in avoiding the recurrence of common problems, and facilitate a cultural change to operate and view the AM as a positive tool for learning lessons.

VI. THE REVISED ACCOUNTABILITY MECHANISM POLICY

115. This section presents the proposed revised AM policy. It uses the 2003 policy as a basis and incorporates the recommendations outlined in Section V and other changes.

A. Objectives and Guiding Principles

116. The objectives of the AM are to provide an independent and effective forum for people adversely affected by ADB-assisted projects to voice their concerns and seek solutions to their problems, and to file requests for compliance reviews of alleged noncompliance with ADB's operational policies and procedures that causes them direct and material harm.

117. The AM is designed to (i) enhance ADB's development effectiveness and project quality; (ii) be responsive to the concerns of project-affected people and be 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; and (v) be cost-effective, efficient, and complementary to the other supervision, audit, quality control, and evaluation systems already existing at ADB.

B. The Structure

118. Experiences since 2003 reinforce the need for a clear demarcation between problem solving and compliance review functions. The revised AM will continue these dual functions, namely, (i) the problem solving function led by the SPF, who will respond to specific problems of

locally affected people in ADB-assisted projects through a range of informal and flexible methods; and (ii) the compliance review function undertaken by the CRP which investigates the alleged noncompliance of ADB with its operational policies and procedures that has resulted, or is likely to result, in direct and material harm to project-affected people.

119. To preserve the distinct functions of the problem solving and compliance review, and to provide an easy access one stop entry point for project-affected people, this basic two pronged structure will be complemented by the CRO who will receive all requests and forward them to OSPF, CRP, operations departments, or other departments and offices based on the preference of the requesters and the nature of the problems. The CRO will copy the information to all the relevant departments and offices.

C. Human and Financial Resources

120. The assessment of AM suggests the need to distinguish the fixed costs for supporting the basic operation of the AM and variable costs to respond to demand and workload. The allocation of human and financial resources for the AM will reflect this consideration to ensure efficiency in using resources and responsiveness to project-affected people.

1. The Problem Solving Function

121. The OSPF is an office headed by the SPF. The basic structure of the OSPF consists of the SPF, one international staff member, and two administrative/national staff members. The SPF is a special appointee at the level equivalent to a director general, and is appointed by the President after consultation with the Board. The SPF reports directly to the President. Any additional human and financial resources, if required, will be approved through the work program and budget framework process. BPMSD will handle the administrative processes according to ADB guidelines. The OSPF may engage technical experts as consultants in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB, to assist OSPF work, including monitoring activities.

122. The selection criteria for the SPF includes (i) the ability to deal thoroughly and fairly with requests; (ii) integrity and independence from the operations departments; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge of and experience with the operations of ADB or comparable institutions, and/or private sector experience. The term of the SPF is three years, renewable. The SPF must not have worked in any operations departments for at least five years prior to the appointment. The SPF must disclose to all stakeholders immediately upon learning that he/she has a personal interest or significant prior involvement in the matter. In the discharge of his/her function, 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.

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

2. The Compliance Review Function

124. **CRP.** The CRP will have three members, one of whom will be the chair. The CRP members will be appointed by the Board upon the recommendation of the BCRC in consultation with the President. The search and selection process will be directed by the BCRC, and may involve the use of an executive search firm if the BCRC deem necessary.

125. Each panel member will have a five-year, non-renewable 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 include (i) the ability to deal thoroughly and fairly with the request 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 three years have elapsed from their time of employment with ADB. After serving on CRP, former panel members will be barred from employment at ADB. A panel member may be removed in the same way as he/she was appointed, on the grounds of inefficiency or misconduct. A panel member will be disqualified from participation in a compliance review if he/she has a personal interest or has had significant prior involvement.

126. The CRP will report to the Board through the BCRC, except on specific activities where the CRP will report to the BCRC. The CRP members will be exempt from the formal annual performance review process. However, the Chair of the BCRC, in consultation with other BCRC members, will provide written annual feedback on their performance. The feedback of the CRP Chair will be taken into account in the performance feedback on the other two CRP members.

127. Prior to the appointment of a new Chair, CRP, the BCRC will review the need for the Chair to work on a full-time or part-time basis and make a recommendation to the Board for its approval. If full time, the Chair, CRP's salary on appointment will be determined by the Board, upon recommendation of the BCRC in consultation with the President. His/her annual salary increase will be the average of the pay increases given to vice presidents. If part time, the CRP members will be remunerated on comparable levels with other AMs and be reimbursed for their expenses.

128. In performing its functions, the CRP will have access to all ADB staff and Management, and all ADB records that the CRP deems relevant, except personal information that is typically restricted.

129. **OCRCP.** The OCRCP will support the CRP. The OCRCP will be headed by the Chair, CRP. The basic structure of OCRCP will be one professional staff member to work as the Secretary, and two administrative/national staff members. The Chair, CRP, in consultation with the other CRP members, may request additional human and/or financial resources if needed. These additional resources will be endorsed by the BCRC in consultation with the President and approved by the Board. The OCRCP Secretary will be appointed by the President and will report to the Chair, CRP. BPMSD will handle the administrative processes in relation to the OCRCP staff, in accordance with ADB guidelines.

130. OCRCP staff will be ADB staff and the terms and conditions of their employment will be the same as for other ADB staff, as provided by the staff regulations and administrative orders of ADB. The principle of not banning OCRCP staff from transferring to and from other parts of

ADB is supported by the importance of maintaining the right balance between insiders and outsiders. As demonstrated by the experience of IED, this flexibility in staff movement should help guard against the potential isolation of the CRP and enrich both compliance review and operations through cross-fertilization of knowledge and experience.

131. The Chair, CRP will be responsible for preparing the combined annual work program and budget of the CRP and OCRP. The annual work program and budget will be endorsed by the BCRC in consultation with the President, and reviewed by the Board Budget Review Committee. The budget proposal will then be presented to the Board for approval, separately from ADB's overall administrative budget. Sufficient flexibility will be ensured in the work program and budgeting to accommodate the demand driven nature of the work of the CRP and OCRP. CRP may engage technical experts as consultants in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB, to assist it in its work, including post-compliance review monitoring.

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

3. Legal Advice

133. The Office of the General Counsel will be responsible for advising the OSPF, OCRP, CRP, and BCRC concerning ADB's legal status, rights, and obligations under the ADB charter and any agreement to which ADB is a party, and on any other matters relating to ADB's rights and obligations with respect to any request for problem solving or compliance review under the policy.

D. Functions

1. Problem Solving

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

135. The OSPF will:

- (i) obtain from the operations departments all materials and analyses relating to the requests;
- (ii) facilitate a consultative dialogue, use its good offices, and/or facilitate the establishment of a mediation mechanism;
- (iii) inform the Board and other stakeholders about the results of specific

- consultation activities;
- (iv) collate and integrate internal and external experiences of problem-solving to be fed back into ADB's operations, including the formulation, processing, or implementation of projects;
- (v) provide generic support and advice to the operations departments in their problem-solving activities but not for specific cases under review by the operations departments;
- (vi) working with the OCRP to update the basic information pack to provide clear, simple, informative, and succinct information about the AM. The pack will be sent to the requesters when acknowledging the receipt of the request. The pack will highlight the different remedies available under the two functions, e.g., that the consultation function is intended to address the problems on the ground and facilitate resolution of the problem, and that the compliance review function focuses on investigating the alleged noncompliance of ADB with its operational policies and procedures;
- (vii) working with OCRP, prepare and publish annual AM reports⁴⁰. The reports will distill emerging trends and lessons from the experience of both OSPF and OCRP. They may also incorporate AM related issues and lessons from the work of IED and RSDD which will contribute to the relevant sections;
- (viii) working with OCRP, provide joint quarterly briefing sessions to the BCRC on the requests. One of these briefings may be combined with the briefing on the annual AM report;
- (ix) conduct outreach programs within ADB and to the public; OSPF outreach will include a holistic introduction to the AM, while focusing on specific subjects;
- (x) improve the interface of the AM websites. The OSPF and OCRP websites will be linked through common landing pages. These pages will be regularly updated and modified to improve the access and comprehensiveness of the information; and
- (xi) conduct other activities required to effectively carry out the problem solving.

136. The problem solving function will not replace the existing project administration and problem-solving functions inherent in operations departments, which have the initial responsibility for responding to the concerns of affected communities. The SPF will confine his/her role 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 requesters and local authorities.

2. The Compliance Review Function

a. The Compliance Review Panel

137. The CRP will investigate alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project that directly, materially, and adversely affects local people in the course of the formulation, processing, or implementation of the project. A compliance review is not intended to investigate the borrowing country, EA, the borrower, or the private project sponsor (PPS). The conduct of these other parties will be considered only to the extent they are directly relevant to an assessment of ADB's compliance with its operational policies and procedures. The compliance review is not intended to provide judicial-type

⁴⁰ The Chair CRP, SPF, DG IED, and DG RSDD may rotate to chair the preparation of the lessons learned and/or other relevant sections of the AM annual report.

remedies, such as injunctions or money damages.

138. The CRP will:

- (i) process requests for compliance review;
- (ii) engage with all stakeholders, including Management and staff, the requesters, the DMC government or the PPS, and the Board member representing the country concerned, to gain a thorough understanding of the issues to be examined during the compliance review;
- (iii) coordinate its activities, to the extent appropriate, with those of the compliance review mechanism of any other cofinancing institution that is conducting a separate compliance review of the same project;
- (iv) conduct thorough and objective reviews of policy compliance by ADB;
- (v) consult with Management and staff, the requesters, the DMC government or the PPS, and the Board member representing the country concerned on its preliminary findings;
- (vi) issue draft reports to Management, requesters, and the borrower;
- (vii) issue final reports to the Board with its findings;
- (viii) monitor the implementation of decisions made by the Board and produce annual monitoring reports;
- (ix) working with OSPF, prepare and publish annual AM reports. The AM annual reports will distill emerging trends and lessons from the experience of both OSPF and OCRP. They may also incorporate AM related issues and lessons from the work of IED and RSDD (to be contributed by these departments);
- (x) working with OSPF, provide quarterly briefing sessions to the BCRC on the requests. One of these briefings may be combined with the briefing on the annual AM report;
- (xi) develop a roster of independent technical experts who can assist CRP in carrying out its work; and
- (xii) liaise with accountability mechanisms at other institutions.

139. The Chair, CRP will:

- (i) perform all the functions listed for CRP;
- (ii) assign members of the CRP to conduct specific compliance reviews and monitoring tasks in consultation with the BCRC;
- (iii) prepare the annual work program and budget for CRP and OCRP;
- (iv) In consultation with other CRP members, implement CRP's work program, and report regularly to the Board through the BCRC on the CRP activities;
- (v) evaluate the OCRP Secretary and other relevant OCRP staff; and
- (vi) provide input to BCRC's annual performance feedback to CRP members.

b. Office of the Compliance Review Panel

140. OCRP will:

- (i) support the work of CRP;
- (ii) work with the OSPF to produce a clear, simple, informative, and succinct basic information pack about the AM to be sent to the requesters when acknowledging the receipt of the request. The pack will highlight the different remedies available under the two functions, e.g., that the problem solving

function is intended to address the problems on the ground and facilitate resolution of the problem, and that the compliance review function focuses on bringing the project into compliance and/or mitigating any harm, if appropriate, following the Board's decision on the outcome of a compliance review;

- (iii) conduct outreach programs internally and to the public. OCRP outreach will include a holistic introduction to the AM, while focusing on specific subjects;
- (iv) 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 designed to promote interaction with project beneficiaries or stakeholders including civil society groups; and
- (v) facilitate CRP's communication and coordination with the Board, Management, OSPF, and staff.

c. Complaint Receiving Officer

141. A staff member from OCRP will be assigned as the CRO, who will:

- (i) receive all the requests and promptly acknowledge them;
- (ii) upon receiving each request, call a meeting with relevant OSPF staff to jointly screen the request and decide whether to forward it to the SPF, CRP, operations departments, or other offices and departments;
- (iii) produce a joint memo with the OSPF staff summarizing the reasons for forwarding the request to a specific office or department; and send the memo to the SPF; Chair, CRP; and the operations department concerned; with a copy to BCRC;
- (iv) forward the requests to OSPF if the requesters requested to undergo problem solving; to Chair, CRP if the requesters requested to undergo compliance review; to operations departments if there were no prior good faith efforts by the requesters to solve the problems with the operations department concerned; or to other relevant departments and offices if the request is beyond the mandate of AM (e.g. corruption matters and procurement issues). As determining whether there have been prior good faith efforts is not always a simple task, the CRP and SPF eligibility assessment should also review whether this condition was met;
- (v) register the requests;
- (vi) copy the relevant sections, e.g. OSFP, CRP, or the relevant operations department if the requests are not forwarded to them;
- (vii) inform the requesters about who to contact subsequently;

142. The CRO performs the service of forwarding the requests to relevant offices and departments depending on the preference of the requesters and the nature of the problems. He/she will carry out the function with objectivity and neutrality, and exercise minimum discretion.

d. Board Compliance Review Committee

143. The BCRC will:

- (i) clear CRP's proposed TOR for compliance reviews before they are released

- by CRP;
- (ii) comment on the CRP's draft compliance review reports;
- (iii) review 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 potential CRP members in consultation with the President;
- (vii) provide written feedback to all CRP members on their performance. The feedback by the Chair, CRP will be taken into consideration the feedback on the other CRP members; and
- (viii) serve as a focal point for the CRP's communication and dialogue with the Board on AM.

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

e. The Board of Directors

145. The key responsibilities of the Board of Directors with regard to the CRP include:

- (i) overseeing the CRP's work;
- (ii) appointing and/or removing CRP members on the recommendation of the BCRC in consultation with the President;
- (iii) considering and approving CRP reports, and approving their public release;
- (iv) considering and approving the Management's recommendations and/or action plans in response to the CRP's findings; and
- (v) reviewing and approving the AM policy.

3. ADB Management and Staff

146. ADB Management and staff will:

- (i) ensure that OSPF and CRP have full access to information in conducting their functions;
- (ii) provide assistance to OSPF on problem solving;
- (iii) coordinate with CRP on compliance review;
- (iv) make recommendations and/or action plans to bring projects into compliance in response to compliance review findings. The recommendations/action plans should be agreed to by the borrower;
- (v) assist in mission arrangements for OSPF, CRP, and OCRP and provide other assistance to them as needed;
- (vi) track the complaints that were forwarded to the operations departments due to a lack of good faith efforts by the requesters to solve the problems with the operations departments.

E. Eligibility

1. Who Can File Requests?

147. 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 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 request is made through a representative, it must clearly identify the projected affected people on whose behalf it is made and provide evidence of authority to represent such people.

148. For the compliance review, requests may also be filed by any one or more ADB Board members, after raising their concerns first with Management, in special cases involving allegations of serious violations of ADB's operational policies and procedures relating to an ongoing ADB-assisted project that 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.

149. The term "ADB-assisted project" refers to a project financed or to be financed, or administered or to be administered, by ADB. It covers both public sector operations and private sector operations. The filing of a request to either SPF or CRP will not suspend or otherwise affect the formulation, processing, or implementation of the project unless agreed to by the DMC or PPS concerned and ADB.

2. Scope and Exclusions

a. Problem Solving Function

150. Requests will be excluded if they are

- (i) about actions that are not related to ADB's action or omission in the course of the formulation, processing, or implementation of ADB-assisted projects;
- (ii) about matters already considered by the SPF,
- (iii) about matters that requesters have not made good faith efforts to address with the concerned operations department or through the relevant project specific grievance mechanism;
- (iv) about decisions made by ADB, the borrower or EA, or the PPS on procurement of goods and services, including consulting services;
- (v) about allegations of fraud or corruption in ADB-assisted projects and by ADB staff;
- (vi) about an ADB-assisted project for which the loan closing date⁴¹ has passed for one year or more;

⁴¹ For programmatic operations, such as multitranches financing facilities, additional financing, program clusters, the cut-off will be tranche (or its equivalent) based. The cut-off date is one year after the loan closing date of the tranche (or its equivalent). This will be before the combining of the loan closing date with later tranches (or its equivalent) in some cases. For projects whose loan closing dates are kept open after the project completion for the purpose of capitalizing interest payments, the cut-off date will be one year after the project completion date.

- (vii) about the adequacy or suitability of ADB's existing policies and procedures;
- (viii) frivolous, malicious, trivial, or generated to gain competitive advantage;
- (ix) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or relate to ADB personnel matters; and/or
- (x) about ADB's non-operational housekeeping matters, such as finance and administration.

b. Compliance Review Function

151. The CRP will examine whether the direct and material harm complained of by the requester is the result of ADB's alleged failure to follow its operational policies and procedures in the course of the formulation, processing, or implementation of an ADB-assisted project. All types of requests excluded from the problem solving function are also excluded from the scope of the compliance review function with exception of item (ii) above. In addition, for the purpose of compliance reviews, the following requests will also be excluded:

- (i) complaints relating to actions that are the responsibility of other parties, such as a borrower, EA, 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 noncompliance of ADB 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.

152. The scope of compliance reviews is "ADB's operational policies and procedures" as they relate to the formulation, processing, or implementation of an ADB-assisted project. The operational policies and procedures are included in the relevant sections of the applicable operations manual (OM). They do not include guidelines and similar documents or statements. The Board will decide whether a particular policy is an operational policy subject to compliance review, and CRP determines which part of the operational policies and procedures was or is not complied with after carrying out a specific compliance review. In determining the eligibility of a request, the CRP must be satisfied that there is sufficient evidence of the coexistence of (i) direct and material harm caused by the ADB assisted project, (ii) the serious noncompliance, and (iii) the causal link between the noncompliance and the harm.

153. For a compliance review, the applicable operational policies and procedures will depend on whether the request 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, and an "ongoing project" refers to a project that has been approved by the Board or the President. For a proposed project, the time frames refer to the policies and procedures that were in effect when the request was filed with the CRP. For an ongoing project, these refer to policies and procedures that were in effect at the time of Board's approval of the project, unless otherwise specified in the loan documents or other relevant documents. 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 Request?

154. Requests must be in writing and preferably be addressed to the “Complaint Receiving Officer”. Requests will be accepted by mail, facsimile, electronic mail, or hand delivery to the CRO at ADB headquarters. Requests 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 AM is English, but requests may be submitted in any of the official or national languages of ADB's DMCs. In cases where the requests are submitted in languages other than English, additional time will be required for translation. The identities of requesters will be kept confidential if requested, but anonymous requests will not be accepted.

155. The request must specify the following:

- (i) names, designations, addresses, and contact information of the requesters and any representatives;
- (ii) if a request is made through a representative, identification of the project-affected people on whose behalf the request is made and evidence of authority to represent them;
- (iii) whether the requesters choose that their identities are kept confidential;
- (iv) whether the requesters prefer to first undergo problem solving with the OSPF or compliance review with the CRP;
- (v) a brief description of the ADB-assisted project, including the name and location;
- (vi) a description of the direct and material harm that has been, or is likely to be, caused to the requesters by the ADB-assisted project;
- (vii) an explanation of why the requesters 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 the formulation, processing, or implementation of an ADB-assisted project;
- (viii) if known, a description of the operational policies and procedures that have not been complied with by ADB in the course of the formulation, processing, or implementation of an ADB-assisted project;
- (ix) a description of the requesters' good faith efforts to address the problems first with the operations department or the project specific grievance mechanism concerned; and the results of these efforts;
- (x) if applicable, a description of the requesters' efforts to address the request with the OSPF or CRP; and the results from these efforts;
- (xi) the desired outcome or remedies that the project-affected people believe ADB should provide or help through the AM;
- (xii) an explanation of why any of the above information cannot be provided; and
- (xiii) any other relevant matters or facts with supporting documents.

156. If the OSPF or CRP believe that it is impossible to keep the requesters' identification confidential, they should inform the requesters of the risk and give them an opportunity to reconsider the request.

157. The OSPF and CRP will determine independently whether the request meets their respective eligibility criteria. The OSPF and CRP will fully share information and analysis with each other on the request. However, the OPSF and CRP will determine independently how to use the information and analysis.

G. Processing Requests

158. The requesters will decide whether they want to start with the problem solving or compliance review function first. They can exit the problem solving or the compliance review function at any time. The ongoing process they are in will be terminated if the requesters exit.⁴² Requesters cannot file a request concerning the same issue to either the OSPF or CRP more than once. CRP will ask the Management to respond after receiving the request and before the determination of eligibility. Responding to CRP findings, the Management will recommend measures and/or actions to bring the project into compliance. The OSFP and CRP will determine the eligibility of each request independently.

159. The indicative steps are described below. All the days refer to working days except the Board consideration dates which are 21 calendar days based on existing ADB rules.

1. Receiving the Request

160. **Step 1: Receiving the Request.** The requesters or their representative file a request to the CRO. Requests received by any other ADB departments or offices will be forwarded to CRO. The CRO will immediately acknowledge receipt of the request, and send a basic AM information pack to the requesters. The CRO will inform the SPF; Chair, CRP; and the operations departments concerned about receipt of the request; and send a copy of the requesters' letter to them.

161. **Step 2: Meeting with OSPF.** Within 2 days of receiving the request, the CRO will meet with the SPF or OSPF staff assigned by the SPF to jointly screen and decide where to forward the request. The CRO and the OSPF staff will prepare a joint memo to specify the reasons for forwarding the request to a specific department or office. The memo will be sent to SPF; Chair, CRP; and the operations department concerned, and copied to BCRC. Unless the requesters clearly indicated a preference for compliance review and provided sufficient and clear information on their good faith efforts to resolve the problems with the operations department, it will be forwarded to OSPF or the operations department.

162. **Step 3. Forwarding the Request.** Within one day of the meeting in step 2, the CRO will forward the request to (i) OSPF if the requesters indicated a preference for problem solving first or have not indicated any preferences; and have provided clear and sufficient information on their good faith efforts to solve the problem with the operations department and project specific grievance mechanism concerned; (ii) OCRP if the requesters preferred to start with compliance review; and have provided clear and sufficient information on their good faith efforts to solve the problem with the operations department and project specific grievance mechanism concerned; (iii) the operations department if the requesters have not made prior good faith efforts to resolve the problems with the department and project specific grievance mechanism concerned; or have not provided clear and sufficient information on such efforts; (iv) Office of Anti-Corruption and Integrity (OAI) if it concerns corruption, (v) COSO and/or OAI if it concerns procurement; (vi) other departments or offices as appropriate.

163. The CRO will copy the request to SPF; Chair, CRP; or the concerned operations department. CRO will notify the requesters and their authorized representative about the status of the request and the contact person(s) for the subsequent steps.

⁴² The problem solving or compliance review process will be terminated if the requesters disengage.

164. **Step 4: Registration of the Request.** Within two days after forwarding the request to relevant departments and offices, the CRO will register it on the relevant webpage(s) and send an acknowledgement to the requester.

165. For requests that are forwarded to operations departments due to a lack of requesters' prior good faith efforts, the operations departments will address any issues or problems. At the end of the process, the operations department will produce a report summarizing the request, issues and problems, the steps taken to resolve the issues, decisions by concerned parties, agreements reached, results, and lessons. The operations department will post the report on the ADB website.

2. The Problem Solving Function

166. The problem solving process is expected to take about 160 days from the date the request is filed with ADB to reaching an agreement on the remedial actions. This period excludes translation time, any request for extension of time 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.

167. During in-country consultations in 2010, local communities expressed their desire for problems to be solved locally for example by resident missions to expedite the process. Reflecting this, OSPF may, at any stage, fully or partially delegate the problem solving to the operations department concerned if it considers that this will improve the efficiency and effectiveness of problem solving. The OSPF will decide on the degree and manner in which it will undertake the problem solving on a case-by-case basis. The indicative steps for the problem solving are summarized below.

168. **Step 1: Determining Eligibility.** After acknowledging the request, the SPF will, within 21 days from receipt of the request, screen the request, and determine its eligibility.⁴³ In order to find a request eligible, the SPF must be satisfied that the request meets the eligibility criteria and does not fall within the exclusions listed in Section E above. For example, the SPF will review and confirm whether there were sufficient good faith efforts by the requesters to solve the problems with the operations department. This is important as it may be impossible in some cases for the CRO to decide whether good faith efforts have been made. The SPF should also explore whether confidentiality is being requested.

169. In addition, the SPF must also be satisfied with the following requirements: (i) the request is genuine and does not fall within any of the exclusions; and (ii) the SPF believes, in his/her sole discretion, that his/her involvement could be useful. The factors for consideration include whether the ADB has or continues to have leverage to influence change, and whether the problem-solving exercise will interfere with or be impeded by any other relevant process before a court, an arbitration tribunal, or a similar review body.

170. Affected people also need advice on the AM and require sufficient knowledge to make their choices. The eligibility stage will also explain the AM to requesters. The SPF will inform the requesters of the following two options: (i) the requesters can carry on with the problem solving process, or (ii) the requesters can abandon the problem solving process and file a request for compliance review. The SPF will highlight the differences under the two functions,

⁴³ The forwarding of the request by CRO to the SPF does not preclude the SPF from independently assessing the eligibility of the request.

e.g., indicating that the problem solving function is intended to address the problems on the ground and facilitate resolution of the problem, and that the remedies under the compliance review function focus on investigating ADB's compliance with its operational policies and procedures. This may or may not mitigate any harm, following the Board's decision of the outcome of a compliance review resulting in the determination of noncompliance with ADB's operational policies and procedures. The SPF will give the requesters 7 days from receipt of the SPF's findings to respond to the SPF with the requesters' decision.

171. During the determination of eligibility, the SPF may consult all stakeholders, including ADB staff, the requesters, the DMC government or the PPS, and the Board member representing the country concerned. The determination of eligibility may include a desk-based review and/or a site visit.

172. The SPF will report the decision on eligibility to the President, with a copy to the vice president concerned.

173. **Step 2: Review and Assessment.** The SPF will review and assess the request to (i) understand the history of the request; (ii) confirm the stakeholders; (iii) clarify the issues of concern and the options for resolving them; (iv) explore the stakeholders' readiness for joint problem-solving; and (iv) recommend how best a process to resolve the problem can be worked out.

174. The review may include site visits, interviews, and meetings with the requesters, the government or the PPS, as well as any other people the SPF believes would be useful. The SPF will obtain information from the operations department, and if necessary, will request the operations department's advice and support. The SPF will field a fact-finding mission(s) on his/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 his/her findings to the President, with a copy to the vice-president concerned. The SPF will also refer the findings to the requesters, the operations department and the government or PPS and request their comments. Based on the assessment and taking into account the comments received, the SPF will decide whether (i) to proceed with a problem solving process, or (ii) to determine that no further problem solving efforts will be purposeful and conclude the process. The SPF will have 120 days from determination of eligibility to complete this step.

175. **Step 3: Problem Solving Process.** If the SPF decides to proceed, he/she will assist the parties to engage in a consultation process aimed at resolving the problem. The problem solving process will depend on the particular circumstances and may include, among other approaches, (i) consultative dialogue, (ii) information sharing, (iii) joint fact-finding, or (iv) mediation.

176. Implementing the problem solving process requires the consent of every party involved. Parties except the SPF can "walk away" from the process if they consider that it is not purposeful or if there is no consensus on the course of action. Doing so will be deemed to bring about a formal closure to the problem solving process.

177. Remedial actions that are adopted as a result of the problem solving process will reflect an agreement among the relevant parties and in most cases will be specified in a written agreement or series of agreements made by the relevant stakeholders. Remedial actions involving a major change in the project will require approval by Management or the Board

according to ADB's procedures, and agreement by the borrower.

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

179. **Step 4. Monitoring.** The SPF will monitor the implementation of any remedial action agreed to. The SPF will report annually to the President, with a copy to the Board, regarding the status of implementation. As part of the monitoring activity, the SPF will consult with the operations department, the requesters, and the government or the PPS. The monitoring time frame will be project specific, but will generally not exceed two years. All stakeholders, including the public, may submit information regarding the status of implementation to the SPF. The SPF's monitoring reports will be sent to the requesters and the government or PPS and posted on the ADB website, subject to consent of the requesters and the government or PPS, after being submitted to the President and furnished to the Board for information.

180. **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 requesters, the operations department, the government or PPS, and the Board for information. The final report will be made public, subject to the consent of the requesters and the government or PPS.

3. The Compliance Review Function

181. The requesters will know whether the Board has authorized the compliance review they have requested about 60 days after receipt of the notification of registration for compliance review. They will know the outcome of the Board decision about 240 days from the receipt of the notification of registration for compliance review. These periods exclude the time taken for translation, and any request for extension of time to provide information or file documents. The indicative steps for the compliance review phase are summarized below.

182. **Step 1: Requesting Management Response.** The CRP will forward the request to the Management and request a Management response within 21 days. The CRP will also inform the Board member representing the DMC concerned about the request. In its response, the Management must provide evidence that (i) it has complied with the relevant ADB policies and procedures; or (ii) there are serious failures attributable exclusively to its own actions or omissions in complying with the ADB policies and procedures, but the Management intends to take actions to ensure compliance; or (iii) the serious failures are exclusively attributable to the borrower or other factors external to ADB; or (iv) the serious failures that may exist are attributable both to the ADB's noncompliance and to the borrower or other external factors. OCRP will copy the BCRC into its correspondence with the Management.

183. **Step 2: Determining Eligibility.** Within 21 days of receiving the Management response, CRP will determine the eligibility⁴⁴ of the request. In so doing, the CRP will review

⁴⁴ The forwarding of the request by the CRO to the CRP does not preclude the CRP from independently assessing the eligibility of the request.

the request, the Management's response, and other relevant documents. In order to find a request eligible, the CRP must be satisfied that the request meets the eligibility criteria and does not fall within the exclusions listed in Section E above. For example, the CRP will review and confirm whether there were sufficient good faith efforts by the requesters in solving the problems with the operations department involved. This is important as it may be impossible in some cases for the CRO to decide whether good faith efforts have been made. The CRP should also explore whether confidentiality is being requested. In addition, the CRP must also be satisfied that (i) there is evidence of noncompliance, (ii) the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people, and (iii) the noncompliance is of a serious nature that warrants a compliance review.

184. Affected people also need advice on the AM and require sufficient knowledge to make their choices. The eligibility stage will also explain the AM to requesters. The CRP will inform the requesters of the following two options: (i) the requesters can carry on with the problem solving process, or (ii) the requesters can abandon the problem solving process and file a request for compliance review. The CRP will highlight the differences under the two functions, e.g., indicating that the problem solving function is intended to address the problems on the ground and facilitate resolution of the problem, and that the remedies under the compliance review function focus on investigating ADB's compliance with its operational policies and procedures. It may mitigate any harm, if appropriate, following the Board's decision about the outcome of a compliance review resulting in the determination of noncompliance with ADB's operational policies and procedures. The CRP will give the requesters 7 days from receipt of the SPF's findings to respond to the CRP with the requesters' decision.

185. During the eligibility stage, the CRP may consult all stakeholders, including Management and staff, the requesters, the DMC government or the PPS, and the Board member representing the country concerned. The determination of eligibility may include a desk-based review and/or a site visit. The CRP will prepare an eligibility report. If the CRP determines that the request is ineligible, it will inform the Board of the ineligibility of the request. If the CRP determines that the request is eligible, it will recommend to the Board that a compliance review be authorized. The CRP will inform the requesters of its decision after determining the eligibility.

186. **Step 3: Board Authorization of the Compliance Review.** The CRP will submit its recommendation to the Board, attaching the request and Management's response. Within 21 calendar days from receipt of the CRP's recommendation, the Board will consider and authorize the compliance review. Within 7 days from receipt of the Board's authorization, the requester will be informed of the Board's decision, and the eligibility report and the Board's decision will be posted on the ADB website.

187. **Step 4: Conducting the Compliance Review.** The CRP will begin the compliance review as soon as the Board authorizes it. The Chair, CRP, in consultation with the BCRC, will decide the specific panel member(s) to conduct the review. The CRP's review is not time bound because the amount of time will vary depending on the nature, complexity, and scope of the project and the alleged policy noncompliance. BCRC will clear the TOR, and time frame for the compliance review. Within 14 days of the Board's authorization of the review, the CRP will release the TOR which will indicate the methodology, estimated review time frame, budget, and the CRP member(s) for the review. The TOR will be posted on the registry of requests.

188. Throughout the compliance review process, the CRP will consult all stakeholders concerned, including Management and staff, the requester, the DMC government or the PPS,

and the Board member representing the country concerned. The review may include desk reviews, meetings, discussions, and a site visit.

189. **Step 5: CRP's Draft Report and Responses.** Upon completion of its compliance review, CRP will issue a draft report of its findings to Management, the borrower, and the requesters for comments and responses within 45 days. The CRP will also forward the draft report to the BCRC for its comments. The CRP report documents its findings concerning any noncompliance and harm. It focuses on whether there is a serious failure by ADB to comply with its operational policies and procedures in formulating, processing, or implementing a project in relation to the alleged direct and material harm. In the event of a finding of noncompliance, the report will focus on establishing a causal link between those direct and material adverse effects alleged in the request and ADB's serious failure of compliance with its operational policies and procedures⁴⁵. For assessing direct and material adverse effects, the without-project situation should be used as the base case for comparison, taking into consideration the availability of information. Non-accomplishments and unfulfilled expectations that do not generate direct and material harm compared to the without-project situation will be excluded. Each party is free to provide comments on the draft report, but only the CRP's final view on these matters will be reflected in its final report. The CRP will prepare a matrix summarizing how it has responded to the comments by the Management, requesters, and the borrower.

190. The Management response will articulate Management's positions on the CRP's findings. If the CRP concludes that there was direct and material harm caused by ADB's non-compliance, Management's response should include recommendations and/or an action plan to bring the project into compliance with ADB policies and addressing related findings of harm. Because the legal ownership of the project lies with the DMC government or PPS, the implementation of the recommendations and/or an action plan must be agreed by the government or PPS. The Management response will be considered by the Board in conjunction with the CRP report.

191. **Step 6: CRP's Final Report.** Within 14 days of receiving the responses to CRP's draft report from the Management, the borrower, and the requester, the CRP will consider their responses and make changes as necessary before issuing its final report to the Board, attaching the responses from Management, the borrower, and the requesters. 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.

192. **Step 7: Board's Decision.** Within 21 calendar days of receiving the CRP's final report and the Management response, the Board will consider the report and make a final decision regarding any recommendations and/or an action plan that Management may propose to bring the project into compliance and/or mitigate any harm. Within 7 days after the Board's decision, the Board decision, the CRP's final report, with the borrower and requesters' responses attached (subject to agreement of relevant parties), and the Management's response will be released to the requester and the borrower, and then posted on the website.

193. **Step 8. Monitoring and Conclusion.** CRP will monitor the implementation of any remedial actions. Any remedial actions in project scope or implementation approved by the

⁴⁵ During the eligibility determination or the review stage, if the CRP finds that the alleged direct and material adverse effect is not totally or partially caused by ADB's noncompliance, its eligibility or draft review report will state this without entering into analysis of the direct material adverse effect itself or its causes.

Board will be carried out in accordance with applicable ADB procedures. Unless the Board specifies a different timetable, the CRP will annually report on the progress. The Chair, CRP, in consultation with the BCRC, will determine which CRP member(s) will conduct the annual monitoring exercise each year. The monitoring time frame will be project specific, but will generally not exceed three years. The final monitoring report will also conclude the compliance review process. The monitoring may include consultations with Management, the requesters, the DMC government or the PPS, and Board members; document review; and site visits. The CRP will also consider any information received from the requesters and the public regarding the status of implementation. The CRP will forward its draft monitoring reports to BCRC for review. It will finalize the reports in consultation with BCRC before making them available to the Board, Management, the requester, the DMC government or the PPS, and the public.

H. Transparency and Information Dissemination

194. The OSPF and CRP operations will be as transparent as possible, both within ADB and to the public. Information disclosure to the public will be consistent with ADB's public communications policy. Specific milestones for which information disclosure is relevant include the registry of requests, determination of eligibility, SPF review and assessments, SPF final reports; TOR of the compliance review, CRP's final reports; Management's response to CRP findings; requesters' and borrower's responses (subject to agreement of the relevant parties), Board's decisions on compliance review, CRP monitoring reports, and the AM annual reports jointly produced by OSFP, OCRP, IED, and RSDD.

195. The OSPF and OCRP will maintain their own websites and each have distinctive logos and letterheads. However, their websites will be integrated and linked through common ADB AM landing page(s) which will be regularly updated and improved. OSPF and OCRP outreach to the public will include a holistic introduction to the AM in general, while also focusing on specific subjects.

196. 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 will be kept confidential. The final agreement and resolution will also be kept confidential if the parties so agree. Any material or information submitted to the SPF or CRP on a confidential basis from any party may not be released to any other parties without the consent of the party that submitted it. When requested, SPF and CRP may withhold the identities of the requesters from other stakeholders.

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

198. The SPF and CRP, and all staff working on AM, will exercise discretion and maintain a low profile in the borrowing country 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 AM process.

I. Approaches

1. General Approaches

199. The SPF and CRP will keep abreast of the best practices on problem solving and compliance review. They may use desk reviews, interviews, discussions, workshops, consultation with country experts, site visits, and other approaches. The SPF and CRP can also engage experts/consultants in assisting any parts of their work.

2. Site Visits

200. The Working Group is considering several options to effectively address site visit issues. It will finalize its views by taking into consideration of all comments received so far, and from further consultations.

J. Application

201. The AM applies to ADB-assisted projects in both the public and private sectors. It will also apply to operations that use country systems. The use of country systems will not alter the need and nature for problem solving. The compliance review will focus on the roles and responsibilities assumed by ADB in formulating, processing, and implementing the project according to the policies providing the scope for using country systems, such as the SPS.⁴⁶ The AM applies to ADB administered cofinancing.

VII. IMPLEMENTATION AND RESOURCE REQUIREMENT

A. Awareness and Learning

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

- (i) Internal audience – improve the awareness and disseminate lessons to staff through workshops, training courses, and orientation sessions. AM should be included as a part of regular staff training course, particularly for mission leaders.
- (ii) Targeted project level outreach– The SPS requires setting up of grievance redress mechanisms at the project level. ADB and government staff working on the grievance handling mechanisms should organize awareness seminars in conjunction with resident missions, project teams, local government units, and EAs. Pamphlets in national languages, community notice boards, and audio visual materials should be used to inform people. The intensity and format of this activity will vary with the nature of the project. ADB can explore the possibility of outsourcing these activities to reputed NGOs or civil society organizations. The gender issue should be taken into the outreach strategy.
- (iii) National Level – OSPF and OCRP should hold regular dissemination activities in DMCs. In each resident mission a staff member should be designated as a focal person for grievance handling, either on a full time or part time basis. Some resident missions have already assigned focal

⁴⁶ The SPS clarifies (i) conditions for applying country safeguard systems, (ii) methodology of country safeguard system assessments, (iii) consultation and validation processes, (iv) ADB's and borrowers' roles and responsibilities, and (v) procedures and other related requirements such as gap filling.

persons for handling grievances and this good practice should be extended to all resident missions.

203. Improving the awareness of the AM requires that ADB staff work as a conduit to disseminate information about the AM to local communities. Operations departments should especially focus on projects with a high likelihood of generating requests such as large infrastructure projects and projects with heavy resettlement. These projects, should establish local grievance redress mechanisms as required by the SPS. Staff should disseminate information early in the project cycle about the AM and its availability as a recourse in case other methods of dealing with harmful project effects are not successful. The AM should be operated and seen as an important instrument for learning, and for ensuring project quality and development effectiveness. The AM, ADB Management and staff, and Board should all promote a cultural change to eliminate the remaining perception that the AM is adversarial.

B. Costs and Resource Needs

204. The proposed changes require additional costs in the following areas.

- (i) Incremental costs for OSPF and OCRP depending on work loads. The OSPF received 13 cases in 2009 and 7 in 2010. . The updated policy may lead to increased requests for compliance reviews which may lead to higher resource requirements, both human and financial.
- (ii) Increasing outreach.
- (iii) Resident mission grievance handling focal person. It is proposed that each resident mission assign a staff member as a focal person for grievance handling. This staff can either be part time or full time depending on the number of requests.

205. Cost savings may be derived from setting the appropriate basic AM structure and provide ample flexibility to respond to demand. The balance between cost increases and cost savings suggests that there may be no significant overall budget implications in implementing the updated AM compared to the current policy.

C. Effective Date and Transitional Period

206. The updated AM will become effective six months from the date of Board approval of the policy. Requests that have been filed under the current AM will be transferred to the updated AM. Given that changes proposed are incremental, the transition is expected to be smooth. Upon the Board's approval of the policy, the operations manual will be revised, superseding the current version⁴⁷.

VIII. REQUEST FOR BOARD GUIDANCE

207. The Board's guidance will be sought on the proposed revisions of the 2003 policy set out in sections VI and VII of this paper.

⁴⁷ The current AM requires the OSPF, CRP, and BCRC to prepare operating and administrative procedures. These procedures are not recommended under this policy to reduce duplication and increase transparency. Any necessary operating and administrative procedures should be reflected in the operations manual.

TERMS OF REFERENCE FOR THE REVIEW OF THE ACCOUNTABILITY MECHANISM

1. In 1995, the Asian Development Bank (ADB) established an Inspection Function to provide a forum for project beneficiaries to appeal to an independent body for matters relating to ADB's compliance with its operational policies and procedures in ADB-assisted projects.¹ In 2003, following an extensive review process, ADB introduced the current accountability mechanism (AM)², building on the Inspection Function. The AM 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 already in place at ADB. The AM was declared effective on 12 December 2003. At the 43rd Annual Meeting of the Board of Governors of ADB in Tashkent from 1 to 4 May 2010, the President of ADB announced that ADB would undertake a joint Board Management review of its AM. A joint Board and Management Working Group has been established for this purpose.

2. The objective of the review will be to examine the scope for improvements in the AM. The review will be broad based and will include, among others, the following aspects:

- 1) Analysis of the effectiveness and adequacy of the AM in light of its historical perspective, objectives, and the principles as contextualized in the 2003 AM policy.
- 2) Evaluation of ADB's experience with the AM since 2003, reflecting the changing context of ADB operations, especially the adoption of Strategy 2020.
- 3) Comparison and analysis of ADB's AM with other relevant comparators.
- 4) Consultation with stakeholders including the public, project-affected people, governments, ADB Board members, Management, operational staff, nongovernmental and civil society organizations.
- 5) Addressing of key issues arising out of the analysis, comparison, evaluation, and consultation.
- 6) Recommendations, based on the above analysis, for changes and improvements in the policies, the functioning of the AM, and its operating and administrative procedures.

3. The review will include a public consultation process. The consultation is planned to include three phases. The first phase will be inviting public comments on the current AM policy through the ADB website. The second phase will be country consultations in both developed and developing member countries. The proposed locations are Washington DC, Frankfurt, Tokyo, Jakarta, Islamabad, and Manila. The consultation will include governments, nongovernmental organizations, the private sector, and wherever possible, project beneficiaries and affected people. The third phase will be an invitation for public comments on the Working Group report through the ADB website. A dedicated AM review website has been established.

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

² *Review of the Inspection Function: Establishment of a New Accountability Mechanism*. ADB. 2003. Manila ("the AM policy")

4. The review is expected to be undertaken from April 2010 to April 2011.
5. The following key issues were included in the external experts' terms of references:
 - i. The approach to site visits required under the current AM, which requires borrowing country permission to carry out site visits.
 - ii. The relatively limited recourse to the compliance review phase.
 - iii. The level of independence of the mechanism, including reporting lines, ownership, and dissemination of AM 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. Accessibility of the mechanism by affected people.
 - v. The eligibility criteria for filing a complaint.
 - vi. The effectiveness of the Office of the Compliance Review Panel (OCRP) and ADB in information dissemination and conduct of public outreach (level of awareness about the ADB AM).
 - vii. Assessment of implications for bringing projects into compliance in terms of time required, delays, and increase in financial costs.
 - viii. Taking in particular concerns of developing member countries (DMCs) on board, an observation on the broader impact that the AM has had on ADB's approach to decision making and project selection.
 - ix. From the experience of ADB and other similar institutions, examination and comments on the extent of benefits obtained by the complainants and/or adversely affected people.
 - x. Any other issues that are viewed as important for improving the ADB AM.

COMPARISON OF ACCOUNTABILITY MECHANISMS

No.	Areas	ADB	World Bank	Other Institutions
1	Milestones	<p>Inspection Panel established in 1995.</p> <p>Inspection Panel Reviewed in 2002/2003.</p> <p>Accountability Mechanism created in 2003.</p> <p>Accountability Mechanism currently under review (2010)</p>	<p>First to establish among MDBs – Inspection Panel created in 1993.</p> <p>Inspection Panel reviewed in 1996 and 1999 which resulted in the 1996 and 1999 clarifications.</p>	<p>IFC: Compliance Advisor Ombudsman (CAO) established in 1999. CAO amended its 2004 operational guidelines in 2006 and 2007.</p> <p>IADB established Independent Investigation Mechanism in 1994. This was enhanced in 2010 as the Independent Consultation and Investigation Mechanism. (ICIM).</p> <p>AfDB: Independent Review Mechanism (IRM) established in 2004. It was amended in June 2010 following a review in 2009.</p> <p>EBRD: Independent Recourse Mechanism (IRM) was in place between July 2004 and March 2010. The new Project Complaint Mechanism (PCM) became operational in March 2010.</p> <p>EIB: The new Complaints Mechanism was approved in Feb 2010, superseding the Complaints Mechanism Policy of June 2008</p> <p>JBIC adopted <i>Summary of Procedures to Submit Objections Concerning JBIC Guidelines for Confirmation of Environmental and Social Considerations</i> in 2003. The Procedures were updated in October 2009.</p> <p>OPIC Board approved the General Policy and Guidelines on <i>Accountability and Advisory Mechanism for OPIC</i> and established an Office of Accountability (OA) in 2005.</p>
2	No. of Cases	<p>2004-2010</p> <p>SPF: Total 32. Eligible 11.</p> <p>CRP: Total 4. Eligible</p>	<p>1995-2010</p> <p>Inspection Panel: Total 71. Eligible 32.</p>	<p>IFC (2000-09). Total 110. Eligible problem solving 49, eligible for compliance audit 9; eligible for compliance appraisal 9. Ineligible 43.</p>

No.	Areas	ADB	World Bank	Other Institutions
		3.		<p>IADB (1994-2010): 3 since Feb 2010.</p> <p>AfDB (2004-10): Total 6 since 2007.</p> <p>EBRD (2004-10): Total 6.</p> <p>EIB (2007-08): Total 9.</p> <p>JBIC (2003-2010): 1 ineligible.</p> <p>OPIC (2005-10): Total 6, problem solving 3, compliance review 3.</p>
3	Policy coverage	All operational policies and procedures concerning formulation, processing, and implementation of ADB financed projects.	World Bank's own operational policies and procedures with respect to the design, appraisal and/or implementation of projects.	<p>IFC: Focusing on environmental and social aspects.</p> <p>IADB and AfDB: Operational policies and procedures.</p> <p>EBRD: Focusing on environmental, social, and public disclosure aspects.</p> <p>EIB: Policies on institutional governance, strategy guidelines, codes of conduct, transparency and corporate responsibility, anti-fraud, thematic lending policies, geographic policies, cooperation with 3rd parties and/or international organizations, project-cycle related policies and procurement.</p> <p>JBIC: The Examiner for Environmental Guidelines is specifically to ensure the compliance of the "<i>Guidelines for Confirmation of Environmental and Social Considerations</i>".</p> <p>OPIC: Environmental, social, labor, human rights, and transparency standards.</p>
4	Procurement and corruption	Excluded	Excluded.	All excluded these two aspects, except that EIB includes procurement.
5	Cut-off dates	Up to the approval of the PCR.	The request is filed before the loan financing is	Ranges from project completion to 12 months after completion, except EIB to which complaints

No.	Areas	ADB	World Bank	Other Institutions
			substantially disbursed (up to 95% disbursement).	must be lodged within 1 year from the date on which the facts upon which the allegation is grounded could be reasonably known by the complainant; and IFC which does not have a cut-off date.
6	Minimum number of person(s)	2 or more persons	2 or more persons	(1) AfDB and JBIC: 2 or more persons. (2) IFC, IADB, EIB, EBRD, and OPIC: 1 or more.
7	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 (possibly) IFC.
8	Structure	SPF/OSPF CRP/OCRP	The Inspection Panel and its Secretariat	(1) IFC, EBRD, EIB, JBIC, and OPIC: Each has a unit/office responsible for both problem solving and compliance review. The units report to the President (or the Management Committee in case of EIB). (2). AfDB: Head of Compliance Review and Mediation Unit (CRMU) Head works on problem solving and supports experts on compliance review. (3) IADB. Ombudsperson, the Panel, Executive Secretary report to the Board.
9	Appointments and reporting	SPF appointed by the President after consultation with the Board, and reports to the President. CRP members appointed by the Board upon the recommendation of the President. Secretary OCRP appointed by the President.	There is only the compliance review by the Inspection Panel. No formal problem solving stage. World Bank panel members appointed by the Board based on President's nomination. It reports to the Board. Executive Secretary: appointed by the	(1). AfDB. Head of Compliance Review and Mediation Unit (CRMU) is appointed by President with concurrence of Board. The Head 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. (2). IFC, OPIC, EBID, and EIB. There is no Secretariat. The AM

No.	Areas	ADB	World Bank	Other Institutions
			President after consultation with the Board.	<p>unit heads are appointed by, and report to, the President. EIB unit reports to the Management Committee.</p> <p>(3). JBIC. The examiners appointed and report to the President. Secretary appointed by the human resources department.</p> <p>(4). IADB: Ombudsman, panel, and Executive Secretary appointed by and report to the Board.</p>
10	Site visit	Site visits takes place in consultation with the borrowing country.	<p>(i). Use country offices to obtain mission clearance and meetings, same as other missions.</p> <p>(ii). Inspection in the territory of such country shall be carried out with its prior consent (1993 Resolution, para. 21).</p> <p>(iii) Any additional site visit needs to be invited by the country (1999, Clarification, para. 16).</p>	<p>1. IADB. Any part of the process to be conducted in the territory of the borrower/recipient country may be conducted only after obtaining the written non-objection of the country (2010 Policy, para. 49).</p> <p>2. AfDB, EBRD, EIB, and OPIC. The rules state site visits <u>may</u> be undertaken. No details given.</p> <p>3. JBIC. Site visit not mentioned, but examiners can conduct interviews. The Chairman's Summary states that JBIC '<i>is a government institution and shall accord adequate considerations to the sovereignty of the recipient country</i>'.</p>

AfDB = African Development Bank, 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, MDB = multilateral development bank, OPIC = Overseas Private Investment Corporation (US).

NUMBER OF CASES IN DIFFERENT ACCOUNTABILITY MECHANISMS

Asian Development Bank Accountability Mechanism	2004 to 15 Nov 2010	Compliance Review Panel			Special Project Facilitator			
		Total	Eligible	Ineligible	Total	Eligible	Ineligible	Eligibility Being Determined
		3	2	1	32	10	20	2

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

World Bank Inspection Panel	1994 to 8 November 2010	Total Requests Received	Eligible for Investigation	Not Eligible for Investigation	No Recommendation Made	Eligibility Ongoing
		70	32	16	20	2

Source: WB Inspection Panel Website as of 8 November 2010

International Finance Corporation Compliance Review Ombudsman	2000-2009	Total new complaints	Ineligible	Ombudsman	Compliance			
				Total	Closed after ombudsman and compliance appraisal	Compliance Audit	Ongoing compliance cases	Total
				49	9	6	3	18

Source: 2008-09 CAO Annual Report.

Inter-American Development Bank Independent Consultation and Investigation Mechanism	Established in 1994; reorganized in February 2010	Total Cases Registered (since Feb 2010)
		3

Source: <http://www.iadb.org/en/mici/registry-of-cases,1805.html>

African Development Bank Independent Review Mechanism	2004-2010	Total No. of Cases in IRM Register (since 2007)
		6

Source: <http://www.afdb.org/en/about-us/structure/independent-review-mechanism/requests-registry/>

European Bank for Reconstruction and Development Project Complaint Mechanism	IRM was in place since 2004; replaced by IRM in March 2010	Project Complaint Mechanism (PCM)	Independent Recourse Mechanism
		1 registered (as of 23 June 2010)	5 registered complaints

European Investment Bank Complaints Office	Approved in February 2010 (superseding Complaints Policy of 2008)	EIB cases include procurement cases. There were 15 complaints in 2007 and 40 in 2008 which were mostly procurement issues. There were 2 cases related to environmental and social impacts in 2007 and 7 cases in 2008.

Source: Complaints Office Annual Activity Report 2008.

Japan Bank for International Corporation Objections Procedures	2003-2010	1 complaint received in 2007, ineligible

Source: Annual Report of the EXAMINERS FOR ENVIRONMENTAL GUIDELINES (FY2009)

Overseas Private Investment Corporation Office of Accountability	2005-2010	Problem Solving Requests	Total Compliance Review Requests
		3	3

Source: <http://www.opic.gov/doing-business/accountability/registry> (downloaded on 19 November 2010)

**SUMMARY OF ELIGIBLE COMPLAINTS HANDLED BY THE OFFICE OF THE SPECIAL
PROJECT FACILITATOR: 2004 – 2010**

Projects	Complainants and Issues	Status
<p>1. Loan 1820-NEP (SF): Melamchi Water Supply Project (MWSP), approved on 21 December 2000 (ADB: \$120 million; 7 cofinanciers).</p>	<p>Complaint received on 3 May 2004. 4 individuals filed complaints for the following issues:</p> <ul style="list-style-type: none"> (i) Access to information; (ii) Environmental and Impact Assessment (iii) Land acquisition, compensation, and resettlement; (iv) Indigenous people, (v) Social Upliftment Program; (vi) Agriculture; (vii) Forestry. <p>OSPF carried out review and site visit. It concluded that 2 of the complainants are not adversely and materially affected; while the remaining 2 were affected but have been treated fairly by the project, and where appropriate, received compensation.</p>	<p>The complainants withdrew and filed a request with CRP on 6 December 2004. (The CRP after its eligibility mission deemed the case ineligible).</p>
<p>2. Loan 1711-SRI (SF): Southern Transport Development Project (STDP), approved on 22 November 1999 (ADB: \$90 million; JBIC: \$120 million).</p>	<p>Complaint was received on 9 June 2004. 3 NGOs representing 25 complainants. The issues include:</p> <ul style="list-style-type: none"> (i) Environmental and Impact Assessment, (ii) Social Impact Assessment; (iii) Compensation and Resettlement 	<p>The complaint was concluded without settlement. An external mediator was retained. The mediator felt that the complainants' perceived grievances could not be resolved within the forum of a mediated settlement.. The complainants filed a request with CRP on 2 Dec 2004</p>
<p>3. Loan 1765-INO Community Empowerment for Rural Development Project, approved 19 October 2000 (ADB: \$170.2 M),</p>	<p>Complaint received on 21 February 2005.</p> <p>8 persons, including 3 representing NGOs and 5 villagers (who requested confidentiality). The issues raised were:</p> <ul style="list-style-type: none"> (i) Village infrastructure (flaws in design and construction); (ii) sequencing of project components; (iii) information; and (iv) participation and decision making. 	<p>Issues were resolved to the satisfaction of all parties.</p> <p>OSPF in its final report concluded that it was "confident that future complaints will be dealt with efficiently through project's complaint mechanism at the local level".</p>
<p>4. Loan 2231 (SF)-PK: National Highway</p>	<p>Complaint received on 9 September 2006.</p>	<p>Issues raised in the complaint were resolved to the satisfaction of all</p>

Projects	Complainants and Issues	Status
<p>Development Sector Investment Program (NHDSIP), approved on 14 June 2006 [ADB: MFF of up to \$770 M (OCR) & \$3 M (SPF)].</p>	<p>Committee of Affectees of Muzaffargarh Bypass" (comprising 53 members) filed the complaint. Issues raised included:</p> <ul style="list-style-type: none"> (i) realignment of a bypass; (ii) resettlement and compensation for losses; (iii) information and consultation 	<p>parties.</p> <p>OSPF Annual report noted, "The complainants confirmed that they were satisfied with their compensation and the underpass. This complaint was thus resolved."</p>
<p>5. Loan 1659 – CAM: Phnom Penh to Ho Chi Minh City Highway Project, approved on 15 December 1998 (ADB: \$40M),</p>	<p>Complaint was received on 30 July 2007.</p> <p>NGO Forum (Cambodia) filed complaints on behalf of affected persons in the villages of Krang Khok with 41 affected persons and Steung Slot with 22 affected persons on the following issues:</p> <ul style="list-style-type: none"> (i) Compensation, (ii) land titling, (iii) livelihood 	<p>OSPF Annual report noted:</p> <p>"At the request of the complainants, 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 OSPF.</p> <p>In view of this, and considering that the consultation process had been held in abeyance for nearly 2 years, OSPF informed the complainants in late 2009 that the complaint would be closed.</p>
<p>6. Loan 2176-PRC: Fuzhou Environmental Improvement Project, approved on 29 July 2005 (ADB: \$55.8 M, with commercial financing).</p>	<p>Complaint was received on 15 January 2009.</p> <p>A group of 7 families who were to be resettled under the Nantai Island river rehabilitation component of the project filed complaint on the following issues:</p> <p>Resettlement - 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 residents. The</p>	<p>In the formulation of the course of action, OSPF believed there was a need for a structured participatory consultation process assisted by an independent facilitator, to improve communication among the parties and help them understand each other and support a joint search for solutions. SPF hired a mediator from Hong Kong, China. The Government agreed to provide the affected people with economy houses. 5 families agreed and two did not. The government later changed the project design and ceased to request resettlement of the families. The two families filed a</p>

Projects	Complainants and Issues	Status
	complainants felt this was not consistent ADB's 2004 resettlement plan.	compliance review request to CRP.
<p>7. Loan 2060/2061-PAK: Southern Punjab Basic Urban Services Project, approved on 18 December 2003 (ADB: \$45 million).</p>	<p>Complaint received on 27 February 2009.</p> <p>Signatory was 1 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"> (i) Resettlement; (ii) Environment. 	<p>From OSPF Annual Report: "ADB closed the loan at the end of July 2009 and is discussing with the government whether to include the wastewater treatment component under a new project expected to be approved in 2010."</p>
<p>8. Loan 2211-PAK/2212-PAK(SF): Rawalpindi Environmental Improvement Project (Sewage Treatment Plant Component), approved on 13 December 2005 (ADB: \$20 million).</p>	<p>Complaint received on 28 May 2009.</p> <p>The information on the complainants is not public yet. The issues raised included:</p> <ul style="list-style-type: none"> (i) Land acquisition, (ii) Compensation. 	<p>From OSFP Annual Report: "OSPF's ability to pursue the consultation was limited by the security situation in Pakistan, which precluded subsequent missions during 2009. OSPF's consultant organized a meeting in December 2009 to explain the process of land valuation to the complainants and provide an opportunity for them, ADB, and the government to share information, raise concerns, and discuss next steps. ADB closed the loan at the end of August 2009 and is discussing with the government whether to include the sewage treatment plant component in a new project scheduled for 2010. However, it appears that the plant's construction may be substantially delayed by uncertainty about its size and cost-sharing arrangements."</p>
<p>9. Loan 2562-KAZ: CAREC Transport Corridor I Investment Program, approved on 22 October 2008 [ADB: \$ 340 million (1st tranche) and \$ 187million (2nd tranche)].</p>	<p>Complaint received on 5 November 2009.</p> <p>The complainants are 2 signatories. They claimed to represent at least 30 other villagers. A NGO, the Taraz Press Club Public Union, facilitated the complaint. Issues raised included:</p> <ul style="list-style-type: none"> (i) Information, (ii) participation, (iii) cattle passes, (iv) underpass for agricultural machinery. 	<p>Consultation Ongoing.</p>

Projects	Complainants and Issues	Status
<p>10. Loan 2053 – TAJ: Education Sector Reform Project (approved 17 December 2003 (ADB: \$7.5 million).</p>	<p>Complaint received: 5 August 2009). Detailed information is not yet public.</p>	<p>Consultation Ongoing</p>
<p>11. Loan 2533 – KGZ: CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 2 (approved 14 July 2009 (ADB: \$50 million).</p>	<p>Complaint received: 20 September 2010. Detailed information is not yet public.</p>	<p>Consultation Ongoing</p>

SUMMARY OF REQUESTS FOR COMPLIANCE REVIEW: 2004 -2010

Projects	Requests	Responses	Results
<p>1. Loan 1146-PAK: Chasma Right River Bank Irrigation Project, approved on December 1991 (ADB: \$185 million in 1991; additional financing of \$33.5 million in June 1999).</p>	<p>Request received on 4 June 2002 under the previous Inspection Function of ADB.</p> <p>The complaint was lodged by 4 individuals, with authorization to represent Project affectees.</p> <p>The requesters claimed ADB breached its operational policies and procedures in formulating and processing the supplementary financing Project, with material adverse effect on Chashma affectees. Issues included: project-induced flooding and involuntary resettlement; inadequate compensation for loss of land, other assets and livelihoods; and lack of information sharing, consultation and participation of affected people.</p>	<p>In March 2003, the BIC submitted its report to the Board recommending an inspection to commence in December 2003. The Board approved the recommendation, and an inspection panel conducted the investigation in early 2004. The 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 due to their, "...<i>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.</i>"</p> <p>In August 2004, the Board approved the monitoring by CRP of the implementation of the remedial actions to bring the Project back into compliance.</p> <p>The CRP prepared and issued annual monitoring reports in 2005, 2006, 2007, and 2008. The fifth monitoring report (covering 2008/2009) was the last report made.</p>	<p>After 5 years of monitoring, the CRP concluded in June 2010 that ADB:</p> <p>(i) Complied with 24 of the 29 recommendations;</p> <p>(ii) Partially complied with 4 recommendations; and</p> <p>(iii) 1 recommendation had been superseded by events.</p> <p>Of the 4 recommendations where ADB had achieved partial compliance, the Panel concluded that sufficient progress was made and that, in the circumstances, there was no need for the Panel to extend its monitoring mandate beyond 5 years.</p>
<p>2. Nepal Melamchi Water Supply Project (1820-NEP (SF)). The ADB loan of \$120 million for the Project was approved in</p>	<p>CRP received requests from 4 requesters on 12 November 2004. The following complaints were raised:</p> <p>(i) Inappropriate or inadequate information disclosure;</p> <p>(ii) Displacement and the lack of adequate compensation and resettlement;</p>	<p>The CRP obtained from the SPF materials relating to the complaint in the consultation phase. It carried out a desk-based review of relevant materials, consulted with stakeholders. CRP also carried out an eligibility review mission in Nepal including a site visit to the project area.</p>	<p>The CRP filed a mission and could not verify alleged direct and material harm and policy violations and deemed the request not eligible.</p>

Projects	Requests	Responses	Results
December 2000.	<ul style="list-style-type: none"> (iii) Loss of livelihoods due to the shutting down of water mills (grain mills) and micro hydro for local energy consumption; (iv) Destruction of community forests; (v) Destruction of irrigation canals; (vi) Damage to crops and livelihoods due to reduced flows; and (vii) Displacement and other adverse effects on IPs and communities. 		
<p>3. Loan 1771-SR (SF): Southern Transport Development Project, approved on 25 June 1999 (ADB: \$90 million as supplementary loan was approved in March 2008).</p>	<p>The request was submitted by the Joint Organization of the Affected Communities of the Colombo Matara Highway, representing 28 persons negatively affected by the Project on 2 December 2004. The Requesters stated alleged violations of ADB's operational policies and procedures which have caused harm to them, including environment; involuntary resettlement; incorporation of social dimensions in ADB operations; governance; economic analysis; benefit monitoring and evaluation; gender and development in ADB operations; processing of loan proposals; formulation and implementation of loan covenants; procurement of goods and services; and anticorruption.</p> <p>The alleged harm included loss of homes, loss of livelihoods, damage to the environment, degradation of wetlands, dispersion of integrated communities, damage to five temples, the negative effects of resettlement, and human rights violations.</p>	<p>The CRP conducted an extensive review of available documentation in Manila and in Colombo. It also carried out interviews with the Requesters and project affectees, and a wide range of current and past staff, consultants, and contractors associated with the Project. With the support the Government of Sri Lanka (GOSL), the affected people of Sri Lanka, 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 STDP that considerable progress had been made in implementing the recommendations formulated in 2005. Of the original 19 recommendations, 17 were fully complied with and only 2 that were partially complied with.</p>

Projects	Requests	Responses	Results
<p>4. Loan 2176-PRC: Fuzhou Environmental Improvement project, approved on 29 July 2005 (ADB: \$55.8M, with commercial financing).</p>	<p>CRP received a request signed by 2 individuals for compliance review on 3 June 2009. The SPF had previously dealt with a complaint from 7 affected households.</p> <p>Issues raised related to ADB's Involuntary Resettlement Policy (IRP), including:</p> <ul style="list-style-type: none"> (i) insufficient compensation to replace lost housing for residents without legal title; (ii) absence of rehabilitation measures to offset a loss of income; and (iii) inadequate information dissemination and consultation 	<p>CRP began with a desk review documents; and considered that a site visit to be necessary to corroborate the claims made by the requesting parties and to give them to interact directly with the CRP and to present their best evidence to support their claims. The Government declined the site visit for the following reasons:</p> <ul style="list-style-type: none"> (i) the resettlement plan was in accordance with both PRC and ADB relevant policies; (ii) rerouting of the river had made the compliance review request obsolete; (iii) a senior government official who visited the project site confirmed that the requesting parties no longer lived in the area; and finally (iv) previous project site visits by the OSPF should provide the CRP with sufficient information for its compliance review. In the government's view, the proposed site visit was therefore no longer necessary. <p>The CRP acknowledged the decision of the PRC to change the project design; however, the change was made after the compliance review request had been filed. As part of the eligibility process, the CRP stated that the change in project design would not obviate the need to investigate whether ADB had previously failed to comply with its operational policies and procedures.</p>	<p>The CRP stated that it is unable to complete the compliance review due to a lack of site visit.</p>

SUMMARY OF ASSESSMENT OF THE ADB ACCOUNTABILITY MECHANISM

Areas	Strengths	Weaknesses	Proposed changes
Access			
Awareness	(i) Systematic outreach has increased.	(i) Awareness is limited.	(i) Enhance outreach.
Eligibility	(i) Long cut-off date.	(i) PCR as cut-off date sometimes lacks clarity.	(ii) Clarify cut-off date.
Process	(i) No mandatory requirement for citing specific policy violations. (ii) Minimum document requirements. (iii) Can use English and other national or official languages. (iv) Can be submitted through various means and to various points.	(i) Process complex. (ii) No single point of entry.	(i) Simplify process. (ii) Introduce a single point of entry.
Credibility			
Independence	(i) The arrangements that CRP reports to the Board, and SPF reports to the President well reflect the distinct nature and needs of the process.	(i) CRP appointments recommended by the President. (ii) Lack of interaction between CRP and Management and staff lead to isolation.	(i) Enhance CRP independence through appointments in line with IED. (ii) Enhance interaction between CRP, the Management, and staff.
Monitoring	(i) SPF and CRP are empowered to monitor implementation of actions.		
Transparency	(i). High degree of transparency in systematically and comprehensively disclosing information, given due consideration to confidentiality.	(i) Complaints referred back to operations departments are not tracked.	(i) Track complaints referred back to operations departments.
Participation	(i) Requesters and the Management respond to draft CRP report. (ii) Problem solving empowers complainants with an active role in decision making.	(i) Lack of Management and DMC response to the request at the eligibility stage. (ii) CRP reports not shared with the borrowing country.	(i) Introduce Management response. (ii) Inform and coordinate with the borrowing country.

Areas	Strengths	Weaknesses	Proposed changes
Efficiency			
Time	(i) Expected time frame clearly specified in the policy.	(i) Actual consultation and compliance review time exceeded the expected time frame. (ii) Rigid and long CRP monitoring time frame (5 years) for every project.	(i) Set realistic time frame. (ii) Simplify processes. (iii) fully utilize grass root level mechanisms for problem prevention, problem solving, and early compliance. (iv) optimize the SPF and CRP monitoring time frame.
Costs	(i) ADB has provided sufficient resources for AM.	(i) Operating costs per case highest compared to other AMs. (ii) Staff numbers stipulated in the policy lead to operational rigidity.	(i) Define the 'fixed costs' required regardless of the number of cases. (ii) Allocate 'variable costs' at optimum level based on demand and work requirements.
Effectiveness			
Structure	(i) A sound dual consultation and compliance review structure in place.		
Relevance	(i) Both consultation and compliance review have been relevant.		
Sequence	(i) problem solving was given top priority. (ii) Complainants can exit the consultation stage and file compliance review throughout the process.	(i) Requiring compliance review after complaints first approached SPF creates perception and practical problems.	(i) Enable direct access to CRP.
Mandate	(i) Dedicated support for the consultation and compliance phases.	(i) CRP mandate to make recommendations blurred the distinctions between problem solving and compliance review, and between compliance review and project management. (ii) Misperception between compliance review and performance auditing.	(i) Clarify the mandate between problem solving, compliance review, and project administration. (ii) Clarify the roles between performance auditing and compliance review.

Areas	Strengths	Weaknesses	Proposed changes
Learning lessons	Systematic learning has been carried out. OSPF advisory role has been beneficial.	(i) Learning is still limited. (ii) Compliance review is sometimes seen as adversarial.	(i) Improve learning (ii) Institutionalize a cultural change.
Site visit	(i) defined in the policy.	(i) Actual implementation problematic.	(i) Learning from experience of ADB and other AMs, develop a sound approach to address problems.
Outcomes	Consultation and compliance review deliver tangible outcomes for affected people, and improves project quality.		Addressing the above issues will contribute to improved outcomes.

Source: ADB