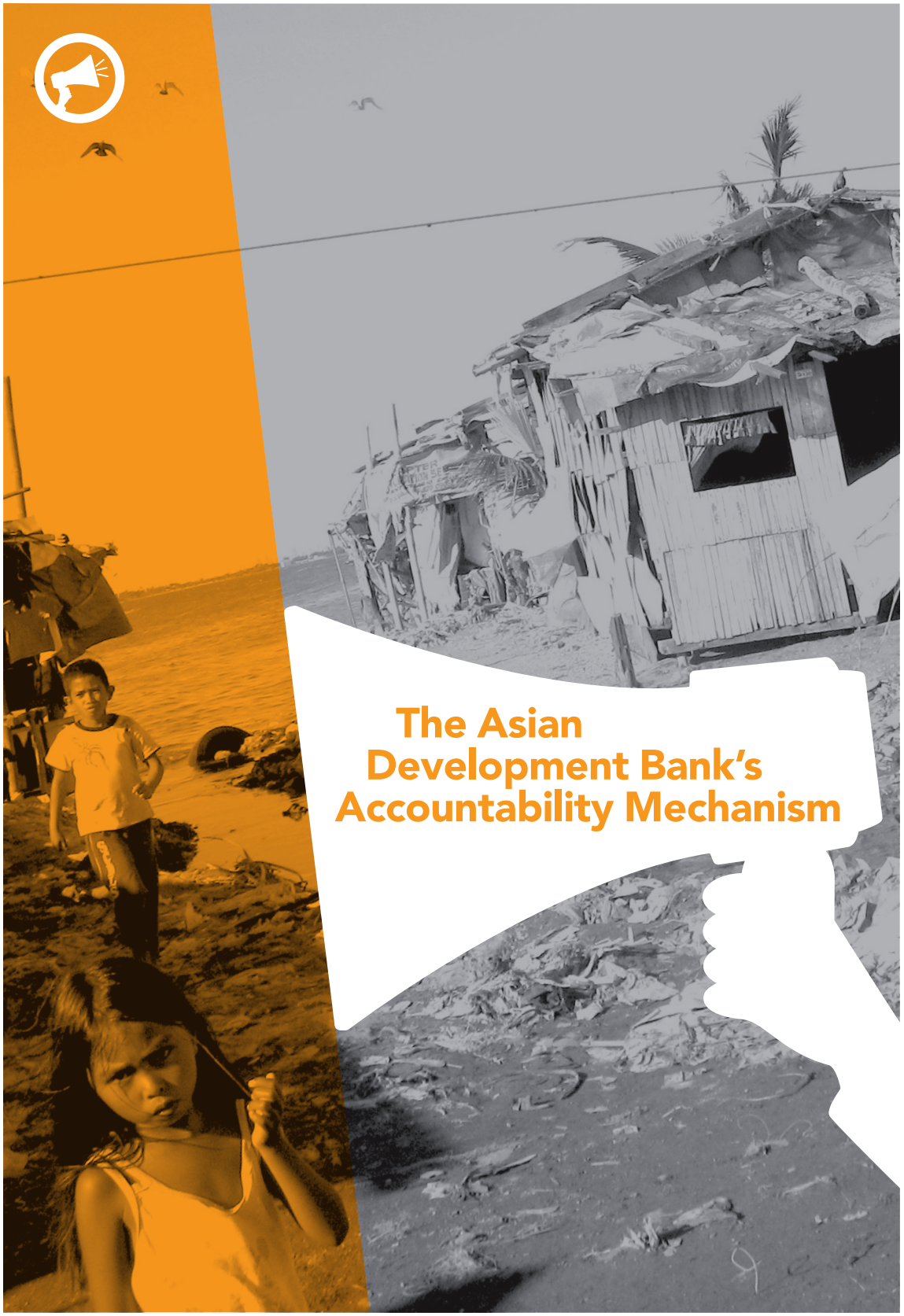

The Asian Development Bank's Accountability Mechanism

About the **Asian Development Bank's Accountability Mechanism**

The Asian Development Bank (ADB) is a multilateral development bank that aims to alleviate poverty in the Asia and Pacific region. The ADB primarily supports public sector projects through loans, grants and technical assistance in the following core areas: infrastructure, environment, regional cooperation and integration, finance sector development and education. The ADB also provides equity investments and loans to private companies operating in its member countries. In some cases the ADB also provides investments and loans to banks and other financial institutions, joint ventures between companies and government agencies (public-private partnerships) or state-owned enterprises.

The Accountability Mechanism (AM) is the ADB's grievance mechanism. Through the AM, projectaffected people can raise their concerns about any direct, material and adverse harm they have or could experience as a result of an ADB-assisted project. When filing a complaint to the AM, you can request Problemsolving and/or a Compliance Review:

- **Problem-solving involves seeking agreement among the complainants, the company and/or the member government on ways to address the problems of project-affected people.**

- **A Compliance Review investigates whether the ADB has complied with its own operational policies and procedures and whether non-compliance by the bank has or could result in direct, material and adverse harm.**

Key **ADB policies**

The AM can review allegations of non-compliance with all ADB operational policies and procedures, including those of other institutions that are referenced in its policies. The AM can review compliance to its policies by the ADB even if a host country's policies are used for the ADB project, or if there are other funders involved in the project. The two ADB policies most often cited in complaints are the Safeguard Policy Statement and the Public Communications Policy.

Safeguard Policy Statement (SPS) – 2009: This policy covers issues concerning the environment, involuntary resettlement and indigenous peoples. It outlines requirements for conducting environmental and social assessments; developing plans to avoid, mitigate and manage harmful impacts; disclosing information; consulting with communities; monitoring and reporting; and creating project-level grievance mechanisms.

- **The Environmental safeguards also include requirements on habitat and biodiversity conservation; sustainable management of natural resources; pollution prevention and abatement; occupational and community health and safety; use of hazardous materials and pesticides; greenhouse gas reduction; and conservation of physical cultural resources.**
- **The Involuntary Resettlement safeguards also outline requirements for preparing resettlement plans and negotiating land acquisition; adequately compensating and assisting displaced persons; and restoring livelihoods. Draft resettlement plans must be disclosed before the ADB appraises the project.**
- **The Indigenous Peoples' safeguards also include requirements for obtaining the support of indigenous peoples on certain types of projects, and special considerations when ancestral domains and natural resources of indigenous people may be affected.**

The SPS applies to all ADB-assisted projects reviewed by the Bank's management after 20 January 2010. Depending on the approval date of the project, older safeguard policies may apply, such as the ADB's Environment Policy (2002), Involuntary Resettlement Policy (1995) and Policy on Indigenous Peoples (1998).

Public Communications Policy (PCP) – 2011: This policy covers both information disclosure and the ADB's external relations. The PCP presumes disclosure of all documents, unless they contain information that is exempt from disclosure.

Other applicable policies: The ADB also has policies relating to the five core areas of infrastructure, environment, regional cooperation and integration, finance sector development and education. There are also policies on issues such as private sector development, good governance and capacity development, gender equity and partnerships. The Operations Manual has the most up-to-date list of ADB's operational policies known as Bank Policies (BPs) and procedural requirements known as Operational Procedures (OPs). The Operations Manual can be accessed at: http://www.adb.org/documents/operations-manual.

How to file a complaint

The following step-by-step guide explains the process that affected groups and their representatives can follow to submit a complaint to the AM. The AM, as well as SOMO and Accountability Counsel, can provide advice and additional information about submitting a complaint. A sample complaint can be found online at http://www.adb.org/site/accountability-mechanism.

1

Overall strategic considerations

- **Consider the benefits of a complaint, as well as limitations of the AM, and set appropriate expectations.**
- **Consider whether another strategy might be more effective. Using the AM is most effective when combined with other strategies, including engaging the media, seeking campaign support from other organisations, government advocacy or other tactics.**
- **Evaluate the time and resources that will be required, and understand that the AM process could be long and drawn out.**

General information about the Accountability Mechanism

The ADB's current Accountability Mechanism (AM) Policy came into effect on 24 May 2012, replacing the previous 2003 Accountability Mechanism Policy. The AM is comprised of two separate offices: the Office of the Special Project Facilitator (SPF) for Problem-Solving and the Office of the Compliance Review Panel (CRP) for the Compliance Review.

The Office of the SPF oversees the Problem-Solving Function and reports to the ADB's President. The SPF's role is to facilitate a flexible, dialogue-based process whereby the relevant parties try to find a solution without determining fault or guilt. This function provides a forum for project-affected people to seek solutions to the problems they are experiencing with an ADB-assisted project. Problem-solving requires the constructive engagement of all parties, including the company, to come to a consensus on solutions.

The CRP oversees the Compliance Review Function, and is comprised of a full-time panel chair and two part-time panel members who report to the ADB's Board of Directors (the Board). The CRP is a fact-finding body that investigates alleged violations of the ADB's policies and determines if any non-compliance has or could result in direct, material and adverse harm to project-affected people.

Both offices share a Complaint Receiving Officer (CRO), who serves as the first point of contact to the AM. The CRO is responsible for receiving, acknowledging and forwarding complaints to the relevant AM office. Complainants can choose which function they would like to use, or can request both functions. The AM process does not require complainants to go through problem-solving before a complaint can be considered for a compliance review, but they cannot request problem-solving once a compliance review has started or if a review has addressed the issues. Complainants can request a compliance review if a problem-solving process ends without resolution, or when it concludes successfully.

2

Community considerations prior to submitting a complaint

- **Determine the scope of the affected community and whether they understand and support a complaint to the AM. Early and candid discussions between project-affected people and non-governmental organisation (NGO) allies about what they can realistically expect to achieve are critically important. Consider whether the affected group needs training on the AM process.**
- **If possible, any community divisions should be resolved early on, so they do not undermine the AM process. Complaints are most effective when project-affected people speak with one voice.**
- **Decide who will speak on behalf of the project-affected people during the process and how decisions will be made.**

3

Technical preparation for the complaint

- **Gather evidence detailing the real or potential harm, such as photographs, videos, letters, emails, written notes or other materials.**
- **Make sure to keep a record of the previous steps taken to resolve the problem, including with the relevant ADB Operations Department.**
- **Decide whether problem-solving, compliance review or both are needed to address your concerns.**
- **If possible, clearly define which ADB policies and procedures have been violated and how those violations have caused, or may cause, direct, material and adverse harm.**
- **Identify your desired outcomes and determine what you hope the ADB will do to resolve the problem.**

The ADB Accountability Mechanism **process**

Registration of the complaint

When the CRO receives a complaint, he or she acknowledges receipt and informs the SPF and the CRP, and the relevant ADB Department. The complainant has 21 days to decide which function to request.

Problem-Solving Function

If the SPF determines the complaint is eligible , it conducts an assessment, which could include one or more site visits and meetings with you and other relevant parties. Based on the assessment and comments received from the parties, the SPF will decide whether to proceed with problem-solving. Generally, the objective of the Problem-Solving Function is to bring the parties together and come to an agreement about how to address the problem without determining whether a breach has occurred. Once a problem-solving process has begun, either party can withdraw at any time, and you can request a compliance review. At the end of the process, the SPF will issue a public report that includes a summary of the complaint, steps taken to resolve the issues and any decisions made by the parties. The SPF will monitor the implementation of any agreement reached.

Compliance Review Function

If the Office of the CRP that oversees the Compliance Review Function determines that a case is eligible, it will issue an eligibility report for consideration and approval by the Board. If the Board approves the report, the CRP will conduct an investigation that may include one or more site visits, meeting with relevant parties and desk reviews. There is no timeline for an investigation. The review will assess whether the ADB failed to comply with its policies and whether serious harm has happened or could happen. To conclude the investigation, the CRP will issue a report with its findings.

If the CRP finds that the ADB violated its policies, ADB Management will propose ways to bring the project into compliance. The CRP will provide comments on Management's proposed actions, and then the report will be submitted to the Board for final consideration. The CRP's report will be made public after the Board approves any remedial actions, and the CRP will monitor any remedial actions.

4

Write the complaint

The AM has a sample letter and form, but you are not required to use them. The complaint should include:

- **The date, name, designations and contact details of the complainants and their local or non-local representatives; whether complainants wish their identities to remain confidential; and written proof authorising representatives. Nonlocal representatives should explain why they are the appropriate party to file a complaint on behalf of the project-affected people, including why there is no local representative available. Anonymous complaints are not accepted.**
- **A request for problem-solving and/or a compliance review.**
- **A description of the project, including the name and location.**
- **A description of the direct, material and adverse harm or potential harm.**
- **A description of the 'good faith' efforts taken to address the issues with the relevant ADB Operations Department and the results.**

While not required, you are strongly urged to include:

- **A description of the ADB's policies that are being violated and how non-compliance has or will cause direct, material and adverse harm.**
- **An explanation of your desired outcomes.**
- **Supporting documentation and evidence.**

The **who, what, when, where, and why** of filing a complaint

Who: A complaint may be brought by two or more people who are, or could be, "directly, materially, and adversely" affected by an ADB-assisted project. A complaint can be submitted on behalf of the affected people by a representative, provided that he or she identifies the affected people and includes evidence of the authority to act on their behalf.. You can request that your identity be kept confidential, but anonymous complaints are not accepted.

What: The complaint should request problem-solving or compliance review, depending on what you want to achieve. If you request problem-solving, you need to show that any harm was direct, serious and caused by an ADB-assisted project. If you request compliance review, the complaint should also include which ADB operational policies and procedures were not followed during the design, appraisal and/or implementation of the project that caused or may cause harm.

When: A complaint can be filed after you have made 'good faith' efforts to address your concerns directly with the ADB's Operations Department. This does not mean that you have to first raise the issues with a project-level grievance mechanism before submitting a complaint to the AM. A complaint can be filed before a project begins. The last day to submit a complaint is two years after the loan or grant closing date.

Where: The AM handles complaints concerning ADB-assisted projects in member countries, or from affected people in adjacent countries. The complaint should be submitted to the Complaint Receiving Officer (see address below).

Why: Submitting a complaint may bring the problem to the attention of the ADB Management and Baord, who have the power to redress harm, redesign projects, order compensation or possibly even cancel projects. Bringing a complaint may create a record of the ADB's violations, which may help in advocacy campaigns to address problems and prevent future harmful impacts.

5

File the complaint

- **The working language of the AM is English, but complaints can be written in any of the official or national languages of the ADB's developing member countries.**
- **Submit the complaint via email, fax, mail or by hand to:**

Complaint Receiving Officer
Accountability Mechanism Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Philippines

T +63 2 632 4444
F +63 2 636 2086
Email: amcro@adb.org

- **You can also hand deliver your letter to any ADB resident mission office, and request for it to be transmitted to the CRO.**

6

Follow up on your complaint

- **Follow up with the AM to ensure that the process is moving along if there are unreasonable or unexplained delays.**
- **Any proposals that come from problem-solving should be considered carefully for their real benefits before being accepted.**
- **If you request a compliance review, it is often helpful to speak to and inform members of the Board, who will ultimately decide what to do with the CRP's report.**
- **If the CRP concludes that the ADB has violated its policies, ensure the ADB follows through with any commitments made to remedy the harm or potential harm.**
- **After a compliance review is complete, you cannot appeal if you disagree with the CRP's findings or the Board's decision.**

Benefits and **limitations** of the mechanism

Submitting a complaint to the AM could:

- Help raise awareness about what is happening, both locally and internationally.
- Allow you to voice your concerns directly to the ADB.
- Lead to a mediated agreement that resolves the problem, facilitated by the SPF.
- Result in an official determination about whether or not there have been violations of the ADB's policies.
- Lead to action by ADB management and staff to correct any violations.

Submitting a complaint cannot:

- Guarantee the harm being caused by the project will be stopped or prevented.
- Guarantee that the AM will order problems to be fixed or award compensation to the victims.
- Allow issues to be addressed that have been previously submitted to the AM, unless new evidence or circumstances are presented.
- Challenge the adequacy or suitability of the ADB's policies or the laws, policies or regulations of the host government.
- Allege fraud or corruption as the Office of Anticorruption and Integrity of the ADB handles these complaints.

About this brochure

This brochure provides a brief overview of the work of the ADB's Accountability Mechanism (AM) and its procedure to file a complaint. Civil society organisations, workers, communities and groups of individuals who are harmed by an ADB-assisted project can use the AM to address their grievance. This brochure briefly explains how.

About the Human Rights & Grievance Mechanisms Programme

This publication is part of a series of brochures on grievance mechanisms produced by the Centre for Research on Multinational Corporations (SOMO)'s Human Rights & Grievance Mechanisms Programme. This project aims to improve the accessibility and effectiveness of non-judicial grievance mechanisms for stakeholders who experience adverse impacts on their human rights as a result of business activities. For more information, go to www.grievancemechanisms.org.

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About SOMO

SOMO is an independent, not-for-profit research and network organisation that promotes sustainable and fair global economic development and the elimination of the structural causes of poverty, environmental problems, exploitation and inequality.

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About Accountability Counsel

The brochures for the Human Rights & Grievance Mechanisms program are produced in partnership with Accountability Counsel. Accountability Counsel is a non-profit legal organisation that supports communities to defend their environmental and human rights when they have been harmed by internationally financed development projects. Accountability Counsel helps communities to voice their complaints about projects that affect them – and to demand remedies where rights are violated – through the use of non-judicial accountability offices.

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This publication is made possible with financial assistance from the Dutch Ministry of Foreign Affairs. The content of this publication is the sole responsibility of SOMO, and can in no way be taken to reflect the views of the Dutch Ministry of Foreign Affairs or the Asian Development Bank.

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GRAPHIC DESIGN: JUSTAR.NL