

External Review of the Accountability Mechanism for the Asian Development Bank

Bruce Purdue

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Other ADB interlocutors included the following:

Ricardo Carlos Barba, Principal Safeguards Specialist, Office of Safeguards

Mark Bezuijen, Principal Environment Specialist, Agriculture, Food, Nature, and Rural Development Sector Office, Sectors Group

Donald Bobiash, ADB Executive Director; Chair, BCRC

Kamel Bouhmad, Senior Portfolio Management Specialist, Georgia Resident Mission

Arnaud Cauchois, Country Director, Nepal Resident Mission

Ajay Deshpande, Former Member, CRP

Warren Evans, Former SPF

Arntraud Hartmann, Former Member, CRP

Damien Horiambe, ADB Alternate Executive Director
 Moushumi Khan, ADB Alternate Executive Director
 Mark Kunzer, Advisor, Private Sector Operations Department
 Lesley Lahm, Country Director, Georgia Resident Mission
 Nurussa'adah Muharram, ADB Alternate Executive Director
 Antoine Morel, Principal Environment Specialist, Office of Safeguards
 Jocelyn Erlinda Munsayac, Principal Safeguards Specialist, Office of Safeguards
 Aruna Uddeeptha Nanayakkara, Senior Transport Officer, Sri Lanka Resident Mission
 Thomas Panella, Director, Agriculture, Food, Nature, and Rural Development Sector Office,
 Sectors Group,
 Llewelyn Roberts, ADB Alternate Executive Director
 Phil Rose, former ADB Executive Director; and former Chair, BCRC
 Ko Sakamoto, Principal Corporate Transformation Specialist, Transformation Office
 Vaideeswaran Sankaran, Member, CRP
 Nogendra Sapkota, Senior Social Development Specialist, Office of Safeguards
 Dai Chang Song, Principal Financial Sector Specialist, Public Sector Management and
 Governance Sector Office, Sectors Group
 Dingding Tang, Former Chair, CRP
 Rachel Thompson, ADB Executive Director
 Woochong Um, Managing Director General
 Halina Ward, former Member, CRP
 Priyantha Cabral Wijayatunga, Senior Director, Energy Sector Office, Sectors Group
 Kenichi Yokoyama, Director General, South Asia Department
 Nianshan Zhang, Head, Office of Safeguards
 Yevgeniy Zhukov, Director General, Central and West Asia Department

External interlocutors included the following:

Vasco Amaral Cunha, Head, EIB-CM, EIB
 Margaux Day, Policy Director, Accountability Counsel
 Sonja Derkum, former Head, EIB-CM, EIB
 Omar El Sabeel Larranaga, EIB-CM, EIB
 Janine Ferretti, Director General, IFC/MIGA, CAO
 Mark Goldsmith, Chair, Inspection Panel, World Bank
 Radhika Goyal, Policy Associate, Accountability Counsel
 Victoria Marquez Mees, Chief, Accountability Office, and Head, IPAM, EBRD

Professor Susan Park, University of Sydney

David Simpson, Director, IRM, AfDB

Marvin Taylor, Managing Director, Complaints Resolution, PPM, AIIB

Shamas Ur Rehman Toor, PPM, AIIB

Esteban Tovar, MICI, IADB

Dr Maartje van Putten

Andrea Cecilia Repetto Vargas, Director, MICI, IADB

NOTE: Titles cited are the titles as at the time of interview

Acronyms and Terms

AfDB	African Development Bank
AiIB	Asian Infrastructure and Investment Bank
AM	ADB's Accountability Mechanism
AMP	Accountability Mechanism Policy
AM2003	ADB's Accountability Mechanism Policy 2003
AM2012	ADB's Accountability Mechanism Policy 2012
AP or Aps	A person or persons affected by an ADB project or proposal
BCRC	Board compliance review committee
CAO	Compliance Advisor Ombudsman, IFC/MIGA
CCSD	climate change and sustainable development
CRO	complaint receiving officer
CRP	ADB's Compliance Review Panel
CSO	Civil Society Organization
CWRD	Central and West Regional Department
DFI	Development Finance Institution
DMC	Developing Member Country of ADB
EA	executing agency
E&S Policy	ADB's proposed Environmental and Social Policy
EARD	East Asia Regional Department
EBRD	European Bank for Reconstruction and Development
EIB	European Investment Bank
EIB-CM	Complaints Mechanism, EIB
ESF	ADB's proposed Environment and Social Framework
ESS	An ADB Environmental and Social Standard
External Review	This desktop review
Formal Review	The formal review of the AM2012, proposed for 2024
GRM	Grievance redress mechanism
IA	implementing agency
IADB	InterAmerican Development Bank
IAM	Independent Accountability Mechanism
IBRD or World Bank	International Bank for Reconstruction and Development
IDA	International Development Association
IED	Independent Evaluation Department
IFC	International Finance Corporation
IFI	International Finance Institution
IO	International Organization
IPAM	Independent Project Accountability Mechanism, EBRD

IRM	Independent Resource Mechanism
IT	Information Technology
KMAP	knowledge management plan
LCD	loan closing date
MDB	Multilateral Development Bank
MICI	Independent Consultation and Investigation Mechanism, IADB
MIGA	Multilateral Investment Guarantee Agency
NGO	Non-Government Organization
NOM	ADB's New Operating Model
OAG	ADB's Office of the Auditor General
OD	Operations Department, including Regional Departments
OCRP	ADB's Office of the Compliance Review Panel
OHCHR	Office of High Commissioner on Human Rights
OM	ADB's Operations Manual, as amended
OSFG	ADB's Office of Safeguards
OSPF	ADB's Office of the Special Project Facilitator
OVE	Operations Evaluation Department
PARD	Pacific Regional Department
PRC	People's Republic of China
PPM	Project-affected People's Mechanism, AIIB
PSO	Private Sector Operations or Non-Sovereign Operations
PSOD	Private Sector Operations Department
RAP	remedial action plan
RM	resident mission
S2030	ADB's Strategy 2030
SARD	South Asia Regional Department
SERD	Southeast Regional Department
SPF	ADB's Special Project Facilitator
SPS2009	ADB's Safeguard Policy Statement 2009
ToR	term of reference
WB	World Bank

Glossary of Terms

ADB’s Accountability Mechanism Policy 2003 (“AM2003”)	Refers to the “ <i>Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism</i> ”. Asian Development Bank. (R79-03, 8 May 2003)
ADB’s Accountability Mechanism Policy 2012 (“AM2012”)	Refers to the “ <i>Accountability Mechanism Policy 2012</i> ”. Asian Development Bank. Approved on 24 February 2012 (“the AM2012”)
AM Policy Review	Refers to the review of the strengths and weaknesses of the AM2003 and the major changes proposed for the AM, as set out in the AM2012
ADB’s proposed Environment and Social Framework (“ESF”)	Refers to the “ <i>Environmental and Social Framework</i> ” Consultation Draft. Asian Development Bank. Draft for Consultation – 7 September 2023, which comprises the E&S Policy and 10 ESSs
ADB’s New Operating Model (“NOM”)	Refers to the “ <i>Organizational Review A New Operating Model to Accelerate ADB’s Transformation Toward Strategy 2030 and Beyond</i> ”. Asian Development Bank. October 2022
ADB’s Strategy 2030 (“S2030”)	Refers to “ <i>Strategy 2030 – Achieving a Prosperous, Inclusive, Resilient, and Sustainable Asia and the Pacific</i> ”. Asian Development Bank. July 2018
ADB’s Safeguard Policy Statement 2009 (“SPS”)	Refers to the “ <i>Safeguard Policy Statement</i> ”. Asian Development Bank. June 2009
AfDB Independent Recourse Mechanism (“IRM”)	Resolutions B/BD/2004/9 - F/BD/2004/7 and B/BD/2004/10 adopted by the Boards of Directors established the IRM 30 June 2004 (“AfDB Enabling Resolution”) Resolution B/BD/2021/16 – F/BD/2021/11 (the second amendment) 2021 (“Amended Enabling Resolution”) established the IRM’s authority Independent Recourse Mechanism Operating Rules and Procedures (Approved July 2021) (“the IRM rules”) provide the details of the operational provisions of the Amended Enabling Resolution

AIIB Project-Affected People's Mechanism ("PPM")	<p>AIIB Policy on the Project-affected People's Mechanism (7 December 2018) ("the AIIB PPM Policy")</p> <p>The Complaints-resolution, Evaluation and Integrity Unit (CEIU) is responsible for the proper functioning of the PPM (PPM Policy, Section 1.2)</p> <p>Rules of Procedure of the Project-Affected People's Mechanism Issued by the Managing Director, Complaints-resolution, Evaluation and Integrity Unit (CEIU) (13 June 2019) ("the PPM Rules of Procedure")</p>
EBRD Independent Project Accountability Mechanism ("IPAM")	<p>EBRD Project Accountability Policy (April 2019) (<i>"the EBRD PAP"</i>)</p>
EIB EIB-Complaints Mechanism ("EIB-CM")	<p>EIB Group Complaints Mechanism Policy (November 2018) ("the EIB-CM policy")</p>
IDB Independent Compliance ("MICI")	<p>Policy of the Independent Consultation and Investigation Mechanism of the IDB MI-47-8 (14 April 2021) ("the MICI policy")</p>
IFC/MIGA Independent Accountability Mechanism ("CAO")	<p>External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness: Report and Recommendations (June 2020) ("the CAO Review report")</p> <p>Independent Accountability Mechanism (CAO) Policy (28 June 2021) ("the IAM(CAO) policy")</p>
World Bank Accountability Mechanism ("AM") Inspection Panel ("IP")	<p>External Review of the Inspection Panel's Toolkit Daniel D. Bradlow (14 May 2018) ("the IP review")</p> <p>Resolution No. IBRD 2020-0005 Resolution No. IDA 2020-0004 The World Bank Accountability Mechanism (8 September 2020) ("the WB Accountability Mechanism resolutions")</p> <p>Resolution No. IBRD 2020-0004 and Resolution No. IDA 2020-0003 The World Bank Inspection Panel (8 September 2020) ("the WB IP resolutions")</p>

The Inspection Panel at the World Bank:
Operating Procedures (December 2022) (“the
WB IP operating procedures”)

Accountability Mechanism: Operating
Procedures (as at 6 March 2023) (“the WB AM
operating procedures”)

Quotes from staff and interlocutors are included in the review without attribution.

AM data used in the review is drawn from the AM databases and was current as of 31
December 2023.

1. The External Review

The current AMP was issued in 2012 and is becoming out of date. A number of other multilateral development banks have updated both their safeguard frameworks and accountability mechanisms ... At the same time ... the Accountability Mechanism ... risks falling behind international best practice. It can be strengthened to deliver redress to genuine complainants more quickly and efficiently and reduce disruption to operations.

ADB Board Compliance Review Committee, 2022¹

The ADB's Accountability Mechanism (AM) is woefully behind good practice and needs to reform urgently. We seek for the Board to support an effective AM Policy review.

Accountability Counsel, June 2023²

The Asian Development Bank (ADB) must update the Accountability Mechanism (AM) because the AM2012, which was adopted more than a decade ago, has never been reviewed and must now be regarded as out of date.

According to the Terms of Reference, to ensure the AM remains effective and efficient, conforms to international best practices and is able to address emerging issues being considered under the ongoing review and update of the Safeguard Policy Statement 2009 (SPS), ADB Management decided to conduct this external report, in consultation with the Board of Directors, through the Board Compliance Review Committee, as Phase 1 of the AM Review. This external report will provide ADB Management with important perspectives to consider a planned formal review of the AM. This external report will be disclosed on the ADB website for public comments and, together with the outputs of other studies and the public comments, it will provide a baseline and recommendations that will feed into a "Formal Review" in Phase 2 of the AM Review. (See Appendix 1)

1.1 Aim

To recommend options to update and modernize ADB's accountability policy to ensure that it is credible, efficient, and effective and is consistent with good international policies.

1.2 Objectives

- i. To review current implementation, effectiveness, and adequacy of ADB's AM
- ii. To examine the scope for improving and updating the AM

¹ Annual Report of the Board Compliance Review Committee 2022 (ADB, February 2023), paras 30 & 35

² "Reforms Needed at the ADB's Accountability Mechanism" – Accountability Counsel Briefing for ADB's Board of Directors (June 2023)

1.3 Scope of Work

According to the Terms of Reference³, this review seeks to:

- i. **Analyze** the effectiveness and adequacy of the AM in light of its historical perspectives and objectives, the principles set out in the AM2012, taking into account concerns of project-affected people and other relevant stakeholders
- ii. **Assess** ADB's experience with the AM since 2012, reflecting the changing context of ADB operations, especially the adoption of Strategy 2030⁴, the NOM⁵ and the proposed ESF⁶ and the impact of emerging issues and good international policies relevant to the accountability of MDBs
- iii. **Compare** the AM with international accountability mechanisms (IAMs) at other MDBs, such as the African Development Bank (AfDB), Asian Infrastructure Investment Bank (AIIB), European Bank for Reconstruction and Development (EBRD), European Investment Bank (EIB), Inter American Development Bank (IDB), International Bank for Rural Development (IBRD) and the International Finance Corporation (IFC), Multilateral Investment Guarantee Agency (MIGA)
- iv. **Recommend** options to improve and update the ADB's accountability policy and procedures

1.4 Approach

This review is a desk-based study, which has benefited from engagement with interlocutors at ADB and among other accountability stakeholders.⁷ The review was conducted in accordance with an agreed workplan and timetable.⁸

Basic ADB documents and supplementary documents informed the desktop study.⁹ The interviews helped to interrogate these resources, where possible. On 26 March 2026 a draft of this report was submitted to ADB for any comments from a Board/management working group.

The review reflects on the origins of accountability in MDBs and the journey that led to the contested nature of compliance. It also advocates for a renewed culture of accountability at ADB and recommends that ADB consider several options that aim to deliver quality remedy

³ See **Appendix 1 Terms of Reference**

⁴ ADB's *Strategy 2030– Achieving a Prosperous, Inclusive, Resilient, and Sustainable Asia and the Pacific*. Asian Development Bank. July 2018

⁵ ADB's New Operating Model: see "*Organizational Review A New Operating Model to Accelerate ADB's Transformation Toward Strategy 2030 and Beyond*". Asian Development Bank. October 2022. The NOM includes corporate shifts towards initiatives in climate change; private sector operations ("PSO"); and a focus on solutions and new ways of doing business.

⁶ ADB's proposed *Environment and Social Framework*, including an E&S Policy and 10 ESSs, that is expected to replace ADB's existing Safeguard Policy Statement 2009

⁷ The review did not include interviews with communities affected by ADB-financed projects and proposals. It is expected that the Formal Review will be based on much wider consultations and must include interviews and interaction with such affected communities.

⁸ The agreed timetable was varied in March 2024 to accommodate further research with other IAMs.

⁹ Basic ADB documents included all constituent policies, reports and review documents relating to the AM, documents relating to grievance resolution practices at ADB, and documents related to S2030, the proposed ESF and the NOM. Supplementary documents included documents and reports relating to other IAMs (such as structure; functions; organisation; governance and case data), CSO and NGO publications, books, and studies and articles on IFI accountability, as well as materials on development effectiveness.

to people affected by development finance projects, which is a central feature of contemporary accountability policy and procedures.

The themes of this review are **credibility, access, effectiveness** and **efficiency**.¹⁰

Section 2 of the review emphasises the importance of the Formal Review and urges the revival of an updated accountability culture at ADB. Section 3 analyzes the effectiveness and adequacy of the AM and assesses ADB's experience with the AM since 2012.¹¹ Section 4 reviews important emerging issues for IAMs and refers to the comparison of the AM with comparator IAMs¹². Section 5 surveys the major issues involved in updating and improving ADB's accountability policy, while Section 6 examines the changing context of ADB operations, especially the adoption of Strategy 2030 and the NOM and the likely approval of the ESF. Section 7 recommends options to improve and update ADB's accountability policy and procedures, taking into consideration other IAMs and emerging good policies¹³.

¹⁰ These themes are not new: they were the parameters of the review that led to the AM2012 (See Section 2.3 and Section 3, *infra*.)

¹¹ ToR, *Detailed Tasks (ii) (a) & (b)*

¹² *ibid.*, (ii)(c)&(d)

¹³ *ibid.*, (ii)(e)

2. Reviving a Culture of Accountability

2.1 The Importance of the Proposed Formal Review

The upcoming Formal Review this year constitutes a crucial milestone for independent accountability at ADB.

There has been no review of ADB's accountability policy for over a decade, as there is no review trigger in the AM2012 (other than a reference to an interim benefits and costs study¹⁴). The principles and techniques that underpin MDB accountability have evolved significantly since 2012 and ADB must respond to a changing landscape for accountability in development finance.

At a practical level, there is uncertainty over aspects of the AM2012. In 2019 for example, the General Counsel issued a comprehensive legal memorandum outlining his interpretation of several features of ADB's accountability policy, which led to the issuance of "Clarifications" of the policy in 2020. Such *ad hoc* interpretations and clarifications must now give way to policy clarity.

Over the last 12 years, the other IAMs have undergone policy revisions and design enhancements to align with emerging best practices. There are more IAMs now than in 2012 tackling accountability challenges¹⁵ and several of them are currently engaged in reviews similar to ADB's review process.¹⁶ With the growing scrutiny of MDB accountability by nongovernmental organisation (NGO) and civil society organisation (CSO) stakeholders (particularly on the quality of IAM independence), along with the release of global reports on accountability policies and procedures at MDBs, the need for ADB to review its accountability policy is urgent.

Moreover, as ADB navigates the implications of Strategy 2030¹⁷, the NOM¹⁸ and an eventual update to environmental and social safeguards policy¹⁹, alongside the introduction of ambitious new financing instruments, there may well be an increased risk of harm, now or in the future, to affected people, communities, and environments and ADB needs to be better prepared to address any such risks.

Recent legal developments have seen the rejection of absolute legal immunity traditionally accorded to international organizations like ADB by certain courts, including the United States Supreme Court. Consequently, an ineffective accountability system may encourage affected individuals or their representatives to launch lawsuits seeking injunctive relief or damages for alleged harm. While such a risk is uncertain, ADB should still mitigate any risk by offering credible alternative dispute resolution solutions grounded in an independent, competent, and efficient accountability system.

¹⁴ AM2012, para. 212

¹⁵ The association of IAMs, the IAM Network or IAMnet, has increased from 10 members (2012) to 24 members (2023). The IAMnet was consolidated by ADB: ADB. 2009. *Piloting a Community of Practice for Independent Accountability Mechanisms*. Manila. (approved for \$150,000). The network is available at <http://iamnet.adb.org>.

¹⁶ AIIB; EBRD; EIB; World Bank

¹⁷ *Strategy 2030*

¹⁸ "Organizational Review A New Operating Model to Accelerate ADB's Transformation Toward Strategy 2030 and Beyond". Asian Development Bank. October 2022

¹⁹ "Environmental and Social Framework" Consultation Draft. Asian Development Bank. Draft for Consultation – 7 September 2023, which comprises the E&S Policy and 10 ESSs

ADB will need a robust review process to introduce changes to its accountability policy that align with contemporary best practices; and to invest adequate resources to ensure the effectiveness of the policy. The Formal Review should aim to guarantee the independence of the AM, improve access to the AM, and acknowledge the importance of delivering remedies to affected individuals and communities.

2.2 First Principles

Accountability and compliance are pillars that can enhance the reputation of an organization and build trust among its stakeholders.

Across various accountability systems, whether in corporate governance, commissions of inquiry, or IAMs, there are common features that contribute to their effectiveness. These include:

- Clearly defined policies and procedures
- Establishment of a dedicated accountability team
- Oversight from, say, a Board of Directors
- Protection for complainants, ensuring they can voice concerns without fear of reprisal
- Impartial, well-documented, evidence-based investigations conducted within reasonable timeframes
- Implementation of recommendations based on investigation findings, with tracking mechanisms to assess effectiveness and the quality of outcomes
- Staff understanding of accountability and compliance, supported by training and educational resources
- A commitment to continuous learning and improvement
- Sound record-keeping practices, transparency, and utilization of technology for enhanced efficiency

Similarly, commissions of inquiry typically exhibit features that affirm their investigatory independence²⁰, including:

- Clear terms of reference outlining their scope and objectives
- Leadership by a commissioner(s), supported by experienced staff, adequate funding, and access to expertise, including legal advice
- Full investigative powers
- Freedom from interference or undue influence
- An obligation to conduct proceedings with fairness and transparency.
- Strict guidelines to prevent conflicts of interest

Professor Edith Brown Weiss, a former Chair of the World Bank's Inspection Panel²¹, played a significant role in shaping accountability mechanisms at MDBs.²² As a powerful advocate

²⁰ For example, see "Keeping them Honest: the Case for a Genuine National Integrity Commission and Other Vital Democratic Reforms" by Stephen Charles and Catherine Williams. (Scribe, 2022), pp.88-89

²¹ Member (2002) and Chair (2003-2007). See "*The World Bank Inspection Panel: Participation and accountability*" by Edith Brown Weiss, Peter L. Lallas and Anna Herken in "Envisioning reform: enhancing UN accountability in the 21st century", edited by Sumihiro Kuyama and Michael Ross Fowler (UN University, 2009)

²² See "*Contextual Accountability, the World Bank Inspection Panel, and the Transformation of International Law in Edith Brown Weiss's Kaleidoscopic World*" David Hunter. The Georgetown Environmental Law Review, Vol.32:439

for the independence of accountability functions, she emphasized credibility, accessibility, efficiency, and effectiveness as criteria to evaluate IAMs.²³ When ADB reviewed the AM2003 in 2010-11, it adopted an analytical approach based on these same criteria²⁴.

2.3 Origins of Multilateral Development Banks' Accountability

The origins of MDB accountability functions are a reminder of why ADB's accountability is important.

From the 1980s mounting concerns about the potential adverse impacts of MDB-financed projects on affected communities, coupled with the traditional immunity from legal proceedings enjoyed by MDBs, prompted increasing calls for enhanced accountability measures.

In the early 1990s MDBs faced criticism "... *that (they) ignored environmental issues*"²⁵. The World Bank's influential 1992 Wapenhans Report²⁶ emphasized the necessity for "*vigilance*" and "*rigorous and continuous self-assessment*" due to the risks associated with development financing. Importantly, the report observed:

*"Noncompliance remains a serious problem ... In an era of heightened concern over the importance of prudent governance, it is unacceptable that instruments of transparency and accountability are neglected"*²⁷

Responding to concerns from the World Bank Board, CSOs, NGOs and other stakeholders, the first suggestions emerge in 1993 that "... *the interests of the Bank would be best served by the establishment of an independent Inspection Function ... to augment the Bank's existing supervision, audit and evaluation functions*". The bank needed "*ready access ... to a reliable source of independent judgment*". Some have also suggested that controversies surrounding specific projects²⁸ "*caused the establishment of the Inspection Panel*"²⁹

The U.S. Congress³⁰ provided a forum to consider accountability in development finance and in 1993 received proposals from prominent NGOs³¹ advocating for an "*independent appeals commission that would receive complaints from people in developing countries*". This commission would: be appointed by the World Bank Board; be independent; have authority to receive complaints from individuals in developing countries; make recommendations to the Board regarding project suspension or modification; have access to all World Bank files; publish its findings; have an independent budget; and prohibit involvement of former World Bank staff in the commission.

²³ E.B. Weiss. Note on Criteria for Evaluating Accountability Institutions in MDBs. Address to the 4th Meeting of the Accountability Mechanisms. London. 21 June 2007 (World Bank. 2009. *Accountability at the World Bank: The Inspection Panel at 15 Years*. Washington. DC. Annex B pp. 109-113).

²⁴ AM2012, para. 69; Appendix 7: Summary Assessment of the ADB Accountability Mechanism (The AM2003 policy review is set out in AM2012)

²⁵ "*Policing the Banks: Accountability Mechanisms for the Financial Sector*" Maartje van Putten (McGill-Queens University Press. 2008) (*hereinafter referred to as "Policing the Banks"*), p.61

²⁶ "*Effective Implementation: Key to Development Impact*" World Bank R92-195. 1 September 1992, authored by Willi Wapenhans ("the Wapenhans Report")

²⁷ *ibid.*, 22

²⁸ For example, the Narmada Dam Project in India - Development Credit Agreement No. 1553 - IN and Loan Agreement No. 2497 - IN., 1985, effective on 6 January 1986.

²⁹ *Policing the Banks*, op cit., p.74

³⁰ Through the U.S. House of Representatives Subcommittee on International Development, Finance, Trade, and Monetary Policy

³¹ The NGOs included Environmental Defence Fund, Sierra Club, National Wildlife Federation, Friends of the Earth and the Bank Information Center

At the same time, the World Bank recognized several institutional challenges, including an "approval culture," declining project quality, the need for stricter environmental policies, procedures, and guidelines, and pressure for access to information. Consequently, the establishment of an independent inspection panel was deemed essential to safeguard the Bank's interests and enhance transparency and accountability.³² These concerns still attend development financing.

Following the establishment of the Inspection Panel, World Bank President James Wolfensohn hailed it as an "unprecedented means" to increase "transparency and accountability" in bank operations and stated:

"... This was a first of its kind for an international organisation - the creation of an independent mechanism to respond to claims by those whom we are most intent on helping that they have been adversely affected by the projects we finance... it has empowered and given voice to those we most need to hear. At the same time, it has served the Bank itself through ensuring that we really are fulfilling our mandate of improving conditions for the world's poorest people".³³

Since these early initiatives, the landscape of international development finance has continued to evolve significantly, with increased levels, types, and complexity of funding usually requiring adherence to specific environmental and social safeguards. Large and diverse communities are affected by MDB-financed projects and so there has been a corresponding rise in demands from those communities for better MDB accountability. These pleas are often supported by NGOs and CSOs and involve calls for reforms in the organization, governance, and operation of IAMs.

Appendix 2 exhibits the evolution of accountability for development finance with a chronology of selected milestones, highlighting changes in comparator IAMs, the publication of policy papers and significant contributions from NGO and CSO practitioners.

2.4 Culture and Leadership

MDB accountability symbolises a commitment to people who are or may be adversely affected by its projects and proposals.

Therefore, ADB should be proud of the fact that it champions accountability³⁴ and it should take the opportunity of the review to cultivate a culture that values prompt responses to complaints, independent investigations of non-compliance, the efficient delivery of quality remedies when necessary, and continuous learning to enhance development effectiveness and project quality. Such a culture would require the concerted effort of the Board, management, and staff and goes beyond merely following the rules. As the UNOHC's 2016 "Glass Half Full report" emphasizes, a modern accountability system consists of the IAM but also includes the Board of Directors and management of the concerned DFI: each of these three participants must discharge responsibilities for the system to work properly to deliver remedies for affected people.³⁵

³² *Policing the Banks*, op. cit., p.84 (quoting the then-World Bank General Counsel, Ibrahim Shihata)

³³ Alvaro Umana Quesada "The World Bank Inspection Panel: The First Four Years, 1994-1998, Foreword by James Wolfensohn

³⁴ Maartje van Putten "Policing the Banks", interview 25 November 2023

³⁵ "Glass Half Full – The State of Accountability in Development Finance" UN Office of the High Commissioner on Human Rights (January 2016) ("Glass Half Full report")

In 2019, Philippe le Houérou, a former CEO of IFC, emphasized the importance of nurturing a proactive culture that acknowledges mistakes, takes ownership, and commits to rectifying errors swiftly. Moreover, such a culture that fosters an environment of partnership rather than assigns blame is also reflected elsewhere:

An ... accountability management culture stems from its implementation of compliance and dispute solutions, based on credibility and enhanced by reputation. Accountability management should be championed from top to bottom, more partnership than contested blame. The ... accountability culture naturally requires leaders to set an example and take the lead. In particular, promoting accountability awareness among managers, taking the lead in capacity building, accountability training and fostering publicity of accountability services and actions. The benefits of accountability are not derived from short-term reactions but depend on ... embracing an accountability culture and partnership to sustain long-term operations.

Law.Asia³⁶

The IFC/MIGA CAO review in 2020 highlighted the need for a more proactive engagement culture:

“... in order for IFC/MIGA to be more effective in providing support to their clients and in helping to mitigate harm resulting from environmental and social impacts, they need to develop a more active engagement culture, not only with the client but also with the affected people – both in proactive stakeholder engagement and in response to those who bring complaints.”³⁷

Ethical leadership is crucial in setting the tone and fostering this culture of accountability.³⁸ ADB must aim to instil an organizational culture grounded in planning, policy enhancements, skill development, and personnel reforms. According to ADB's own NOM³⁹, successful cultural transformation involves aligning with ADB's values, delegating approval authority, empowering staff, promoting collaboration and innovation, streamlining processes, decreasing bureaucracy, and encouraging feedback and continuous improvement: The NOM asserts that “*cost cutting is not the objective*”.

And, as the NOM makes clear, culture is “... *an environment that develops and empowers staff and is ... collaborative and innovative, consistent with the organizational values formulated under the Culture Transformation Initiative (CTI)*”⁴⁰ This should apply equally to ADB's accountability policy.

³⁶

³⁷ External Review of IFC/MIGA E&S Accountability, including CAO's Role and Effectiveness – Report and Recommendations. IFC/MIGA. June 2020 (*hereinafter referred to as “the CAO Review”*), para. 34. See [Recommendation 4](#): Regardless of the Mechanism Used, IFC/MIGA Need a More Active Response Culture and Greater Willingness to Engage with Clients and Complainants.

³⁸ See “*The Eight Essential (Leadership) Capabilities for the 21st Century*” by Dr Ruby Campbell, CEO, ProVeritas Leadership, SAM (7 September 2023). ADB will need to communicate the AM objectives clearly, consider innovative solutions and foster collaboration that guarantees that the AM is “*valued, respected and heard*” using partnership rather than contest to promote a “*culture of trust and engagement ... to achieve shared goals*”. ADB should ensure that the AM contributes to “... *a culture of learning ... (to) capitalise on emerging trends ... and navigate (an unpredictable future)*”. The AM can provide opportunities to learn from mistakes, grow and adapt to foster “*continuous improvement*”.

³⁹ Organizational Review: A New Operating Model to Accelerate ADB's Transformation Toward Strategy 2030 and Beyond (ADB. October 2022) (the “NOM”), See paras. 29, 36(ix), 131 (**cultural transformation**) and 152).

⁴⁰ *ibid.*, para.29

3. The Accountability Mechanism Policy 2012

3.1 Accountability at ADB

From the outset, ADB's accountability policy aimed to achieve an extensive list of objectives:

- Provide a platform to address and resolve complaints from people affected by ADB-assisted projects
- Establish an independent body to investigate ADB's compliance with its operational policies and procedures
- Ensure fairness, transparency, efficiency, and cost-effectiveness
- Administer accountability measures to enhance project quality and development effectiveness
- Improve complaint management and response processes through learning, capacity development, and training
- Complement ADB's existing project supervision, reporting, audit, and evaluation systems.
- Facilitate public access to ADB, particularly through beneficiary participation
- Promote good governance to foster confidence in ADB
- Maintain the highest professional and technical standards in staffing and operations

In 1995 ADB established its Inspection Panel ("IP"), which was the first independent body designed to investigate ADB's compliance with its own operational policies and procedures.⁴¹ ADB received 8 requests for inspection under the 1995 IP policy but determined that 6 of them were ineligible⁴² and only inspected 2 projects, namely the Samut Prakarn Wastewater Management Project in Thailand⁴³ and the Chashma Right Bank Irrigation Project (Stage III) in Pakistan.⁴⁴

ADB's experience under the IP policy proved to be controversial and its initial approach faced criticism. As the subsequent review observed: "... *it became evident that the current inspection process and procedures were lengthy, confusing, and complex for most stakeholders both inside and outside ADB. The (Samut Prakarn Project) also raised concerns about independence, credibility, transparency and information dissemination, and effectiveness of the Inspection Function*".⁴⁵ The IP's credibility and independence were questioned, leading to early concerns about ADB's accountability policy.⁴⁶

In 2002 ADB reviewed the 1995 IP policy and subsequently adopted AM2003⁴⁷, which replaced the Inspection Panel with the AM, consisting of the CRP and the SPF.

⁴¹ ADB. ADB Inspection Policy. Board paper R225-95, the "Establishment of an Inspection Function" (10 November 1995), approved by the Board of Directors on 5 December 1995

⁴² AM2012, para. 6, p.2

⁴³ ADB. 1995. *Report and Recommendation of the President to the Board of Directors: Proposed Loan to Thailand for the Samut Prakarn Wastewater Management Project*. Manila (Loan 1410-THA for \$150 million, approved on 7 December 1995) ("the Samut Prakarn Project").

⁴⁴ ADB. 1991. *Report and Recommendation of the President to the Board of Directors: Proposed Loan and Technical Assistance to the Islamic Republic of Pakistan for the Chashma Right Bank Irrigation Project (Stage III)*. Manila (Loan 1146-PAK for \$185 million, approved on 17 December 1991) ("the Chashma Right Bank Project").

⁴⁵ ADB "Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism" (May 2003) ("the 2003 Policy"), para. 4, p.1

⁴⁶ See "The International Finance Institutions: A Call for Change" A Report to the Committee on Foreign Relations, United States Senate. (One Hundred Eleventh Congress, Second Session, March 10, 2010), pp. 42-43

⁴⁷ "Review of the Inspection Function – Establishment of a New ADB Accountability Mechanism" May 2003 ("the 2003 Policy")

In 2009 the CRP commenced a compliance review under the AM2003 in relation to the Fuzhou Environmental Improvement Project in PRC.⁴⁸ In November 2009, after extensive discussions, meetings, and submissions between the CRP and PRC, together with representations from the highest levels of ADB, PRC refused to allow the CRP to visit the project site. The CRP determined that it could not then complete the review of ADB's compliance. Once again, doubts were raised about the effectiveness of ADB's accountability efforts.

In 2010 ADB initiated a review of AM2003, commencing with an independent external review⁴⁹, followed by a proposed policy paper⁵⁰ and culminating in the AM2012, which was approved on 24 February 2012.

So, the road to the current AM2012 was marked by controversy. Each of the AM2003 and the AM2012, respectively, was preceded by a controversial compliance investigation that contributed to negative impressions of accountability at ADB, particularly compliance reviews.⁵¹ While the AM has made progress, scepticism remains. Therefore, while the Formal Review should certainly focus on upgrading and improving the policy, it should also take the opportunity to renew a positive culture of accountability and compliance in ADB.

3.2 The Major Changes Initiated by AM2012

The AM2012 was designed to overcome several perceived weaknesses in the AM2003.⁵² The policy review also reflected on the reasons why there had only been a relatively small number of requests for compliance review.⁵³ (A summary of the strengths and weaknesses of the AM2003 and comments on the limited number of compliance review cases are in **Appendix 3**.)

The AM2012 introduced "*major policy changes*" to the AM⁵⁴, which were predominantly focussed on the CRP and compliance review.⁵⁵ As mentioned, the AM2012 used the analytical framework organised around credibility, accessibility, efficiency and effectiveness.⁵⁶

This review examines each of the major policy changes using the same rubric.⁵⁷

⁴⁸ PRC: Fuzhou Environmental Improvement Project (Loan 2176-PRC, approved on 29 July 2005) ("*the Fuzhou Project*")

⁴⁹ "Independent Review of the ADB Accountability Mechanism" Dr Maartje van Putten and Dr Ishrat Husain (December 2010) ("*the 2010 Independent Review*").

⁵⁰ "Further Strengthening the Accountability Mechanism" (ADB, February 2011) ("*the 2011 AM Paper*")

⁵¹ This criticism did not extend to problem solving by the SPF, which involves negotiated solutions between consenting parties rather than a forensic investigation of ADB's compliance or failure to comply.

⁵² AM2012., Paras 43 – 69; Appendix 7: Summary Assessment of the ADB Accountability Mechanism.

⁵³ The 2012 – 2023 data reveals that during this period there were a total number of 21 requests for compliance review (though one request was combined with an earlier case). Of the 20 cases, 12 were found to be "ineligible" or *ultra vires*, and 3 were withdrawn. Five requests were processed by the CRP but the board refused to authorise compliance reviews in 2 cases (*See pp.43-44 below*).

⁵⁴ *ibid.*, Paras 70 - 101

⁵⁵ Both before the AM2012 was adopted, and after, (and as suggested in footnote 48 *supra*.) there has been much less policy concern over the SPF and the OSPF.

⁵⁶ *ibid.*, para. 69; Appendix 7 (As per AM2012, footnote #25, ADB's assessment was based on the criteria identified by Professor Brown Weiss in 2007. *See footnote #21, supra*.)

⁵⁷ The major policy changes could well contribute to more than one of the 4 criteria used in the analytical framework; but for ease of presentation each of the major changes appears under only one criterion.

3.3 Credibility

The credibility of an IAM depends on several factors, notably its independence and its visibility, competence, and effectiveness.

The AM2012 introduced major changes to enhance the independence of compliance review⁵⁸ and to clarify its roles.⁵⁹ It also addressed compliance review site visits, which were contentious at the time of the review.

Nevertheless, today there are still challenges related to these major changes in 2012 that affect the credibility of the AM.

3.3.1 Enhancing the Independence of Compliance Review

The major changes introduced by the AM2012 to enhance the independence of compliance review included provisions for CRP members to be appointed by the Board “... *based on the recommendation of the BCRC in consultation with the President*”; the CRP Chair to become the head of the OCRP (thus dispensing with the President-appointed OCRP secretary); and the CRP work program and budget process “*to be strengthened*” and greater involvement by the BCRC.⁶⁰

The AM2012 also sought to improve Board oversight with the BCRC acting as the focal point for CRP’s interactions with the Board, dealing with “*regular dialogue on the Accountability Mechanism*”, “*annual performance feedback*” on the CRP members,⁶¹ quarterly updates on CRP/OCRP work, the CRP/OCRP work plan and budget, the AM annual report, OCRP outreach and feedback on progress.⁶² (Obviously, the Board does not have oversight of the entire AM, as the SPF currently reports to the President.)

These changes have been unremarkable but were, perhaps, designed to enhance the appearance of independence. As ADB staff noted, “... *looking at the impact of these various changes ... (the AM2012) didn’t make the CRP any more independent because people already figured that they are independent anyway*”.

The AM2012 does not mention any of the other indicia of AM independence that have emerged over the last decade and are now considered to be good practice among comparable IAMs.

3.3.2 Clarifying the Roles of Compliance Review

The AM2012 sought to “*clarify the roles*” of compliance reviews and introduced significant modifications to the compliance review function.⁶³

Rather than “enhancing” the independence of compliance reviews, these major changes could be perceived as diminishing that independence. These major changes seemed

⁵⁸ 2012 Policy, paras. 52 & 53 (SPF’s independence vis-a-vis ODs and project staff has not emerged as an issue.)

⁵⁹ *Ibid.*, para. 54

⁶⁰ *Ibid.*, paras. 83-84. This approach was based on similar procedures designed to ensure the independence of ADB’s Independent Evaluation Department (“IED”)

⁶¹ Although this part of the policy response refers to the BCRC engaging in regular dialogue with the “Accountability Mechanism”, this was confined to compliance reviews, as it is unlikely that this was also designed to be a forum for the Board to engage with the SPF.

⁶² The BCRC seems to have far less involvement with the SPF/OSPF.

⁶³ AM2012, paras. 85-86

designed to downgrade the roles of the CRP while expanding the involvement of management in the compliance review process. This affects the credibility of the CRP.

Under the AM2003, the CRP investigated allegations of ADB's non-compliance and, if it determined that ADB was non-compliant, the CRP recommended remedial action to the Board.⁶⁴ The policy stipulated that the CRP should issue findings and recommendations, including those for any remedial changes in the project's scope or implementation.⁶⁵

The AM2012 criticized this approach, noting that CRP recommendations were either too "*specific and detailed*" blurring the line between compliance review and project design, or too broad, addressing the adequacy or suitability of ADB policies and procedures, allegedly exceeding the CRP's mandate.⁶⁶

Rather than addressing these matters with the CRP, the AM2012 simply changed the CRP from an "investigatory" body to a "fact-finding" body⁶⁷ and removed its authority to make recommendations to the Board. Now, the CRP only provides findings to the Board and no longer formally recommends remediation solutions. The responsibility for crafting recommendations has shifted to management, involving the host DMC and approval by the Board.

Some AM personnel say that the CRP *prima facie* independent from management. However, this seems to overlook the significance of the major changes in the role of the CRP introduced by the AM2012. As the CRP's power to recommend remediation has been transferred to management, there is the risk that the remediation recommendations emerging from an "independent" compliance review will be influenced by the very management whose actions the CRP has investigated: those found responsible for policy or procedural violations now craft the recommendations for remedy. This shift diminishes the CRP's credibility and raises concerns about the efficacy of ADB's compliance review.

Some ADB staff contend that the CRP remains "*very independent*" and question whether a fact-finding body that presents findings to the Board is really any different from an investigatory body that recommends remedial action to the Board. However, contemporary good practice suggests that, at the culmination of an independent compliance review, an IAM should have the unfettered power to make recommendations directly to the Board for remedial action, as necessary.

Moreover, it also seems that ADB may still have concerns about the CRP's "*professional independence*" and may feel that there is room for further clarification or refinement of the CRP's role, particularly where management considers that the CRP has exceeded its mandate by applying standards that are not found in ADB policies or procedures or by suggesting remedial action in the absence of a finding of "actual harm".

⁶⁴ AM2003, paras. 34 & 99

⁶⁵ AM2003, *ibid.*

⁶⁶ AM2012, para. 54

⁶⁷ AM Policy 2012, para. 114, states that "*The CRP will be a fact-finding body that reports to the Board through the BCRC ...*", and para. 130 states that "*The CRP will be a fact-finding body on behalf of the Board.*" *Fact-finding* simply connotes information gathering; whereas *investigation* is more detailed and entails judgment and conclusions based on the analysis of evidence. AM2012 explicitly sought to "*clarify*" a different mandate for the CRP. So, this must be taken to mean that there is a difference between an "*independent investigatory body*" with a mandate to recommend remedial action (AM2003) and a "*fact-finding body*" with no such mandate (AM2012).

The AM2012 has not succeeded in enhancing the independence of compliance review at ADB and policy uncertainty persists. The AM cannot maintain credibility if its independence and roles are perceived to have been attenuated.

3.3.3 Addressing Site Visit Issues

Most commentators acknowledge that site visits may be necessary for the visibility and credibility of an IAM.⁶⁸ Site visits allow complainants and other APs to engage with the IAM in person, particularly during compliance reviews. The major policy changes in the AM2012 primarily addressed site visits conducted by the CRP for compliance reviews; apparently there were no issues regarding the SPF's site visits for problem-solving.

The CRP investigates ADB's compliance.⁶⁹ However, during the period preceding the AM2012, some borrower countries had concerns regarding IAM site visits by IAM to investigate compliance. Perhaps this was due to fears of potential encroachment on the host's sovereignty or the risk of negative connotations concerning the host's culpability. In this context, ADB has worked with EAs and IAs to explain the compliance review function better and allay host countries' apprehensions over compliance reviews. There seems to be an increased understanding among DMCs that compliance reviews may necessitate CRP visits.

The AM2003 had assumed "*the good faith cooperation of all parties in the compliance review process*" and anticipated routine consents for site visits.⁷⁰ In the aftermath of the site visit refusal for the review of ADB's compliance in the Fuzhou Project⁷¹ the AM2012 recommended adopting a "*partnership approach on site visits*" and leveraging ADB's "*good offices and established international mechanisms*" to assist the CRP in obtaining country access.⁷² These provisions reiterated the practical, common-sense approach to site visits that the CRP had followed since 2003. Subsequently, there has been no significant change in the way in which the CRP secures host country permissions for site visits and, since 2012, no DMC has refused permission for the CRP to conduct a site visit.

There is, however, one issue that deserves reflection.

The AM2012 now stipulates that, if a host DMC does refuse permission for a site visit, the CRP must still "*complete the compliance review*" and report to the Board.⁷³

The CRP may decide that it can complete a credible compliance review without a site visit. But if, in its professional judgment, the CRP determines that a site visit is essential for a credible, independent compliance review, and the host DMC refuses permission for that visit, there must be a question of whether it is appropriate to expect the CRP to complete that compliance review in any event.

⁶⁸ Indeed, some commentators have suggested that ADB loan agreements should bind DMCs to permit site visits in any case where an AP complains about ADB's non-compliance. Equally, DMCs contend that "compliance" is about ADB's compliance with its own policies and procedures, not a breach of loan covenants and, therefore, site visits should not be addressed in loan documents.

⁶⁹ AM2012, para. 148

⁷⁰ AM2003, para. 56, footnote 2

⁷¹ For ADB, the so-called controversy over compliance review site visits seems to have been triggered by just 2 compliance cases: THA: Samut Prakharn Wastewater Management Project (Loan No. 1410, approved on 7 December 1995), prior to the AM2003; and PRC: Fuzhou Environmental Improvement Project (Loan 2176-PRC, approved on 29 July 2005) ("the Fuzhou Project"), prior to the AM2012.

⁷² AM2012, paras 76-82

⁷³ AM2012, paras. 131(ix) and 201

This again raises concerns about the credibility of the CRP as an instrument of good governance and may diminish APs' confidence in ADB's accountability policy if an essential site visit is denied.

3.4 Accessibility

ADB anticipated that the AM would become more accessible through the combined effect of 3 of the major policy changes, namely (i) enabling direct access to the compliance review function, (ii) the establishment of the CRO as the single entry point to the AM and (iii) the greater clarity on eligibility by adopting a more specific deadline for filing AM complaints ("the cutoff date").

3.4.1 Enabling Direct Access to the Compliance Review Function

AM2003 stipulated that the complaint process was sequential: complaints had to be lodged first with the SPF and only subsequently with the CRP.⁷⁴ The AM2012 eliminated sequencing to permit APs direct access to pursue a compliance review with the CRP.⁷⁵

Since 2012, complainants may choose to pursue either compliance review or problem-solving at the outset. Complainants may exit consultations "*at any time*"; may seek access to the CRP upon reaching a problem-solving agreement or if no agreement can be reached; or may seek access to the CRP during the monitoring of a consultation agreement.

If the CRP deems a compliance review request as "*ineligible*", APs can shift to the problem-solving process with the SPF; however, if the CRP finds non-compliance or exonerates ADB, APs cannot subsequently seek problem-solving with the SPF because operations departments "*... can still address problems as part of project implementation*".⁷⁶

This major change was designed to improve accessibility to the CRP.⁷⁷ The 2010 Independent Review suggested that prior to 2012 access was "*blocked*" by the requirement to go through problem-solving first, prolonging CRP requests. However, there was no evidence that access had been blocked nor that complainants preferred compliance review but were being unreasonably delayed by the SPF.

While some argue that direct access to the CRP has improved accessibility since 2012, affected communities may not share this view, as factors beyond sequencing affect accessibility.

- Access to the AM may not be pursued due to a lack of awareness because many APs may simply not know about the AM
- Direct access assumes that APs appreciate the differences between dispute resolution and compliance review but this is almost certainly not the case: APs cannot be expected to know about ADB's "*operational policies and procedures*" and whether ADB has complied with them or not
- A complainant may not know which pathway to choose

⁷⁴ AM2003, para. 113(iv)

⁷⁵ AM2012, paras. 71-73

⁷⁶ AM2012, para 73

⁷⁷ The 2012 policy changed "*problem-solving phase*" to "*problem-solving function*" and "*compliance review phase*" to "*compliance review function*" (See AM2012 para.101)

- Most APs cannot be expected to know at the outset that the AM is a “last resort” solution⁷⁸ and, in any event, there may be legitimate reasons why a complainant would prefer to approach an independent body directly (and confidentially), without first pursuing a dispute with the EA/IA or with the operations department.

Despite enabling direct access to compliance review, the bureaucratic impediments and uncertainty around eligibility appear to contribute to the high rate of attrition: since 2012, most complaints have been determined to be inchoate (insufficient supporting documentation) or “ineligible” due to a lack of “*prior good faith efforts*” to solve the problem. The data suggests that most complaints that were lodged with the AM in that period were not taken up by the AM.⁷⁹

Another point to note is a reminder that dispute resolution and compliance review offer complainants fundamentally different solutions; and dissatisfaction with the former does not ground an appeal to the latter. These functions have different purposes, objectives, parties, procedures and outcomes and it is inappropriate to conflate the interests of APs in both. Some ADB staff point to the sequencing under the 2003 policy as a benefit as it seems to assume that the CRP is the “higher authority” and sequencing is a form of appeal. AM2012 policy specifically dispensed with the concept of “*phases*” to make it clear that the CRP is not an appellate body: “*Relative to a request for problem solving with the SPF, request for compliance review is not an appeal to a higher authority*”⁸⁰

3.4.2 Establishing A Single Entry Point

Recognizing the importance of facilitating access for APs to either dispute resolution or compliance review, the AM2012 underscored the necessity of establishing a “single entry point” for access to the AM.⁸¹ This led to the creation of the position of Complaint Receiving Officer (CRO) to receive all AM complaints and to serve as the central hub for initial complaint processing.⁸²

To date, the CRO has been a consultant jointly engaged by OSPF and OCRP and mandated to be independent (and may not be an ADB staff member).⁸³ The AM2012 outlines specific performance requirements for the CRO, emphasizing the need for easy access, credibility, and efficiency in handling complaints. Importantly, the AM2012 highlights the seniority of the CRO's role, drawing parallels with the executive secretary of ADB's Administrative Tribunal⁸⁴, thus underlining the significance of the position. This single entry point position has a pivotal institutional role in the AM, warranting comprehensive support.

The establishment of the CRO has improved access to the AM, garnering acknowledgment for impartiality and adept handling of confidentiality concerns for APs. The CRO assists complainants in navigating the process, provides initial feedback from operations staff, and

⁷⁸ AM2012, paras. 67 & 105

⁷⁹ See Section 3.7.1, *infra.*; and **Appendix 5**.

⁸⁰ *ibid.*, para. 130. As noted ADB's approach to accountability suggests that the compliance review function may not necessarily solve the APs' underlying problems.

⁸¹ AM2012, para. 47

⁸² *ibid.*, para. 74

⁸³ *ibid.*, para. 75

⁸⁴ Paragraph 2 of Article V of the Statute of the Administrative Tribunal of the Asian Development Bank (ADB, 2006) stipulates that the ADB President is responsible to make the administrative arrangements for the Tribunal, “... including the appointment of a suitably qualified lawyer as Executive Secretary who, in the discharge of duties, shall be responsible only to the Tribunal”

expedites the resolution of issues efficiently. Positive feedback from ADB staff underscores the personal service of each CRO.

However, there is a perception that the ADB has treated the CRO as a *pro forma* appointment primarily designed simply to receive complaints—more bureaucratic than substantive. Engagement as a short-term consultant poses challenges for the recruitment processes, contract administration, and access to ADB support systems and raises concerns over the institutional respect accorded to this pivotal role.

Moreover, evolving circumstances will require a more substantial role for the entry point to ADB's IAM, supported by adequate resources to engage effectively with complainants. Emerging issues, such as the implications of major ADB policy initiatives, a potential for a more comprehensive ADB-wide system to track progress on the disposition of "*ineligible*" complaints, and the imperative to inform and educate stakeholders about the AM, all highlight the need for enhanced institutional support at the initial entry point to the AM.

3.4.3 Clarifying the Cutoff Date

The cutoff date for submission of complaints should be precise.⁸⁵

Under AM2003, the cutoff date was linked to the issuance of a project completion report (PCR).⁸⁶ However, the AM2012 identified the uncertainty of the actual issuance of the PCR, which makes it challenging to determine the cutoff for access to the AM in advance. (Extending the cutoff date beyond an uncertain PCR issuance date does not solve the uncertainty.)

The AM2012 now uses the loan closing date (LCD) to determine the cutoff date.⁸⁷ Since the LCD is disclosed throughout the project cycle and is relatively predictable, setting the cutoff date as the LCD plus a designated period offers greater certainty. Complainants are now required to file an AM complaint within 2 years after the LCD and this change was received positively.

The transition to the LCD-based cutoff date over the past decade has not been overly restrictive as most complaints typically arise during the formulation, preparation, and immediate implementation phases of a project and often raise immediate issues of design, safeguards, resettlement, and compensation for loss of land and livelihood.

However, caution is warranted.

First, a fair cutoff date for complaint submission relies on the fact that affected communities are aware of deadlines, time constraints, and the need for prompt responses. Clarifying these time limits remains essential to ensure the effectiveness of the AM process.

Second, there may be circumstances where a legitimate complaint could arise beyond the current stipulated cutoff date. There may be cases where ADB has a financial exposure to the project well into the future (such as new financing instruments under the proposed ESF or complex PSO financing structures, such as equity investments or guarantees) and this may require a reconsideration of the existing deadline.

⁸⁵ *Ibid.*, para. 87

⁸⁶ *Ibid.*, para. 55

⁸⁷ The LCD is the last date for a borrower to withdraw funds from the ADB loan/grant account.

Questions about the appropriateness of the current cutoff date in all circumstances, the potential to exclude otherwise valid complaints, and the risk of harm from non-compliance that may emerge beyond present deadlines, all warrant further consideration.

3.5 Improving Efficiency

The AM2012 sought to improve both the process efficiency and cost efficiency of the AM.

3.5.1 Process

The 2012 analysis scrutinized the average processing times for both the problem-solving function and the compliance review function of the AM.⁸⁸ The findings indicated that prolonged proceedings were primarily due to 2 factors: (i) complex processes that posed challenges for APs and complainants, and (ii) the recurrent need to enlist mediators and other experts, together with periodic site visits.⁸⁹

The 2012 analysis also evaluated the existing 5-year period allocated for the CRP to monitor progress on remedial actions aimed at restoring a project to compliance. Given the lack of a specific rationale for this standard monitoring period, the AM2012 proposed adopting a "*more flexible timeframe tailored to each project*" for increased efficiency.⁹⁰

The AM2012 also adopted several pragmatic improvements, including allowing APs to submit inputs in writing or through various communication channels, eliminating consultations with the President on procedural steps, setting adaptable monitoring durations for AM outcomes, requiring only minimum information to initiate a complaint, and allowing complainants the flexibility to provide additional information at any time, whether for problem-solving or compliance review.

While many commentators argue that the AM has historically operated with reasonable efficiency, the actual impact of the 2012 efficiency measures on improving overall efficiency remains uncertain.

For example, the AM2012 also emphasises the merits of grievance management at the local level and encouraged the SPF to engage with ADB staff and project-level grievance redress mechanisms (GRMs) to broaden the opportunities for local problem-solving. Therefore, since 2012, OSPF has made substantial efforts to promote grievance management at the project, local, RM, and departmental levels.⁹¹ The GRM work has grown with OSPF initiating GRM training, e-learning modules, problem-solving tools and informal consensus-based techniques designed to increase efficiency. It appears that in many instances GRMs are better understood and more accessible, with improved complaint-handling capabilities at the EA and IA levels.⁹²

ADB staff and local officials also highlight the importance of OSPF's creative approaches to problem-solving. The emphasis on bringing parties together to solve problems rather than

⁸⁸ AM2012, para. 56 **Consultation phase:** Time to determine eligibility = 47 days; time from complaint to action = 170 days; **Compliance review phase:** Time to determine eligibility = 20 days; time for compliance review = 367 days

⁸⁹ AM2012, paras. 55-61

⁹⁰ *ibid.*, paras. 58 and 91

⁹¹ For example, OSPF has designed and produced at least 2 GRM templates

⁹² For example, in Sri Lanka, there is an efficient GRM system deployed in a road project. The project would receive about 3000 or so complaints; but only one or two have actually come up to the OSPF. This seems to demonstrate that if there is an effective GRM most complaints can be resolved locally at the outset.

assigning blame is positive; and the use of local facilitators to help in resolving complaints is innovative, even though not explicitly featured in the AM2012. OSPF's engagement of competent local facilitators, listening to understand grievances better, and managing redress to a solution have all proven to be efficient, albeit requiring investments in time, energy, and resources.

There are 2 issues that may impede greater efficiency in processing AM cases:

1) **The eligibility hurdle**

The eligibility criterion has emerged as a prominent challenge, with approximately 80% of AM complaints found to be ineligible or withdrawn to date. As discussed earlier, the primary reasons for such ineligibility appear to stem from complainants' failure to furnish requisite supporting documents or to engage in "*prior good faith efforts*" to resolve issues with operations departments. Ineligible complaints have consumed time, effort, and resources, contributing to delays in addressing concerns raised by complainants and other APs.

Despite efforts by OSPF and OCRP to enhance knowledge and awareness among stakeholders regarding the objectives, processes, documentary requirements, and eligibility conditions at the AM⁹³, challenges to access persist. Given the evolving culture and the emphasis on remedy, maintaining "*eligibility*" as a threshold hurdle or precondition will always pose challenges to efficient access to the AM.

(There is also a perception problem: a finding of "*ineligibility*" signals that an affected person or community has no right to seek IAM intervention. As IAMs should focus on remedy, "*admissibility*" is more appropriate foster to the idea that every submission deserves fair consideration unless beyond the IAM's mandate or frivolous, trivial, malicious, or vexatious.)

2) **Lengthy processing of compliance reviews**

Despite the fact that the AM2012 identified processing delays as a major threat to efficiency and indicated that this needed to be improved⁹⁴, the length of time to process complaints, particularly compliance reviews, has been criticised by ADB staff, DMC representatives and other stakeholders. Many have also expressed concern over the length, complexity and density of many AM reports, often involving additional studies, investigations, meetings, and expert assessments: "*All these processes took a lot of time. It became a serious reputational problem for everyone, both ADB and (the DMC)*".

On the other hand, the AM has pursued reasonable timeframes but there are often compelling reasons why, say, a compliance review may be lengthy.

For example, AM2012 excludes the time required for translations, agreed extensions of time and, implicitly, seasonal weather that restricts the ability to conduct site visits. Obviously the COVID-19 pandemic (November 2019 to around May 2023) also exacerbated processing. Also, lengthy compliance reviews are not necessarily unusual: other IAMs have also faced similar processing challenges.

⁹³ For example, AM with SDSS and SDCC have conducted joint outreach for ADB staff, EAs/IAs and CSOs in India and the Philippines, respectively
⁹⁴ 2012 Policy, paras. 56-57

AM2012 suggests that the Board would authorise a compliance review “*about 70 days*”, or about 3.5 months, after registering the complaint and that compliance reviews would be completed “*about 200 days*”, or about 10 months, after registering the complaint.⁹⁵

Virtually every step in the compliance review process is subject to indicative working daytime limits⁹⁶; however, the conduct of a compliance review itself is not time-bound⁹⁷: “*Time required for compliance review depends on project’s nature, complexity, and scope and alleged noncompliance*”⁹⁸

In considering the duration of individual compliance review cases under AM2012, and assuming notification of a compliance review happens as soon as the Board authorization is issued, the 70-working day timeline for that authorisation (as per the AM2012) was likely to be met.

However, according to AM data, the time taken from the receipt of a complaint until Board consideration on the CRP’s final report in relation to 5 compliance reviews, respectively, was varied for individual reviews as follows:

2012	INO: Integrated Citarum Water Resources Program	14 months ⁹⁹
2012	GMS: Rehabilitation of the Railway in Cambodia Project	17 months ¹⁰⁰
2013	IND: Mundra Ultra Mega Power Project	17 months ¹⁰¹
2016	GEO: Sustainable Urban Transport Investment Program	12 months ¹⁰²
2021	GEO: North-South Corridor (Kvesheti-Kobi) Road Project	24 months ¹⁰³

Clearly, processing times were exacerbated in some instances. For example, the compliance review for the North-South Corridor Road Project in Georgia¹⁰⁴ took the longest to process and coincided with the imposition of global travel restrictions necessitated by the COVID pandemic:

2020

8 December CRO receives the complaint

2021

6 January Complaint sent to CRP

11 January CRP determines complaint is within its mandate

⁹⁵ AM2012, para.177; ADB Operations Manual Operational Procedures (OP), OM Section L1/OP, issued on 24 May 2012, para. 70. Unless otherwise stated, “days” refers to “*working days in ADB*” (ibid., para 2)

⁹⁶ The notice periods for board decisions on authorising a compliance review, considering the CRP’s report and deciding on management’s proposed remedial actions are each “21 calendar days”.

⁹⁷ AM2012, para. 177

⁹⁸ OM Section L1/OP, op. cit., Table A1.3: The Compliance Review Process.

⁹⁹ Integrated Citarum Water Resources Management Investment Program – Project 1 (Loans 2500 & 2501 (SF)-INO)

¹⁰⁰ Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project (L2288/2602/G0187 Supplementary)

¹⁰¹ Mundra Ultra Mega Power Project (L2419)

¹⁰² Georgia: Sustainable Urban Transport Investment Program – Tranche 3 (L3603)

¹⁰³ Georgia: North-South Corridor (Kvesheti-Kobi) Road Project (L3803)

¹⁰⁴ Georgia: North-South Corridor (Kvesheti-Kobi) Road Project (Project No. 51257-001)

10 March	CRP issues the eligibility determination
24 March	Board approves the eligibility report
5 May	BCRC approves the compliance review ToR
2022	
29 July	Draft report shared with management / complainants / borrower
18 November	CRP submits its final report to the BCRC / Board
2023	
24 January	Board consideration of CRP's final report
30 March	Management shares the draft RAP with CRP
28 April	Management submits the final RAP to the Board
19 May	Board approves the RAP

This timeline was affected by the specific context of the case. For example, according to the CRP, complaints usually raise around 3-5 issues. In this Georgia KK case, the complainants raised 11 issues, with some of those issues going well beyond usual complaints (such as inadequate compensation, lack of consultation, and so on) to include matters such as assertions of inadequate consideration of climate change impacts, cultural heritage considerations and maximization of social benefits. The CRP had to engage 5 different technical experts to assist in the analysis of these unprecedented complaints. This gives a sense of the complexities that can arise.

From the current data it is unclear whether the existing processing time limits are reasonable; but future discipline would suggest further simplification of procedures, more demanding time limits applied to each stage of compliance review and efficient production of concise, streamlined reports. Also, the BCRC is not subject to any strict time limit to clear compliance reports for submission to the Board. There is no apparent reason why the BCRC should not be subject to the same discipline as the remainder of the AM.

3.5.2 Cost

The AM2012 observed that the costs associated with accountability consist of direct operating costs; indirect costs, such as staff time; increased implementation costs; and costs to APs.¹⁰⁵ However, as much of the AM work is demand-driven, it has always been difficult to predict costs accurately in advance.

The AM2012 also recognized DMC concerns regarding cost increases associated with AM complaints, including delays leading to cost escalation, cost overruns, increased commitment charges, changes in scope requiring more funding, increased compensation

¹⁰⁵ The 2012 analysis estimated that the 2009 operating costs were approximately \$2.1m, though the details are somewhat unclear.

payments under the SPS2009, higher administrative costs, and non-financial costs due to risk aversion or focusing on compliance rather than development results.

“DMCs expressed their uneasiness in bearing the costs resulting from ADB’s noncompliance with ADB’s operational policies and procedures”¹⁰⁶

Therefore, the AM2012 identified several cost management issues:

- AM costs must be balanced against benefits such as solving APs’ problems, ensuring ADB compliance, and contributing to development effectiveness¹⁰⁷
- ADB needs to be aware of AM costs as a component of managing the policy *“to ensure its credibility and ownership by DMCs. A better understanding of AM costs and benefits will also help in designing and implementing an effective policy”*¹⁰⁸
- Any AM case will impose costs on APs, so APs’ transaction costs must be minimized with ADB focusing on swift, early complaint management¹⁰⁹
- To improve cost-effectiveness, the AM would identify fixed costs to manage the AM and variable costs that will be based on demand; the staffing of OCRP and OSPF would be similar (with just one professional staff in each Office) and the Chair, CRP would be full-time, supported by 2 part-time CRP members.

As part of the Formal Review, ADB must still reflect on the need to invest in compliance, especially having regard to the price to be paid for non-compliance. According to a 2017 study, it pays for an organization to invest in compliance because it would be less expensive than the consequences of non-compliance.¹¹⁰

The typical investments in compliance include policy development, an accountability and compliance system, checks & balances during project preparation, approval and design, periodic compliance reviews, communications and training.

The anticipated cost when an organization fails to comply with policies and procedures may be the costs of business disruption, productivity losses, redress costs, and perhaps the biggest price to be paid: the effect on the organization’s reputation. The study examined the data related to the direct, indirect, and opportunity costs of non-compliance.¹¹¹ It also found that a higher percentage of the budget spent on compliance suggests that corporate investment in compliance reduces the negative consequences and cost of non-compliance.¹¹²

The study considered how an organization can reduce compliance costs. These observations included adoption of a formal charter that covers, *inter alia*:

¹⁰⁶ AM2012, para. 60

¹⁰⁷ *Ibid.*, paras. 28-37

¹⁰⁸ *Ibid.*, para. 61

¹⁰⁹ *Ibid.*, para. 62

¹¹⁰ *Cost of Compliance with Data Protection Regulations: Benchmark Study of Multinational Organisations* Sponsored by Globalscape. Independently conducted by Ponemon Institute LLC. (December 2017) p.3. Study deals with data protection requirements; however, it canvasses 53 multinational organizations and it offers valuable general insights into the cost of non-compliance with, *inter alia*, policies and procedures

¹¹¹ The study examined costs associated with policy, communications and training, compliance policy management, *“forensic investigations”* and monitoring enforcement and estimated Indirect cost (administrative overhead) at 40%; direct costs (consultants, auditors, experts) at 32%; and opportunity costs (e.g. inability to execute a program on time) at 28%.

¹¹² *Cost of Compliance*, op. cit. p.5. The study estimated that among the surveyed organizations during the period 2011 to 2017, annual investments in compliance increased by 43% from \$3.53m (2011) to \$5.47m (2017), while the annual cost of non-compliance over the same period increased by 45% from \$9.37m (2011) to \$14.82m (2017). It found that a higher percentage (of total budget) for compliance spending is an indication that corporate investment in compliance reduces the negative consequences and cost of non-compliance.

- Applying best practices
- Board-level reporting
- Appointment of a compliance “leader”
- Centralized governance, with in-house expertise
- Compliance audits of policies and procedures
- Training
- Efficient complaint response processes

3.6 Effectiveness

3.6.1 Improving Awareness and Enhancing Learning

The 2012 analysis emphasized awareness and learning as pivotal elements in raising the stature and efficacy of accountability in ADB.¹¹³ The AM2012 identified the imperative to heighten awareness regarding ADB's accountability endeavours among local communities, ADB staff, and other stakeholders and to scale up training initiatives.¹¹⁴

Several areas for improvement were identified in the AM2012, including a deeper commitment to outreach and dissemination, meticulous tracking of "*ineligible*" complaints, establishment of common reporting instruments such as the AM annual report and joint websites, preparation of triennial Joint Learning Reports (JLRs), increased engagement by the BCRC, and enhancement of staff training and capacity building.

The AM2012 attempted to inculcate the AM into ADB's culture and expressed platitudes regarding "vertical complementarity"¹¹⁵ and "horizontal complementarity"¹¹⁶. The initiatives undertaken by the AM, OSPF, OCRP in pursuit of awareness and learning improvements from 2012 to 2023 underscore the depth and breadth of the commitment by AM leaders and staff to enhance effectiveness. Nevertheless, the accountability awareness and learning initiatives continue to be particularly challenging “major policy changes” introduced by the AM2012.

Pursuant to AM2012, the AM has also allocated resources to address awareness and learning, including publications, materials, outreach activities, briefings, internal and external training sessions, knowledge events, and dedicated AM sessions during ADB annual meetings. For example, the collaborative JLRs synthesize learning experiences from ADB's accountability, safeguards and evaluations staff and provide valuable insights and recommendations for the ensuing 3-year period. The AM web pages highlight some of these accomplishments.¹¹⁷

Awareness and learning initiatives include:

- The collaborative JLRs, which are interesting, well-prepared, and each contain extensive actions to be initiated

¹¹³ AM2012 also proposed a number of semantic changes in the AM lexicon, namely, "*complaints*" would be lodged by "*complainants*" with either the "*problem solving function*" or the "*compliance review function*" thus dispensing with the idea of "*phases*" in AM processing.

¹¹⁴ AM2012, para. 63

¹¹⁵ *ibid.*, paras 22-27

¹¹⁶ *ibid.*, paras 28-33

¹¹⁷ <https://www.adb.org/who-we-are/accountability-mechanism/main>

- Establishment of a unified system to track those “ineligible” complaints that are referred to ADB operations departments
- Introduction of digitized AM annual reports and microsites, using technology for improved accessibility
- Multimedia formats, such as "A report on 25 years of the AM" and the CRP's "Common Threads" report, to enhance communication
- AM orientation programs for all incoming ADB staff
- GRM training by OSPF for ADB staff and EA/IA staff
- Recognition of the need to capture institutional knowledge through "knowledge sessions" in operations departments and among EAs/IAs
- Staff training through the AM's outreach programs and in-house seminars
- Adoption of the Communication Strategy (2023) and Knowledge Management Strategy (2023)

For a full list of the AM's initiatives, see **Appendix 4**.

Despite these initiatives, challenges remain.

3.6.2 Challenges to Effectiveness

(i) Mainstreaming accountability initiatives

The triennial JLRs are substantial documents, posing a formidable challenge to mainstream effectively. While issued with commendable intentions, ADB staff express concerns about the practical feasibility of assimilating JLR recommendations, given existing staff workloads and resource constraints. Some staff members question the utility of the JLRs, emphasizing the need for implementation of recommendations at the grassroots level to drive real outcomes.

Candid commentaries reveal insights into the challenges faced by AM publications. Staff members express uncertainty about next steps and action plans after reviewing the JLRs, highlighting the need for clearer guidance and alignment with operational priorities coupled with a sense from managers and staff of being overwhelmed by numerous materials:

"... There are high level ambitions, but you have to deliver them at the grassroots... if we want to see outcomes and results then GRM really has to be strengthened at the grassroots level, which means the provincial level and the village level."

"... there's that sense that it's a really interesting report, but we've been too busy actually doing stuff to turn our minds to that sort of an issue."

"... I don't know where to next ... what is then expected from us? What are the next steps for us? What's the action plan after that?"

"We know about the JLRs. But we are inundated by so many materials. This is about information dissemination and awareness. I am not sure the JLR is clear on what things the operations department could take on."

(ii) Cascading solutions to the most vulnerable

Efforts to enhance awareness and learning must extend to the local and project levels, especially considering the vulnerability of many APs. Some ADB staff

question the effectiveness of cascading learning initiatives and emphasize the importance of simplifying and making such initiatives more accessible to vulnerable communities. The AM also acknowledges the challenges of dissemination to affected communities to facilitate effective access to the AM, if necessary. Despite resource and staff constraints, the AM remains committed to addressing these challenges.

(iii) Enhanced collaboration

Collaboration has always been vital to enhancing the effectiveness of the AM.¹¹⁸

Existing partnerships among the AM, OSPT/OSFG, and IED have yielded valuable insights and mutual learning opportunities. The existing collaboration between the AM and CCSD continues to be important (e.g. collaboration on the JLRs; consideration of the role of the AM role in the SPS update process; regular sessions among CCSD, OSPF, and OCRP; and active online staff collaboration).

However, to overcome challenges such as follow-up action on JLRs, collaboration must still be enhanced, particularly as part of a revived culture of accountability. Regular meetings, participation in, say, a safeguards community of practice, joint learning events, and the proposed safeguards knowledge management action plan are avenues for deeper collaboration.

3.7 AM2012 by the Numbers

3.7.1 Caseloads

During 2012 – 2023 the AM received 483 complaints but, of these, 327 complaints (71%) were found to be *ultra vires* the mandate of the AM, while 141 cases were taken up by the AM. Out of these 141 cases:

- CRP** handled 21 cases (15%)
- SPF** handled 120 cases (85%)

As to the functional caseloads,

CRP managed the 21 compliance review cases as follows:

- 6 cases (29%) were found eligible and were reviewed by the CRP
- 7 cases (33%) were referred to ODs
- 5 cases (24%) were found to be ineligible (other than lack of prior good faith efforts)
- 3 requests were withdrawn

SPF managed the 120 dispute resolution cases as follows:

- 23 cases (18%) were found eligible and were handled by OSPF
- 68 cases (57%) were referred to ODs
- 25 cases (21%) were found to be ineligible

¹¹⁸ For example, the AM2012 indicates that the (former) Chief Compliance Officer (presumably, now the head, OSFD) could provide insights into awareness and lessons learned.

4 complaints were withdrawn

So, the total caseload of 141 cases during the period were resolved as follows:

31 cases (6 CRP + 23 SPF) or 22% were found **eligible** and **reviewed** or **managed**
 75 cases (7 CRP + 68 SPF) or 53% were **referred** to ODs
 30 cases (5 CRP + 25 SPF) or 17% were found **ineligible**
 7 complaints or requests were **withdrawn**

Therefore, the AM or the relevant OD resolved 106 out of 141 cases (75%)

The 2012-2023 caseloads, including complaints processed, admissibility, sectoral distribution, regional distribution, types of complaints, OCRP workload and OSPF workload are set out in **Appendix 5**.

3.7.2 AM Budget

Observations on the budget data:

- The annual AM budget during the period 2012 to 2022 has been stable.
- The annual administrative expenditure for the AM was in the range of \$1,572,000 (2014) to \$2,025,000 (2018); including
 - Compliance review budget (OCRP/CRP) has ranged from \$1,055,000 (2012) to \$1,285,000 (2022)
 - Dispute resolution budget (consultants + salaries) has ranged from \$554,500 (2014) to \$1,019,054 (2021)
- The AM annual administrative expenditures as a percentage of ADB's overall internal administrative expenses (IAE) budget remained relatively modest and constant,
 - i.e. average administrative expenses as a percentage of ADB's IAE
 OSPF = 0.02%; CRPN + OCRP = 0.07%; Average = 0.3%
- Apart from OCRP's expenditure on consulting services in 2018 and on staff and contractual workers in 2016 and 2021, the actual administrative expenses for OSPF, OCRP and CRP never exceeded the AM administrative budget for each year during the period
- OCRP's actual expenses for consultants ranged from a low of \$27,300 (2012) to a high of \$197,000 (2022)
- The annual salaries of the Chair, CRP and the SPF, respectively, have been relatively stable during 2012-2023, but each salary **declined** (year-on-year) on 4 separate occasions during the period

During the course of this review, there have been a number of comments concerning the cost of compliance and compliance reviews. It is important to note that: (a) the budgets for IAMs, as a proportion of the overall internal administrative budget of the MDB is "miniscule"; (b) a compelling compliance investigation and recommendations may actually change the way the MDB does business (WB's IP cited the influence of its work on the WB's approach to issues of gender based violence): a small IAM budget can produce huge institutional gains derived from having a strong IAM; and

(c) as AfDB has pointed out, numbers can be “deceptive and taken out of context”: there is virtually no standardised data gathering and reporting in relation to accountability complaints (and this is a pressing concern). Nevertheless, all IAMs accept accountability for spending taxpayer funds and they have an obligation not to waste the budget.

The details of the AM Budget for 2012 to 2022 are shown in **Appendix 6**.

4. Accountability in Development Finance

For more than a decade, there has been an important evolution in the approach to accountability in development finance, including UN reports that offer guidance to improve MDB accountability, increased scrutiny of the IAMs, legal cases that deal with the immunity of international organisations and the emergence of good policy recommendations.

4.1 Reports on Modern Accountability Techniques

Over the last decade or so, the UN has published three reports that suggest techniques that MDBs should employ to strengthen their IAMs.

In 2011, the UN Human Rights Council adopted and published the "**Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework**".¹¹⁹

These principles were crafted to address the impact of business activities and set a global standard for preventing and mitigating the adverse effects of business operations, including development financing by non-State actors (such as MDBs), on individuals and communities.

The UN Guiding Principles rest on 3 pillars: protection, respect for rights, and accessible remedies for affected communities. They encompass **legitimacy, accessibility, predictability, equity, transparency, and continuous learning**, all of which align with ADB's policy journey.

The UN Guiding Principles underscore the obligations to protect and respect human rights while ensuring access to effective remedies for those adversely affected. They propose a foundational framework aimed at fostering accountability and providing redress in cases of rights violations and have become a benchmark in international development finance, helping to guide institutions in assessing their accountability and governance practices.

IFIs may also refer to UN Guiding Principles to guide their policies when it comes to conducting impact assessments, ensuring meaningful consultation with affected communities, and establishing project-level solutions for remedy in case of adverse impacts.

Subsequently, the UN Guiding Principles were cited in two further reports focused on enhancing accountability in development financing.

In 2016 the UN Office of the High Commissioner on Human Rights ("OHCHR") released its report, "**Glass Half Full – The State of Accountability in Development Finance**".¹²⁰

While the concept of "accountability" might have been perceived as partially fulfilled, IAMs were not necessarily providing "*adequate remedy for the harm that people and communities affected by development projects have experienced*".

¹¹⁹ "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework Author: John Ruggie (2011) United Nations Human Rights Council. https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf, ("the UN Guiding Principles")

¹²⁰ "**Glass Half Full – The State of Accountability in Development Finance**" UN Office of the High Commissioner on Human Rights (January 2016) ("Glass Half Full report")

The "Glass Half Full" report, compiled by 11 contributing organizations¹²¹, advocated for a development model based on respect for human rights.¹²² It contended that affected individuals must have access to "*adequate remedy*", which necessitated a significant improvement in the way IAMs handle complaints. Without these improvements, the report considered that IAMs merely serve as rudimentary safety nets for "*... those people and communities that have been harmed by the current development model*".

The Glass Half Full report presented two sets of recommendations: one set prescribing "*best practices that should be adopted by all IAMs and DFIs*"; and a second set that contemplated a "*... new accountability system ... with mechanisms that are empowered to make binding decisions and DFIs that no longer claim immunity in national courts. DFIs will only revisit their development model when they are truly held accountable for the harms caused to people and communities around the world by the activities they finance.*" While the second set of recommendations may be aspirational, the first set of recommendations can inform the review of any IAM.

In 2022, the OHCHR released a further report, "**Remedy in Development Finance – Guidance and Practice**".¹²³ The effectiveness checklist in Annex 2 of that report is based on the UN Guiding Principles.

The Remedy report is essential reading to appreciate contemporary approaches to the improvement of accountability policy at MDBs and, notably, encourages MDBs to confront the issues raised in the report.

As the title implies, the report focuses on the need to deliver quality remedies: if individuals or communities suffer harm related to development financing, they deserve redress. For instance, the acknowledgment that access to a clean, healthy, sustainable environment is a human right elevates the significance of that right and sets the stage for future claims to remedy.¹²⁴

The Remedy report acknowledges the extensive experience of MDBs and IAMs in remedying adverse impacts and seeks to build on this collective expertise: MDBs need not "*reinvent the wheel*" but, rather, should enhance and extend their existing mechanisms.¹²⁵ DFIs should establish or improve an effective IAM, in line with the UN Guiding Principles, to address non-compliance and should ensure that borrowing countries inform affected communities about the IAM and available remedies.

The Remedy report underscores the indispensable role of leadership. Leaders must engage in discussions on remedy and communicate a clear ambition, reframing complaints as opportunities for learning and improvement rather than mere sources of reputational risk. It advocates for a shift from investment volume to quality and sustainability and suggests that harm is a routine aspect of project cycles rather than indicative of failure.

¹²¹ Accountability Counsel; Both ENDS; Center for International Environmental Law (CIEL); Central and Eastern European Bankwatch Network; Center for Human Rights and Global Justice, New York University School of Law; Centre for Research on Multinational Corporations (SOMO); Counter Balance; Foundation for the Development of Sustainable Policies (FUNDEPS); Inclusive Development International (IDI); Natural Justice; Program on International & Comparative Environmental Law, American University Washington College of Law.

¹²² See International Accountability Project, *Back to Development: A Call for What Development Could Be* (2015) - bit.ly/backtodevelopment.

¹²³ "*Remedy in Development Finance – Guidance and Practice*" United Nations Human Rights Office of the High Commissioner for Human Rights (OHCHR) (New York and Geneva) 2022 ("the Remedy report")

¹²⁴ *ibid.*, p. vii

¹²⁵ *ibid.*, p. 3

The UN Guiding Principles and abstracts of the Glass Half Full report and the Remedy report, respectively, are in **Appendix 8**.

4.2 Increased Public Scrutiny of Independent Accountability Mechanisms

The review of ADB's accountability policy comes at a time marked by increased attention on IAMs.¹²⁶ This scrutiny stems primarily from concerns expressed by NGOs, CSOs, and advocacy groups relating to the review processes, the independence of each IAM, and the urgency to reflect emerging good policies.

In 2019, a coalition of 75 concerned organizations called upon the Board of the World Bank Group to embrace greater transparency and stakeholder engagement as part of the review of the IFC/MIGA CAO.¹²⁷ This coalition consisted of organizations dedicated to supporting communities adversely affected by internationally financed projects.

The coalition called for the CAO review to be transparent and to include stakeholder voices. The review, they insisted, should draw insights from affected individuals, communities, and the CSOs that had been representing them. Specifically, they advocated for improvements to the review process itself:

- Extending the review timeline to ensure a more thorough and comprehensive examination.
- Public disclosure of the terms of reference
- Establishing feedback mechanisms and a robust means for collecting and assessing comments
- Creating the opportunity for communities to contribute in their native languages.
- Facilitating multiple personal consultations and outreach meetings to solicit input from CSOs, local communities, and past complainants.

¹²⁶ For example, on 22 October 2023, the Canadian newspaper, The Globe and Mail, published a special opinion article entitled "*In times of polycrises, multilateral development banks must do more and act faster*" by ADB President Masatsugu Asakawa. In a letter to the editor of The Globe and Mail, Accountability Counsel responded to that article by stating, among other things, that "... Mr. Asakawa's call to action leaves out promises to learn from past mistakes, remediate harm or commit to community-led design and implementation to mitigate damage. **That's particularly concerning to us, since we consider the ADB's accountability mechanism to be woefully outdated.**" (emphasis added)

¹²⁷ *Lack of Transparency and Adequate External Stakeholder Participation in the IFC/MIGA Accountability Framework Review Process* (23 October 2019), a joint statement to the World Bank Group's Board of Directors submitted by the following global partners: Abibiman Foundation, ACADHOSHA, Accountability Counsel, Action For Development, Action Paysanne Contre la Faim, Africa Centre for Investment and Trade Policy Facilitation, African Law Foundation (AFRILAW), Arab Watch Coalition, Association for Women and Children's Affairs, Association Tunisienne pour le Droit de Développement, Bank Information Center, Bank Information Center Europe, Both ENDS, Bretton Woods Project, Buliisa Initiative for Rural Development Organisation (BIRUDO), CEE Bankwatch Network, Center for International Environmental Law (CIEL), Centre for Research on Multinational Corporations (SOMO), Centro de los Derechos del Campesino, CITIM (Centre d'information Tiers Monde), Community Outreach for Development and Welfare Advocacy (CODWA), Community Policing Partners (COMPPART), Conseil Régional des Organisations Non Gouvernementales de Développement, Conseil Régional des Organisations Non Gouvernementales de Développement du Kasaï Oriental, COPA-Kenya, Dynamique pour la Promotion et la Protection de l'Artisanat Minier au Tchad (DYPRODAMIT), Egyptian Center for Civic and Legislative Reform, Egyptian Initiative for Personal Rights, Equitable Cambodia, etika asbl, Foundation for Environmental Management and Campaign Against Poverty, Foundation For Environmental Rights, Advocacy & Development (FENRAD), Freedom from Debt Coalition (FDC) of the Philippines, Friends of the Earth Japan, Friends with Environment in Development – Uganda Fundación Ambiente y Recursos Naturales, FUNDEPS, Gender Action, GLOBAL RIGHTS, Green Advocates International, Inclusive Development International, Indian Social Action Forum, Institute for Agriculture and Trade Policy (IATP), International Accountability Project, International Rivers, Jamaa Resource Initiatives, Kebetkache Women Development & Resource Centre, Lebanese Union for Persons with Physical Disabilities (LUPD), Lebanon Eco Movement, Loeildafrique Media, Lumière Synergie pour le Développement, Dr. Muatar Khaydarova (Independent Expert on Freedom of Association), Narasha Community Development Group, Natural Resources Alliance of Kenya, Nature Tropicale ONG, NGO Forum on ADB, Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE), Oxfam, Oyu Tolgoi Watch, Pakistan Fisherfolk Forum, Peace Point Development Foundation, Phenix Center for Economic and Informatics Studies, Project on Organizing, Development, Education, and Research (PODER), SEATINI UGANDA, Social Justice Connection, Studies and Economic Media Center, SUHODE Foundation, Tunisian Association for Transparency in Energy and Mines, Urgewald e.V., Wedian Association for Social Development, Witnessradio.org-Uganda, WomanHealth Philippines, Yemen Observatory for Human Rights, Yemen Organization for Promoting Integrity, Youth For Environment Education And Development Foundation (YFEED Foundation)

- Releasing the report and recommendations to the public before any Board decision affecting the accountability framework

In October 2023, 26 CSOs and advocates issued a strong call to the IAMnet emphasizing the importance of safeguarding the independence of IAMs.¹²⁸ The independence of each IAM is considered vital for legitimacy and effectiveness. In their public communique, they referred to IAMs' role in facilitating access to justice and expressed deep concerns about the growing threats to the independence of the IAMs in recent years.

The group highlighted instances of interference, such as management intervention and opposition from MDB legal departments regarding compliance review findings and proceedings. Specific cases of interference included the "*capture and undermining*" of the compliance function at IFC/MIGA's CAO, as well as retaliation against a complaints panel member for exercising independent judgment in an eligibility determination, thus raising doubts about CAO's operational independence. The CSO coalition also cited Board decisions and actions by the legal department at the Green Climate Fund that had the effect of undermining the independence, procedures, and mandate of the GCF's Independent Redress Mechanism. Similar efforts at the World Bank allegedly compromised the ability of its Inspection Panel to operate independently. Additionally, they noted "structural" independence issues at AIIB's PPM.¹²⁹

Focussing on ADB, the commentary expressed "*long-standing concerns*" about the role of OGC that has had the effect of limiting the independence of the CRP. These concerns included OGC's "*intervention*" that eventually compelled the CRP to modify one of its recommendations regarding a remedial compensation fund in the Cambodia Railways case¹³⁰ and a further instance where OGC's interpretation of the AM2012 had the effect of limiting the CRP's powers and ultimately curtailing the CRP's monitoring mandate.

Reasonable people may well disagree with this kind of criticism of MDBs' accountability policies and may have a different view the role of legal departments, and MDBs should not be expected to genuflect to such criticism; however, it should not be ignored. Such public scrutiny calls for measured responses.

4.3 Legal Liability of International Organizations and the Role of Accountability

"In the absence of other viable remedial mechanisms, project-affected people are increasingly bringing claims against international financial institutions in domestic courts."¹³¹

¹²⁸ October 2, 2023, Civil Society Open Letter To: Independent Accountability Mechanisms Network (IAMnet) members: *A call to defend the independence of IAMs*, released by: Accountability Counsel, Arab Watch Coalition, Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE), Bank Information Center, Both ENDS, Bretton Woods Project, African Law Foundation (AFRILAW), Center for Research on Multinational Corporations (SOMO), CEE Bankwatch Network, Community Empowerment and Social Justice Network (CEMSOJ), Nepal Counter Balance, DamSense, Friends with Environment in Development Fundeps, Gender Action, Green Advocates International Inclusive Development International, International Rivers, Jamaa Resource Initiatives Kenya, Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP), Lumière Synergie pour le Développement (LSD, Senegal) ("*the Open Letter to the IAMnet*")

¹²⁹ The companion claim that these structural issues were to blame for the absence of any serious complaints at AIIB is debatable. There are many reasons, other than design faults, as to why access to any IAM can be difficult.

¹³⁰ Complaint Number 2015/1 (7 September 2015) in Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project – Loan 2288 and Loan 2602/Grant 0187 (Supplementary)

¹³¹ Remedy Paper, pp. 20

Typically, an international organisation (IO) claims immunity from domestic legal proceedings, such immunity being derived from the IO's founding charter and its ratification as part of the local law of the host country. For example, under its Charter, ADB enjoys "*immunity from judicial proceedings*".¹³² While there are some limited exceptions¹³³ and certain cases of alternative dispute resolution¹³⁴, such immunity has generally been regarded as absolute and analogous to sovereign immunity. But the jurisprudence may be changing.

In 2008, ADB and IFC co-financed the 4150MW coal-fired Tata Power Mundra Plant in India¹³⁵. In 2011, a group of affected Gujarati fishers and farmers complained to CAO that IFC had failed to comply with its environmental and social policies and procedures. CAO agreed with the affected people and, in response, IFC prepared a remediation action plan in 2013. However, by 2015 CAO found that IFC had still not fulfilled the action plan and insisted on "*the need for a rapid, participatory and expressly remedial approach to assessing and addressing project impacts.*" The complainants alleged that IFC had not remediated the damage and in April 2015 EarthRights International, on behalf of the affected people, launched a lawsuit against IFC in the federal court in Washington, D.C. for damages and injunctions claiming negligence, nuisance, trespass, and breach of contract.

IFC sought to dismiss the lawsuit claiming that it enjoys "*absolute immunity*" from legal proceedings in the United States and had not waived this immunity. Moreover, IFC argued that the CAO had provided plaintiffs with "*an alternative means of recourse*" (although the pleadings highlighted CAO's inability to compel IFC to take remedial action in response to CAO's findings, which effectively deprives affected communities of remedy).

The case was elevated to the U.S. Supreme Court¹³⁶ and on 27 February 2019, in an historic 7-1 decision, the Court agreed with the affected people and decided in that under U.S. law IFC does not enjoy absolute immunity due to an exception where IFC conducts or carries on commercial activities in the U.S.

*"In 2019, the Supreme Court reset the U.S. law of immunities for international organizations with its landmark [judgment](#) in *Jam v. International Finance Corporation*. That case overturned the long-held understanding that ... international organizations ... (are entitled) to virtually absolute immunity from U.S. courts."¹³⁷*

Although subsequent hearings found that there was an insufficient nexus with the U.S., the Remedy report observed that "(T)he Supreme Court's decision has been welcomed in many quarters as a harbinger of strengthened accountability and stimulus for DFIs to invest more resources in due diligence, harm prevention and more proactive approaches to remedy".

¹³² Article 50.1 of The Agreement Establishing the Asian Development Bank (the "*ADB Charter*") states that "*The Bank shall enjoy immunity from every form of legal process*" This immunity from judicial proceedings is repeated in Section 5 of Article III of the Agreement between The Asian Development Bank and the Government of the Republic of the Philippines Regarding the Headquarters of the Asian Development Bank ("*the ADB Headquarters Agreement*").

¹³³ *ibid.*, where ADB does not enjoy immunity in relation to certain borrowing, guarantee and securities transactions or where it has accepted legal service of process.

¹³⁴ The ADB Charter, Article 50.2

¹³⁵ ADB provided a loan of \$450 million to Coastal Gujarat Power Limited (a subsidiary of Tata Power) for this project, cofinanced with IFC, Export-Import Bank of Korea, Korea Trade Insurance Corporation and BNP Paribas SA. In September 2013 a local NGO, Machimar Adhikar Sangharsh Sangathan (MASS) filed a request for compliance review with ADB's AM claiming adverse environmental and social impact on certain fishing communities. In March 2015 the board considered the CRP report and in September 2018 a final monitoring report was prepared.

¹³⁶ *Budha Ismail Jam et al vs. International Finance Corporation*, 139 S. Ct. 759, 765 (2019)

¹³⁷ Transnational Litigation Blog, 14 June 2023. <https://tlblog.org/u-s-immunity-of-international-organizations-since-jam-v-ifc-new-challenges-and-opportunities/>

Subsequently, there have been similar cases, and commentators have reflected on the need for IOs (such as IFC and ADB) to consider the implications of this possible threat to absolute immunity.¹³⁸

The Remedy report specifically opined that concerns about the potential legal liability for an MDB should be kept “in perspective” and that fears of litigation and liability have probably been overstated. The IFC/MIGA External Review was pithy: “*As institutions, IFC/MIGA/CAO should not let the litigation tail wag the dog of effective E&S risk management*”

And, while the *Jam* decision raised fears of a surge of local litigation against MDBs, most recognise that there are legal hurdles facing any plaintiff suing an MDB before a local court, such as : the complexity of the law, choice of forum, political questions, the requirement for a territorial nexus, proof that harm relates to “*commercial activity*”, restrictive laws on lender liability and so on.

However, one obvious way to ameliorate the risk of local litigation, and to avoid the consequential reputational damage, is to ensure that all complaints are managed credibly, efficiently, transparently and, where appropriate, that remedy is delivered to APs who have suffered or may suffer harm from an MDB-financed project.

“Pending further debate on such proposals¹³⁹, ... ensuring that IAM processes more explicitly and effectively lead to remedy, may alleviate concerns about excessive legal liability exposure and enhance the scope for win-win outcomes in practice ... Litigation risk ... is best addressed through rigorous due diligence, a greater focus on prevention, more effective IAMs and more proactive involvement by DFIs in remedy”

For any MDB a strong accountability mechanism can “*not only (ensure) successful development projects but (can) also (reduce) ... exposure to legal liability*”: an IAM “*offers a pragmatic alternative to litigation, as it is able to produce timely and cost-effective solutions for parties to a grievance. ...*”

ADB’s Formal Review should be cognisant of this issue. As was observed in relation to the CAO review at the time:

At this moment, the World Bank Group has the opportunity to strengthen, and not shrink from, accountability at IFC and MIGA. Amid an ongoing [review](#) of the IFC/MIGA accountability framework, which includes the CAO, now is the time for the institutions to commit to instilling a culture of accountability and vigilant compliance with its social and environmental safeguards.

Accountability Counsel¹⁴⁰

¹³⁸ See, for example, “Meeting the Challenges of International Organisations’ New Threat Environment” in *Just Security*, 28 June 2022. <https://www.justsecurity.org/82127/meeting-the-challenges-of-international-organizations-new-threat-environment/>

¹³⁹ A range of alternative means of remedy have been proposed in the development financing context, including establishing a “super IAM” for multilateral development banks.

¹⁴⁰ Latest *Jam v. IFC* Decision Does Not Change What has Always Been True: Strong Accountability at the IFC Benefits Investors and Communities Alike By Margaux Day and Gregory Berry, Accountability Counsel (21 February 2020). See <https://www.accountabilitycounsel.org/2020/02/latest-jam-v-ifc-decision-does-not-change-what-has-always-been-true-strong-accountability-at-the-ifc-benefits-investors-and-communities-alike/>

4.4 Contemporary Accountability Policy Proposals

In January 2024, a group of 12 accountability NGOs, commentators and advocates¹⁴¹ published a revised version of **The Good Policy Paper: Guiding Practice from the Policies of the Independent Accountability Mechanisms**.¹⁴²

The Good Policy Paper is designed to analyse the strongest features of nearly 20 IAMs, mostly housed in MDBs and including ADB's AM, and to curate recommendations on those "*existing policy provisions*" among IAMs that represent good contemporary practice in accountability. The 71 recommendations in the Good Policy Paper are organised around 5 elements of Mandate, Function and Roles, Structure, Information Disclosure and Outreach, and Complaint Process and also include specific recommendations relating to the 3 typical IAM functions, namely Compliance Review, Dispute Resolution, and Advisory.

The Good Policy Paper analysis draws on the effectiveness criteria developed as part of the UN Guiding Principles and is expressly designed "*to capture the best existing practices from established mechanisms*"¹⁴³ It seeks to identify those current IAM practices that could effectively deliver to affected people "*a fairer, more predictable, and more accessible process that allowed them to have a greater role in seeking the accountability they deserve.*"

Importantly for this review, the Good Policy Paper offers a benchmark for the improvement of IAM policies: it can "*... provide insights for future IAM reviews, spark discussions with IAMs, institutions, management, Boards, and governments about how complaint processes can be more effective, equitable and accessible for complainants seeking remedy, and improve outcomes for all involved in the accountability process.*"¹⁴⁴

The Good Policy Paper should be an important ingredient for the Formal Review; however, it only recommends good policy: "*The effectiveness of a mechanism depends to a great extent on the Board's endorsement and support of a strong mandate for the mechanism ... and on how robustly ... management engages with its processes and responds to the mechanism's findings*"¹⁴⁵

Appendix 9 maps certain Good Policy Paper recommendations against the recommendations proposed in this review.

¹⁴¹ Accountability Counsel, Bank Information Center (BIC), Center for International Environmental Law (CIEL), Centre for Research on Multinational Corporations (SOMO), Community Empowerment and Social Justice Network (CEMSOJ), Gender Action, Green Advocates International (Liberia), Inclusive Development International, International Accountability Project, Jamaa Resource Initiatives, Recourse, Urgewald e.V.

¹⁴² Multiple Authors, *Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms* (2023) (herein referred to as "the Good Policy Paper"). The authors published a good policy paper in December 2021 and updated it in December 2023. The 2024 Good Policy Paper is the latest edition.

¹⁴³ *ibid.*, p.10

¹⁴⁴ *ibid.*, p.12

¹⁴⁵ *ibid.*, pp. 11-12

5. The Ambition to Improve ADB'S Accountability Policy

In light of the evolution of accountability issues in development finance, the increased public scrutiny of MDB accountability practices, questions over legal immunity and the advancement of policy standards, this section aims to identify areas where ADB's accountability policy may be updated and improved. The review has also considered the IAMs established at MDBs and a comparative table of features of 7 IAMs is shown in **Appendix 10**.

The Formal Review will be an opportunity to enhance the functionality, governance, and operational procedures of accountability in ADB. Following the NOM principles, ADB's IAM should contribute to bank-wide knowledge and better project quality, benefit from the delegation of full authority from the Board and improved business processes and engage IAM executives and staff who are valued by ADB.¹⁴⁶

The focus should be on improving the **credibility, accessibility, efficiency, and effectiveness** of ADB's accountability policy.

5.1 Functions¹⁴⁷

An Accountability Advisory Function

Currently, the AM has two functions: compliance review, conducted by the CRP, with support from the OCRP, and problem-solving, conducted by the SPF with support from the OSPF. The AM does not have an Advisory function.

As previously mentioned,¹⁴⁸ ADB has identified several accountability objectives beyond its core functions, including enhancing project quality, improving development effectiveness, refining complaint management through institutional learning, and fostering transparency and beneficiary participation. The AM2012 emphasises the importance of continuous learning and advancement, aiming to assimilate lessons and insights, improve projects, and cultivate a culture of accountability. However, despite the introduction of initiatives like the JLRs, the outcomes of learning and capacity development initiatives have not consistently met their intended objectives. The current framework for achieving accountability awareness and learning objectives is also divided between OSPF and OCRP.

A dedicated Advisory function can be the institutional focal point for accountability effectiveness through learning and capacity building, consolidating lessons learned from compliance reviews, providing guidance to prevent the recurrence of harm or noncompliance in future projects, and offering insights on accountability trends and policies. This function would also deploy specialized expertise in pedagogy and knowledge management that can be more focussed, allowing mediation and compliance review teams to concentrate on case management. An Advisory function would also be the natural custodian of the AM's new Knowledge Management Strategy and Communications Strategy.

¹⁴⁶ NOM Paper, para. 102

¹⁴⁷ For ease of reference, this Section refers to 3 main functions: compliance review; mediation; and advisory. "Mediation" is intended to be a generic term to encompass the menu of problem-solving tasks undertaken by the accountability apparatus: consultation, negotiation; problem-solving; arbitration; and so on.

¹⁴⁸ Section 3.1, *supra*.

Establishing an Advisory function aligns with good practice in other IAMs, which have embraced the concept to promote continuous learning and improvement of policy and practice.

All of the comparator IAMs have either a dedicated Advisory function or feature advisory services as a key part of their accountability functions. The IFC/MIGA CAO has always had a specific and strong Advisory role and the World Bank's Inspection Panel can also provide advisory services, such as case lessons and systemic issues and reflections.¹⁴⁹ In 2019, EBRD introduced institutional learning and advisory "*... to identify institutional learnings that distinguish common challenges, provide constructive recommendations, and promote a culture of continuous learning at EBRD*"¹⁵⁰ AfDB has an advisory function that seeks to provide independent opinions on "*systemic issues, technical advice on any operations and policies*" and is designed to support staff and management "*to strengthen the positive social and environmental impact of Operations*".¹⁵¹ The EIB-CM provides advice to management on systemic issues related to policies, standards, procedures, guidelines, resources and systems, based on lessons learned from complaints. AIIB has introduced "*Project Processing Queries*" which is a process to request information¹⁵² and is committed to building "*an institutional culture of continuous AIIB-wide learning and accountability*". The PPM learning function independently identifies positive and adverse environmental and social impacts during PPM reviews.¹⁵³ IDB's MICI has introduced an institutional learning program called *MICI Reflections* focused on lessons learned, best practices, trends, and systemic issues.¹⁵⁴

All MDBs now have knowledge management initiatives at the institutional and corporate levels. IAM practitioners also stress that "compliance" and its companion, "accountability", need to be part of the institution-wide curriculum. These are part of development effectiveness solutions and the IAM should not left out of this equation.

*"...the advisory function helps to embed an institutional culture of continuous learning and improvement of policy and practice."*¹⁵⁵

*"...The advisory function was considered by the (Board) ... a welcome development in view of the opportunity it offers IRM to enhance learning and promote the culture of compliance in (AfDB) ... The AfDB should be commended for expanding IRM functions to include an Advisory one ... This gives the Bank an opportunity to institute changes to its policies and procedures and reinforces public trust in the institution."*¹⁵⁶

*"More recently, the MDBs have explicitly included an advisory function aimed at ensuring that the mechanisms can distill the lessons arising from the cases they handle with a view to helping to promote institutional learning."*¹⁵⁷

¹⁴⁹ WB IP Resolutions, Section 4.2

¹⁵⁰ The EBRD PAP, para. 1.2(a)

¹⁵¹ AfDB IRM rules, para. 8

¹⁵² AIIB PPM Policy, para. 2.1

¹⁵³ PPM Rules of Procedure, Attachment 5 (p.44)

¹⁵⁴ See also the MICI Policy, para. 61

¹⁵⁵ Good Policy Paper, p.80

¹⁵⁶ AfDB IRM policy, para. 203, pp. 59-60. The referenced 2014 AfDB IAM policy review report states: "*Advisory role tends to highly serve the interest of institutions for learning lessons from complaints and recommendations relating to systemic issues*" (emphasis added), p.45

¹⁵⁷ IADB MICI policy, pp. 02-03

"...The structure of CAO was innovative when established because it encompassed both a Dispute Resolution and a Compliance function, and introduced an Advisory function as well"... and the Advisory function pioneered by CAO has been incorporated in most new IAMs"¹⁵⁸

Since 2013, when CAO committed resources for a fulltime Advisory staff, the Advisory function has provided guidance to IFC/MIGA on issues of policy and practice through Advisory Notes on topics such as supply chains, corporate incentives, and grievance mechanisms"¹⁵⁹

The introduction of an Advisory function offers an opportunity to enhance the effectiveness of ADB's accountability policy.

5.2 Governance

The credibility of ADB's accountability policy depends on the adoption of high standards of good governance.

5.2.1 The Board of Directors

Board leadership ensures the credibility and effectiveness of an IAM and its contributions to the MDB's mission. The Board is the custodian of the accountability policy and, among other things, it should define the mandate of the IAM and guarantee its independence; appoint the head of accountability; approve an adequate budget so that the IAM can fulfil its mandate; appoint CRP members; approve remediation recommended by the IAM if a compliance review determines that the MDB has been non-compliant; engage with an IAM's Advisory function; report to shareholders on the effectiveness of the accountability policy; and supervise periodic policy reviews.

As with ADB's existing BCRC, the Board may invest certain accountability responsibilities in a dedicated committee of the Board (e.g. a "Board accountability committee").¹⁶⁰ By its nature, this committee should consist of Board members who are, or will become, well versed in the accountability policy and procedures and with E&S standards and risks.¹⁶¹

If the IAM's mandate is clear and precise in the accountability policy and it has strong leadership, sufficient staff and adequate resources, the Board should ensure that the IAM is independent by investing it with full power and authority to conduct and complete compliance reviews, the resolution of disputes, and advisory work. The IAM would be accountable to the Board for the exercise of those powers to accomplish its mandate.

5.2.2 Organisation and Structure

(1) Accountability Functions Report to the Board

Currently, the CRP reports to the Board, while the SPF reports to the President.¹⁶² It is now regarded as best practice that an IAM should report to the MDB Board. If an

¹⁵⁸ The CAO Review report, para. 39. In fact, the 2020 IFC/MIGA CAO review highlights extensive coverage of an accountability advisory function, including staff training on the AM, though it also notes some challenges.

¹⁵⁹ *ibid.*, para. 345

¹⁶⁰ ADB's current Board committee, the BCRC, probably derives from the fact that only the CRP reports to the Board, while the SPF reports to the President. Better policy would see the IAM (compliance; mediation; advisory) housed under one administrative unit that reports to the Board. Thus, the BCRC would become the "Board Accountability Committee".

¹⁶¹ Some BCRC members have complained that the roles of the BCRC are currently somewhat unclear.

¹⁶² AM2012, para. 108, p. 21

accountability function, such as dispute resolution, reports to management, this may “*risk legitimacy*”.¹⁶³

While an IAM may not be autonomous, independence, and the perception of independence, are essential to maintain the credibility of the IAM. Therefore, all accountability functions—compliance review, dispute resolution, Advisory—should report to the board. This reporting arrangement serves to “*instil confidence*” among APs and other stakeholders.

Virtually all of the comparator IAMs report to the Board of the MDB¹⁶⁴. AIIB’s PPM reports to the Board “through” the Policy and Strategy Committee of the Board¹⁶⁵ and AfDB’s IRM reports to the Board and is “overseen” by a Board committee¹⁶⁶; however, EBRD’s IPAM, IDB’s MICI, World Bank’s AM and IP and (most recently) the IFC/MIGA AM(CAO) all report to their respective Boards. Currently, the SPF is the only IAM entity reporting to management and is an outlier.

The approach at other IAMs is instructive:

“One characteristic of IAM governance is that they function independently of their bank’s operations. This helps give all their stakeholders confidence that they are, and are seen to be, able to operate without fear or favour to any party to the process. One indicator of their independence is to whom the IAMs reports.”¹⁶⁷

“The IAM must be structured in a manner that maximizes its independence, impartiality, credibility and legitimacy. Project affected people must have the confidence that the mechanism is empowered to address their problems. The mechanism must thus be structured in a way that reinforces its independence from Management. The IAM should report directly to the Board of Directors.”¹⁶⁸

“The MICI policy, as reformulated in 2014, defines the institutional position, scope, functions, and operating structure of the mechanism. The MICI was created as an office reporting directly to the Boards of Executive Directors of the IDB and IDB Invest so as to act independently from IDB Group Management.”¹⁶⁹

“The Review Team recommends that CAO should report to the IFC/MIGA Board rather than to the President, in order to eliminate potential conflicts of interest, ensure that issues of E&S accountability are regularly reviewed at the highest level of IFC/MIGA governance, and ensure appropriate action in response to CAO non-compliance findings.”¹⁷⁰

ADB’s dispute resolution/problem-solving function, the SPF, should report to the board.

¹⁶³ As per Accountability Counsel

¹⁶⁴ EIB’s EIB-CM is part of the Inspectorate General, a directorate headed by the Inspector General. This inspectorate comprises 3 offices, namely fraud; evaluation; complaints. The complaints (compliance; dispute resolution) are handled by the EIB-CM, which is operationally independent. (See EIB-CM policy, paras. 2, 2.2, and 7.12)

¹⁶⁵ AIIB PPM Policy, para. 2.3

¹⁶⁶ IRM rules, paras. 82-83

¹⁶⁷ 2018 IBRD/IDA policy review report, para. 16

¹⁶⁸ African Development Bank’s review of its Independent Recourse Mechanism (IRM) 2021, (“AfDB review”) para. 295

¹⁶⁹ Inter-American Development Bank’s review of its Independent Consultation and Investigation Mechanism (MICI), (“IDB review”) paras. 2.2, 9

¹⁷⁰ CAO Review report, paras 41-42

(2) Conducting Compliance Reviews

If all accountability functions report to the Board, ADB would have two options to conduct compliance reviews: either retaining the CRP, more or less in its present form; or establishing a “one ADB” institutional IAM. Different considerations apply to each option. For example, following its 2020 review, the World Bank elected to retain its Inspection Panel, whereas other MDBs decided to move away from separate compliance/inspection panels to establish dedicated institutional IAMs to deal with all accountability functions.

The independent CRP has merit:

- Prestige and reputation
- The sole task of the independent CRP is to investigate evidence of alleged non-compliance in a case that has been accepted by the IAM
- The CRP is deliberative: a small, dedicated forum that calls for members to engage in the analysis of arguments in complex cases and make the most appropriate recommendations to the Board
- Compliance reviews are conducted by experienced high-level professionals skilled in investigation and who come from diverse backgrounds
- An independent CRP is a hallmark of good governance
- Certain compliance review cases, particularly those involving private sector operations or emerging environmental or social financing instruments, may call on specialist compliance review panellists.¹⁷¹

So, ADB’s CRP has “established prestige” (in the words of an IAM practitioner) and ADB should be careful not to diminish the status of the compliance review function and risk losing credibility.

The World Bank retained its IP because of its credibility as the “gold standard” for accountability, based on its 30-year history of leadership in the field. With such a contribution to MDB accountability, the World Bank considered that it would have been a “great loss” to remove this valuable role. Therefore, the IP was retained as a component in the World Bank’s newly established “Accountability Mechanism”, which is overseen by the Accountability Secretary and includes a dispute resolution function. While the IP still enjoys complete independence in its deliberations, the AM supervises its operational and administrative support, including staffing and communications and this arrangement apparently presents challenges. (This “hybrid” configuration is likely to be taken up during the forthcoming AM/IP review.)

On the other hand, there are sound arguments that support a “one ADB” institutional IAM.

For example, the current disparate CRP/SPF reporting arrangements have hindered the establishment of a cohesive “center of gravity” for accountability within ADB and the fragmented structure has inhibited a more valued culture of accountability:

¹⁷¹ Strategy 2030 indicates that PSO will become a larger portion of future ADB funding. If so, and PSO increases in size and complexity, it may be necessary to consider how the AM should manage referrals involving PSO financing instruments.

- The absence of a clear institutional home for independent accountability functions may lead to fragmentation of accountability efforts
- Customary accountability functions may become "silos," isolating staff, hindering cross-fertilization of ideas, and limiting professional development opportunities
- Without a unified structure, accountability professionals may lack the opportunities and *esprit de corps* that helps to nurture a wider culture of accountability
- The fragmented structure may obscure the IAM's visibility to APs and other external stakeholders, making it difficult for them to navigate and access accountability solutions. (For example, ADB's organisation chart does not mention the "*Accountability Mechanism*" and the official contact details on the web site are divided under the "OSPF" and "OCRPF", respectively. This presents a practical difficulty for any APs who do not understand the difference between the two functions)

To address these challenges, the IAM could function as a single body led by a senior-level IAM head with full authority under the policy. This structure would include teams responsible for each function (compliance review, mediation/problem-solving, and Advisory), supported by a specialized secretariat. One accountability body could streamline operations and enhance efficiency.

ADB's NOM makes the case for a "one ADB team" approach: it can allow for the resolution of more issues, may facilitate "*a streamlined quality assurance process*"¹⁷², and lead to faster resolution of issues and reduction of administration time.¹⁷³ The "one team" approach can also minimise fragmentation, improve oversight, avoid duplication, speed up responsiveness, facilitate knowledge flows and even open career opportunities for otherwise isolated staff.¹⁷⁴

In 2019 EBRD renamed its IAM as the "IPAM" and structured it as the IAM, independent from management and reporting to the Board. Thus, EBRD moved away from a panel with a small secretariat to reviewing compliance inhouse in the IPAM.¹⁷⁵

AfDB's focus on redesigning its IRM took into account a number of factors: as a regional bank, AfDB's IAM is not as ubiquitous as WB's IP; a separate panel can present problems of independence and accountability: the IRM Director is accountable to the Board and to other AfDB stakeholders whereas a panel is less accountable in the same way; appointing a panel can take time and it is "almost impossible" to secure the expertise for modern development finance in a single panel; and, since dispute resolution and compliance review would be located in the IRM, they need to be particularly vigilant about confidentiality and potential conflicts of interest.

"(The IRM) should be run by a senior-level term-limited head whose sole responsibility is to oversee the three functions of dispute resolution, compliance review and advisory services. A head at the helm of the mechanism enhances internal governance and serves as an important voice of

¹⁷² NOM Paper, para. 36

¹⁷³ *ibid.*, para 90

¹⁷⁴ *ibid.*, para 89

¹⁷⁵ While the move to inhouse compliance reviews was calculated to be efficient and save costs, the process entailed different functions, timeframes and steps and required more resources than originally anticipated.

*accountability whose sole responsibility is to oversee the three functions within the institution and at the highest level*¹⁷⁶

Other IAMs have also embraced a unified IAM structure:

*IDB: “The MICI’s basic structure, as established in its policy, was completed in early 2016 after some delay. The current structure of the MICI comprises a single office headed by a director with responsibility for all functions of the mechanism. This structure resolved major problems identified by OVE in 2012 regarding accountability and conflicts of interest associated with the previous structure.”*¹⁷⁷

*IFC/MIGA: “The Review Team recommends that all three CAO functions (Compliance, Dispute Resolution, and Advisory) report to the Board through the CAO VP. IFC/MIGA Management have proposed that CAO’s Compliance function report to the Board, while keeping the reporting lines for the Dispute Resolution and Advisory functions with the President. However, splitting the reporting lines could have three negative impacts. First, it could reduce the perceived impartiality of CAO Dispute Resolution, by aligning Dispute Resolution processes more explicitly with the World Bank’s Management. Second, it could reduce the ability of CAO’s VP to effectively manage the three functions as one organization. Third, it could reduce the operational complementarity that exists now among the three functions ...”*¹⁷⁸

Managing compliance reviews inhouse can also be seen as efficient and cost effective and may contribute to institutional learning and experience.¹⁷⁹

[The concept of an “*accountability mechanism*” is vague and probably a mystery for some affected communities; it is difficult to know what is meant by a “mechanism”. The original proposals for a “commission” offer a stronger message on the place of accountability: a commission connotes an independent investigative body as a serious instrument of public sector governance and captures the essence of a dedicated institutional responsibility for accountability functions. The creation of an **ADB accountability commission**, led by an **accountability commissioner**, signals independence and good governance, and would represent an important cultural shift: see Figure A.]

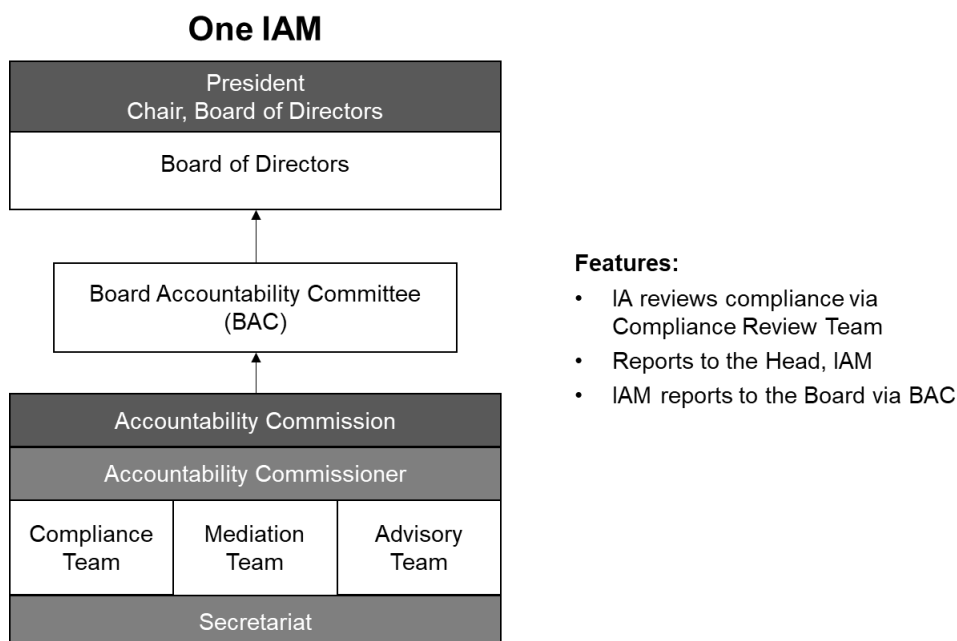
¹⁷⁶ AfDB review, para. 295, p. 81 (21)

¹⁷⁷ IDB review, 6.2, para. 63

¹⁷⁸ The CAO policy review, paras. 45-46 xiii-xv

¹⁷⁹ An in-house compliance review capability may contribute to a consistent approach to compliance investigations and may help to nurture institutional expertise and knowledge: See Good Policy Paper (January 2024), p.20

Figure A. A Sample Accountability Commission



5.2.3 Independence

“For the mechanism to function effectively, it must be trusted by all stakeholders, including local communities, the financial institution’s management, the institution’s clients, and interested civil society organizations (CSOs). Project affected people must have confidence that the mechanism is empowered to address their problems and concerns. In order to foster such trust, the mechanism must be structured in a manner that maximizes its impartiality, credibility, legitimacy, and independence from the financial institution’s management, if not the institution as a whole. The mechanism must also be given the power to run its office independently.”

The Good Policy Paper, January 2024¹⁸⁰

Independence is the cornerstone of any IAM, essential to uphold its integrity, credibility, and effectiveness.

While the AM2012 aimed to “enhance” the independence of compliance review¹⁸¹, the redefinition of the CRP’s role compromised it.¹⁸² This shift warrants reconsideration and, in line with contemporary practice, the CRP’s power to make recommendations to the Board should be restored. The accountability policy should invest the IAM with full authority to oversee all accountability functions. For its part, the IAM must be accountable to the Board for exercising its powers and authority in accordance with the accountability policy and adherence to its mandate.¹⁸³

¹⁸⁰ Good Policy Paper, p.19

¹⁸¹ AM2012, paras. 83-84

¹⁸² *ibid.*, paras 85-86

¹⁸³ As a general matter, ADB’s “One ADB project team” concept under the NOM supports the principle of delegated decision-making and granting authority to a team, coupled with reformed business processes, to achieve improved efficiency. See NOM, para. 140

Importantly, it should be noted that in June 2023 a CRP member resigned prematurely from the CRP amid concerns over the erosion of the implementation of the CRP's mandate and the independence of the AM's compliance function. Therefore, it is clear that the consideration of full independence is extremely important for all IAM practitioners.

There are several crucial *indicia* of independence:

(1) Clarity of the Mandate to Review Compliance

An IAM is not autonomous but it must be independent. If the accountability policy is clear, the IAM must be able to execute its powers under that policy without the risk of any involvement by the Board, management or staff during the pendency of any IAM case. This preserves the integrity and credibility of the IAM and its processes.

There have been instances at ADB where the independence of the CRP has been questioned and perceived to have been compromised due to a lack of clarity in the AM2012.¹⁸⁴

In August 2020 ADB released a document on its website designed to "clarify" certain provisions of the AM2012.¹⁸⁵ The document suggests that several "similar or recurring issues" would "benefit from guidance" and suggests that these are not policy issues, but "implementation issues" that called for guidance to be resolved.

The precise policy status of these Clarifications remains unclear. They are not part of the AM2012, the Board has not approved them and they are not reflected in the OM.¹⁸⁶

The Clarifications document is based on a memorandum dated 1 February 2019 from the General Counsel to the BCRC titled "Accountability Mechanism Policy – OGC Policy Interpretations" ("OGC's Policy Interpretations") The General Counsel explained that " ... *BCRC considered many comments and lessons-learned in the course of the implementation of the ... AM Policy ... and the several compliance reviews conducted under the (policy)*". While there was no plan to conduct a "wholesale review" of the AM2012 at that time, the General Counsel had advised the BCRC that it need not wait for a "*formal policy review*" and prepared the OGC policy interpretations to address the "*issues such as ambiguities in policy, rules or procedures*". OGC offered that these policy interpretations would clarify the issues "*as a means of solution other than policy amendment*".

OGC offered interpretations of 11 separate issues, including clarifications of the scope of CRP's monitoring of management Remedial Action Plans (RAP), the term "*through BCRC*", and the scope of a compliance review, the definition of "*harm*" and exclusion of "*likely harm*" from CRP findings, and clarifying the independence and/or reporting lines of individual part-time CRP members*

¹⁸⁴ Another instance arose in Complaint No. 2015/1 (7 September 2015) in Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project (Loan 2288 and Loan 2602/Grant 0187 (Supplementary) the perception of the CRP's independence was affected when the CRP had to change a recommendation for a remediation fund. See the Open Letter to the IAMnet (footnote 128, *supra*.)

¹⁸⁵ <https://www.adb.org/documents/amp2012-implementation-guidance>

¹⁸⁶ OM Section L1/BP (Accountability Mechanism); OM Section L1/OP (Accountability Mechanism Procedures)

Subsequently, 8 of these “OGC Policy Interpretations” were adapted and presented as “Guidance” notes in the policy Clarifications.

It is not the purpose of this review to consider the merits or otherwise of the OGC Policy Interpretations nor the Clarifications; however, this attempt to deal with policy uncertainty and lack of clarity in the absence of a “*formal policy review*” has proven to be difficult for the CRP and controversial for NGOs, CSOs, and other commentators.

Some have complained that this interpretive technique has raised doubts over the CRP’s independence, eliminated any power to consider future harm or to investigate all evidence of possible non-compliance that emerges during a compliance review and has curtailed what should be a legitimate part of the CRP’s monitoring mandate. Under a sound accountability policy, most of these matters should be explicit: the authority and powers of the CRP should be clearly delineated in the accountability policy, rather than leaving uncertainty to be “interpreted” and “clarified” by an *ad hoc* process. The time would now appear to be propitious for “policy amendment”, as seemingly foreshadowed by the General Counsel.

For example, contemporary IAM policies routinely contemplate that complaints or allegations of non-compliance may involve “actual or potential harm”. At AfDB the IRM rules refer to harm that is actual or potential: “have been harmed” or “could be harmed”.¹⁸⁷ EBRD’s PAP also refers to harm that is actual or potential: “to have caused or to be likely to cause” and for compliance review harm must be material and may be direct or indirect.¹⁸⁸ IDB’s MICI deals with harm that is actual or potential, direct, causing material damage, or loss, arising from noncompliance. Harm may be “actual or potential” and “direct, material damage”, or “loss (actual or reasonably likely to occur in the future)”¹⁸⁹; and the EIB-CM policy refers to “maladministration” related to noncompliance with “policies, standards, procedures, human rights, principles of good administration, and environmental or social impacts”¹⁹⁰

In addition, IAM policies, procedures and rules clearly apply to projects where the MDB has already approved financing. There are, however, different approaches to the handling of complaints raised in relation to proposed projects or those that are under consideration but have not yet been approved for financing. AfDB’s IRM policy applies to operations that are approved by the Boards or management, or that are under consideration for financing by management.¹⁹¹

In other cases, complaints at the pre-appraisal stage must be sent to the project team and those projects at the appraisal stage must be sent to the operations department. In such cases, a project may be approved with disbursement being subject to remediation conditions (EIB-CM).¹⁹² At IDB complaints received before project approval must be sent to management and recorded in a public registry:

¹⁸⁷ the IRM rules, paras. 3, 11, 15(a), 16(b), 58, 62, 63, 67(iii)(b)

¹⁸⁸ EBRD PAP, Section 1, paras. 2.1(c)(iv), 2.6(b)(i)

¹⁸⁹ MICI policy, page 2. IDB also noted that in dispute resolution cases IAMs have moved somewhat away from “*harm per se*”: a case may involve harm but the dispute resolution process tends not to focus on this in the pursuit of a solution acceptable to all parties. For compliance review, however, “harm” or “likely harm” is still at the heart of the problem

¹⁹⁰ EIB-CM Policy, paras. 1.1, 3.

¹⁹¹ IRM rules, paras. 3, 9, 11, 15

¹⁹² *ibid.*, para. 6.2.10

During project preparation, management must take the complaint into account and inform MICI of its response.¹⁹³ In some instances, complaints related to projects which have not been approved are simply referred to management and the Board (IFC/MIGA CAO)¹⁹⁴

(2) Admissibility

In 2016 the BCRC discussed the CRP's eligibility report that proposed a compliance review for the Samoa Customary Lands Project.¹⁹⁵ The BCRC agreed that there was evidence that ADB had failed to comply with its Public Communications Policy; however, the BCRC had also "*received ... conflicting opinions from the CRP and OGC*" and was unable to reach a "conclusion". Despite the evidence of non-compliance, the BCRC recommended to the board that a compliance review should not proceed.¹⁹⁶ The BCRC Chair's summary suggested that "*ADB Management should be asked to remind staff of the importance of full compliance ...*" It was unclear how this would happen nor if, in fact, such a reminder was issued.

A majority of the Board approved the BCRC recommendation not to proceed with a compliance review¹⁹⁷ and the CRP was bereft of power to investigate.

Similarly, in February 2018, the BCRC considered the CRP's eligibility report seeking authority for a compliance review of allegations of ADB's non-compliance in the Georgia Nenskra Hydropower Project.¹⁹⁸ According to the BCRC Chair's report to the Board, the BCRC "*took note*" of the CRP's findings that "*appear based on credible evidence to support a preliminary finding of several important areas of non-compliance with ADB's operational policies and procedures.*"¹⁹⁹ However, due to the risks associated with a potentially lengthy compliance review, the BCRC recommended that the Board should not authorize a compliance review "*at this time*" and should, instead approve of an "*alternative to a compliance review*" consisting of a management plan and an informal Board seminar. Management was encouraged to fix the problem of non-compliance. The AM2012 does not provide for such an alternative.

In March 2018, the Board approved the BCRC's recommendations not to authorize a compliance review and to pursue the alternative approach.²⁰⁰

The AM2012 indicates that the Board must authorize a compliance review based on the CRP's eligibility report but it is silent on the consequences of refusing to do so even after the CRP finds, based on the evidence, that the complaint is eligible for compliance review.²⁰¹ The requirement to obtain Board authority to conduct a compliance review, together with a lack of clarity when the Board refuses to

¹⁹³ *ibid.*, para.19(e).

¹⁹⁴ AM (CAO) policy, paras. 42 and 47.

¹⁹⁵ Complaint no. 2016/2 (20 April 2016) Samoa: Promoting Economic Use of Customary Land and Samoa AgriBusiness Support Project – TA Nos. 4712, 7387, 8481 & Grant No. 0392

¹⁹⁶ Chair's Summary of the Board Compliance Review Committee (DOC.R60-16)

¹⁹⁷ The record indicates that the United States opposed the BCRC recommendation.

¹⁹⁸ Complaint 2017/4 (7 December 2017) in relation to GEO: Nenskra Hydropower Project (Project Number 49223-001)

¹⁹⁹ Memorandum dated 23 February 2018 from the Chair, BCRC to Board of Directors

²⁰⁰ Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia) (R13-18, 7 March 2018)

²⁰¹ AM2012, para. 182

authorise a review, undermines the independence of the CRP and the integrity of the process to hold ADB accountable.

If the accountability policy is clear and unambiguous and a professional IAM team is led by a respected head of accountability, then the IAM should be invested with the power to execute the IAM mandate free from undue influence or interference (and should be held accountable for doing so).

When accessing an IAM, complainants or their representatives typically face two pathways: compliance review or dispute resolution. Having regard to the importance of delivering remedy to affected people, many accountability practitioners emphasise the importance of complainants having “agency” over the process of accessing an IAM.

A complainant may make the final choice of function; but the IAM may still seek to recommend the most suitable function based on submission content, timing and eligibility criteria, taking into account the complainant’s preferences. (AIIB)²⁰²

In some cases, complainants have an option to choose problem-solving only, compliance review only, or both problem-solving and compliance review (IPAM)²⁰³; There are variations where a complainant may choose dispute resolution only, compliance review only, or both and, if both functions are chosen, the processing becomes sequential (IDB)²⁰⁴; or the complainant also has the option to choose problem-solving only, compliance review only, or problem-solving then compliance review (AfDB)²⁰⁵

Some IAMs make the dispute resolution function available in the first instance but if there is no agreement, the complainant may seek compliance review (CAO).²⁰⁶ In approaching the World Bank, complainants first file a complaint with the IP; but the AM may offer a dispute resolution option to the complainant(s) and borrowers²⁰⁷. If no agreement can be reached between the parties, the IP will proceed to an inspection.²⁰⁸

The EIB-CM is “*predominantly compliance focused*” but it may conduct problem-solving, whenever applicable.²⁰⁹

The Good Policy Paper recommends that an IAM should have the “*sole authority, without the need for Board approval, to determine whether to conduct a compliance investigation*”.²¹⁰

(3) Recommendations to the Board

The IAM should have the power to conduct a compliance review and, where non-compliance is identified, to complete its independent investigation by making recommendations to the Board for remediation. Substantive IAM recommendations

²⁰² AIIB PPM policy, para. 6.3

²⁰³ EBRD PAP, para. 18; Project Complaint Mechanism (PCM) Rules, p1

²⁰⁴ MICI Policy para. 17(a)

²⁰⁵ IRM rules, paras. 17 and 35(d)

²⁰⁶ IFC/MIGA CAO policy, para. 59

²⁰⁷ WB Accountability Mechanism resolutions, paras. 9 and 11; WB IP resolutions, para. 30-33

²⁰⁸ WB IP resolutions, op. cit. para. 33(a)

²⁰⁹ EIB-CM policy, para 5.3.3

²¹⁰ Good Policy Paper (2024), Recommendation 46, p.64

create the standard against which to measure the effectiveness of any remedial action.²¹¹

As noted earlier, the AM2012 removed the power of the CRP to make recommendations to the Board (though the reasons for doing so were not persuasive) so that the CRP only delivers “findings” on ADB’s non-compliance to the Board.²¹²

At most comparable IAMs an investigation that finds non-compliance culminates in the IAM’s recommendations to the Board to remediate the harm, preclude the harm or bring the MDB into compliance. The World Bank’s IP considers that it is more appropriate to issue findings that can be discussed with the APs prior to the finalisation of any action plan prepared by management in response to the IP’s findings.

Given the background to AM2012, the power for the CRP to make recommendations to the Board should be restored.

The Good Policy Paper recommendation states that: “*The compliance review function should make recommendations regarding prevention and remediation of harms and noncompliance*”²¹³. At comparator IAMs the power to make recommendations based on the findings of a review of compliance is framed as follows:

*“The purpose of the CAO compliance function is to carry out reviews of IFC/MIGA’s compliance with E&S Policies, assess related Harm, and recommend remedial actions where appropriate”*²¹⁴

*“If IPAM finds the Bank to be non-compliant ... the Compliance Review Report will ... provide Bank Management with specific recommendations to address the findings of non-compliance: ... identifying Project-specific actions to bring the Bank into compliance and address the harm or potential harm associated with the findings of non-compliance; and ... identifying changes to EBRD practices, procedures, guidance or systems to bring the Bank into compliance and to avoid recurrence of such or similar situations”*²¹⁵

(iv) Selection and Appointment of the IAM Head

The selection and appointment of an IAM head is also an important indicator of IAM independence.

The heads of the other comparator IAMs are appointed by the Board or with Board concurrence, though the selection process varies.²¹⁶ (As noted earlier, ADB is an outlier as it is the only MDB with an IAM functional head, the SPF, appointed by the President.)

²¹¹ See [The Independent Recourse Mechanism - Operating Rules and Procedures January 2015 \(Updated July 2021\)](#).; para 67 (iii)

²¹² AM2012, para 186.

²¹³ Good Policy Paper, Recommendation 2, p. 16

²¹⁴ CAO Policy, para. 76

²¹⁵ EBRD IPAM policy, para 2.7(d)(ii)

²¹⁶ The appointment process is not addressed in the policies of AIIB nor EIB

Each IAM has detailed provisions on the selection of the IAM head. Some MDBs have taken the initiative to include representatives from civil society and other external stakeholders as a member or members on the selection committee. This is a powerful signal to nurture partnership with civil society, add an imprimatur of inclusiveness, offer a “voice” to affected communities and may add legitimacy to the eventual selection.

For example, a selection committee to consider nominations from stakeholders may include representatives from the business community and civil society; the appointment is made by the Board (CAO, IFC, and MIGA). Selection committees can also include external stakeholders who possess expertise in accountability and social or environmental projects (EBRD); or independent external advisors (AfDB).

Also, other stakeholders, such as NGOs/CSOs, are often represented on selection committees that submit a proposed candidate to the Board for approval and appointment. Independent voices in the selection process of key IAM executives increases the credibility of the process. The Good Policy Paper suggests that including external stakeholders in the selection process can “*legitimize the hiring process and build trust*”²¹⁷.

*“To maintain the independence of the CAO [Director General (DG)], a selection committee will be established to conduct an independent, transparent, and participatory selection process that involves stakeholders from diverse regional, sectoral, and cultural backgrounds, including civil society and business communities.”*²¹⁸

Considering the origins of MDB accountability, CSOs and NGOs can be an important (and increasingly prominent) part of the emergence of an accountability culture. CSOs/NGOs have contributed to the evolution of accountability policies and practices. Inviting NGOs/CSOs to be part of the selection process for the accountability head would send important signals about ADB’s confidence in engaging with civil society: take advantage of expertise in the field of accountability, offer a visible feature of governance, acknowledge that voices of APs may be heard at the highest levels, a recognition of the importance of civil society in accountability and improve ADB’s engagement with them. The 2016 JLR offers an eloquent plea for a closer “partnership” between ADB and NGOs and CSOs: enhancing partnership “to promote trust and partnership building”²¹⁹

(v) Employment Prohibitions²²⁰

Employment prohibitions are simple but strong signals of independence and a commitment to avoid conflicts of interest. Again this feature signals credibility, independence and reputation and, therefore, can enhance confidence on the part of Complainants. Such prohibitions suggest a mature IAM. Most IAMs have

²¹⁷ The Good Policy Paper, Recommendation 7, p.22

²¹⁸ IFC/MIGA Independent Accountability Mechanism (CAO) Policy (28 June 2021) (“the CAO policy”), para. 15

²¹⁹ 2016 Learning Report on the Implementation of the Accountability Mechanism Policy (ADB. Manila. 2017), p.20. Some commentators argue that ADB may well achieve improvements in responsiveness, implementation, results, governance and social inclusion by fostering greater engagement with NGOs and CSOs.

²²⁰ The heads of most IAMs are barred from any work after their term: IFC/ MIGA refers to “employment”; as AfDB, IBRD/IDA, and IADB refer to “working in any capacity”; and EBRD refers to “any remunerated services”.

employment restrictions on the IAM head (this extends to the senior leadership of compliance and dispute resolution).

The Good Policy Paper recommends both pre-employment bans²²¹ and post-employment bans for IAM principals²²² and refers the AfDB's IRM and IFC's CAO, which feature employment bans.

*"The Accountability Mechanism Secretary will be prohibited from working for the World Bank Group in any capacity following the conclusion of his/her appointment."*²²³.

(vi) Access to Independent Legal Advice²²⁴

An IAM may need to seek legal advice. In considering any legal issues that arise in connection with accountability cases, particularly compliance reviews, in-house legal departments face an obvious conflict of interest that could have the effect of diminishing the reputation and credibility of the IAM. ADB's OGC is cognizant of this issue.²²⁵

Contemporary good practice suggests that, in appropriate cases, an IAM should also have access to independent legal advice, if required. The Good Policy Paper recommends the availability of independent legal advice and cites the policies at AfDB and IADB.²²⁶

*"The Director may also seek external legal advice on a Complaint, grievance or complaint-related matter or with regard to any matters concerning the IRM."*²²⁷

*"... Except with regard to the Bank's rights and obligations, the MICI Director may also, at any time, seek external legal advice on Request-related issues as they arise"*²²⁸

Some Board members have indicated that they "see value" in the Board having access to independent legal counsel. The Board always has the prerogative to obtain external legal advice.

It has been suggested that OGC could explicitly acknowledge its conflict of interest in accountability matters and could manage such conflicts by designating different OGC lawyers, respectively, to "advise and serve" management, the AM and the Board. It is suggested further that a failure to observe this protocol "could be seen as a violation of the bank's ethics/business conduct rules and result in sanction." While

²²¹ Good Policy Paper, Recommendation 11, p.25

²²² *ibid.*, Recommendation 12, p.26

²²³ IBRD/IDA Resolution No. IBRD 2020-0005 Resolution No. IDA 2020-0004 The World Bank Accountability Mechanism (September 8, 2020) ("WB AM Resolution"), para 3(b)

²²⁴ In addition to the comparator IAMs, paragraph 100 of the Green Climate Fund's IAM (IRM) Procedures stipulates that "if requested by the Head of the IRM, the General Counsel of the GCF or a counsel designated by the General Counsel will provide legal advice to the IRM on the GCF's rights and obligations and GCF operational policies and procedures relevant to a request, grievance or complaint. **The Head of the IRM may also seek external legal advice on a request-, grievance- or complaint- related matter or with regard to any other matters concerning the IRM** (emphasis added)"

²²⁵ ADB's OGC has adopted a practical solution by attempting to segregate a small cadre of lawyers, separate from other legal services in OGC, in order to advise the AM, particularly the OCRP; however, this "virtual barrier" designed to prevent the flow of information and advice, is not effective in dispelling the risks of all conflicts of interest.

²²⁶ Good Policy Paper, Recommendation 10, p.24

²²⁷ AfDB's IRM policy, para. 97

²²⁸ IADB's MICI policy, para. 64

somewhat Draconian, this is not a robust solution and even implies that the ring-fence could be breached.

Most IAMs contemplate that external legal counsel may be required in certain circumstances; most permit the IAM to engage outside counsel, whether explicit or implied.

For example, the Accountability head may seek external legal advice on a complaint, grievance or complaint-related matter or regarding any matters concerning the (AfDB's IRM)²²⁹ or on complaint-related issues as they arise (IDB's MICI).²³⁰ In at least case, if the IAM requires external legal advice, the General Counsel will appoint that counsel following "*standard procedures for hiring external counsel*" and, if necessary, will discuss "*alternative*" legal counsel if there is any concern over the proper functioning of the IAM (AIIB)²³¹ Accountability policy may be silent on access to independent legal advice but, in practice, the IAM still has the right to obtain such advice (and has done so on occasion) (IFC/MIGA).²³² Access to independent legal advice at EBRD is similar to the current position at ADB where external legal advice may be obtained but only "*on the laws and regulations of the relevant EBRD territories or countries of operation as necessary*"²³³

Given the current perception that the AM's independence has been "eroded", ADB's accountability policy should expressly empower the AM to obtain such independent legal advice as it may require

5.3.4 Remedy: Focus on Outcomes

Any contemporary accountability policy must signal a recognition by the MDB "first to do no harm" and a commitment to mitigate any harm caused, or potential harm that may be caused by MDB-financed projects.²³⁴ It now seems inevitable that the effectiveness of an IAM will hinge on the commitment to deliver quality outcomes to APs within reasonable timeframes.

Therefore, MDBs must increase focus on remediating harm revealed by a compliance review with specific, time-bound actions in remedial action plans (RAPs) or management action plans (MAPs): APs should be consulted during the preparation of RAPs/MAPs; and monitoring should continue until all noncompliance is corrected, avoiding arbitrary end dates. MDBs must commit to, and monitor specific, time-bound remediation actions to achieve compliance and to deliver remedy to the APs.

*"Management shall consult with the affected parties during the preparation of the management action plan and shall communicate to the Panel the nature and outcomes of consultations with affected parties."*²³⁵

²²⁹ IRM rules, para. 97

²³⁰ EBRD's General Counsel has the reserve right to provide advice on IADB's rights and obligations.

²³¹ PPM Rules of Procedure, section 11.3

²³² This was "vital" in recent cases where legal questions arose concerning the public disclosure of CAO reports.

²³³ EBRD PAP, para. 3.3(d)

²³⁴ If a compliance review reveals that direct and material harm has been, or may be occasioned by an ADB-financed project or is reasonably likely to occur, then ADB should be committed to remediating that harm.

²³⁵ WB IP Operating Procedures, para. 81

Also, the IAM should continue to monitor the implementation of a RAP/MAP until all noncompliance has been corrected or remediated and, therefore, should not be limited by an arbitrary end date.²³⁶

*“CAO will close the compliance monitoring process when: a. CAO determines that substantive commitments as set out in the MAP have been effectively fulfilled”*²³⁷

5.2.5 The Need for Strategic Planning

ADB has excellent credentials in strategic planning, with a successful corporate results framework but ADB has never had a strategy to implement its accountability policy.²³⁸ Such a strategy may hold the key to achieving greater effectiveness.

A strategy is usually based on a theory of change, or an illustration of how and why the implementation of the policy is expected to achieve the desired changes. As mentioned in Section 3.1 (*supra.*), ADB’s accountability policy has long had a consistent set of 2 primary objectives and several secondary objectives. So, what is the theory that underpins these objectives and why does ADB believe that the accountability policy will achieve them?

Without a theory, a strategy, and a framework to track progress, it has been difficult to draw confident conclusions about the efficacy of the AM2012 and its contributions to development effectiveness. The CRP recently inaugurated individual strategies for knowledge management²³⁹ and communications.²⁴⁰ These are welcome additions to its institutional toolkit; however, they are really just first steps in what should be the articulation of an overarching accountability strategy.²⁴¹

The Board must articulate the vision or mission statement for the accountability policy to provide the platform for a strategy to achieve the policy objectives.

A sound strategy encapsulated in a strategic framework can contribute to the success of ADB’s commitment to accountability in the challenging environment for development finance. Strategic planning would be an innovative approach to accountability at ADB that can provide many advantages:

- Clarity of direction, purpose, and prioritization
- Alignment of accountability endeavours with policy objectives
- Synergy among various accountability functions
- Efficient resource allocation (budget, staff, support)
- Informed decision-making
- Effective communication with stakeholders (affected persons, developing member countries, NGOs/CSOs, ADB staff)
- Establishment of performance metrics and indicators to monitor progress

²³⁶ The CRP’s **Common Threads** report ([CRP report](#)) confirms that in several cases remedial action plans are not being implemented as required over the specified 3-year or 5-year time period. This creates a risk of depriving APs of remedy and should not be acceptable to ADB.

²³⁷ IFC’s CAO policy, para. 145

²³⁸ Based on current information, no MDB has adopted a strategy designed to achieve the objectives of its accountability policy.

²³⁹ ADB. AM. Accountability Mechanism Knowledge Management Strategy: First Resort for Learning, Last Resort for Complaints. 30 May 2023.

<https://www.adb.org/sites/default/files/institutional-document/885381/accountability-mechanism-knowledge-management-strategy.pdf>

²⁴⁰ ADB. AM. Accountability Mechanism Communication Strategy. 30 May 2023. <https://www.adb.org/sites/default/files/institutional-document/885361/accountability-mechanism-communication-strategy.pdf>

²⁴¹ See generally, *On Strategy* Harvard Business Review Press. Boston. 2011; *Succeeding with the Balanced Scorecard*, James Creelman and Naresh Makhijani. John Wiley & Sons. 2005; *Balanced Scorecard for State-Owned Enterprises*. ADB. 2007

- Cultivation of an accountability culture and values
- Enhanced platform for continuous improvement
- Improved learning through evaluations and reviews
- Encouragement of adaptation based on past experience

ADB's NOM makes the case for a strategic plan to implement policy: a commitment to designing practical ways to measure impact, which helps to guide staff; supporting new ways of working; enhancing performance management and feedback; and capturing efficiency.²⁴² The adoption of an accountability strategy and a strategic framework would signal the value of accountability in ADB.

AfDB's IRM has already adopted a strategic approach: as explained, the strategic plan was designed to align AfDB around simple messages of what the IRM seeks to accomplish, based on a theory of change (inputs/outputs/impact) that assumes that complaints are part of the development equation and not about "blame". (AfDB now seeks to develop reliable and useful KPIs but this will depend on improved quantitative data management.)

Appendix 7 provides a sample of strategic planning for accountability at ADB.

5.2.6 Audit, Evaluation and Review of the Accountability Policy

Audit, evaluation, and periodic review are the tools that can reinforce the credibility of ADB's accountability policy.

The AM has not been independently audited.²⁴³

An audit is a valuable governance tool that examines financial and operational information and provides an impartial assessment of the accuracy, completeness, and fairness of that information. This could help to verify the AM's outputs and outcomes of operations and should be part of the checks and balances that attend the implementation of the accountability policy.

Apart from rendering an opinion on the budget and financial aspects of the AM, an independent audit could also offer insights into the AM's efficiency, effectiveness, and overall performance: an audit report may identify inefficiencies, contribute to improved effectiveness and help to build trust in the AM.

The AM has never been independently evaluated.

An objective and impartial evaluation of the effectiveness of the AM could not only provide insights into performance, use of resources and achievement of the accountability policy objectives, but also would benchmark the AM against comparator IAMs and emerging good practices, which can help inform future performance.

The AM2012 does not stipulate a deadline for the review of the policy.²⁴⁴

²⁴² NOM Paper, para 36(viii)

²⁴³ There have been some informal discussions between the AM and ADB's OAG about a formal audit but an independent audit has yet to be commissioned.

²⁴⁴ There is only a reference, *en passant*, to the need for a cost benefit analysis and an impact assessment: AM2012, para. 112, p. 40

This may help to explain why the AM2012 has not been reviewed in more than a decade while during the same period other IAMs have been reviewed at least once or, multiple times.

At present ADB and World Bank do not stipulate any specific timetable for periodic reviews of their IAMs. All other IAMs have various mechanics to undertake or consider undertaking accountability policy reviews: AIIB requires a policy review “*no later than 5 years*” after adoption of its policy; in 2019, EBRD stipulated that its PAP would be reviewed “*at 5 years*” (i.e. 2024); IDB’s MICI was committed to a review “*within the first 5 years following effectiveness*”²⁴⁵ and, likewise, IFC/MIGA also committed to a policy review “*within 5 years from policy effectiveness*”; AfDB requires a policy review “*every 4 years*”; and “*every 5 years*” EIB will consider the need for a policy review.

ADB should commit to the periodic review of its accountability policy. In this regard, most IAM practitioners would regard the IFC/MIGA External Review of the CAO (June 2020) to be an excellent example of the approach, process and analytical rigor required for a comprehensive review of an MDB accountability policy.²⁴⁶

To preserve independence and remain relevant, the AM should periodically conduct a review, say every 5 years, to verify progress of the policy, identify strengths and weaknesses, assess the effectiveness of the policy and to recommend changes to the policy, where necessary or appropriate.

These elements of good governance – strategy, audit, evaluation and review – must strengthen ADB’s commitment to a culture of accountability, where an IAM is respected and valued. Strategic alignment, resource allocation, continuous learning, stakeholder engagement, better decision-making, quality assurance and the AM’s own accountability would all benefit from these initiatives.

5.3 Modernizing Procedures for Accessibility and Efficiency²⁴⁷

ADB’s accountability procedures should be modernized. Updating certain processing features can improve accessibility, while simplification can improve the efficiency.

The NOM provides useful guidance for the AM on the quest for effectiveness and efficiency.

Upgrading the AM can be built on “*modernizing business processes*”²⁴⁸ that can “*improve the quality of solutions and decisions, promote efficiency, and improve consistency, thereby improving ... client centricity*”.²⁴⁹ The Board can confidently delegate powers and authority to the AM, which will be accountable for its actions.²⁵⁰

The changes in the AM’s business processes should be designed to make a new accountability policy work by being more effective in delivering policy objectives. The changes should be based on decentralizing authority for implementation, ensuring that the AM is accountable for its actions, simplification of reporting, updating staff instructions and

²⁴⁵ However, IDB’s 2020-2021 external evaluation recommended that a new comprehensive policy review was not required at that time.

²⁴⁶ See the CAO Review report

²⁴⁷ In this Section, the complaints, submissions and requests made to the AM are “referrals”

²⁴⁸ NOM Paper, para. 17

²⁴⁹ *ibid.*, para. 36(x)

²⁵⁰ This would be considered to be “*in line with ADB’s trust and accountability values*”: NOM Paper, para. 91

internal documents and digitizing processes where possible.²⁵¹ (The AM's business processes, staff guidelines, and the relevant sections of the Operations Manual could come under ADB's Digital Agenda 2030, a "*cornerstone of a comprehensive overhaul of systems that support the realization of the proposed business process reforms*".²⁵²)

There are several elements to this overhaul.

(1) Empowering the IAM

Invest the AM with full power and authority to resolve disputes and undertake compliance reviews and equip the AM with the resources to do so, accompanied by responsibility and accountability for its decisions and actions. If the MDB has installed a competent, credible, and efficient IAM then independence demands that the IAM should be responsible for the processing of each referral to the IAM and the management of each accountability case.

The IAM head supported by a strong team, may first determine whether the referral is "*admissible*" in the sense of being within the IAM's mandate²⁵³ and then efficiently evaluate referrals, ensuring fairness, transparency, and timely disposition.

(2) Complainants

It is difficult to understand why the initiation of an accountability complaint requires "*at least two affected persons with a common purpose*". (Having 2 persons rather than allowing any person to initiate an accountability matter seems to be a bureaucratic fig leaf.) The current AM2012 requirement to insist on having 2 people to file a case tends to obscure the fact that ADB should be interested to hear from anybody who has a legitimate complaint about harm or likely harm linked to an ADB-financed project or proposal or who alleges that ADB is non-compliant. ADB should want to hear from such complainants.

Any individual (or a representative) should be able to access an IAM.²⁵⁴

Other comparator IAMs have made changes over the last decade or so to permit "any person" to file a case with the relevant IAM: EBRD (2014), IFC/MIGA (2014), AfDB (2021)

AfDB, EBRD, EIB, and IFC/MIGA allow any individual or group or community to file a complaint; but AIIB, IDB, and WB still require "*2 or more APs*". Having regard to contemporary accountability policies, it is difficult to see the reason for this – if compliance and accountability are valued, anyone should be able to bring a complaint and have it assessed properly; and MDBs should be particularly concerned to learn about any harm, potential harm or compliance risks related to their financing. There is no evidence to suggest that allowing any individual or community to bring a complaint leads to a surge in cases.

²⁵¹ *ibid.*, para. 135

²⁵² *ibid.*, para. 141

²⁵³ In this regard, the IAM head is performing a role similar to the current role of the CRO

²⁵⁴ There does not seem to be any evidence to support the proposition that allowing any individual to launch an accountability matter will necessarily lead to a surge in IAM caseloads.

All IAMs still stipulate that complainants must be “affected persons” or organisations. EBRD also allows access to others in other circumstances “ ... *such as where project-affected people are prevented from filing a request themselves*”²⁵⁵ and restrictions on access “ ... *may be waived when the complaint relates exclusively to environmental issues, where there may be no project-affected people*”²⁵⁶

In addition, current good practice suggests that:

*“The mechanism should accept complaints from one or more individuals”*²⁵⁷

The Good Policy Paper also makes the observation that “there is no correlation between the existence of harm and the number of complainants”.

The IAM should always retain the power to dismiss any referrals that are trivial, frivolous, vexatious or malicious. This already exists under AM2012.²⁵⁸

(3) Representation

APs should have the right to be represented by a representative of their choosing.

Indeed, having regard to challenges faced by an AP to access an IAM, constructive representation can often assist and facilitate the complaint process by “informing, advising, and otherwise supporting complainants throughout the complaint process ...”²⁵⁹ The distinction between local and international CSOs/NGOs serves no particular purpose.²⁶⁰

Allowing responsible representatives to file referrals on behalf of APs ensures that deserving voices are heard. However, it is still appropriate that an IAM should verify and monitor representation mandates and insist on the integrity of representative actions: the sole purpose of representation is to bring to the IAM legitimate and substantiated cases within the mandate of the IAM, not to pursue an “agenda” unrelated to accountability.²⁶¹

The comparator IAMs allow representation by a representative of choice. AfDB’s IRM²⁶², the EIB-CM²⁶³, WB’s AM²⁶⁴, IFC/MIGA’s CAO²⁶⁵ and EBRD’s IPAM²⁶⁶ all allow representation “*by an authorised representative*”. AIIB’s PPM permits in-country representation or, “*in exceptional cases*”, representation by individuals or organizations outside the country²⁶⁷, while IDB’s MICI – representative residing in the country or in certain instances a representative in another country²⁶⁸

²⁵⁵ EBRD PAP, para. 2.1(a)

²⁵⁶ *ibid.*, para. 1.1

²⁵⁷ Good Policy Paper, Recommendation 33, p.50

²⁵⁸ AM2012, para. 142(v)

²⁵⁹ See The Good Policy Paper, Recommendation 35, p.51

²⁶⁰ AIIB and IADB allows both local representatives and representatives residing in another country: the MICI policy, para. 13b. AIIB also allows both in-country representatives and, exceptionally, an individual or organisation outside of the country as representative(s): AIIB Policy on the Project-affected People’s Mechanism (7 December 2018), (“the PPM policy”) para. 3.1

²⁶¹ ADB could clarify that in the case of an individual representative, the authorization must be in writing, signed by complainant (as per the current ADB AM complaint form at <https://www.adb.org/who-we-are/accountability-mechanism/how-file-complaint>), and set out the scope of representation (e.g. only the filing a referral, only acting as a conduit for correspondence, or full representation).

²⁶² AfDB IRM Rules, para. 15(b)

²⁶³ EIB-CM Policy, para. 2.5

²⁶⁴ WB Operating Procedures, para. 21.12

²⁶⁵ IAM (CAO) policy, para. 30

²⁶⁶ IPAM policy, para. 1.3

²⁶⁷ AIIB PPM policy, para. 3.1

²⁶⁸ MICI policy, para. 13(b)

(4) “Prior good faith efforts”

The AM is intended to be a “last resort” mechanism: complainants are expected to make “*prior good faith efforts to solve the problems with the operations department concerned*”²⁶⁹ Currently, this is a prerequisite to “eligibility”, so if those prior good faith efforts have not been made, the complainant is disqualified from access to the AM. And, as noted earlier, this eligibility hurdle has continued to limit access to the AM.²⁷⁰ The process renders a complaint “ineligible”, a disqualification with no right to a remedy available to complainants through the AM.

There may well be reasons why a complainant has not attempted to solve a problem with the operations department: there are arguments against the concept of “*prior good faith efforts*” being a prerequisite for access to the AM.²⁷¹

- A complainant may be unaware of this prerequisite, not understand the requirement or simply may be dissuaded at the outset from bringing a complaint to an IAM
- A complainant may fear reprisals or be threatened with retaliation for complaining
- A complainant may be unwilling to raise issues directly with the operations department (who are ADB employees and may be perceived to be biased, unsympathetic or even responsible for the harm or non-compliance)
- A complainant may not be confident that a project-level GRM can solve the problem

Most other IAM do not have an express requirement that the IAM must obtain Board approval of the eligibility of a complaint or permission to initiate an IAM case, including the commencement of a compliance review. World Bank’s IP does submit an eligibility determination to the Board prior to launching an inspection.

If the accountability policy is clear and unambiguous and a professional IAM team is led by a respected head of accountability, then the IAM should be invested with the power to execute the IAM mandate from the outset (and should be held accountable for doing so).

The Good Policy Paper recommends that the requirement to resolve grievances through other means should not be “*a precondition to filing a complaint to the IAM*”²⁷².

²⁶⁹ AM2012, para. 164 (problem solving function); para. 180 (compliance review function)

²⁷⁰ In 2022, 3 out of 5 cases received by the CRP were found ineligible due to lack of prior so-called “good faith” engagement. See [Annual Report of the Board Compliance Review Committee 2022](#).

²⁷¹ See [2021 Compliance Advisor Ombudsman Policy](#). See “33. There are no formal requirements for lodging a complaint with CAO, [...] 34. In addition, the Complainant may wish to provide information on the following: a. Whether anything has been done by the Complainant to attempt to resolve the problem, including any contact with IFC/MIGA staff, the Client, Sub-Client, or the host government, and what aspects remain unresolved.” See also Accountability Counsel: “Communities often fear reprisals and are unwilling to raise issues directly with bank actors who they perceive to be engaged in environmental or social harm. Because the AM does not permit communities to raise issues to it directly, communities are either choosing not to raise issues or to not pursue complaints once filed, leaving the Bank vulnerable and unaware of the unsustainable aspects of its projects.”

²⁷² Good Policy Paper, Recommendation 32, p.49

In some cases, complainants are encouraged to seek to settle their complaints at the project or local level perhaps through the GRM, but this is not a prerequisite to pursuing a case with the IAM.

“Complainants and Clients/Sub-Clients are encouraged to make good faith efforts to resolve concerns in the most effective and efficient manner, at the Project-level where possible.”²⁷³

(5) Triage: Admissibility and Access

When accessing an IAM, complainants or their representatives typically face two pathways: compliance review or dispute resolution. Having regard to the importance of delivering remedy to affected people, many accountability practitioners emphasise the importance of complainants having “agency” over the process of accessing an IAM.

The establishment of a single entry point to the AM was an important feature of the AM2012. Committing resources at the initial point of contact yields benefits for APs, complainants, ADB staff, and AM personnel alike.

Access to an IAM should be streamlined, in line with the original intention for IAMs to provide a forum for APs who may have no other recourse to remedy. Therefore, it is important to remove barriers to access and to simplify the submission process. The Good Policy Paper recommends that the *“admissibility requirements should be simple”* because those who seek access to an IAM *“... often lack the resources and information necessary to file detailed claims of their grievances and policy non-compliance”²⁷⁴*

The policy could empower the IAM head to “triage” or screen all IAM referrals to determine admissibility and appropriate handling.²⁷⁵ This approach would rely on prompt and efficient responses to complainants.

With support from functional teams and secretariat staff, and engaging with APs/complainants during the process, the IAM head could:

- Dismiss any referral deemed trivial, frivolous, malicious, or vexatious
- Assess whether the referral is supported by evidence
- Determine whether the referral is within the IAM's mandate
- Verify the credentials of any representative
- Assess whether there is any risk of retaliation or retribution
- Seek inputs from the concerned operations department/resident mission
- Determine the most suitable course of action: compliance review or dispute resolution/mediation; or engagement with the GRM or operations department.

The MDB and host country can always address the issues raised in referrals independently of IAM procedures (subject, of course, to robust public protections against retaliation).

²⁷³ IFC CAO policy, para. 38

²⁷⁴ Good Policy Paper, Recommendation 29, p.47

²⁷⁵ “Admissibility” is a more appropriate term when considering remedies for APs rather than the negative connotations that attend “eligibility” and “ineligibility”. In making an admissibility determination, the IAM would mirror the current role of the CRO under the AM2012.

Access also depends on lodging a complaint prior to any mandatory cut-off date. The comparator IAMs adopt various cut-off requirements:

In some instances the cut-off date may extend beyond loan closing where the borrower continues to be bound by environmental and social undertakings beyond the closing date (AIIB)²⁷⁶ or, where private sector projects, following the date of the last disbursement under an underlying obligation or, in the case of equity finance, prior to the MDB's exit from its investment (AIIB).²⁷⁷ Cut-off dates may be linked to the date that the MDB ceases to have a financial interest in the project (e.g. full repayment, prepayment, disposal or otherwise) (EBRD).²⁷⁸ Cut-off dates may be related to the date of the last disbursement (IDB)²⁷⁹ or the physical completion of the project, or the date that the complainant may have become aware of any adverse impacts (AfDB).²⁸⁰ The World Bank has linked cut-off dates to substantial disbursement (95%) of financing (before 2020) or the loan closing date (after 2020).²⁸¹

In the case of private sector operations, the cut-off may be linked to the date where the MDB "exits from the project": this may be related to (i) the termination of the financing, investment, or advisory relationship with the client; (ii) when project ceases to exist, or has been dropped (IFC); (iii) the expiration of a guarantee period or termination of a contract of guarantee; (iv) the cessation of liability under a contract of guarantee; or (v) when a client ceases to have control over a project (MIGA).

It should be noted that there may be limitations in handling complaints that are submitted after a contractual relationship with the borrower/promoter has ceased particularly as there may be no possibility to restore compliance (EIB).²⁸²

(6) Engaging Operations Departments

If the AM sends a case to the operations department for disposition, there are standard procedures for follow up and reporting.²⁸³ It is unclear whether the handling of these cases has been as consistent and systematic across ADB as anticipated by the AM2012.

This engagement (that may include the project GRM and the RM) must be regarded as an integral part of the accountability policy and, therefore, the tracking and reporting requirements must be observed, with the aim of ensuring a satisfactory resolution of the complaint and, where appropriate, delivery of quality remedies to the APs.

How do other IAMs manage complaints that have not really engaged with operations departments to resolve problems before approaching the IAM?

In some cases where a complaint does not meet eligibility criteria (including complainants not having made "*good faith efforts*" to resolve the issues with the

²⁷⁶ AIIB PPM policy, para. 4.2.1

²⁷⁷ *ibid.*, para. 4.2.2

²⁷⁸ PAP, para. 2.2 (b)(iii)

²⁷⁹ MICI policy, para. 19(f)

²⁸⁰ IRM rules, para. 12

²⁸¹ The WB IP resolutions, para. 15(c); the WB IP operating procedures, para. 44(e)

²⁸² EIB-CM Policy, para. 4.3.13

²⁸³ See Operations Manual (OM) Section L/OP (24 May 2012), paras 24(ii), 89, 90 and 96

project-level GRM and management or being unable to explain why they have been unable to do so) the complainant may be directed to the appropriate unit that can handle issues raised in the complaint (AIIB).²⁸⁴ A complaint could be suspended, in consultation with the complainant, where the complainant has failed to make “good faith efforts” and then forwarded to management; but the status and progress of the suspended complaint would need to be monitored (EBRD).²⁸⁵ A lack of “prior good faith efforts” to resolve issues may also lead the IAM to ascertain whether the complainant wants to refer the matter to the MDB for resolution (IFC/MIGA).²⁸⁶ In other cases where a complaint has been suspended, the IAM will consult with the complainant, management, and borrower/client on the way forward (and again the details will be registered) (AfDB).²⁸⁷

It may be that a complaint could be closed if the complainant cannot describe the efforts taken to address the issues with management and the outcomes, if any²⁸⁸ (IDB’s MICI).²⁸⁹ Likewise, “ineligible” complaints may be closed (MICI).²⁹⁰

(7) Business Process Modernization

Apart from the specific items outlined above, the AM’s operational procedures should be overhauled to streamline and modernize the processing of accountability referrals, including reasonable but strict time limits for each step in the process, and the power for the IAM head to terminate case proceedings in appropriate circumstances.

Comparator IAMs incorporate procedural time limits.

*“The Panel seeks to complete its investigations within six months following completion of the investigation plan. Depending on the specific circumstances of the case at hand, the time frame may be longer, for instance in the case of particularly complex cases or when unforeseen events intervene, or it may be shorter, when for example an investigation is narrowly focused or calls for a more urgent consideration.”*²⁹¹

*“The Problem Solving schedule is decided jointly by the Requesters, the Client and other Parties to the initiative. Problem Solving is expected to be completed within one (1) year of the Parties’ agreement to pursue it; however the duration of the process may be extended by the agreement of the Parties and IPAM.”*²⁹²

As part of modernization, the AM procedures should stipulate concise, “plain English”, jargon-free reporting and communications. The 2023 Communications Strategy should help this ambition.

The AM must have the qualified staff, adequate budget, access to expertise and technical and IT support to fulfill its mandate and discharge its functions efficiently

²⁸⁴ PPM policy, para. 6.4.5 (e)

²⁸⁵ EBRD PAP, para. 2.2(f)(ii)(a)

²⁸⁶ IAM (CAO) policy, para. 39

²⁸⁷ IRM operating rules, para. 43.

²⁸⁸ MICI policy, para. 14

²⁸⁹ *ibid.*, para. 20(b)(i)

²⁹⁰ During the 2021 evaluation, it was noted that MICI had a large number of cases not going to management and there was uncertainty as to the tracking of these “ineligible” cases. MICI recognised that a tracking system was needed.

²⁹¹ WB IP Operating Procedures, para. 74

²⁹² EBRD PAP, para 3.1(n)

and effectively. There is a need to upgrade and improve data management in the AM (including recording, storage, retrieval

5.4 Learning and Capacity Development

Establishing a dedicated Advisory function is crucial to nurture continuous learning in accountability at ADB and should be a long-term priority for enhancing the effectiveness of ADB's accountability policy.

As part of a new accountability culture, staff training should incorporate lessons as preventive measures. Given the significant agenda to promote awareness and learning and thus enhance the effectiveness of the AM, ADB must explore the most efficient means to translate innovative ideas emerging from the AM, and collaborations with other departments, into actions to deliver quality remedies for affected communities.

The attainment of the development effectiveness and project quality goals of the accountability policy, for example, can benefit greatly from the establishment of a well-resourced and qualified Advisory function. This function would oversee the accountability learning and capacity development initiatives, including the development of a bank-wide accountability "curriculum," with specialized support from learning and capacity development professionals.

An Advisory team would be responsible to implement effectively the new Communication Strategy and Knowledge Management Strategy.

6. New ADB Policy Challenges

6.1 Strategy 2030

Strategy 2030 (S2030) is ADB's current long-term strategic framework that guides operations and outlines ADB's priorities to address the development challenges in the Asia Pacific region.

S2030 focusses on ADB's vision, 3 "strategic pillars" (poverty reduction, gender equality; climate change), operational priorities, knowledge management, partnerships and financial capacity. One of the important features of S2030 are ADB's aims to catalyze private sector investment for development impact and to emphasize the role of the private sector in achieving sustainable development goals. ADB considers that private sector participation in the region's development requires a supply of commercially viable projects and a supportive enabling environment.²⁹³ Therefore, pursuant to S2030, ADB intends to scale up non-sovereign operations significantly to around a third of all ADB operations.

What will be the impact of expanded PSO on the work of the AM?

Prior to 2003 ADB's accountability policy did not apply to PSO; but AM2003 specifically extended the policy to private sector loans, guarantees, equity investments and technical assistance.²⁹⁴ In fact, ADB was the first MDB to make available both the problem-solving function and the compliance review function for complaints involving PSO projects.²⁹⁵ Having made such an important change, however, the AM2012 does not deal with any substantive issues relating to the application of ADB's accountability policy to its PSO projects.²⁹⁶

PSOD deploys specialised finance and investment instruments (complex project finance, trade finance, equity investments and investment funds) that may give rise to unique issues for the AM. PSO processing is highly sensitive to risk and, as such, PSOD seeks to manage any risks that may come within the mandate of the AM, particularly the risk of a compliance review. (PSOD is less concerned with OSPF problem-solving that usually offers quick, practical methods to resolve a complaint.)

PSOD has always had a rigorous approach to due diligence. But PSOD considers that its "*bruising and tortuous experiences with the AM*" in dealing with compliance reviews under AM2012 have led to sensitivity over the risk of noncompliance. PSOD is committing more resources to due diligence, particularly for more challenging PSO projects to ensure that each project is processed and implemented in accordance with ADB's operational policies and procedures.

PSOD is also pursuing several initiatives to address accountability.

In 2019, PSOD launched a new operational plan that places greater emphasis on PSO development impact and how PSOD plans to deliver in frontier economies, fragile and conflict-affected situations ("FCAS ") and The Pacific. PSOD now pursues a wider analysis

²⁹³ NOM Paper, para. 16

²⁹⁴ AM2003, paras.43–46, especially para. 46.

²⁹⁵ *ibid.*, para. 10, footnote 9

²⁹⁶ The AM2012 contains minimal reference to PSO (paras. 21, 109, 110, 130, 142) and mention of private sector sponsors during policy review consultations and a compliance review for a private sector project, PHI: Visayas Base Load Power Development Project (Loan No. 2612/7303)

of risk and assesses projects against an *ex-ante* development impact framework, including alignment with ADB's policies and procedures. Moreover, PSOD is committed to improving its due diligence under the new operational plan because of the consequences of noncompliance, remedy and responsible exits. Faced with an allegation of ADB's failure to comply with its own policies and procedures, private sector sponsors may resort to early prepayment, so PSOD works to avoid this risk.

PSOD staff consider that ADB policies and procedures "*don't always easily fit with private sector projects*"²⁹⁷; however, in light of the SPS, and in line with other IFIs, PSOD has established a number of precedents and approaches on "*good practices*", "*best practices*", how to interpret "*performance standards*" and the implications of particular policies for private sector projects.²⁹⁸

Complaint management is also an important consideration in PSO. PSOD encourages project sponsors to have effective project-level GRMs to manage local complaints efficiently.²⁹⁹ For its part, PSOD also seeks to ensure effective complaint management in PSO projects using a system to solve complaints at an early stage, to log and track complaints in a database and to report to PSOD senior management.

There are a number of initiatives that the AM and PSOD could pursue to deal more effectively with PSO. For example,

- most PSO Complaints could be resolved efficiently if they are brought to the SPF rather than directly to the CRP: OSPF's help can add value quickly and the outcome is likely to be productive.³⁰⁰ PSOD's primary focus in dealing with a complaint is to provide an independent avenue to resolve APs issues swiftly.
- PSOD staff have raised concerns over compliance reviews that involve private sector projects, sponsors, financing plans, commercial instruments, risk allocation techniques and PSO policies and procedures. PSOD considers that a compliance review in a non-sovereign project requires private sector expertise and experience and, ideally, one or more CRP members should possess that expertise and experience. Perhaps ADB could consider appointing an *ex officio* CRP member specifically to work on PSO Complaints.³⁰¹
- PSOD also observed that, upon completion of a PSO compliance review PSOD (and project sponsors) should have the opportunity to comment and provide inputs on the CRP's findings and any proposed remedial recommendations considered by the BCRC before submission to the Board.
- private sector project sponsors require a clear understanding of the AM. Therefore, there is scope for the AM and PSOD to design specific information and explanatory materials for private sector sponsors.

²⁹⁷ PSOD gave an example from a compliance review where, apparently, there is a suggestion that actual environmental and social management plans for an engineering, procurement and construction (EPC) contract must be in place prior to project approval by ADB. PSOD consider this to be "*fundamentally wrong*": private sector financiers review the structure of EPC contracts to be satisfied how risk is shared and allocated, how costs are apportioned between sponsor and contractor and the responsibilities of each party.

²⁹⁸ PSOD responded well: there are now a director and 24 environment and social specialists handling safeguards in PSOD.

²⁹⁹ If a project involves multiple IFIs, there will be different IAMs. Clearly, there will be challenges if the same complaint issue is lodged with the multiple IAMs. Therefore, it will be helpful if PSOD can explain the AM effectively during due diligence.

³⁰⁰ "*I think we have had a good case where affected people were more concerned about solving a problem.*"

³⁰¹ The CRP is already obliged to develop a "*roster of independent technical experts*" for specific compliance reviews. This could include PSO specialists who could assist with a PSO Complaint: 2012 Policy, para. 131(xiv)

- the AM2012 aims to ensure that ADB learns lessons for future projects. As very few PSO problems have been elevated to the AM, PSOD should be encouraged to share the lessons learned from its approach to complaint management: there may be much to be gained from enhanced cooperation between the AM and PSOD in awareness and learning.

The NOM has already addressed some of the special provisions that will apply to non-sovereign and advisory operations³⁰², the need to expand the synergy between sovereign and non-sovereign operations³⁰³, the expected changing roles for PSOD³⁰⁴, an integrated approach to create a private sector development platform³⁰⁵, the need for “*a full-scale review and redesign of internal processes for [PSO]*”³⁰⁶ and the importance “*to better understand the impediments to developing private sector activities in each country, (and) engage with stakeholders ...*”³⁰⁷

The detailed review of the IFC/MIGA CAO offers a reference point for the application of accountability policy to PSO. For example, that review addressed the challenges of attempting to combine accountability jurisdiction over both sovereign and non-sovereign projects in one IAM.³⁰⁸ Among those challenges: access policies differ; there are significantly different “cultures”, policies, structures, functions and processes; complainants, private sector clients or borrowers are dealt with differently during an assessment; and the processes to achieve remedial actions differ. The IFC/MIGA CAO review stated that, while it had been a “deliberate decision” to establish the IFC/MIGA CAO for private sector lending, guarantees and equity investments and the World Bank’s Inspection Panel for public sector lending, “*a merger between the two IAMs, in principle, would be possible*”.³⁰⁹

However, the review further concluded that “*(A) merger of the World Bank Accountability Mechanism and the CAO might be possible and desirable after the respective reform processes for the IPN/World Bank Accountability Mechanism and the reforms for the CAO proposed in this Review have been implemented and tested over a period of years.*”³¹⁰ So, during a future review, IFC and WB may consider the “desirability of a merger” between the separate IAMs.

While there only been limited AM cases involving ADB PSO financing³¹¹, the S2030 ambition to scale up PSO may well mean that the AM will face increased complaints in PSO and the IFC/MIGA CAO review highlights the challenges for one IAM dealing with both sovereign and non-sovereign projects. The Formal Review should specifically consider how best a new accountability policy should respond to ADB’s emerging private sector initiatives pursuant to S2030.

³⁰² NOM Paper, para. 49

³⁰³ *ibid.*, para. 75

³⁰⁴ *ibid.*, para. 76

³⁰⁵ *ibid.*, para. 81

³⁰⁶ *ibid.*, para 142

³⁰⁷ *ibid.*, para. 19

³⁰⁸ See IFC/MIGA CAO Review, paras 171-177

³⁰⁹ IFC/MIGA CAO Review, para. 175

³¹⁰ *ibid.*, para. 177

³¹¹ IND: [Mundra Ultra Mega Power Project - Loan 2419](#) (2013); [Georgia: Nenskra Hydropower Project \(Project No. 49223-001\)](#) (2017)

6.2 ADB's New Operating Model

In October 2022, ADB adopted the “*new operating model*” or NOM to be more effective in its assistance to its DMCs, and to contribute to the achievement of its overarching corporate strategy, Strategy 2030.³¹² The NOM paper indicated that, in order to “*make ADB's organization suitable for achieving Strategy 2030*”³¹³, it needed to focus on 4 areas of business that required major shifts, namely solutions, private sector development, climate change and “ways of working”.³¹⁴ The NOM paper then set out the NOM for ADB and outlined the implementation arrangements.

On 2 November 2023, the Head of the Office of Safeguards, issued a memorandum providing transitional guidance to ADB staff on the adoption of the new business processes under the NOM (“*the NOM memorandum*”).³¹⁵

The combined effect of the NOM, the revised staff instructions and the NOM memorandum was to usher in “*the most significant changes*” for ADB since 2002³¹⁶.

Having regard to S2030, the NOM refers to 4 “fundamental shifts” including in areas of climate change and private sector development. These shifts will require additional resources, new financing techniques and new engagement with DMCs, EAs/IAs, and APs. ADB may expect new, and perhaps larger numbers of complaints to its IAM in these areas. Therefore, ADB staff will need to be familiar with the AM's mandate, functions and procedures.

If there is to be a change in the accountability culture at ADB, then this should be reflected in the NOM: while accountability issues need not dominate the NOM transition, some features must bear witness to the value and importance of the requirements of the accountability policy in ADB's values systems.

6.2.1 Culture of Accountability

There is virtually no mention of the APs, civil society, the AM, grievances, GRMs, problem-solving, mediations, compliance reviews, SPF or CRP in the NOM Paper nor the NOM memorandum. The existence of the AM, its solutions and procedures are mostly absent in the context of this “*most significant of change*” in ADB's culture, organisation, governance and business processes. This is also an opportunity to insert sensible “reminders” in the NOM to reflect a change in the importance, culture and value of accountability in ADB.

6.2.2 Solving Problems at the Local Level

Under the NOM, ADB is aiming for greater decentralisation. The NOM emphasises, among other things, that RMs “*should have the capability and incentives to select the most appropriate solutions for DMC needs*”.³¹⁷

³¹² Organizational Review: A New Model to Accelerate ADB's Transformation Toward Strategy 2030 and Beyond (October 2022) (“the NOM paper”)

³¹³ NOM paper, para. 33

³¹⁴ *ibid.*, paras 9-30

³¹⁵ The NOM memorandum sought to provide guidance to staff based on the new NOM processes: On 30 June 2023 ADB issued revised staff instructions for sovereign operations and on 1 September 2023 issued revised staff instructions for non-sovereign operations, both relating to ADB's business processes under the NOM. See Operational Manual Section D11 (OM/D11) issued on 30 June 2023 (sovereign operations); and Section D10 (OM/D10) issued on 1 September 2023 (non-sovereign operations)

³¹⁶ NOM paper, para. 4

³¹⁷ NOM Paper, para. 14

This focus on decentralisation in the NOM Paper must raise a question of how ADB should improve its grievance redress and complaint-handing at the local level.³¹⁸

*“There is a strong case for ADB to move closer to its clients so it can respond quickly with assistance tailored to their needs. Decentralization is essential for understanding DMCs and providing impactful services ...”*³¹⁹

This should also mean better focus on ADB’s accountability policy and the mandate, functions and procedures of the IAM, including remedy and redress, which will place additional pressure for staff training and capacity building in grievance and complaint management and resolution. For example, the AM2003 and AM2012 both contemplated that, as the AM is intended to be an instrument of “last resort”, ADB should contribute to capacity development in problem solving and complaint management at the local and project levels and support for local GRMs. In fact, complaints submitted but not admitted to the AM are routinely referred to the concerned operations department for resolution or disposition.

The NOM could usefully endorse the ambition to improve the skilled local management of problems, complaints, and nascent grievances (a grievance may be resolved more quickly and cheaply at the local level and obviate compliance requests).³²⁰

It should be noted that other comparator IAMs have inaugurated dedicated grievance systems to manage the resolution of problems and complaints at the local level at an early stage in project development. The Formal Review could usefully consider the transparency, accessibility and centralisation afforded by the Grievance Redress Service (World Bank), the GRM (AIIB) and the Management Grievance Mechanism (IDB).

6.2.3 Project Processing and Approvals

The NOM memorandum addresses the formation of project teams, project preparation, and project implementation. There are also references to Project Concept Development (paras. 3 et seq),

Development and Approval of the Project Concept Note (para. 8), and the Due Diligence and Project Document Preparation (para. 9). Fact-finding missions appraise and confirm with the borrower/client that all outstanding applicable safeguard issues are resolved (para. 12).

Overall, ADB seeks to “*enhance ... impact during the implementation of its projects ... in line with its development vision*” (NOM paper, para.15)

There is no mention in these provisions of the AM, complaints, problem-solving, mediation, compliance review, grievances, GRMs, nor the commitment to remedy any harm suffered by APs.

The NOM memorandum does refer to the Safeguards Complaints Communications Protocol and how ADB works with its clients to address any safeguard-related complaints received directly from an affected person or representative of an affected person. There is a single reference to complaints received through the AM (paras. 21 & 22) and how complaints submitted to the AM will follow the AM policy (footnote 11). Curiously, there is no comparable

³¹⁸ *ibid.*, para. 28

³¹⁹ *ibid.*, para. 95

³²⁰ See, for example, NOM Paper, paras 14, 96 and 99

reference to AM2012 or the AM in the case of complaints arising in relation to non-sovereign projects.³²¹

Once again, the importance and value of the accountability policy could at least be cited, if not emphasized, throughout the NOM.

6.2.4 The Role of the Head of the Office of Safeguards

Under the NOM memorandum, the Head, OSFG has effectively replaced the formal position of a “chief compliance officer”: informing management of the status of compliance of a proposed project and actions to ensure compliance (para. 13). The Head, OSFG is also an *ex parte* member of the Investment Committee and provides written confirmation on the status of compliance to the Investment Committee Secretariat (ICS) (para.32)

Therefore, from an accountability policy perspective, the Head, OSFG should play an important role in the identification and management of any actual or potential non-compliance complaints.

This raises several issues that may intersect with the AM: What is the significance of the Head, OSFG having confirmed compliance in a project that triggers a complaint to the AM seeking a compliance review? How should the Head, OSFG interact with the IAM if a complaint calls for a compliance review? Under a new accountability policy, should the Head, OSFG have any specific responsibilities if project staff raise any significant safeguard issues identified during project implementation, including any unanticipated impact or safeguard policy non-compliance (para. 19)? If there is a change in scope, the safeguard project staff provide inputs and confirm compliance by screening and categorizing all subprojects/components that are part of the change in scope and identify requirements for the impact assessment and safeguards planning (para. 20). What is the role, if any, of the Head, OSFG, to verify compliance?

6.2.5 Informing APs of the Existence of the AM

The NOM memorandum does not offer any guidance on who is responsible for providing APs with information about the AM and its procedures, even though this is a key initiative under the accountability policy. This could be mentioned as part of the preparation of the Report and Recommendation of the President (RRP) (para. 12) and during due diligence or the review of the E&S provisions in a draft term sheet (para. 31).

Again, this would be a reminder of ADB’s commitment to accountability and the need to support APs. It is encouraging that the Draft Disclosed Environment and Social Framework has a provision that would require a borrower to include information about the AM as part of “meaningful” consultations with project-affected people and other stakeholders (*vide* 6.3, Proposed Environment and Social Framework).

6.2.6 ADB as a Learning Organisation

Although the NOM highlights the importance of a “*development impact methodology*”, the NOM does not mention the contributions to learning that are available from the AM, particularly the important lessons learned from AM cases (learning, awareness, capacity

³²¹ Compare NOM memorandum, para. 43 (non-sovereign operations) with paras. 21 & 22 (sovereign operations)

development, quality outcomes, improved development effectiveness and project quality are all mentioned as objectives of ADB's accountability policy).

The NOM could reinforce positive perceptions about the contributions that a credible, well-resourced AM can make and reinforce the culture of accountability.

6.3 Proposed Environmental and Social Framework

ADB's Safeguard Policy Statement, 2009 (SPS) and Operations Manual Section F1 (OM/F1) are applicable to all ADB-financed and ADB-administered sovereign and non-sovereign projects.³²² ADB has stated that it aims to achieve \$100 billion in climate financing from its own resources and expects to align 100% of sovereign operations and 85% of its non-sovereign operations (PSO) with global climate ambitions.

The focus on climate change is reflected in S2030, the NOM, and the proposed ESF. Various ADB departments will play important roles throughout the project cycle under the NOM and ADB acknowledges the necessity to enhance its climate change finance capabilities, position itself as a leading climate change partner, and strategically engage with clients and potentially affected persons on climate change issues. The NOM has already identified potential challenges associated with the scaling up of ADB's climate change financing initiatives, including limited capacity to integrate climate considerations into sector and country operations, efforts to overcome organizational silos, fragmented accountability for climate action across operations and support departments, and skills gaps in climate-related projects.³²³ Therefore, ADB should consider those aspects of climate financing and development that could trigger AM complaints, particularly the impact or likely impacts of climate finance for mitigation and adaptation that may affect APs, affected communities and the environment (i.e. impacts that may not involve specific individuals or communities).

While the precise impact of the proposed ESF cannot be predicted, ADB may anticipate several issues that could lead to claims of harm to affected people or non-compliance. These issues include adherence to climate standards, effectiveness of climate mitigation and adaptation measures, social and environmental impacts of climate projects, community consultation and participation, transparency in climate finance, compliance with climate agreements, capacity building and knowledge transfer³²⁴, and inclusivity of vulnerable groups. The climate change agenda needs internal champions and increased technical expertise in climate.³²⁵

ADB would have to determine whether communities affected by climate projects have been adequately consulted, if projects involve displacement of communities or raise biodiversity concerns, and whether climate projects are inclusive and consider the needs of marginalized or vulnerable groups. This also means that ADB must ensure that all stakeholders, including APs and communities, are informed about the existence of the AM and the solutions and remedies available under ADB's accountability policy.

³²² NOM Memorandum, p.1, para 2

³²³ NOM Paper, para. 22

³²⁴ For example, ADB has initiated the [Energy Transition Mechanism](#) (2021) and the [Innovative Finance Facility for Climate in Asia and Pacific](#) (2022) but they will still require institutional support.

³²⁵ NOM Paper., para. 23

In short, what are the potential risks of non-compliance in processing financial assistance for climate change?

7. Recommendations to Improve ADB's Accountability Policy

The Formal Review should consider the following options to improve ADB's accountability policy.

7.1 Main Recommendations

The main recommendations to improve ADB's accountability policy are grouped around 4 criteria, namely, credibility, access, efficiency and effectiveness.

Credibility

- Realign reporting lines so that the SPF/OSPF reports to the Board
- Consider the merits of retaining the Compliance Review Panel or establishing a "One ADB" IAM, comprising compliance review, dispute resolution and advisory teams and a permanent secretariat, that reports to the Board
- Designate the BCRC as the "Board Accountability Committee"
- Invest the IAM with full authority and power, within its mandate, to process, manage and finalise any complaint lodged with it, including the review of ADB's compliance with its operational policies and procedures
- Require that the IAM is accountable to the Board in exercising its authority and powers
- Appoint the head of the IAM based on a recommendation from a selection committee comprising ADB stakeholders, including an NGO/CSO representative
- Empower the head of the IAM to appoint the IAM senior leadership team and permanent staff.
- Stipulate that no member of the IAM senior leadership should be a former employee of ADB and that all members of the IAM senior leadership will be barred from employment or engagement with ADB in any capacity after the end of the IAM appointment
- Clarify the mandate to review ADB's compliance with its operational policies and procedures, including but not limited to:
 - referrals to management and the operations department of any complaint involving proposed but not approved ADB financing;
 - investigation of allegations of harm, likely harm or potential harm to people or the environment;
 - recommendations of quality remediation measures to the Board to ensure that ADB achieves compliance with its operational policies and procedures; and
 - cessation of any compliance review process where the IAM is unable to obtain approval for a visit to the project site
- Empower the IAM to be able to obtain independent legal advice, if necessary

Access

- Accept complaints up to the time when ADB ceases to have any financial exposure in a project
- Simplify access to the IAM by adopting procedures such as the following:
 - Accept complaints from any individual or genuine representative
 - Permit Complainants to be represented by a representative of choice
 - Encourage affected persons or communities and their representatives to pursue the resolution of any disputes with the concerned operations department but this should no longer be a prerequisite for lodging a complaint with the IAM
 - Follow detailed, publicised protocols to deal with actual or threatened retaliation against any person who proposes to lodge a complaint with the IAM
- Dismiss any complaints at the outset that are determined to be *ultra vires* the IAM's mandate or assessed as trivial, vexatious, fraudulent or malicious
- Discuss each complaint with the complainant and APs and obtain input from the concerned operations department to assess the merits or otherwise of that complaint.
- Determine via “triage” whether a complaint should be investigated by the compliance review team; managed by the dispute resolution team; or referred to the concerned operations department for resolution and disposition.
- Install a Bank-wide accountability IT system to track and report on each complaint that is referred to an operations department by the IAM until that complaint has been resolved or discharged.

Efficiency

- Streamline and simplify the IAM procedures and the relevant sections of the Operations Manual stipulating, among other things,
 - reasonable timetables for completion of each stage of processing, including deadlines for the termination of an inconclusive compliance review or dispute resolution case, and
 - the production of concise, simple, and jargon-free reports, written in a “plain English” style and with translations for affected persons and communities
- Equip the IAM with state-of-the-art IT and technical support

Effectiveness

- Create an Advisory function in the IAM
- Audit ADB's accountability policy every 3 years
- Independently evaluate ADB's accountability policy every 5 years
- Review the implementation of ADB's accountability policy every 5 years (following the independent evaluation)

7.2 Enhancing ADB's Culture of Accountability

As part of the quest to enhance the culture of accountability at ADB, and among other things, consider the opportunities to reflect the AM better as part of ADB's major policy instruments such as the New Operating Model (NOM) and the proposed Environmental and Social Framework. For example, rather than referring to the AM *en passant*, the NOM could specifically direct attention to the AM policy when dealing with issues such as (i) the early resolution of project problems at the local level, (ii) the timely dissemination of information on the AM during the identification, processing and approval of projects, and (iii) constructive contributions from the AM to ADB as a learning institution.

7.3 Accountability for Private Sector Operations

Consider the merits of adopting specialised operational procedures to apply to complaints received by the IAM in relation to ADB's PSO.

7.4 A Strategy to Implement ADB's Accountability Policy

Adopt a strategy, including a measurable and monitorable strategic framework for the effective implementation of ADB's accountability policy.

Appendices

Appendix 1 - Terms of Reference

(as per ADB CMS as at 30 June 2024)

Objective and Purpose of the Assignment

In 1995, the Asian Development Bank (ADB) established an Inspection Function to provide a forum for people affected by ADB-assisted projects to appeal to an independent body for matters relating to ADB's compliance with its operational policies and procedures. Following a review in 2002 and 2003, the Inspection Function was replaced by the Accountability Mechanism (AM) in 2003. The most significant change introduced in the 2003 AM policy was the establishment of two mutually supportive functions: problem-solving and compliance review. ADB was the first multilateral development bank (MDB) to establish an accountability mechanism that went beyond the inspection function by introducing the dual dimensions of problem solving and compliance review for private and public sector operations. The objective of the AM is 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 other supervision, audit, quality control, and evaluation systems at ADB. In 2012, ADB's AM was further enhanced by: (i) giving affected people direct access to compliance review instead of necessarily going first to the problem-solving function, (ii) appointing a complaint receiving officer as the single entry point to receive and forward complaints to the Special Project Facilitator or Compliance Review Panel Chair as appropriate, (iii) enhancing the independence of compliance review, (iv) improving efficiency such as giving the operations departments and project-level grievance redress mechanisms more scope for problem-solving, and (v) improving awareness and enhancing learning.

To ensure the AM remains effective and efficient, conforms to international best practices and is able to address emerging issues being considered under the ongoing review and update of the Safeguard Policy Statement 2009, ADB Management decided to conduct an "External Review" of the AM, in consultation with the Board of Directors, through the Board Compliance Review Committee. This External Review will provide ADB Management with important perspectives to consider a planned formal review of the AM. The final report will be disclosed on the ADB website for public comments. Additionally, to guide future policy design and implementation, ADB will also undertake a separate review of the major policy changes introduced in 2012 and a Cost and Benefits Study required under paragraph 212 of AM Policy 2012.

The External Review, along with the outputs of other ongoing studies, as well as public comments, will provide a baseline and recommendations that will feed into a "Formal Review". The Formal Review will be led by a joint Board and Management working group to be established. The Formal Review phase will include extensive and inclusive public consultations with project-affected people, project beneficiaries, governments (including early engagement with DMCs), project executing and implementing agencies, civil society organizations, private sector, academia, think tanks, peer institutions, and other relevant stakeholders. It is envisaged Working paper(s) ("W-paper") will be prepared, which will be disclosed for public comments and circulated to the Board for guidance. A final AM Policy paper updating the 2012 AM Policy ("R-paper") will be submitted for Board approval. Thereafter, updated operations manual and staff instructions will be prepared to operationalize the updated AM Policy.

This TOR covers the External Review only. The objective of the External Review is to review current implementation effectiveness and adequacy of the AM and examine the scope for improving and updating the AM.

Scope of Work

The external review will include the following aspects:

- (i) an analysis of the effectiveness and adequacy of the AM in light of its historical perspectives and objectives, the principles set out in the 2012 AM Policy, taking into account concerns of project-affected people, as well as interests of beneficiaries of ADB projects and other relevant stakeholders;
- (ii) an evaluation of ADB's experience with the AM since 2012, reflecting the changing context of ADB operations, especially the adoption of Strategy 2030; as well as a review of emerging issues and international best practices that are relevant to environmental and social safeguards and the Accountability Mechanism.
- (iii) comparison and analysis of ADB's AM with other relevant comparators such as the World Bank, International Finance Corporation and Multilateral Investment Guarantee Agency, African Development Bank, European Bank for Reconstruction and Development, European Investment Bank, Inter-American Development Bank, and Asian Infrastructure Investment Bank; the Analysis would include key policy features, similarities and differences, lessons learned and good practices, among other issues.
- (iv) recommendations, based on the external review's analysis, for improving and updating the policies, the functioning of the AM, and its operating and administrative procedures.

The external review will be conducted by an independent Senior International Expert who will ensure maximum legitimacy of the process across all stakeholder groups. While a significant proportion of the work will be desk-based, the study will ensure engagement with key stakeholders in gathering and analyzing the key study topics covered above. The external review will be conducted by an independent Senior International Expert who will ensure maximum legitimacy of the process across all stakeholder groups. While a significant proportion of the work will be desk-based, the study will ensure engagement with key stakeholders in gathering and analyzing the key study topics covered above. Information gathered during stakeholder consultations will be presented as a supplementary annex to the main report which will include the following:

- a. List of stakeholders consulted, including organization, job title and name.
- b. Detailed summary of interviews conducted, with key issues and recommendations raised.
- c. Copy of questionnaire.

The independent expert will be assisted by two research assistants to work together to deliver the final report to ADB Management.

The external review process was initially expected to take approximately 8 months from inception to issuance of the final report delivered between April 2023 and November 2023. Work started on 31 July 2023 and contract has been extended with the additional deliverable (supplementary annex to the main report) until 30 June 2024.

Detailed Tasks and/or Expected Output

The Senior International Expert will be responsible for delivering the following deliverables:

- (i) Draft report outline and workplan for approval (2 weeks after contract signing)
- (ii) Draft report including the following sections (due 31 March 2024):
 - a. an analysis of the effectiveness and adequacy of the AM;
 - b. an evaluation of ADB's experience with the AM since 2012,
 - c. a comparison and analysis of ADB's AM with other relevant comparators from multilateral development banks.
 - d. Review of emerging issues for safeguards and accountability mechanisms, and review of the changing context of ADB operations, especially the adoption of Strategy 2030;
 - e. recommend options for consideration, based on the external review's analysis and taking into consideration existing models of other MDBs, for improving and updating the functioning of the AM, and its operating and administrative procedures.
- (iii) Supplementary Annex to Main Report on Stakeholder Consultations (due on 1 May 2024)
- (iv) Final report, addressing comments from ADB Management and Board (due 30 Jun 2024).

The Senior International Expert will report to a Working Group established between ADB's Management and Board, with daily activities coordinated with the Director, Policy and Technical Services Division (OSPT), in the Office of Safeguards Department (OSFG). Logistics support will be provided by the OSPT.

With particular reference to coronavirus disease (COVID-19), any need for international and national travel shall be assessed by ADB and the Consultant using ADB's advice at the time of travel. Subject to ADB's approval, the Consultant may use remote video technology meetings to replace face to face meetings as considered necessary.

Appendix 2 - The Evolution of Independent Accountability Mechanisms

A Selected Timeline

(🕒 denotes new policy or major revision or treatment)

1986	
January	WORLD BANK. IBRD/IDA financing for the Narmada River Development (Gujarat) Water Delivery and Drainage Project and the related Sardar Sarovar Dam and Power Project became effective
1991	
March	WORLD BANK. In response to concerns raised by World Bank Directors and NGOs on both projects, the World Bank President established the Independent Review Commission, to which Bradford Morse (ex-UNDP head) and Thomas Berger (the “Morse Commission”) were later appointed in June and September 1991 as Chair and Deputy Chair, respectively
September	WORLD BANK. The Morse Commission commenced its review.
1992	
June	WORLD BANK. The Morse Commission report was issued criticising World Bank, which was regarded as being “seriously out of compliance with its own policies and procedures on environment and resettlement” ³²⁶
September	WORLD BANK. The Wapenhans Report, an internal World Bank task force report titled “Effective Implementation: Key to Development Impact” by Willi Wapenhans on the efficiency of World Bank operations, was issued.
1993	
May	During the First session of the U.S. House of Representatives, One Hundred Third Congress, a Hearing on Authorizing Contributions to IDA, GEF, and ADF by the Subcommittee on International Development, Finance, Trade and Monetary Policy of the Committee on Banking, Finance and Urban Affairs (Chair: Rep. Barney Frank, D., NY), including testimony from Washington, D.C.-based NGOs (Environmental Defense Fund; National Wildlife Federation; Natural Resources Defence Council; Center for Environmental Law; Church World Service; Lutheran World Relief plus submissions from India-based NGOs), was held
June	WORLD BANK. World Bank President’s Action Plan, Chapter G: “Giving Attention to Generic Factors Affecting Portfolio Performance”, which followed the Wapenhans Report, referred to the suggestion to consider the establishment of an “Inspection Function”. ³²⁷
🕒 September	WORLD BANK. The resolution establishing the World Bank Inspection Panel (Resolution No. IBRD 93-10 and Resolution No. IDA 93-6, “The World Bank Inspection Panel”) was adopted by the Board.
1994	
🕒	IADB. An independent inspection function was mandated by the Board and IADB’s Independent Investigation Mechanism was created.
June	WORLD BANK. The U.S. Congressional Subcommittee met again given continuing concerns over the “genuine independence of the Inspection Panel”. While the Inspection

³²⁶ Van Putten, op cit, p.73

³²⁷ Ibid.

		Panel was established, World Bank had to go further, otherwise funding would be withheld.
○	April	WORLD BANK. The members of the Inspection Panel were appointed.
○	August	WORLD BANK. The Inspection Panel became operational, and Operating Procedures of the Inspection Panel was issued shortly after.
1995		
	September	WORLD BANK. Three Board members proposed a discussion on the Inspection Panel (especially focussing on “eligibility”).
	November	WORLD BANK. The Inspection Panel issued “Inspection-Function: Practical Suggestions Based on Experience to Date, Working Paper for the World Bank Executive Directors”, endeavouring to find a way for the institution to accept a compliance body; and highlighted two issues: (i) eligibility requirements; and (ii) concerns over the role(s) played by international NGOs. The concept of “problem solving” was also mentioned.
○	December	ADB. The “Establishment of an Inspection Function”, establishing ADB’s IAM, was approved by the Board.
	August	WORLD BANK. The Inspection Panel became operational, and Operating Procedures of the Inspection Panel was issued shortly after.
1996		
	February	WORLD BANK. An informal Board meeting to discuss four papers and submissions from international NGOs was held,
	May	WORLD BANK. The Board referred the Inspection Panel review to the Board’s Committee on Development Effectiveness (CODE), and this review included the issue of application to private sector operations.
○	October	WORLD BANK. The “Review of the Resolution Establishing the Inspection Panel 1996 Clarification of Certain Aspects of the Resolution” (First Clarification) was issued, dealing with the Panel’s function, Eligibility and Access, Outreach, Composition of the Panel and the Role of the Board. The review did not deal with “... the question of inspection of World Bank Group private sector projects.”
1997		
	November	WORLD BANK. An informal Board meeting to discuss further clarifications was held.
1998		
	March	WORLD BANK. A Board working group was established to review accountability.
	December	WORLD BANK. The Board working group presented 17 main recommendations, which generated specific responses from the Inspection Panel.
○		IFC/MIGA. The Terms of Reference for the Compliance Advisor Ombudsman (CAO) were issued, establishing the IAM for IFC/MIGA.
1999		
○	April	WORLD BANK. The “1999 Clarification of the Board’s Second Review of the Inspection Panel” (Second Clarification) was approved.
2000		
○		IFC/MIGA. CAO’s Operational Guidelines were adopted.
2001		

April	ADB. The first inspection under the ADB Inspection Function was held in relation to the Thailand project “ Samut Prakarn Wastewater Management Project ” (Loan 1410-THA, approved 7 Dec 1995); this lasted until March 2002. Two previous requests for inspection were filed but they were considered ineligible.
2003	
December	ADB. “The Accountability Mechanism Policy 2003” (second iteration) took effect, superseding the 1995 Policy and adding a problem-solving phase prior to the compliance review (inspection) phase.
2004	
	The first Annual Meeting of the Independent Accountability Mechanisms Network (IAMs) was held, with the Inspection Panel as host. Network annual meetings have been held annually since 2004.
April	EBRD. The Independent Recourse Mechanism Rules of Procedure were adopted by the Board, establishing the IAM for EBRD.
June	AfDB. Resolutions B/BD/2004/9 – F/BD/2004/7 and B/BD/2004/10 (Enabling Resolution) establishing the Independent Review Mechanism, AfDB’s IAM, was adopted by the Group Boards of Directors.
	IFC/MIGA. CAO’s Operational Guidelines (second) were adopted.
2006	
	AfDB. The Independent Review Mechanism Operating Rules and Procedures were issued by the Board.
2007	
	IFC/MIGA. CAO’s Operational Guidelines (third) were adopted.
2008	
June	EIB. The Complaints Mechanism Policy was adopted by the Board, establishing the IAM for EIB.
2009	
	EBRD. The Project Complaint Mechanism (previously, Independent Recourse Mechanism) Rules of Procedure were adopted by the Board.
2010	
February	IADB. The second iteration of the Policy Establishing the Independent Consultation and Investigation Mechanism (previously, Independent Investigation Mechanism) was adopted.
February	EIB. The amended EIB Complaints Mechanism Policy was adopted by the Board.
June	AfDB. Resolution B/BD/2010/10 – F/BD/2010/04 concerning the Independent Review Mechanism (second iteration) was adopted. (The Independent Review Mechanism Operating Rules and Procedures were issued by the Boards).

Sept - Oct ³²⁸	ADB. In the PRC project “ Fuzhou Environmental Improvement Project ” (Loan 2176-PRC, approved 29 Jul 2005), CRP’s final report to the Board on the compliance review case filed on 3 June 2009 stated that “it would be inappropriate to issue any findings or make any recommendations without a site visit” being permitted by the PRC. ³²⁹ The Board closed the case.
2011	
June	The UN “ Guiding Principles on Business and Human Rights – Implementing the UN ‘Protect, Respect and Remedy’ Framework ” were endorsed by the Human Rights Council. ³³⁰
2012	
February	ADB. “The Accountability Mechanism Policy 2012” (third iteration) was adopted by the Board, providing for two functions (problem solving and compliance review), rather than phases, and a single, neutral entry point, among other major changes.
May	ADB. “The Accountability Mechanism Policy 2012” took effect, superseding the 2003 Policy. Operations Manual was issued by Management.
2013	
November	WORLD BANK. The “Piloting a new approach to support early solutions in the Inspection Panel process” was issued by the Inspection Panel, Operations Policy and Country Services, and Legal Vice Presidency Unit.
	IFC/MIGA. Updated Terms of Reference for the Compliance Advisor Ombudsman (second iteration) were issued.
	IFC/MIGA. CAO’s Operational Guidelines (fourth) were adopted.
2014	
April	WORLD BANK. The new Operating Procedures of The Inspection Panel issued by the Inspection Panel.
May	EBRD. The amended Project Complaint Mechanism Rules of Procedure were adopted by the Board.
2015	
January	AfDB. Resolution B/BD/2015/03 – F/BD/2015/02 regarding the Independent Review Mechanism (third iteration) were adopted by the Group Boards. (Independent Review Mechanism Operating Rules and Procedures were issued by the Boards).
2016	

³²⁸ Pages 61 and 85 of the 2012 Accountability Mechanism Policy document, background section, states that the CRP submitted its report in October 2010, stating “n the Fuzhou Environmental Improvement Project4 in the People’s Republic of China, the CRP issued its report in October 2010 without a conclusion. The CRP stated it would be inappropriate to issue any findings or make any recommendations without a site visit.” Whereas CRP’s complaint-specific registry states that the Board had met on the 19th of October and made a decision on the 21st of October. The CRP report on Board decision is not available publicly. And finally, another CRP web page stated that its final report was instead submitted on the 27th of October, with the decision having been made on the 19th of October (<https://lnadbg4.adb.org/dir0035p.nsf/alldocs/BDAO-7XVC5P?OpenDocument>).

³²⁹ Dates are reported inconsistently. Information was taken from Actual page 61 of 85 (or page 50 at the bottom of the page) of the 2012 Accountability Mechanism Policy document, background section, as mentioned in Footnote 3. In page 59, the fact is stated in a different way: “The CRP stated that it was unable to complete the compliance review for lack of a site visit.”

³³⁰ Page iv, https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

January	“Glass Half-Full? The State of Accountability in Development Finance”, reviewing 11 IAMs of development finance institutions, ³³¹ was published by 11 international organizations, namely, Accountability Counsel; Both ENDS; Center for International Environmental Law; Central and Eastern European Bankwatch Network; Center for Human Rights and Global Justice, New York University School of Law; Centre for Research on Multinational Corporations; Counter Balance; Foundation for the Development of Sustainable Policies; Inclusive Development International; Natural Justice; Program on International & Comparative Environmental Law, American University Washington College of Law. ³³²
February	WORLD BANK. The Operating Procedures of The Inspection Panel issued by the Inspection Panel was updated with the addition of an annex on enhancing consultation with stakeholders and tracking action plans
August	ADB. “SAM: Promoting Economic Use of Customary Land Project” - In response to the CRP report finding the request for compliance review to be eligible, the Board endorsed the BCRC’s recommendation not to proceed with a compliance review
2017	
August	WORLD BANK. Commissioned an External Review of the Inspection Panel’s Toolkit.
2018	
March	ADB. “GEO: Nenskra Hydropower Project” - In response to the CRP report finding the request for compliance review to be eligible, the Board approved the recommendation of the Board Compliance Review Committee that the Board should not authorize a compliance review and that the Board should instead approve alternative actions. ³³³
May	WORLD BANK. “External Review of the Inspection Panel’s Toolkit” prepared for the Committee on Development Effectiveness (CODE)
July	WORLD BANK. CODE Working Group established to consider the areas identified in the External Review in more detail
October	WORLD BANK. Board approves measures to include, among other things, an advisory role in the IP’s mandate and provisions to share IP reports with Requesters; and notes the strengthening of the Grievance Redress Service (GRS)
November	EIB. The EIB Group Complaints Mechanism Policy was adopted by the Board. (The EIB Group Complaints Mechanism Procedures were adopted.)
2019	
February	IFC/MIGA. The US Supreme Court decided that, as an international organization, IFC does not enjoy absolute immunity from lawsuits brought against them in the US: <u>Jam vs. International Financial Corporation</u> , 139 S. Ct. 759, 765.
April	EBRD. The Project Accountability Policy was adopted by the Board. Guidance on Case Handling under the EBRD Project Accountability Policy was issued.
July	WORLD BANK. CODE considers the report on the IP’s feedback engagement, including procedures to increase management accountability
2020	

³³¹ Page 13, <https://www.ciel.org/wp-content/uploads/2021/06/Glass-half-full.pdf>

³³² <https://www.ciel.org/wp-content/uploads/2021/06/Glass-half-full.pdf>

³³³ [https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-Nenskra-ReportofBCRC&ER-21Mar18.pdf/\\$FILE/GEO-Nenskra-ReportofBCRC&ER-21Mar18.pdf](https://lnadbg4.adb.org/dir0035p.nsf/attachments/GEO-Nenskra-ReportofBCRC&ER-21Mar18.pdf/$FILE/GEO-Nenskra-ReportofBCRC&ER-21Mar18.pdf)

March	WORLD BANK. Report and Recommendation on the Inspection Panel's Toolkit Review, including recommendations on the verification of remediation measures, allowing requests to be filed up to 15 months after loan closing and a revised organizational structure with a new "World Bank Accountability Mechanism", which will include compliance review and dispute resolution functions.
September	WORLD BANK. Resolution No. IBRD 2020-0005 and Resolution No. IDA 2020-0004, "The World Bank Accountability Mechanism", and Resolution IBRD No. 2020-0004 and Resolution IDA No. 2020-0003, "The World Bank Inspection Panel", (second iteration) were adopted by the Board, establishing one head of office (Secretary) and a problem-solving option to those seeking compliance review
2021	
April	IADB. The Policy of the Independent Consultation and Investigation Mechanism (third iteration) was adopted by the Board.
June	IFC/MIGA. The IFC/MIGA Independent Accountability Mechanism (CAO) Policy (third iteration) was adopted by the Board, which moved the CAO from under Management to under the Board, among other major changes.
	IFC/MIGA. Independent Accountability Mechanism (CAO) Policy: Transitional Arrangements were issued by IFC/MIGA.
July	AfDB. Resolution B/BD/2021/16 – F/BD/2021/11 was adopted by the Group Boards establishing the Independent Recourse Mechanism (previously, Independent Review Mechanism) (fourth iteration). (The Independent Recourse Mechanism Operating Rules and Procedures January 2015, updated to July 2021, was issued by the Boards.)
October	WORLD BANK. The Interim Operating Procedures of the Accountability Mechanism Dispute Resolution Service were issued by the Accountability Mechanism Secretary.
December	" <i>Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms</i> " was published by 11 international organizations, namely, Accountability Counsel, Bank Information Center, Center for International Environmental Law, Centre for Research on Multinational Corporations, Community Empowerment and Social Justice Network, Gender Action, Green Advocates International (Liberia), Inclusive Development International, International Accountability Project, Jamaa Resource initiatives, and <i>urgewald e.V.</i> ³³⁴ The report, which is based on UN Guiding Principles on Business and Human Rights' effectiveness criteria, "identifies good existing policy provisions that cover the key elements of an effective mechanism: Mandate, Function and Roles, Structure, Information Disclosure and Outreach, and Complaint Process; as well as the three typical functions of an IAM: Compliance Review, Dispute Resolution, and Advisory". ³³⁵
2022	
February	The "Remedy in Development Finance: Guidance and Practice" was issued by the UN Human Rights Commission Office of the High Commissioner (NY and Geneva).
December	WORLD BANK. The Operating Procedures of the Inspection Panel were issued by the Inspection Panel. Shortly after, the Accountability Mechanism Procedures were issued by the Accountability Mechanism Secretary
2023	
March	WORLD BANK. "The Accountability Mechanism Procedures" were re-issued by the Accountability Mechanism Secretary with clarifications.

³³⁴ Pages 3-4, <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf>

³³⁵ Page 11, <https://accountabilitycounsel.org/wp-content/uploads/2021/12/good-policy-paper-final.pdf>

October	20 th annual meeting of the IAMs was held in London, where ADB's AM was selected as host for the 21 st annual meeting in 2024.
2024	
January	" <i>Good Policy Paper: Guiding Practice from the Policies of Independent Accountability Mechanisms (January 2024)</i> " was published by 12 international organisations (the original 11 authors in 2021, plus Recourse)

Appendix 3 - The Strengths and Weaknesses of the AM2003

The Strengths of the AM2003

The AM2012 outlined several strengths of the AM2003.

i. Introduction of the problem-solving function

Regarded as a positive innovation, the problem-solving function empowered APs *"to participate in the problem solving process rather than just letting them be recipients of the inspection results"*.

ii. Independence and effectiveness

Recognizing the need for the CRP to maintain independence from management, the AM2003 was commended for ensuring the credibility of investigations into alleged ADB non-compliance. The AM2012 contended that, by reporting to the President, the SPF would be independent from operations, but this would strike a balance between objectivity and operational knowledge: *"sufficiently empowered but ... not isolated from operations staff"*

iii. The mandate to monitor remedial actions

The introduction of this mandate was deemed to enhance credibility.³³⁶

iv. Accessibility

The complaint filing procedures were considered *"to conform to international good practices"*.³³⁷ However, the encouragement for requesters to cite specific policy violations could be considered to be overly optimistic about the awareness of ADB's specific policies among often disadvantaged APs.

v. Complementarity

(a) "Vertical complementarity"

The interconnected system, forming a *"problem-solving-compliance continuum"* was lauded for providing a uniform link from project to departmental levels and eventually to the AM. The AM2012 emphasized minimizing complaints to the SPF and CRP, as a last resort, with a focus on prompt and effective problem resolution at the project, local or DMC levels.

The AM2012 considered that *"(W)here problems occur ADB's philosophy is to respond promptly and effectively at project and operational levels. Complaints to the SPF and CRP should only occur as exceptions"*³³⁸ AM2012 describes a *"bottom-up, multilevel mechanism ... in place to solve problems and ensure compliance"*.³³⁹

(b) "Horizontal complementarity"

The alignment with other accountability mechanisms such as the Independent Evaluation Department (IED) and the Office of the Auditor General (OAG) was considered a strength, contributing to ADB's overall governance and accountability commitment.³⁴⁰

ADB's vision was summed up by asserting that these integrated aspects of governance were *"... designed to ensure that ADB operations are carried out in accordance with approved operational policies and procedures and deliver intended results. ADB's philosophy is that **accountability should be mainstreamed across all operations and activities** ..."* (emphasis added)

vi. Effective results

The AM was credited with delivering effective results, both through the consultation phase and compliance review phase, as evidenced by successful interventions in projects like the compliance

³³⁶ AM2012, para. 19

³³⁷ *ibid.*, para. 20

³³⁸ *ibid.*, para. 27, p.7

³³⁹ *ibid.*, para 24, p.6

³⁴⁰ This aspect also included indirect associations with the work of Office of Anticorruption and Integrity, Central Operations Services Office, Office of Risk Management, and the Board oversight committees

review in the Southern Transport Project in Sri Lanka³⁴¹: "... *the CRP played an important role in bringing the project into compliance. Consultations in Sri Lanka indicated that the CRP's work helped to address the problems faced by the affected people and facilitated the government's improvement of its own systems*"³⁴²

vii. Transparency

The AM operated with a "high degree of transparency" while ensuring confidentiality.

viii. The AM as a learning mechanism

The AM contributed to learning initiatives at ADB and in DMCs through information disclosure, learning efforts, training courses for staff, and the establishment of online communities of practice. The AM2012 asserted that: "*Staff, Management, and the Board increasingly see the Accountability Mechanism is a tool for ADB to respond positively to public scrutiny. The Accountability Mechanism helps ADB to learn lessons and improve its project quality*".³⁴³

The Weaknesses of the AM2003

Most of the weaknesses identified in the review related to compliance reviews.

i. Lack of direct access to the compliance review function

The sequential approach, requiring a problem-solving phase before the compliance review phase, was criticized for failing to recognize the differences between mediation and compliance review. Although sequencing was acknowledged as a weakness, the arguments against it were not persuasive: there was no firm evidence that OSPF had "*blocked access*" to compliance review nor that sequencing had resulted in longer process for complainants who would have preferred compliance review

ii. Need for a single entry point

With access to both SPF and CRP, the absence of a single entry point to the AM necessitated the creation of the CRO. However, concerns were raised about the adequacy of resourcing and staffing for this critical role.

iii. Uncertainty on site visits

The controversy over the PRC government's refusal to allow a site visit triggered the discussion on site visits.³⁴⁴ Although the AM2003 on site visits was not controversial, the review identified 2 weaknesses, namely the fact that the AM2003 did not address the process for obtaining site visit consents from the host country and the lack of guidance on what to do if a host country consent for a visit was refused. The AM2012 suggests that management could assist with consents³⁴⁵ and, if a site visit is refused, the CRP should still complete a compliance review.

The SPF had no history of having a DMC permission for a site visit declined.

iv. The need to enhance the independence and effectiveness of the Compliance Review Panel

The policy review correctly focused on CRP weaknesses to enhance independence, such as the appointment of CRP members by the Board and the regularizing of work planning and budget processes.

v. The need to clarify the roles of the Compliance Review Panel

Concerns were raised about CRP recommendations being too specific or too broad. And, apparently, the review seemed to suggest that the CRP should be more of a fact-finding body rather than an independent investigator, though there is no clear analysis of why the power to "investigate" was regarded as a weakness. Rather than enhancing independence, the major policy changes triggered by these perceived weaknesses may well constrain independence.

³⁴¹ Complaint No. 2004/1 (2 December 2004) Sri Lanka: Southern Transport Development Project – Loan No.1711-SRI (SF)

³⁴² AM2012, op. cit., para 37

³⁴³ 2012 Policy, op. cit., para 42

³⁴⁴ PRC: Fuzhou Environmental Improvement Project (Loan 2176-PRC, approved on 29 July 2005) ("*the Fuzhou Project*")

³⁴⁵ The review ignored the fact that the Fuzhou compliance review demonstrated that if a DMC is unwilling to grant permission for a site visit, then management intervention may still not be successful

vi. The lack of predictable cutoff dates

Using the project completion report issuance date as the deadline for complaint submissions was deemed uncertain. Suggestions were made for a more predictable cutoff date, such as the loan closing date or when ADB no longer has a financial stake in the project.

vii. The need for efficiency improvements

Concerns were raised about processing times for both consultations and compliance reviews, respectively, and the need for controls over direct and indirect operating costs of the AM.

viii. Inadequate awareness and tracking

Limited awareness of the AM among local communities and the absence of a comprehensive Bank-wide system to track progress on those “ineligible” complaints that the AM has referred to operations departments (ODs) were identified as weaknesses.

ix. Insufficient learning

The compliance review process was viewed as adversarial, necessitating a shift toward the perception that the AM should be regarded as a positive instrument for learning and development. It is unclear why the review did not address the challenges of learning from the OSPF’s work at the consultation stage and in problem-solving.

Impediments to Compliance Review

The 2003 review also considered the impediments to initiating compliance reviews. As with other IAMs, the review suggested that most complaints may be solved at the project (GRM) or departmental level; there may be limited awareness of the CRP and remedies; and the AM may employ complex procedures. [In addition, there may be other factors that influence whether APs seek recourse to the AM: for example, scepticism about an MDB’s commitment to accountability; the perceived lack of independence; the difficulty of accessing the AM; the challenges in accessing information and getting guidance; and cost of launching a case.

Appendix 4 - AM Awareness and Learning Initiatives (2012 to 2023)

A. Accountability Mechanism

- Accountability Mechanism Annual Report
 - 2013 – Improving Outcomes
 - 2014 – Partnerships
 - 2015 – Building Skills and Capacity
 - 2016 – Improving Lives
 - 2017 (no title)
 - 2018 (no title)
 - 2019 – Enhancing Accountability and Project-Level Grievance Mechanisms
 - 2020 – Responding to Affected People during the Pandemic
 - 2021- Facilitating ADB in Operationalizing Its Core Values
 - 2022 – Searching for Solutions, Finding the Lessons
- 2016 Joint Learning Report³⁴⁶
- 2018 Joint Learning Report: highlighted the following challenges:
 - improvements in ADB’s consultation with, and participation of APs in the field
 - more analytical work on capacity development for local staff and EAs
 - Capacity building in complaint risk management, including greater interaction between the AM and ODs
 - the use of technology
 - collaboration with ODs, including a series of challenges that dealt with the accessibility of the AM, lessons learned, and effectiveness of addressing complaints
 - a better focus on GRMs (ADB wants to become “*a leader among peer organizations*” in the implementation of GRMs)
 - Greater attention paid to the reasons for the increase in the numbers of complaints that are being made to the AM, which may include problems with GRM complaint handling by ODs
 - the ADB-wide system to track progress on managing ineligible complaints

The JLR concluded with ADB’s need to invest in greater additional work in the most effective way to promote participation and consultation, and the need to put more resources into capacity development. Collaboration between the AM and the ODs, including resources, were regarded as key ingredients.

- 2019–2021 Joint Learning Report on the Implementation of the Accountability Mechanism Policy: Accountability Mechanism Strengthens Good Governance. This report analyzes the triggers for complaints filed with the Accountability Mechanism, considers lessons from complaint resolution, and explores recurring and emerging issues through the lens of good governance.
- October 2014 – [10 Years of Accountability Mechanism \(Video\)](#)
- October 2014 - [10 Years of Accountability Mechanism \(Publication\)](#)
- November 2014 – [ADB’s Accountability Mechanism: Strengthening Partnerships](#)
- August 2018 - [ADB’s Accountability Mechanism Video - An Introduction](#) (translated in 17 languages)
- [Celebrating 25 Years of ADB’s Accountability Mechanism](#) (Multimedia Page)
- September 2018 – [Guidelines for the Protection of Key Stakeholders during the Accountability Mechanism Process](#)

³⁴⁶ The three Joint Learning Reports covering 2016-2022 were jointly prepared by the Office of the Compliance Review Panel, the Office of the Special Project Facilitator, the Independent Evaluation Department, and the Climate Change and Sustainable Development Department.

B. Office of the Special Project Facilitator

- December 2014 – Tracking Impact: The Cambodian Railway Rehabilitation Journey of the OSPF (internal circulation only)
- February 2016 – [Problem Solving Guidebook for ADB-assisted Projects](#)
- June 2017 – Problem Solving on the Road: A Case Study on Nepal (internal circulation only)
- 27 May 2018 – [Building Bridges: Lessons from Problem-Solving in Viet Nam](#)
- 20 March 2020 - [OSPF's video documentation of the Viet Nam case study \(translated in 17 languages\)](#)
- 24 July 2020 - [Armenia: Sustainable Urban Development Investment Program – Tranche 1 Complaint Video](#)
- 1 October 2020 – Office of the Special Project Facilitator's Lessons Learned: Batumi Bypass Road Project in Georgia ([English](#) & [Georgian](#))
- 8 October 2020 – Office of the Special Project Facilitator's Lessons Learned: Sustainable Urban Transport Project Investment Program, Tranche 3 in Georgia (in [English](#) and [Georgian](#))
- 3 November 2020 – Office of the Special Project Facilitator's Lessons Learned: Ulaanbaatar Urban Services and Ger Areas Development Investment Program, Tranche 1 ([English](#) and [Mongolian](#))
- 29 December 2020 – [Office of the Special Project Facilitator's Lessons Learned: Sri Lanka Integrated Road Investment Program](#)
- 9 March 2021 – [Office of the Special Project Facilitator's Lessons Learned: Sri Lanka Clean Energy and Network Efficiency Investment Project](#)
- 20 March 2022 - [OSPF's video documentation of the Mongolia case study \(translated in 17 languages\).](#)
- eLearning Module: *Introduction to Problem Solving* (August 2020)
- eLearning Module: *Foundational Course on Grievance Redress Mechanisms* (May 2020)
- **TA9598: Capacity Building for Grievance Redress and Dispute Resolution During Project Implementation (2018)**

This TA recognises the importance of improving the effectiveness of project-level grievance redress mechanism based on the OSPF problem-solving casework. The TA provided for the preparation of GRM training sessions.

The workshop on **Grievance Redress Mechanism** aims to: (i) improve the functioning of project grievance redress mechanism and (ii) equip project staff with communication skills and knowledge of proper handling and management of grievances received from affected households and stakeholders.

The workshop on **Problem-Solving for ADB-assisted Projects** will introduce the use of a simple framework following a step-by-step approach to problem solving including activities, useful tools, case scenarios and practical tips.

Since inception, OSPF has conducted 21 training sessions across regions, attended by more than 500 participants from various sectors.³⁴⁷ This is as follows:

2019 (face-to-face)	2021	2022
Manila, Philippines	Thimphu, Bhutan (virtual)	Ulaanbaatar, Mongolia (in-person, two batches)
Nadi, Fiji	Colombo, Sri Lanka (virtual)	New Delhi, India (virtual, two batches)
Tbilisi, Georgia	Kathmandu, Nepal (hybrid)	Pokhara, Nepal (in person)
Ulaanbaatar, Mongolia		Islamabad, Pakistan (in person)
Thimphu, Bhutan		Lahore, Pakistan (in person)
Dhaka, Bangladesh		
Tashkent, Uzbekistan		

³⁴⁷ Prior to this TA, OSPF had already conducted and facilitated several training sessions on grievance redress mechanisms and problem-solving as part of its operational support and advisory services.

Bali, Indonesia Tbilisi, Georgia Hanoi, Viet Nam Ho Chi Minh City, Viet Nam		2023 (adding this in case needed, all in person) Jakarta, Indonesia Port Moresby, Papua New Guinea Colombo, Sri Lanka
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C. Office of the Compliance Review Panel

- A Guidebook on the Compliance Review Function of ADB's Accountability Mechanism (May 2018) for:
 - ADB Management and Staff
 - Government Borrower
 - Private Sector/Contractor
 - NGOs/CSOs and Affected People
- Regional Accountability Mechanism Framework & National Accountability Mechanism Framework of PRC (May 2019)
- Knowledge Note: Strengthening Accountability Mechanisms in Financial Intermediaries to Support Environmental and Social Sustainability of Subprojects (September 2019)
- A Sourcebook on the Compliance Review Function of ADB's Accountability Mechanism (June 2019)
- August 2020 – [Compliance Review Panel: Clarifications on the Application of Certain Provisions of the Accountability Mechanism Policy 2012](#)
- Lessons Learned from Compliance Reviews of the Asian Development Bank (2004-2020):
 - Rehabilitation of the Railway Project in the Kingdom of Cambodia
 - Fuzhou Environmental Improvement Project in the People's Republic of China
 - CAREC Transport Corridor 1 (Bishkek – Torugart Road) Project 1 in the Kyrgyz Republic
 - Sri Lanka Southern Transport Development Project
 - Mundra Ultra Mega Power Project in India
 - Integrated Citarum Water Resources Management Investment Program—Project 1 in Indonesia
 - Visayas Base-Load Power Development Project in the Philippines
 - Sustainable Urban Transport Investment Program—Tranche 3 in Georgia
 - Common Threads: Lessons from Compliance Reviews—Strengthening the Fabric of Development Effectiveness
- Video: Stories of Inspiration from the ADB Accountability Mechanism
 - [Compliance story](#)
 - [Problem-solving story](#)

- **TA9289: Strengthening Policy Compliance Awareness for Good Governance and Development Effectiveness**

The TA developed relevant information and awareness-raising materials on the compliance review function of ADB's Accountability Mechanism to improve the understanding of key project stakeholders on compliance review as ADB's internal governance tool and platform to redress noncompliance with ADB policies and procedures. Workshops were designed to progressively develop four guide booklets and a brochure on compliance review. The Dhaka and Manila workshops gathered inputs and firmed up the scope and outline of the guide booklets. Workshops in Tbilisi and Baku presented the draft contents and solicited comments/inputs from various stakeholders. The Bangkok workshop was a content validation workshop by NGOs.

- **TA9466: Strengthening Compliance Review and Accountability to Project Affected Persons of Financial Intermediaries**

The TA, funded by the People's Republic of China Regional Cooperation and Poverty Reduction Fund, is about gathering a significant number of financial intermediaries (FIs); government regulatory agencies; independent accountability mechanisms of international financial institutions (IFIs); and NGOs/CSOs to

discuss and focus on how FIs could establish an effective safeguard compliance and accountability mechanism in projects that those FIs are implementing.

The TA organized three regional workshops, i.e. (i) in Beijing and (ii) Xiamen in PRC (on 12 and 14 and 15 June 2018, respectively) and (iii) in New Delhi, India (on 31 October and 1 November 2018). The workshops were attended by around 250 senior and working level staffs from various financial intermediaries and banks from 23 ADB developing member countries and several private banks and a number of NGOs/CSOs from the region and host countries. The TA successfully mobilized representatives from independent accountability mechanisms of the World Bank Group (including from IFC's Compliance Advisor Ombudsman); European Investment Bank; Asian Infrastructure Investment Bank; New Development Bank; Green Climate Fund; Japan International Cooperation Agency; international organizations and NGOs/CSOs, including UNEP, UNDP, WWF, Bank Information Center, Accountability Counsel, and Friends of the Earth, as resource persons and/or facilitators.

- **TA9718: Developing an Accountability Mechanism Framework for Financial Intermediaries**

The TA, funded by the People's Republic of China Regional Cooperation and Poverty Reduction Fund, is about the formulation of an accountability mechanism framework for financial intermediaries, in general, that could be used as basis for country- or institution-specific accountability mechanism. It built up on the knowledge note/output and collaboration developed under TA 9466 with international organizations (including NGOs and independent accountability mechanisms-IAMs of international financial institutions-IFIs) dealing with accountability and government regulatory agencies.

The TA organized a regional workshop in Shanghai, PRC in May 2019; a consultative workshop in Beijing in July 2019 to get feedback on the draft national Accountability Mechanism Framework (AMF) for PRC; and iii) a wrap-up workshop in Manila in October 2019 to take stock of the achievements of this TA and how to move the initiative forward. A wrap up workshop was held in Manila which presented the regional AMF and the PRC national AMF and highlighted current initiatives by INO and IND at improving their systems towards adopting an AMF in the future. The wrap up workshop which included select ADB staff as participants, identified the critical need for government support towards establishing national AMFs to ensure greater accountability to persons who are affected by FI projects.

- **Deep Dive Sessions into Compliance Review with Operations and Non-Operations Departments**

- OCRP Briefing to SARD (November 2020)
- OCRP Briefing for CWRD (December 2020)
- OCRP Briefing for EARD (June 2021)
- OCRP Briefing for PARD (June 2021)
- OCRP Briefing for SERD (June 2021)
- OCRP Briefing for OGC (March 2022)
- OCRP Briefing for PSOD (June 2022)
- OCRP Briefing for SPD (June 2022)

- **Learning Series on ADB's Safeguards and Accountability Mechanism (Virtual)**

A virtual pilot webinar series on safeguards and accountability which was jointly undertaken by SDSS, OSPF and OCRP were held on i) 27 July to 4 August for 39 India Resident Mission staff and ii) 10 to 18 August for 108 personnel from ADB project executing and implementing agencies in India. Based on this pilot, the team redesigned the program and the next webinar for the Philippines was developed.

SDCC, OCRP, OSPF, and SERD, with the help of the Philippine Learning Center for Environment & Social Sustainability (PHILCESS) organized a learning series under TA-6577 REG: Strengthening ADB's Safeguard Policy Provisions and Procedures - Training and Stakeholder Engagement on the Safeguard Policy Statement and Accountability Mechanism (54203-001). This first-time event provided an opportunity for ADB project stakeholders (SERD staff and projects EAs and IAs) in the Philippines over a span of 4 days (19 & 24 Nov and 1 & 7 Dec 2021) to learn about an integrated systems approach of ADB's Safeguards and Accountability policies through policy-level discussion, implementation successes, challenges, and forward-looking solutions for such challenges.

- **Teasers on Lessons Learned on Compliance Review**

In December 2023, OCRP launched two brief teasers on compliance review lessons, featured on ADB's internal digital platforms. These teasers aim to generate interest in compliance review among ADB staff so

that we can redirect the focus from project mistakes to valuable lessons learned from ADB-assisted projects that went through compliance reviews and eventually contribute to improving the design and implementation of ADB projects.

Appendix 5 - AM Caseloads (2012 to 2023)

Source: ADB's Accountability Mechanism as of 31 December 2023

The figures below present information on complaints received from 2012-2023, this includes complaints processing, complaints according to ODs, sector, complaint type, and admissibility, with each one being sourced from either the CRO directly (in preparation for the 2023 AM Annual Report) or from data gathered and consolidated from the Complaints Registry, OSPF Registry, and OCRP Registry. Table and Figure titles will indicate the specific data source for clarity.

The detailed breakdown of information, source data, and year-on-year complaints information is presented on a separate spreadsheet which can be made available upon request.

Figure A5.1. AM-Related Complaints Processed and Forwarded by the CRO to the SPF or CRP (CRO)

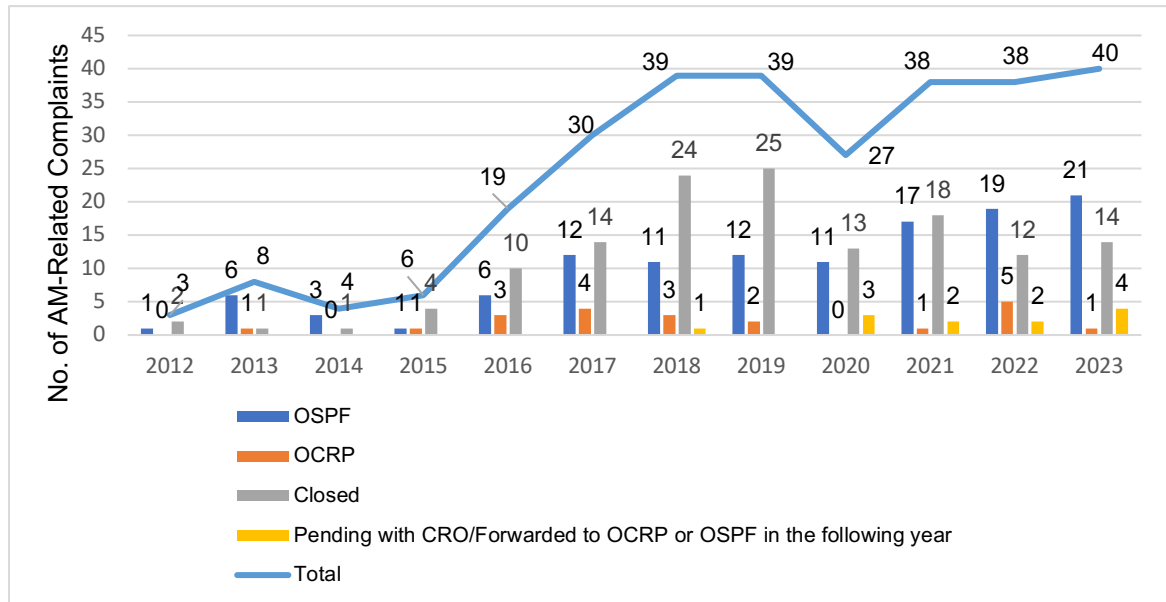


Figure A5.2. Complaints received by admissibility (Complaints Registry, OSPF, and OCRP Registries)

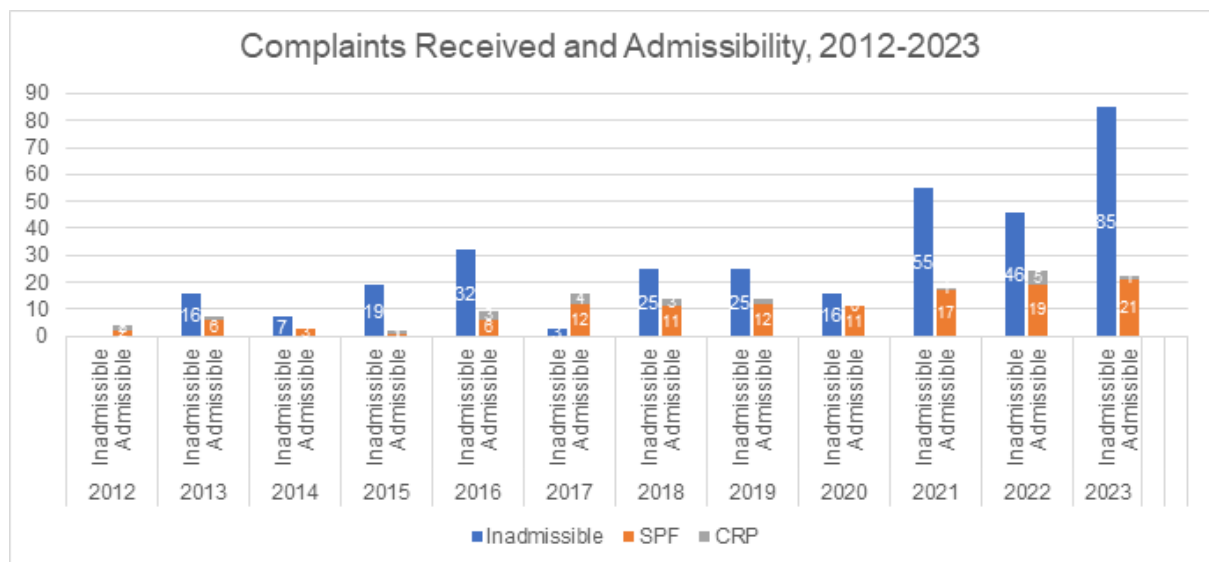


Figure A5.3. Sectoral distribution of AM-related complaints, by percentage and number of complaints (CRO)

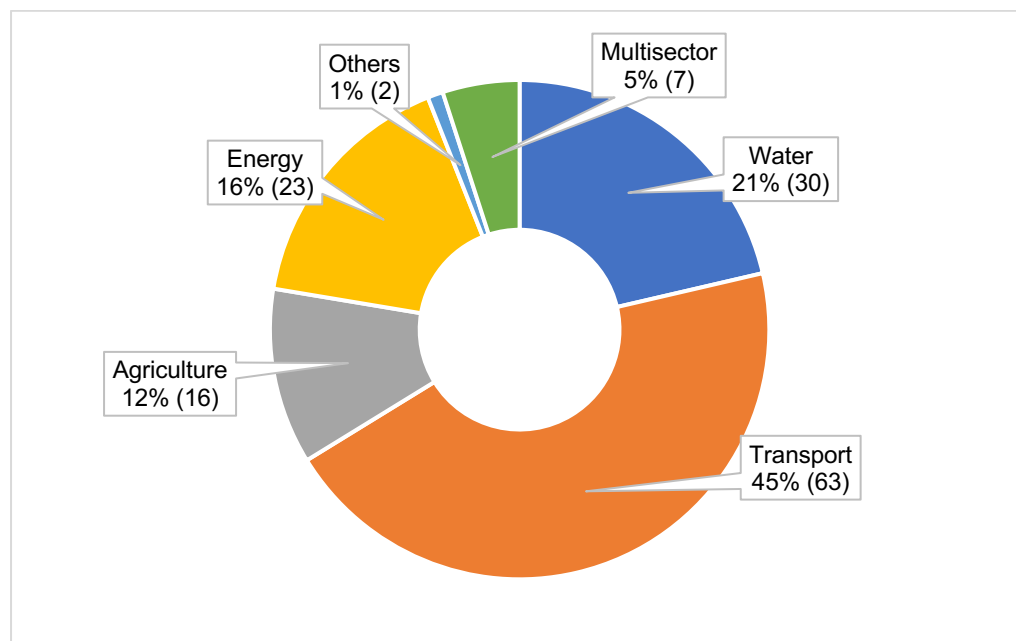


Figure A5.4. Regional Distribution of Complaints, by percentage and number of complaints (CRO)

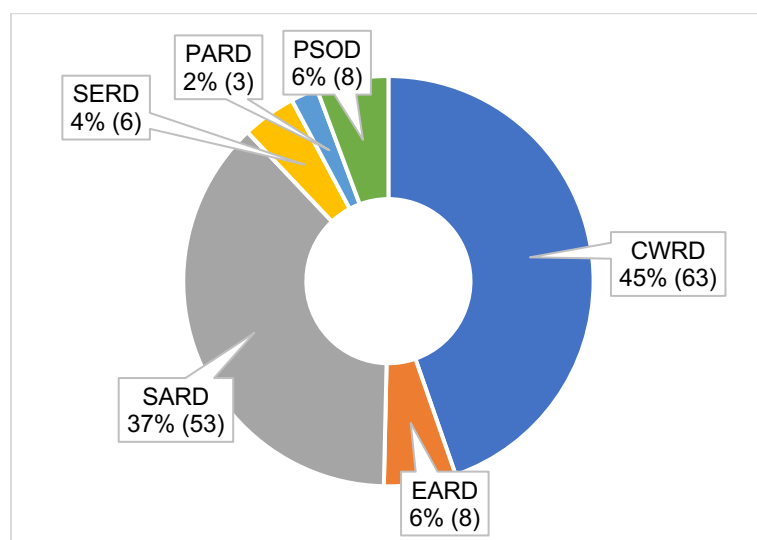


Table A5.1. AM Complaints by Regional Department (from CRO)

Region	Transport	Water	Energy	Agriculture	Total	%
SARD	6	6	1	1	14	35%
CWRD	11	2	1	8	22	55%
EARD	1	0	0	0	1	3%
SERD	0	2	0	0	2	5%
PARD	0	1	0	0	1	3%
Total	18	11	2	9	40	100%
%	45%	28%	5%	23%	100%	

Figure A5.5. Complaints processed by OSPF and OCRP by complaint type (Complaints Registries)

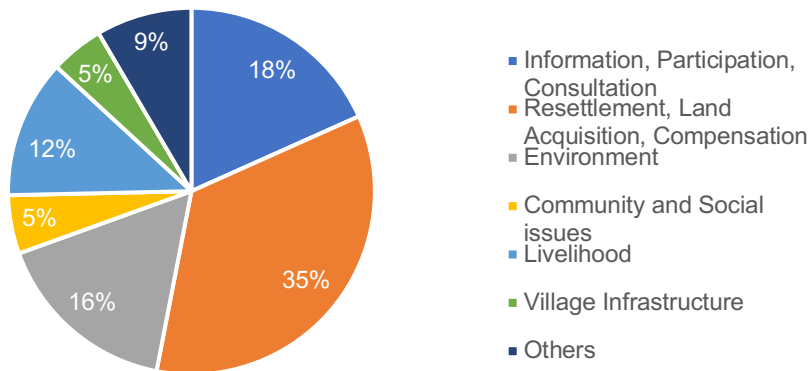


Figure A5.6. CRO Complaints Handling (Complaints Registry Archive)

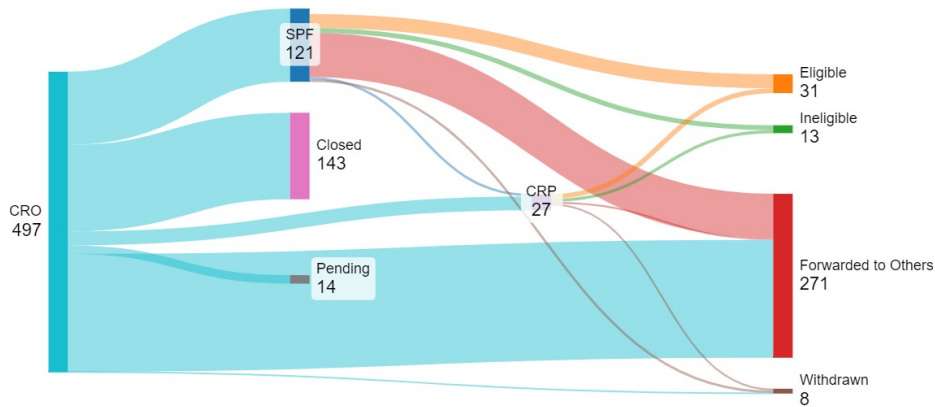


Figure A5.7. Compliance Review Requests Handling by the OCRP (as per CRP registry of complaints)

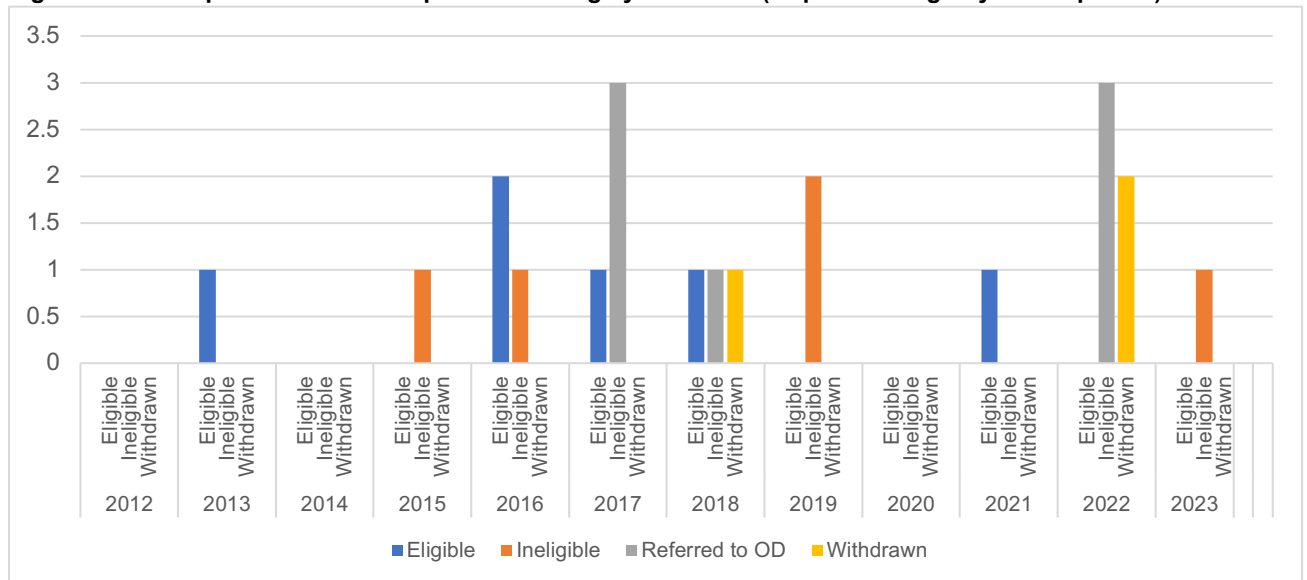
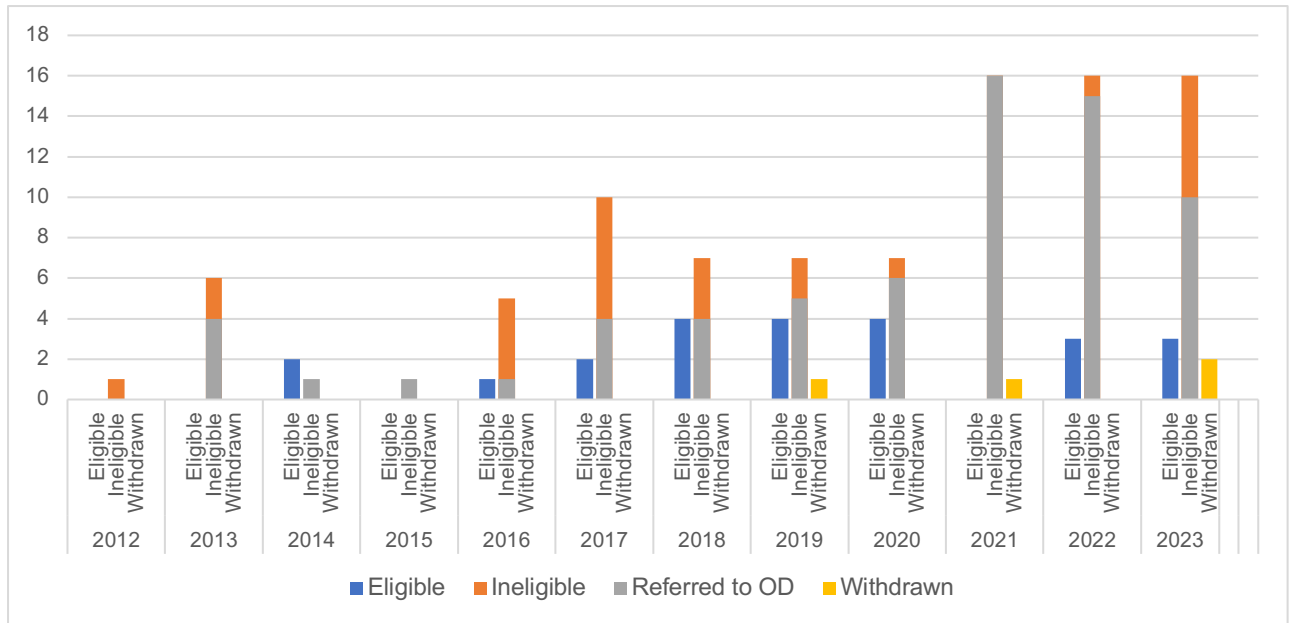


Figure A5.8. Problem Solving Requests Handling by the OSPF



Appendix 6 - AM Budget (2012 – 2022)

Source: ADB's Accountability Mechanism, as of 31 December 2023

Over the course of the review period, budget and actual expenditure data was only available for 2012-2022. Although information on the 2023 budget allocations were available, they were left out as actual expense figures for salaries, administrative costs, and consultants' fees had not yet been validated.

Figure A6.1 presents the annual expenditure of the offices and functions of the Special Project Facilitator, and Compliance Review Panel. Total expenses include both permanent staff salaries, administrative costs, and consultant fees. For the 2012-2022 period, average annual expenditure for the OSPF was US\$817,000, and for the CPRN was US\$1,058,000.

Figure A6.2 compares the total AM budget (salaries and allocated annual budget for estimated administrative and consultant fees for the Special Project Facilitator and Compliance Review Panel) against actual expenses to illustrate budget utilization over the 2012-2023 period. Utilization remained consistently high, even over the COVID-19 lockdown period, with rates above 85%.

A separate spreadsheet with the detailed breakdown of budget figures and source data is available upon request.

Figure A6.1. Actual OSPF and OCRP + CRPN Expenses (USD '000s)

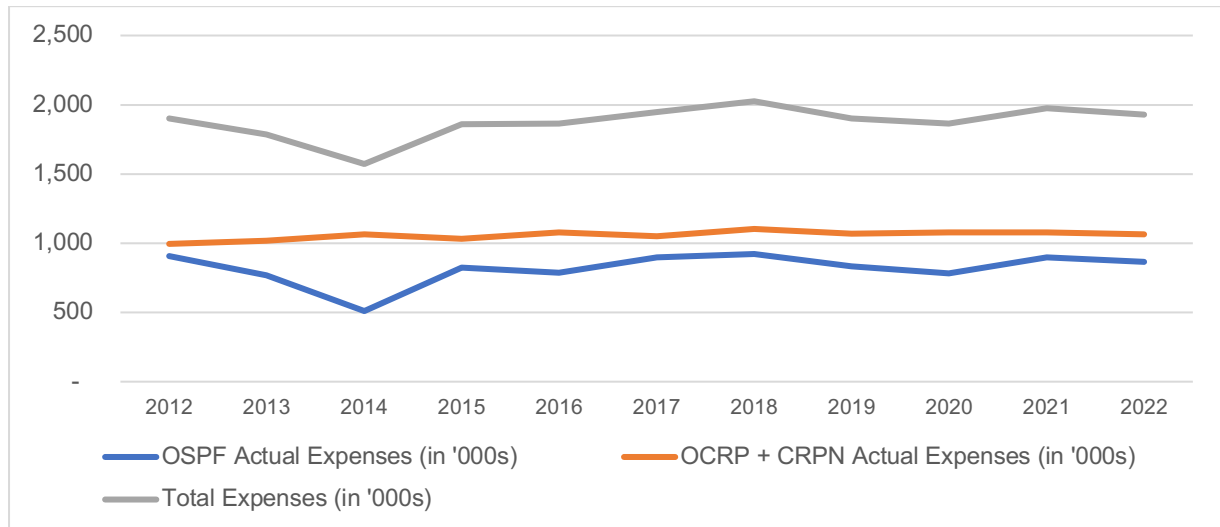
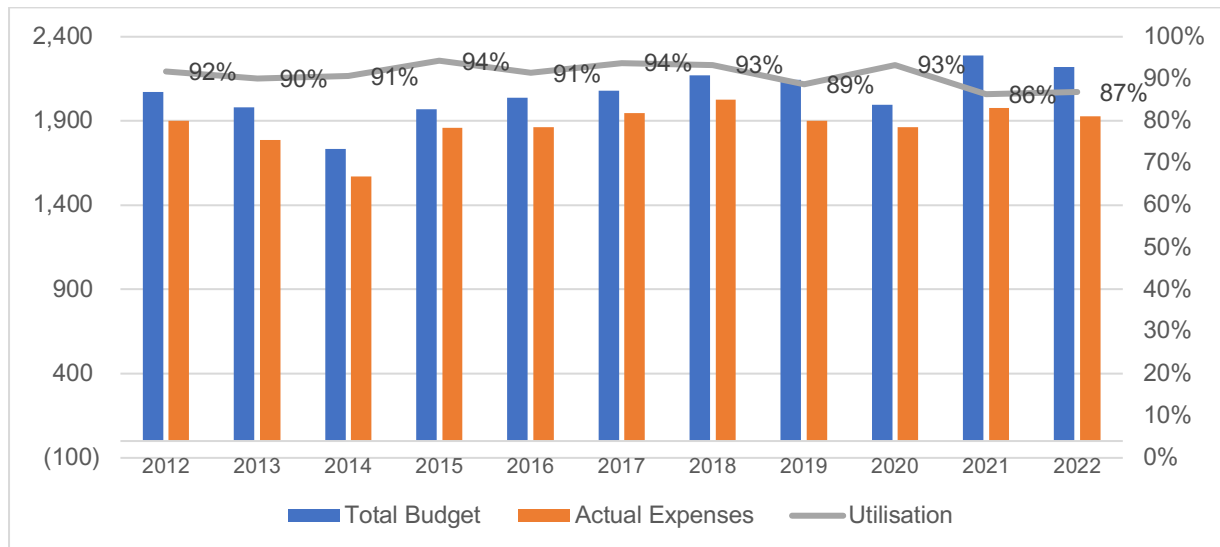


Figure A6.2. AM Budget, Actual Expenses, and Utilization from (USD '000s)



Appendix 7 - Developing a Strategy to Implement ADB’s Accountability Policy³⁴⁸

ADB must be able to articulate a “theory of change” that underpins the policy and the strategy that ADB will adopt to achieve those objectives. All stakeholders must be persuaded of the advantages of a clear strategy to achieve the objectives of the accountability policy. ADB should be able to depict its strategy in a strategic framework, accompanied by indicators to monitor, manage and report on the progress of implementation of the new accountability policy.

A. Theory of Change

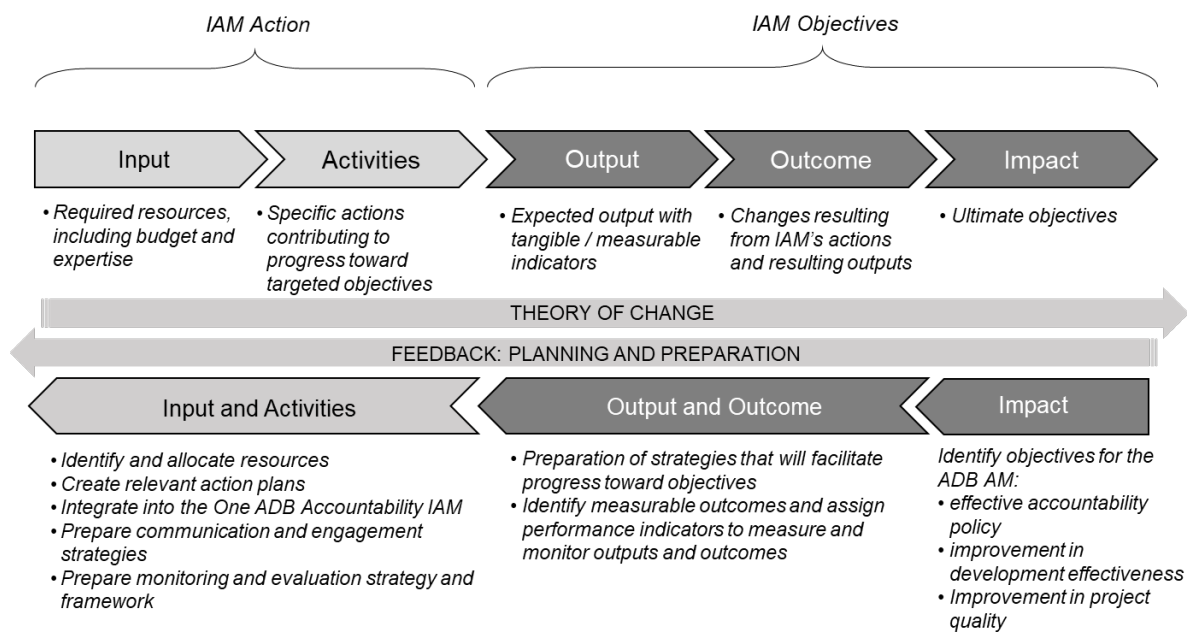
Developing a theory of change would help ADB to design an accountability strategy, monitor its progress, and communicate that progress to stakeholders: a strategic tool that helps to understand the logical connections between inputs, activities, outputs, outcomes and impact: the cause-and-effect relationships from inputs through to the expected outcomes. This provides a roadmap showing how ADB believes it can support the AM to fulfill its mandate and achieve the objectives of the accountability policy. .

The theory of change should also help to identify the resources that the IAM requires to pursue the specific activities (e.g. dispute resolution or compliance review or advisory) to produce outputs that achieve expected outcomes from those actions. The theory should also address the ultimate impact of an effective accountability policy, such as providing quality remedies for APs, improving ADB’s credibility and contributing to development effectiveness and project quality.

B. Planning

The theory of change should combine the culture, organisation, decision-making and resources (human and financial) that will contribute to the effectiveness of ADB’s accountability policy. If ADB is able to articulate its theory of change for the accountability policy it can design the companion strategy to deliver the desired outcomes and impact.

Figure 1: Planning and Execution



³⁴⁸ Any serious attempt to develop a strategy should enlist assistance from both ADB’s Results Unit and IED.

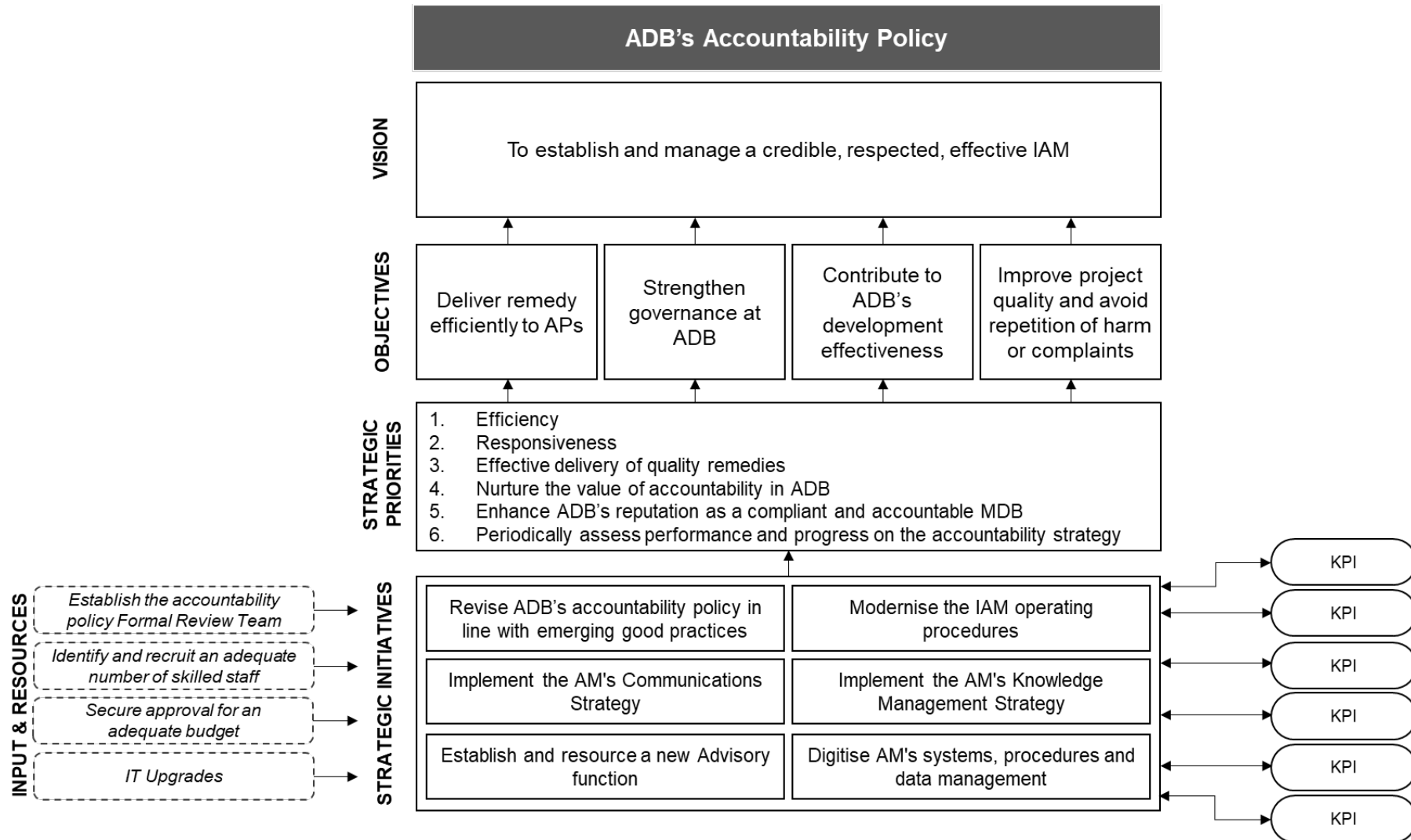
C. Sample Accountability Objectives

A strategy to improve accountability for development finance projects may include the following features:

<p>Governance</p> <ul style="list-style-type: none"> • Adopt the IAM governance structure, including powers, authorities, roles and responsibilities • Supremacy of the IAM's independent reports and recommendations to the Board • Foster an ethical, fair, transparent culture of accountability in ADB • Full disclosure of, and reporting on IAM activities, decision-making and budget • Periodic independent audit and independent evaluation to learn from past performance and adapt accordingly • The IAM to review the accountability policy at 5-year intervals 	<p>Engagement and Participation</p> <ul style="list-style-type: none"> • Commit to wide stakeholder engagement, including but not limited to: <ul style="list-style-type: none"> ○ Affected persons and communities ○ Developing Member Countries ○ Implementing Agencies and Executing Agencies ○ Non-governmental Organizations ○ Civil Society Organizations ○ ADB management and staff • Develop plans to capture and reflect stakeholder comments, perspectives and recommendations (respond to stakeholder concerns) • Efficient publication of timely and concise (“plain English”) reports, disclosure, and communications that are accessible to all stakeholders
<p>Quantifiable metrics</p> <ul style="list-style-type: none"> • Commit to the accountability of the IAM itself • SMART indicators are essential for the evaluation of progress toward fulfilling the AM's mandate and achieving objectives of the accountability policy • Use of IT systems for information storage and retrieval (compatible ADB-wide) • Regular reporting of metrics to all stakeholders (internal and external, including APs) 	<p>Learning and Continuous Improvement</p> <ul style="list-style-type: none"> • Create an Advisory function • Regular training and capacity building, which delivers on the promises of accountability and reinforces its importance • Incorporation and reliance on best use of technology and data security • Encourage feedback, and conduct regular reviews to identify areas for enhancement

D. A Sample Strategic Framework

A strategic framework would provide the IAM with a structured approach to translate high-level concepts into practical initiatives.



A strategic framework can guide the IAM in achieving its long-term objectives while being adaptable to change in a challenging environment.

Criterion	KPI	Metric
Access	The AM caseloads	Number of cases, tracked monthly/annually
Timeliness	Case processing milestones achieved within deadlines (%)	Average time taken to complete each stage of a case
Budget	Budget utilized vs budget allocated budget (%)	Variance between actual expenses and budgeted expenses
Awareness	Level of awareness about the AM, its functions and its objectives	Media mentions, website visits, or social media engagement (No.) Surveys of APs
Transparency	Level of transparency in the IAM's proceedings	Public disclosure of documents or information (No.)
Stakeholders	Stakeholder satisfaction with the IAM's communication and engagement	Stakeholder surveys or other feedback
Reports	Quality and clarity and of AM reports	Evaluation of the report's structure, depth, clarity and adherence to established standards
Processes	Compliance with accountability policy requirements and procedures, including IT upgrades	Challenges or disputes (No.) IT upgrades commissioned on time and within budget
Recommendations	Implementation rate of the AM's recommendations	Recommendations implemented versus total recommendations (No.)
Independence	Perception of the AM's independence	External assessments or surveys on the IAM's perceived independence
Public Relations	Positive media coverage and public sentiment	Media sentiment analysis, including positive, neutral, and negative mentions.
Learning & Improvement	Actual integration of accountability lessons learned Effectiveness of the Advisory function	Evaluation of AM tasks (mediation, compliance review, advisory) and institutional changes Survey of ADB staff and external stakeholders
Knowledge Management	Effective processes in place to capture, store, disseminate and report on AM's knowledge services & products	See Accountability Mechanism Knowledge Management Strategy
Communications	Communicating the outputs, outcomes and impact of the AM's functions and investigations	See Accountability Mechanism Communications Strategy
Audit	Timely commissioning of an independent audit of the AM	Audit report delivered on time
Evaluation	Timely commissioning of an independent evaluation of the AM	Evaluation delivered on time

Appendix 8 - UN Guiding Principles and Reports on Contemporary Accountability Techniques

A. UN Guiding Principles

Guiding Principle #31 sets out the criteria that may be used to assess the effectiveness of a non-judicial grievance mechanism.³⁴⁹

A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it. These criteria provide a benchmark for designing, revising, or assessing a non-judicial grievance mechanism to help ensure that it is effective in practice.

Poorly designed or implemented grievance mechanisms can risk compounding a sense of grievance amongst affected stakeholders by heightening their sense of disempowerment and disrespect by the process.

The first 7 criteria apply to any State-based or non-State-based, adjudicative, or dialogue-based mechanism. The eighth criterion is specific to operational-level mechanisms that an enterprise may help to establish or administer.

“31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- **Legitimate:** *enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*
- **Accessible:** *being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*
- **Predictable:** *providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
- **Equitable:** *seeking to ensure that aggrieved parties have reasonable access to sources of information, advice, and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*
- **Transparent:** *keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism’s performance to build confidence in its effectiveness and meet any public interest at stake;*
- **Rights-compatible:** *ensuring that outcomes and remedies accord with internationally recognized human rights;*
- **A source of continuous learning:** *drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*
- *In addition, operational-level mechanisms should also be based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance and focusing on dialogue as the means to address and resolve grievances.”*

The report provided a commentary on the specific criteria follows:

- i. Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it.
- ii. Accountability for ensuring that the parties to a grievance process cannot interfere with its fair conduct is typically one important factor in building stakeholder trust;
- iii. Barriers to access may include a lack of awareness of the mechanism, language, literacy, costs, physical location, and fears of reprisal;

³⁴⁹ The term “grievance mechanism” is used here as a term of art. The term itself may not always be appropriate or helpful when applied to a specific mechanism, but the criteria for effectiveness remain the same.

- iv. In order for a mechanism to be trusted and used, it should provide public information about the procedure it offers. Time frames for each stage should be respected wherever possible, while allowing that flexibility may sometimes be needed;
- v. In grievances or disputes between business enterprises and affected stakeholders, the latter frequently have much less access to information and expert resources, and often lack the financial resources to pay for them. Where this imbalance is not redressed, it can reduce both the achievement and perception of a fair process and make it harder to arrive at durable solutions;
- vi. Communicating regularly with parties about the progress of individual grievances can be essential to retaining confidence in the process. Providing transparency about the mechanism's performance to wider stakeholders, through statistics, case studies or more detailed information about the handling of certain cases, can be important to demonstrate its legitimacy and retain broad trust. At the same time, confidentiality of the dialogue between parties and of individuals' identities should be provided where necessary;
- vii. Grievances are frequently not framed in terms of human rights and many do not initially raise human rights concerns. Regardless, where outcomes have implications for human rights, care should be taken to ensure that they are in line with internationally recognized human rights;
- viii. Regular analysis of the frequency, patterns and causes of grievances can enable the institution administering the mechanism to identify and influence policies, procedures or practices that should be altered to prevent future harm;
- ix. For an operational-level grievance mechanism, engaging with affected stakeholder groups about its design and performance can help to ensure that it meets their needs, that they will use it in practice, and that there is a shared interest in ensuring its success. Since an enterprise cannot, with legitimacy, both be the subject of complaints and unilaterally determine their outcome, these mechanisms should focus on reaching agreed solutions through dialogue. Where adjudication is needed, this should be provided by a legitimate, independent third-party mechanism.

B. Glass Half Full: The State of Accountability in Development Finance³⁵⁰

The UN OHCHR's 2016 report prepared by 11 organisations³⁵¹ considered that DFIs should pursue a development model that is based on or derived from human rights.³⁵² The report covered over 750 complaints submitted during 1995 to 2016 to the 11 IAMs administered by DFIs, including ADB. (The report cautioned that because most project-affected people are not aware of the availability of the IAMs, the incidence of harm was probably under-reported.)

A modern accountability system consists of the IAM but also includes the board of directors and management of the concerned DFI: each of these three participants must discharge responsibilities for the system to work properly to deliver remedies for affected people.

This report insisted that accountability policies must improve, including by way of regular status reports provided to Complainants; stronger procedures to guard against reprisals that may be visited on Complainants; better communications, particularly online where possible; and the amelioration of the "*power imbalance*" that inevitably exists between Complainants and DFIs/borrowers.

The Glass Half Full report also argued that DFIs have various policies that can affect the chances of affected people securing a remedy for harm caused: for example, a DFI may fail to ensure that affected communities are informed of the IAM and its roles; there may be limits on when a complaint may be filed; the DFI may not respond fully to compliance review findings; and Complainants may not be properly involved in the development and implementation of management action plans. These and other features raised concerns as to whether the accountability systems at that time were actually "fit for purpose" in delivering remedies to affected communities.

³⁵⁰ "*Glass Half Full – The State of Accountability in Development Finance*" UN Office of the High Commissioner on Human Rights (January 2016) ("Glass Half Full report")

³⁵¹ Accountability Counsel; Both ENDS; Center for International Environmental Law (CIEL); Central and Eastern European Bankwatch Network; Center for Human Rights and Global Justice, New York University School of Law; Centre for Research on Multinational Corporations (SOMO); Counter Balance; Foundation for the Development of Sustainable Policies (FUNDEPS); Inclusive Development International (IDI); Natural Justice; Program on International & Comparative Environmental Law, American University Washington College of Law.

³⁵² The report referenced: International Accountability Project, *Back to Development: A Call for What Development Could Be* (2015) - bit.ly/backtodevelopment.

Surely, the report asked, accountability systems for development financing could be improved.

C. Remedy in Development Finance – Guidance and Practice³⁵³

Promoting sustainable development and avoiding harm, means that “remedy” must become central, even at the due diligence phase: “*planning for remedy as an ordinary project contingency*”³⁵⁴.

... multilateral development finance institutions (DFIs) are critical actors in development and, through financing, technical assistance, and their normative roles, make important contributions to the Sustainable Development Goals and human rights. Most DFIs are explicitly mandated to support sustainable development, poverty reduction and avoid harming people and the environment. Clients (borrowing countries) are primarily responsible for project implementation, including remedying adverse environmental and social impacts. However, DFIs have a range of mechanisms, including environmental and social safeguard policies and independent accountability mechanisms (IAMS), to promote sustainable impacts, improve feedback loops, address grievances, and avoid social and environmental harms. Many DFIs provide technical assistance and capacity-building to clients (borrowing countries) in these areas.”

The Remedy report sought to demystify “remedy”, stimulate innovative thinking, address a “remedy ecosystem”, do a stocktake of the MDBs and IAMS (by way of a SWAT analysis) and offer recommendations, which were set out in Annex 1 of the report³⁵⁵

Should an MDB contribute directly to the remediation of a project in appropriate circumstances where that MDB has been found to be non-compliant?

The report argues that any contribution to harm (say, by non-compliance) should trigger a proportionate contribution to remedy. DFIs could consider contributions to remedy: DFIs could consider development mandate, barriers to getting a remedy, complexity of the investment, the operating context and any legacy issues. This may argue for dedicated funds; escrow accounts; trust funds, insurance; guarantees and letters of credit; or perhaps technical assistance to develop more effective approaches to remedy.

There may be concerns about “moral hazard”: namely, a risk that the focus on a DFI’s responsibility and provision of remedy may shift the responsibility away from a client (borrower). In other words, in the quest to sheet home remedy to a DFI, could the client (borrower) avoid scrutiny? The Remedy report considers that the bigger problem is where a client (borrower) is shielded from responsibility and remedies and this may insulate that party, with the onus of remediation falling on APs who have very limited rights! The UN Guiding Principles aim to allocate responsibilities for harm (and the right to remedy) to all involved parties.

³⁵³ “*Remedy in Development Finance – Guidance and Practice*” United Nations Human Rights Office of the High Commissioner for Human Rights (OHCHR) (New York and Geneva) 2022 (“the Remedy report”)

³⁵⁴ *ibid.*, p. viii

³⁵⁵ See Annex 1 of the Remedy report

Appendix 9 - Recommendations to Improve the AM

<p style="text-align: center;">Review AM2012</p> <p style="text-align: center;">Recommendations to Improve ADB’s Accountability Policy</p>	<p style="text-align: center;">Good Policy Paper (January 2024)</p>
<p>Credibility</p>	
<p>Establish a “One ADB” IAM, comprising compliance review, dispute resolution and advisory teams and a permanent secretariat, that reports to the Board</p>	<p><i>Functions and Roles: Compliance Review, Dispute Resolution, Advisory (#2-4)</i></p>
<p>Consider the merits of retaining the Compliance Review Panel</p>	
<p>Designate the BCRC as the “Board Accountability Committee”</p>	
<p>Invest the IAM with full authority and power, within its mandate, to process, manage and finalise any complaint lodged with it, including the review of ADB’s compliance with its operational policies and procedures</p>	<p><i>The mechanism of its independent functions should be run by a senior-level term-limited head and a team of permanent staff (#6)</i></p>
	<p><i>The mechanism should have the sole authority, without need of Board approval, to determine whether to conduct a compliance investigation (#46)</i></p>
<p>Require that the IAM is accountable to the Board in exercising its authority and powers</p>	<p><i>The mechanism should report directly to the board of directors of the financial institution (#5)</i></p>
<p>Appoint the head of the IAM based on a recommendation from a selection committee comprising ADB stakeholders, including an NGO/CSO representative</p>	<p><i>External stakeholders should participate in the hiring process for the mechanism’s head (#7)</i></p>
<p>Empower the head of the IAM to appoint the IAM senior leadership team and permanent staff.</p>	<p><i>IAM staff should be selected by the mechanism’s leadership (#8)</i></p>
<p>Stipulate that no member of the IAM senior leadership should be a former employee of ADB and that all members of the IAM senior leadership will be barred from employment or engagement with ADB in any capacity after the end of the IAM appointment</p>	<p><i>There should be a pre employment ban preventing the hiring of mechanism principals from the financial institution (#11)</i></p>
	<p><i>There should be a post-employment ban for the principals of the mechanism and a cooling off period of at least 2 years for staff (#12)</i></p>

Clarify the mandate to review ADB's compliance with its operational policies and procedures, including but not limited to

- referrals to management of any complaint involving proposed but not approved ADB financing;
- investigation of allegations of harm, likely harm, or potential harm to people or the environment

Recommendations of quality remediation measures to the Board to ensure that ADB achieves compliance with its operational policies and procedures; and

Cessation of any compliance review process where the IAM is unable to obtain approval for a visit to the project site

Empower the IAM to obtain independent legal advice, if necessary

Access

Accept complaints up to the time when ADB ceases to have any financial exposure in a project

Simplify access to the IAM by adopting procedures such as the following:

- Accept complaints from any individual or genuine representative
- Permit Complainants to be represented by a representative of choice
- Encourage affected persons or communities and their representatives to pursue the resolution of any disputes with the concerned operations department but this should no longer be a prerequisite for lodging a complaint with the IAM
- Follow detailed, publicised protocols to deal with actual or threatened retaliation against any person who proposes to lodge a complaint with the IAM

Dismiss any complaints at the outset that are determined to be ultra vires the IAM's mandate or assessed as trivial, vexatious, fraudulent or malicious

Discuss each complaint with the complainant and APs and obtain input from the concerned operations department to assess the merits or otherwise of that complaint.

Determine via "triage" whether a complaint should be investigated by the compliance review team; managed by the dispute resolution team; or referred to the concerned operations department for resolution and disposition.

Complaints should be admissible prior to project approval (#30)

The mechanism should make recommendations to bring the project into compliance and redress harms (#50)

The Board should expeditiously consider the mechanism's findings granting deference to its factual assessments (#51)

The mechanism should be allowed to seek outside legal counsel for advice (#10)

The mechanism should accept complaints from 1 or more individuals (#33)

Complaints should be allowed to have representation and or advisers support them throughout the complaint process (#35)

Complaints should not be required to take other steps to resolve their grievances through other means or mechanisms as a precondition to filing a complaint to the IAM (#32)

The mechanism should take necessary measures to prevent retaliation against complainants (#42)

Install a Bank-wide accountability IT system to track and report on each complaint that is referred to an operations department by the IAM until that complaint has been resolved or discharged.

Efficiency

Streamline and simplify the IAM procedures and the relevant sections of the Operations Manual stipulating, among other things,

- o reasonable timetables for completion of each stage of processing, including deadlines for the termination of an inconclusive compliance review or dispute resolution case; and
- o the production of concise, simple, and jargon-free reports, written in a “plain English” style and with translations for affected persons and communities

Equip the IAM with state-of-the-art IT and technical support

Effectiveness

Create an Advisory function in the IAM

The mechanism should undertake and publish independent analysis on trends and systemic issues arising from its cases (#68)

The mechanism should not, as a part of its advisory function, provide project-specific advice (#69)

The mechanism should provide input on the development and revision of the financial institution's policies and guidelines (#70)

The mechanism should provide its advice to the financial institution's board and management transparently and monitor the institution's implementation of its advice (#71)

Audit ADB's accountability policy every 3 years

Independently evaluate ADB's accountability policy every 5 years

Review the implementation of ADB's accountability policy every 5 years (following the independent evaluation)

Tally:

Review Recommendations: 22 Main Recommendations plus 2 General Recommendations

Relevant Good Policy Paper recommendations: 22/71 GPP recommendations

Appendix 10 - Independent Accountability Mechanisms: Selected Comparative Features

The table below presents a comparative summary of the selected IAMs by features organised according to function, governance, procedure, learning and capacity development, and where available, budget and expenditure. The detailed comparison, complete with reference to specific sections and paragraphs of their respective policies, is presented on an Excel Spreadsheet available upon request.

	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AiIB Project-affected People's Mechanism (PPM)
Summary							
Reference and Policy Documents		<ul style="list-style-type: none"> Project Complaint Mechanism (PCM) Rules of Procedure (superseded by PAP from 1 July 2020) Project Accountability Policy (PAP) (Board approved in 2019) Guidance on Case Handling 			<ul style="list-style-type: none"> Policy of the MICI for the IDB and IDB Lab (adopted Dec 2014) Policy of the MICI for IDB Invest (adopted Nov 2015) Guidelines for addressing risk of reprisals in complaint management. Guidelines for the Consultation Phase 	<ul style="list-style-type: none"> IFC/MIGA CAO Policy (adopted 21 June 2021) "Accountability Mechanism" + CAO 	<ul style="list-style-type: none"> AiIB PPM Policy (adopted December 2018) (link) AiIB PPM FAQs (link) PPM Rules of Procedure (link)
Functions		<ol style="list-style-type: none"> Problem-solving Compliance Review Institutional learning and advisory Outreach 			<ol style="list-style-type: none"> Consultation phase Compliance review phase 	<ol style="list-style-type: none"> Dispute resolution Compliance Advisory 	<ol style="list-style-type: none"> Project Processing queries Dispute Resolution Compliance Review
Reviews Undertaken		Three (3) reviews: 2019 PAP; 2013-2014 PCM RoP; 2009 PCM RoP			Two (2) reviews undertaken in 2010 and 2014 (only for the IDB Policy).	One (1) major review in June 2020.	PPM Policy undergoing its first review process.

	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AIIB Project-affected People's Mechanism (PPM)
Functions							
Advisory and/or Learning Function	Advisory function as part of core AM offering.	Institutional learning and advisory part of core AM offering, and recommendations provision.	Provides advice and recommendations to EIB Management.	The Inspection Panel may provide advisory services, case lessons, and reflection.	No advisory function, but recommendations are offered in Compliance Review report. MICI has also implemented an institutional learning program called MICI Reflections focused on lessons learned, best practices.	Advisory function has been a core part of CAO.	No explicit mention of an advisory function, but it has a Project Processing Queries function that acts as an information and resolution request function. It is committed to continuous AIIB-wide learning and seeks opportunities to learn from other IAMs and PPM stakeholders, and thus engages in outreach and training activities.
Definition of harm, linkage with non-compliance and covered policies	Covers harm that is actual or potential / likely to cause harm. And in compliance, this has to arise from the group's inability to follow policy and procedure.	Covers harm that is actual or potential. For compliance review: harm must be direct or indirect and is material.	Does not refer to harm, but to maladministration, i.e., noncompliance with policies, standards, procedures, human rights, principles of good administration, and environmental or social impacts.	Covers harm arising from noncompliance with operational policies and procedures. For compliance review harm must also be material.	Covers harm that is actual or potential, direct, causing material damage, or loss. Must also arise from noncompliance.	Covers harm that is actual or potential, direct or indirect. Must also be linked to noncompliance.	Covers harm that is actual or potential. Must also arise from noncompliance to Environmental and Social Policy.
Covered projects (maturity date)	Covers Bank Group-Financed Operations approved by the Boards or management or under consideration for financing.	Covers Bank-financed projects approved by the Board or by Board-delegated authority.	Covers projects that have been endorsed for financing. Explicitly does not cover projects at pre-appraisal stage.	Covers projects still under management consideration, and Board-approved projects.	Covers Bank-Financed Operations approved by the Board, the President, or the Donors Committee, with two exceptions for complaints filed over 24 months after last disbursement, and Social Policy Bases Loans.	Covers approved projects. Complaints relating to proposed projects are notified to IFC/MIGA. Exited projects are included under specific circumstances.	Covers AIIB-financed projects with financing under consideration.

	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AIIB Project-affected People's Mechanism (PPM)
Functions							
Complaints Filing	Complaints can be filed by an individual or group in the country where the AfDB -financed operation is located or has an impact, or by a board member or IRM Director.	Complaints can be filed by individuals or an organization.	Complaints can be filed by individuals or an organization.	Complaints can be filed by at least 2 individuals for compliance review. No requirements set out for problem-solving.	Complaints can be filed by at least 2 individuals residing in the country where the financed operation is located.	Complaints can be filed by any affected person or potentially affected individual or group.	Complaints can be filed by two or more PAP in the project area or project area of influence.
AM-triggered compliance reviews	The Director of the IRM can initiate Compliance Reviews under certain conditions.	The policy is silent on AM-initiated compliance reviews.	Inquiries, assessment, investigation, or mediation can be triggered by the President, EIB Management Committee, EIF Chief Executive, or Inspector General.	The Executive Director can request for Inspection, or instruct the Panel to conduct an investigation at any time.	Both policies are silent on AM-initiated compliance reviews.	The policy allows for compliance reviews initiated by CAO.	The PPM can only be triggered by two or more project-affected people.
Representation for project-affected persons	Complainants may be represented by representatives acting on the complainant's instructions.	Complainants may be represented by an authorized representative.	Complainants may be represented by authorized representatives.	Complainants may be represented by an authorized representative in consultation with the DRS.	Complainants may be represented by authorized representatives.	Complainants may be represented by authorized representatives.	Complainants may be represented by an in-country representative, or in exceptional cases, individuals or organization outside the country.

	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AfDB Project-affected People's Mechanism (PPM)
Functions							
Project-level outreach	<p>The IRM must disseminate information about the IRM to affected communities.</p> <p>Management must make significant efforts to make the IRM better known among affected communities.</p> <p>Borrowers/Clients and sub-clients must disclose the existence of the IRM.</p>	<p>The IPAM mandates outreach activities to external stakeholders, and encourages information on it to be integrated into other activities, publications, and project documents.</p>	<p>EIB's policy is silent on the responsibilities for project-level outreach and learning.</p>	<p>Information on AM must be made available in project documents.</p> <p>Management must make significant efforts to make the AM options known in borrowing countries.</p>	<p>The MICI mandates public outreach, and that MICI information is integrated into other IADB activities and publications.</p>	<p>The CAO conducts outreach to external stakeholders and engages with project-affected people and their representatives upon request.</p>	<p>The PPM raises awareness of opportunities it provides among the affected stakeholders, external stakeholders, or local communities.</p>

	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AIIB Project-affected People's Mechanism (PPM)
Governance							
Line of Reporting	IRM reports to the Board and is overseen by a Board committee.	IPAM reports to the Board.	EIB-CM, as part of the Inspectorate General, reports to a Vice President.	AM and Inspection Panel report to the Board.	MICI reports to the Board.	CAO reports to the Board.	PPM reports to the Board of Directors through its Policy and Strategy Committee of the Board.
IAM Head	The Director	The Head	The Head	AM Secretary for AM; IP for Compliance	The Director	The Director General	Managing Director-Complaints resolution, Evaluation and Integrity Unit (MC-CEIU)
Selection Process	A 5-member panel selects a IRM Director candidate	A 6-member selection committee selects an IPAM Head candidate, and is appointed by the Board with the recommendation of the President.	Silent about the selection and appointment of the Head.	The President nominates the AM Secretary, after consultation with the Board.	The Board appoints the MICI Director, drawn from a list of eligible candidates.	CAO, IFC, and MIGA solicit nominations from stakeholders. CODE Chair and Vice-Chair appoint a 6-member selection committee, and the Board appoints the DG, with the President's recommendation.	Policy is silent about the selection and appointment of the MD-CEIU. However, selection process of MD-CEIU is spelled out in the Terms of Reference of CEIU.
Employment after term / Restrictions	IRM Director is barred from future employment in AfDB in any capacity after term.	IPAM Head is barred from providing remunerated services in EBRD after term.	Silent about post-appointment employment.	AM Secretary is barred from future employment in the WB Group after term.	MICI Director, along with the heads of the consultation and compliance phases, are barred from future employment in IADB after term.	CAO DG is restricted for life from obtaining employment with the WB Group.	Silent about post-appointment employment.
IAM Staff and Recruitment	The Director IRM is free to make staffing decisions within the approved budget limits without the Boards or Management's involvement.	The IPAM Head is free to make recruitment decisions within the limits of the approved budget, without Bank management or Board involvement.	Silent on precise staffing. It refers to separate staff for problem solving and for compliance review, respectively	The AM Secretary is able to hire staff and consultants as needed, subject to the budget.	The MICI Director is assisted by coordinators, and may hire more staff and consultants as needed, subject to the budget.	The IFC/MIGA policy allows the CAO DG to determine staffing, budget for which will be proposed to the Board through the CODE and Budget Committee.	The President determines staffing.

	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AIIB Project-affected People's Mechanism (PPM)
Governance							
Role of the Office of General Counsel (OSG)	On request, GC provides legal information and advise with respect to AfDB policies and procedures, and rights and obligations.	On request, GC provides advise on matters concerning EBRD's legal status, rights, and obligations under the Agreement Establishing the Bank.	Silent on the role of the EIB legal department, noting that EIB-CM is not a legal enforcement mechanism.	Advice is sought from Bank's Legal Vice Presidency on matters related to the Bank's rights and obligations with respect to any request.	On request, the IADB Legal Department provides legal information and advice regarding the Bank's rights and obligations, or operational policies.	If issues of confidentiality cannot be addressed between CAO and IFC/MIGA management, the issue is referred to the GC, CAO DG, CODE Chair, and Management.	Advises MD-CEIU as needed, on matters related to PPM, and ensures there are no conflicts of interest.
Seeking external legal counsel	IRM Director may seek external legal advice on a Complaint, grievance or complaint- or IRM-related matters.	The OGC will facilitate IPAM's access to specialist legal advice on the laws and regulations of EBRD territories.	Silent on external legal counsel.	The policy does not include explicit provisions on the access to independent legal counsel.	The MICI Director may, at any time, seek external legal advice on Request-related issues as they arise.	The policy does not include explicit provisions on the access to independent legal counsel. However, CAO practice has included retaining independent legal counsel.	Can be sought if General Counsel determines external counsel is required.
Addressing or avoiding retaliation	Contains provisions on retaliation and confidentiality.	Contains provisions on retaliation, and internal guidelines for handling allegations of retaliations and related complaints.	Contains provisions on retaliation and confidentiality.	Contains provisions on retaliation.	Contains provisions on retaliation and confidentiality.	Contains provisions on retaliation, confidentiality, and internal guidelines for responding to concerns of threats and reprisal.	Contains provisions on addressing and avoiding retaliation and confidentiality.
Human rights reference	The IRM ORP is silent on human rights.	The IPAM Policy is silent on human rights.	The EIB-CM Policy refers to principles of the Charter of Fundamental Rights of the EU and the UN Universal Declaration of Human Rights.	The AM Operating Procedures mentions rights in the context of the AM's effective functioning and raising awareness on the AM.	Both MICI Policies silent on human rights.	The CAO Policy facilitates access to remedy in manners consistent with international principles related to business and human rights.	The PPM Policy is silent on human rights.
IAM Cooperation	Contains provisions for cooperation with other IAMs, along with requirements to ensure confidentiality.	Contains provisions for cooperation with other IAMs, along with requirements to ensure confidentiality.	Contains provisions for cooperation with other IAMs, along with requirements to ensure confidentiality, and guidelines on information sharing and joint outreach.	Contains provisions for cooperation with other IAMs, along with requirements to ensure confidentiality, and guidelines on joint outreach.	Contains provisions for cooperation with other IAMs, along with requirements to ensure confidentiality, and guidelines on information sharing and joint outreach.	Contains provisions for cooperation with other IAMs, along with requirements to ensure confidentiality, and guidelines on information sharing, advisory, and joint outreach	Contains provisions for cooperation only if AIIB agrees to apply the ESP of the co-financing partner, on confidentiality and retaliation, and on capturing and sharing lessons learned.

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Procedure							
Options to access IAM	<p>Complainants have an option to choose problem-solving only, compliance review only, or problem-solving then compliance review.</p> <p>The IRM Director assesses whether problem-solving should be undertaken.</p> <p>If problem-solving unsuccessful, the IRM Director can decide if a compliance review is warranted, subject to approval of the President and the Board.</p>	<p>Complainants have an option to choose problem-solving only, compliance review only, or problem-solving and compliance review.</p> <p>If the Parties are willing to engage in Problem Solving, this function will be pursued prior to the consideration of any transfer of the Case to a Compliance Assessment, unless IPAM deems otherwise.</p> <p>IPAM staff will explain the characteristics, approaches, activities, and possible outcomes of the functions.</p>	<p>The EIB-CM is predominantly compliance focused but it may conduct problem-solving whenever applicable.</p>	<p>Complainants file a complaint for compliance review. Problem-solving (dispute resolution) is only available after IP investigation recommendation is approved by the Board.</p> <p>The Inspection Panel will proceed to conduct compliance review following a notification by the AM Secretary to the Board that no agreement reached between the parties (para. 33(a), WB IP Resolution).</p>	<p>A complainant may choose dispute resolution (Consultation phase) only, compliance review only, or both. When complainants choose both phases, processing will be sequential and will begin with the Consultation phase.</p>	<p>The problem-solving function (dispute resolution) is first made available to complainants and clients, but if both do not agree, the complaint will proceed to compliance review.</p>	<p>PPM will offer recommendations for selection of appropriate PPM function, but complainants have final say on choice of function.</p>
Eligibility requirements for good faith efforts	<p>Complainants must make prior efforts to address issues, but the requirement is flexible, except in cases where efforts would be futile or potentially harmful to the Complainants.</p>	<p>Complainants must make prior efforts to address issues, but the requirement is flexible.</p>	<p>No stipulated requirement for prior actions to be taken, in good faith or otherwise.</p>	<p>Complainants must make prior efforts to address issues, but the requirement is flexible.</p>	<p>Complainants must make prior efforts to address issues, alongside four other eligibility requirements (stipulated in detailed Comparative Assessment).</p>	<p>Complainants are encouraged but not required to make prior efforts to address issues, but the requirement is flexible.</p>	<p>Complainants must make prior good faith efforts with project-level GRM and Management, but are flexible with the requirement.</p>

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Procedure							
Involvement of affected persons in review and problem solving	Complainants can comment on the draft compliance review report. Comments on MAP are also included in the AM's submission to the President, the Boards of Directors, and IRM.	Complainants can comment on draft bank Management Action Plans, Monitoring Reports, Compliance Review Reports, Problem Solving Reports, and Problem-Solving Monitoring Reports.	Concerned stakeholders are invited to make comments for consideration by a set deadline.	Complainants are encouraged to participate directly in consultation through investigation process. Silent on involvement on action plan.	Complainants can comment on draft review of compliance investigation findings, recommendations, and observations.	In the preparation of the management action plan, Management is required to consult with complainant and client. Closure report is shared as reference for affected persons.	Complainants, AIIB staff, client, local authorities, Board Director, and Management alike have equal opportunity to be heard during compliance review. Complainants will be able to comment on MAP.
Covered project - Cut-off date	Complaints may be filed up to 2 years from the physical completion of the operation, or more than 2 years from the date the Complainant is aware of the adverse impacts, whichever is later.	Complaints may be filed up to 2 years from the date that the EBRD ceases to have a financial interest in the project.	EIB-CM Policy is silent on a cutoff date for filing of complaints.	Up to 15 months after the closing date of the loan (para. 15(c), IP Resolution, para. 44(e), IP Operating Procedures).	Complaints may be filed up to 2 years after the date of the last disbursement. MICI cannot be activated if a complaint is filed more than 24 months after the last disbursement of the relevant Bank-Financed Operation.	Complaints may be filed up to the IFC/MIGA exit. In exceptional circumstances, complaints may be filed up to 15 months after exit.	Complaints may be filed until closing date or until 24 months from closing date in exceptional circumstances.
Complaint receiving period - submission to eligibility	There are 2 tiers of screening, for eligibility and the Director's internal review, by the IRM before problem solving or compliance review may commence.	There is 1 tier of screening by the IPAM before problem solving or compliance review may commence.	There is 1 tier of screening called an admissibility check by the EIB-CM before problem solving or compliance review may commence.	There is 1 tier of screening for eligibility determination by the AM before problem solving or compliance review may commence.	There are 2 tiers of screening by the MICI before problem solving or compliance review may commence. The first is the registration stage, in which MICI determines whether a newly received complaint contains all the required information to be analyzed or if any of the exclusions apply.	There is 1 tier of screening for eligibility determination by the CAO.	There is 1 tier of screening by PPM before action problem solving or compliance review can begin.

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Procedure							
Project suspension	Silent on project suspension.	If serious and irreparable harm will be caused, IPAM may make an interim recommendation which can include project suspension.	Generally, a complaint does not suspend the project unless under extenuating circumstances.	Silent on project suspension.	Generally, a complaint does not suspend the project unless under extenuating circumstances.	Silent on project suspension.	Generally, a complaint does not suspend the project unless under extenuating circumstances.
	AfDB Independent Recourse Mechanism (IRM)	EBRD Independent Project Accountability Mechanism (IPAM)	EIB EIB Complaints Mechanism (EIB-CM)	World Bank Accountability Mechanism (AM)	IADB Independent Consultation and Investigation Mechanism (MICI)	IFC / MIGA Independent Accountability Mechanism (CAO)	AiIB Project-affected People's Mechanism (PPM)
Learning and Capacity Development							
Policy review cycle	Board is required to review the policy every 4 years or as otherwise decided. Previously, the 2010 and 2015 iterations of the ORP mandated a 3-year review cycle.	Policy review required by 2024. Previously the 2014 PCM Rules of Procedure required a 5-year or as needed review cycle was mandated. The 2009 PCM Rules of Procedure required a 3-year review or as needed review cycle	Every 5 years, the EIB-CM will consider the need to initiate a Policy review.	The IBRD/IDA policy does not stipulate the timing of any major policy review.	Committed to an independent policy review at the time and form determined by the Board within the first 5 years of Policy effectiveness. However, the 2020-2021 external evaluation recommended, at that moment, that a new comprehensive policy review was not required.	Committed to a policy review initiated by the Board within 5 years of Policy effectiveness.	Requires policy reviews, initiated and guided by MD-CEIU, no later than 5 years from adoption.

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Learning and Capacity Development							
Closure and handling of ineligible complaints	<p>A Complaint may be suspended, in consultation with Complainants, where Complainants have failed to make "good faith efforts" to address the issues with management and/or the project-level GRM without any valid reason.</p> <p>IRM then consults with complainants on the way forward and have 45 days to do so.</p> <p>Unresolved complaints are logged on the register.</p>	<p>A Complaint may be temporarily suspended, in consultation with Complainants, where the Complainants have failed to make "good faith efforts" to address the issues with EBRD and/or the client without any valid reason.</p> <p>IPAM then consults with complainants on the way forward and have 45 days to do so. Progress is monitored.</p>	<p>The EIB-CM Policy is silent on the tracking of ineligible Complaints. Complainants with non-eligible complaints are provided advice.</p>	<p>The IBRD/IDA AM policy is silent on the tracking of ineligible Complaints. Complainants with non-eligible complaints are provided advice.</p>	<p>Complaints that do not contain all the required information or that in which any of the exclusions apply are not registered, therefore, closed. In the casa a complaint has missing information, requesters are given 10 working days to provide the missing information otherwise the process will be terminated, without prejudice to filing again.</p> <p>Likewise, if a compliant do not fulfill any of the eligibility criteria mentioned in the Policies, then it is declared as ineligible for a MICI process and the Mechanisms proceeds to its closure.</p>	<p>At the lack of prior good faith efforts, the CAO will establish whether complainant wishes to be referred elsewhere. Complainants have option to resume complaint processing.</p> <p>Ineligible complaints are published on the CAO complaints registry.</p>	<p>If submission does not meet eligibility criteria, the PPM directs complainants to appropriate unit within AIIB that can handle concerns raised.</p>

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Compiled by Ms. Danielle Rubinos
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