

ADB Safeguards Policy Review and Update
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via electronic mail

31 January 2024

Re: Recommendations on ADB's Draft Environmental and Social Framework

To whom it may concern,

Thank you for the opportunity to share our recommendations for Phase 3 of the consultations around the draft Environmental and Social Framework (ESF). The following written recommendations build on our previous [written statement](#) on the importance of being guided by lessons from ADB's Accountability Mechanism. Our recommendations relate to strengthening accountability and remedy for project-affected people who face environmental and social impacts associated with ADB's financing.

Accountability Counsel is an international legal nonprofit organization that employs community-driven and policy-level strategies to access justice through the independent accountability mechanisms of development finance institutions.

A. The role of ADB's Accountability Mechanism in facilitating remedy must be highlighted

- The description of the ADB's Accountability Mechanism contained in the Environmental Social Policy (ESP) does not sufficiently highlight its role as a forum for addressing and remedying harm. Instead Paragraph 61 of the ESP limits the description of the Accountability Mechanism as "independent forum and process whereby persons adversely affected by a project can voice their concerns and seek solution to their problems, and to request compliance review of alleged noncompliance by ADB with its operational policies and procedures." This is a limited understanding of the role and function of the Accountability Mechanism as project-affected people do not access the Accountability Mechanism purely as a learning exercise for the bank but also in order to seek remedy. Similarly ADB also has a corresponding obligation in ensuring that it provides remedy to those it's financing has harmed.¹ We recommend the following insertion:

Para 61, ESP "The Accountability Mechanism provides an independent forum and process whereby persons adversely affected by a project can voice their concerns and seek solution to their problems, and to request compliance review of alleged noncompliance by ADB with its operational policies and procedures **and seek remedy for harm suffered due to the project.**"

¹ [UN Office of the High Commissioner on Human Rights, Remedy in Development Finance: Guidance and Practice Section IV: Contributing to Remedy](#)

- Moreover, Paragraph 61 includes the requirement to engage in good faith with ADB’s relevant operations department before accessing the Accountability Mechanism. This creates an accessibility issue for communities that fear reprisals and do not want to raise issues with bank actors who they perceive to be involved in the environmental and social harm in the first place, as outlined [here](#) and [here](#). We recommend the following change:

Para 61, ESP “Project-affected persons may submit complaints related to a project to the project-level grievance mechanism, appropriate local judicial or administrative bodies, or mediation, or ADB’s Accountability Mechanism. ~~Project-affected persons will first make good faith efforts to resolve the problems with ADB’s relevant operations departments before approaching the Accountability Mechanism.~~”

- Further, this requirement is out of place in the ADB’s ESP given that no other eligibility or procedural requirement has been included. There is also a risk that including this current procedural requirement in the new ESF will unduly restrict the scope of the upcoming Accountability Mechanism policy review. We acknowledge and welcome the assurance that this language will be removed from the final version of the ESF and look forward to its removal.
- The ESP, being the primary public document that governs management obligations in projects, should further assert that ADB management can and should use its leverage over the client to encourage the implementation of remedial measures.

B. The definition of Mitigation Hierarchy should include the requirement to provide remedy

- We reiterate our earlier [recommendation](#) that the ESF should enable remedy in a manner consistent with UN Guiding Principles. In particular, the definition of Mitigation hierarchy should be amended to ensure ‘technical or financial feasibility’ criterion does not trump human rights considerations when remedying adverse impact.² Feasibility goes without saying, and putting it explicitly risks creating an excuse for noncompliance. Moreover, the mitigation hierarchy should move away from the “compensate/offset” paradigm, as it does not reflect the full range of potential remedies that may

² Examples of Good Practice:

I. Green Climate Fund, Environmental and Social Policy Para. IV.8.f. “The GCF adheres to the mitigation hierarchy as an overall principle to managing environmental and social risks and impacts, suitable for all instances of GCF- financed activities. The mitigation hierarchy aims to: (i) Anticipate and avoid adverse risks and impacts on people and the environment; (ii) Where avoidance is not possible, adverse risks and impacts are minimized through abatement measures; (iii) Mitigate any residual risks and impacts; and (iv) Where avoidance, minimization or mitigation measures are not available or sufficient, and where there is sufficient evidence to justify and support viability, design and implement measures that provide remedy and restoration before adequate and equitable compensation of any residual risks and impacts...”

II. African Development Bank’s Operational Standard 7 (Vulnerable Groups) Para. 11: “The objectives of OS7 are as follows: [...] Identify and avoid adverse impacts of Bank operations on the lives and livelihoods of vulnerable individuals and groups, including women and girls, highly vulnerable rural minorities including indigenous peoples. Where avoidance is not feasible, to reduce, minimize, mitigate, compensate or effectively remedy impacts.”

be required. Rather, the hierarchy should state that where harms are not prevented, they must be “remedied.” We recommend the following changes.

“Measures taken to (i) anticipate and avoid risks and impacts as a first priority; (ii) where avoidance is not possible, minimize or reduce risks and impacts to acceptable levels; and (iii) once risks and impacts have been minimized or reduced, mitigate and/or compensate for adverse impacts on the environment and project-affected persons. ~~(iv) Where avoidance, minimization or mitigation measures are not available or sufficient, the borrower/client will design and implement measures that provide remedy and restoration which may include adequate and equitable compensation of any residual risks and impacts~~ ~~Where any residual impacts are identified that cannot be addressed, the borrower/client will compensate for or offset them, where technically and financially feasible.”~~

C. The requirement for clients and sub-clients to disclose the existence of the Accountability Mechanism must be strengthened

- We are happy to note that Para 32 of ESS10 includes the requirement that “The borrower/client will include information about the ADB’s Accountability Mechanism as part of its meaningful consultation with project-affected persons and other relevant stakeholders.”
- However this requirement must be strengthened. We recommend that information about the applicability of the Accountability Mechanism must be part of the information that is included in the information disclosure under para 15 of ESS10 so as to enable meaningful consultation We recommend the following insertion³:

“15. The borrower/client will provide stakeholders with access to the following information as early as possible in a project cycle and in a timeframe that enables meaningful consultations with stakeholders on project design:...

(vi) The process and means by which concerns and grievances can be raised and will be addressed ~~;~~ **including disclosing information about the Accountability Mechanism.”**

- Additionally, Borrower/Clients should also be required to report on how they disclosed this information to communities.
- Moreover, given that the Accountability Mechanism is applicable to projects regardless of the nature and scale and its risk classification, we recommend that Borrowers/Clients be mandatorily required to disclose the existence of Accountability Mechanism in all projects.⁴ We are also seeking clarity on

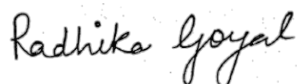
³ Example of Good Practice: AfDB’s new Integrated Safeguards System, E&S Operational Standard 10: 21(h) “The process and means by which grievances can be raised and will be addressed, including information about the project grievance mechanism and the Bank’s Independent Recourse Mechanism.”

⁴ ESS10, Para. 4, “The nature, scope, and frequency of stakeholder engagement will be proportionate to the nature and scale of a project, as well as to its potential E&S risks and impacts.”

whether this will form part of the mandatory requirement that will be incorporated in the legal agreement with the Borrower/Client and recommend that it does so.

- We further recommend that the requirement to disclose the Accountability Mechanism be mandatory for all FI activities⁵ as it is harder for project-affected people to know of ADB's involvement in the FI project. Annex 2 of the Environmental and Social Requirements for Financing Modalities and Products lays down stakeholder engagement requirements for FI clients which does not explicitly include the requirement to disclose information on the Accountability Mechanism.
- Finally, under ESS10, the ESF should require clients to cooperate in good faith with all Accountability Mechanism investigations and processes. This includes providing the Accountability Mechanism access to all relevant project documents, data, and staff. This requirement should also be included in legally binding contracts with FI clients.

Sincerely,



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⁵ Examples of good practice:

(I) AIIB ESF Para. 24.5 "Information on the availability of the PPM is provided in an accessible and understandable manner in locally appropriate language(s), including on the Client's (or beneficiary's) Project-related website." read with AIIB ESF Para 25: For FI Projects, establish: (a) a mechanism to address concerns of relevant Project stakeholders related to the FI's ESMS implementation; and (b) a requirement that a GRM be established for Bank-supported activities as described above in this Section and Sections 24, Project-level Grievance Redress Mechanisms..."

(II) The African Development Bank's Operational Safeguard 9 (Financial Intermediaries), Para. 28 states that: "The FI will require the subprojects to disclose AfDB's support to them, the existence of the project-level Grievance Redress Mechanism (GRM), the Bank's Independent Recourse Mechanism (IRM) and ensure that this information is clearly visible, accessible and understandable to affected communities."