

**Asian Development Bank**

1 May 2025

***Via electronic mail***

Re: Written Recommendations the Accountability Mechanism Policy (2012)

Dear Board of Directors,

We are writing to share a summary of our [recommendations](#) aimed at strengthening the independence, accessibility, and effectiveness of the Asian Development Bank's (ADB) Accountability Mechanism (AM). The AM has historically been seen as a mechanism of last resort, creating barriers to accessibility and leading to the [lowest eligibility](#) and [compliance investigation rates](#) among other Independent Accountability Mechanisms (IAMs). Our recommendations aim to reduce roadblocks complainants face on the long road to remedy, including eligibility barriers, undue delays, power imbalances, and lack of adequate consultation during the remediation process. We would also like to express our strong belief that the objective of this review should not be cost-cutting as the AM's costs are a relatively small part of the overall ADB budget and have remained stable over the last decade.

Our recommendations include case studies, references to good policy at other IAMs, and empirical evidence on the working of the AM for the past 12 years. We urge you to take these recommendations into consideration, in order to bring the AM in line with international good practice.

1. **Independence:** The ability of an IAM to act independently and with impartiality is vital to the legitimacy and credibility of the mechanism. Otherwise, complainants cannot trust that the mechanism will fairly handle complaints. Structure, policy, and procedures of the AM should support its ability to act with integrity under pressure and in the face of conflict.
  - a. **Strengthen the independence of the Office of the Special Project Facilitator (OSPF) and the Office of the Compliance Review Panel (OCRP).** This should include changes to hiring procedures, such as inclusion of external stakeholders, and post-employment restrictions. The OSPF should report to the Board rather than the President. The structure and previous functioning of the OSPF has led complainants to question its independence, even [causing problem solving processes](#) to fail.
  - b. **Retain the dual structure of the AM.** The dual structure of the AM is important to maintaining independence from institutional politics and the AM should retain its two separate functions with section heads at director general level. The AM should also retain the OCRP's panel of experts.
  - c. **Allow the AM to seek independent legal advice.** The Office of General Counsel currently advises the Board, bank management, and the IAM, creating [conflicts of interests](#) which could be safeguarded against by allowing the AM to hire independent counsel.

2. **Accessibility:** The AM has numerous barriers to accessibility, especially in eligibility decisions, which prevent harmed communities from utilizing the mechanism and lead to a lack of faith in the AMs functioning. These recommendations focus on reducing barriers to entry, removing subjectivity, prioritizing complainants' agency, increasing transparency, and strengthening measures that prevent and protect against retaliation.
- a. **Eliminate eligibility barriers:**
    - i. The requirement to engage with management prior to filing a submission to the AM should be removed, and providing information about prior engagement should be voluntary.
    - ii. Complainants should not be required to demonstrate that the harm is 'direct' or 'material'.
    - iii. The AM should accept complaints relating to harms against the environment, biodiversity, natural habitats, protected areas, and other global public goods.
  - b. **Who should trigger or support cases?**
    - i. The Chair, CRP (in addition to the Board and the President) should be allowed to trigger compliance review in very specific situations that can proactively prevent harm and reduce risk of retaliation.
    - ii. Complainants should be allowed to freely choose their representatives, whether local, or international, or both. ADB and its borrowers face no restrictions on representation and often have support of national and international lawyers.
  - c. **Strengthen Complainants' Choice of Function.**
    - i. Complainants should be able to freely decide which AM function they want to utilize, without allowing other parties to object.
    - ii. Complainants should be able to choose problem solving after undergoing a compliance review as there may be unaddressed issues that could be resolved through dialogue.
  - d. **Increase transparency in financial intermediary cases.** For the AM to be widely accessible, affected communities must be aware that a project is funded by ADB, including when that funding is through other financial institutions. The availability of the AM must be communicated appropriately at project level, and the AM should periodically request proof that ADB clients and subclients have made its existence known to project-affected communities.
  - e. **Develop a Retaliation Protocol.** The ADB has the [second largest portfolio](#) of operations in countries with closed civic spaces and therefore has a number of operations at increased risk of retaliation. The AM Policy should include an institutional declaration on zero tolerance to retaliation, and should adopt a proactive approach to assessing, mitigating, and responding to retaliation risks, including provision of emergency assistance and the ability to make immediate and binding recommendations.
3. **Effectiveness:** For an AM to be considered effective, it must ensure that complainants are able to effectively prevent harm to their land, livelihoods, health, and environment and/or receive remedy if they have already been harmed. The recommendations focus on enabling community capacity and agency and strengthening the outcomes of the mechanism, including the quality and implementation of Remedial Action Plans.

- a. **Introduce specific measures to address power imbalances.** Power imbalances that affect complainants' ability to engage in the complaint process tend to lead to diminished outcomes for project-affected peoples. Recognizing that borrowers have greater resources, expertise, time, and capacity, among other advantages, than the typical complainant, the AM must take steps to bridge the gap.
- i. Publish information and communicate with complainants in their local language.
  - ii. Cover complainants' costs of participating in the complaint process.
- b. **Strengthen the effectiveness of the CRP.** This includes two important aspects: 1) whether the CRP is operating at capacity in terms of the number of compliance investigations being handled and 2) whether CRP processes are leading to outcomes which sufficiently address noncompliance and prevent/redress harm. A well functioning and effective CRP is also crucial for the Board to know whether the ADB is in compliance with its policies.
- i. **Strengthen the CRP's ability to conduct compliance investigations:**
    1. The compliance appraisal process should only require preliminary indications of harm and non-compliance.
    2. Remove the requirement to obtain Board authorization to undertake compliance review as it unduly politicizes a technical decision.
    3. Set clear time limits and provide adequate resources for compliance investigations.
  - ii. **Strengthen the CRP's ability to provide outcomes.** The ability of the CRP to facilitate prevention and remediation of harm is fundamental to its success. A fundamental weakness of the current process is the lack of commitment to mitigate or remedy harm.
    1. The AM (including the CRP) should have an explicit remedy mandate.
    2. Affirm the CRP's mandate to facilitate remedy for instances likely harm.
    3. Allow the CRP to make recommendations alongside findings.
- c. **Improve the quality of Remedial Action Plans arising from the CRP.** Management plays a key role in the ultimate effectiveness of the CRP, given its role in proposing remedial actions, providing borrowers with technical and financial capacity to redress harm, and/or using its leverage over borrowers to ensure compliance. Management must take a more effective approach to this role. IAMs have been able to facilitate a [broad range of remedial measures](#) that ADB management should learn from.
- i. Require Management to [consult with complainants](#) on Remedial Action Plans.
  - ii. Require Remedial Action Plans to achieve remedy for complainants.
  - iii. Require BCRC to review whether Action Plans prevent, mitigate, and remediate harm.
- d. **Strengthen the implementation of Remedial Action Plans.** Even in cases where Action Plans include concrete commitments to undertake remedial action, [failure to complete commitments](#) under action plans is common. Implementation of the commitments undertaken in action plans must be strengthened.
- i. Require monitoring mandates to continue until all instances of non-compliance and harm are remedied.
  - ii. Continue publishing and discussing monitoring reports with complainants.

- iii. Consider consequences for borrowers that refuse to engage in efforts to remediate identified environmental, social, and human rights harms stemming from their activities.
- e. **Strengthen the effectiveness of the SPF.** Problem solving should be undertaken based on mutual consent, rather than SPF's discretion on whether its involvement could be useful. Requirement to set ground rules, as well as objective and neutral mediation, can support productive engagement.
  - i. Establish an objective standard and clear timeline for the assessment phase.
  - ii. Adopt ground rules for respecting community agency in problem solving, including a free, prior, and informed consent protocol for Indigenous complainants.
  - iii. Facilitate any capacity-building that may be necessary to enable parties to engage effectively.
  - iv. Select neutral and professional mediators who are acceptable to both parties.
- f. **The AM should be able to recommend suspension of projects due to concerns of imminent harm.** Serious and irreversible harm can occur in the time taken by the complaint process. Where harm, including reprisals, is imminent, the temporary or permanent pausing of a project must be considered to protect communities.
- g. **Create an advisory function for the AM.** An advisory function would help embed an institutional culture of continuous learning and improvement of policy and practices.

Finally, in addition to these recommendations, we recognize that the ADB is expanding its private sector operations. The External Review Report characterized the private sector as highly sensitive to risk, especially that of compliance review. However, we strongly disagree with any suggestion that private sector projects be exempt from any part of the AM. Instead ADB must ensure it has adequate leverage to ensure compliance with environmental and social safeguards. We urge the ADB to be conscious of the risks of harm to communities and the potential for them to be left without access to accountability or remedy. Steps must be taken to ensure that both problem-solving and compliance review processes remain available and undiluted for all projects.

We look forward to engaging with you on these recommendations. Please do not hesitate to contact us if you wish to discuss these recommendations further.

Sincerely,

**Accountability Counsel**

Radhika Goyal, [radhika@accountabilitycounsel.org](mailto:radhika@accountabilitycounsel.org)

**Bank Information Center**

Iromi Perera, [iperera@bankinformationcenter.org](mailto:iperera@bankinformationcenter.org)

**Inclusive Development International**

Sarah Jaffe, [sarah@inclusivedevelopment.net](mailto:sarah@inclusivedevelopment.net)

**Recourse**

Kate Geary, [kate@re-course.org](mailto:kate@re-course.org)