

## Written Submission on ADB-WB Proposed Full Mutual Reliance Framework

Thank you for the opportunity to share our concerns and recommendations on the proposed Asian Development Bank (ADB)-World Bank (WB) Full Mutual Reliance Framework (Proposed Framework). Although we understand that there are opportunities to reduce unnecessary burdens in co-financed projects, we are concerned with the hasty, non-transparent and non-inclusive manner in which the Proposed Framework was conceptualized and how the Proposed Framework creates serious accountability and remedy challenges. We call on both Banks to revise the Proposed Framework in line with our recommendations, so as to continue to meet their core international legal obligations of accountability and access to remedy.

***The process of the Proposed Framework is hastily conceptualized, non-transparent and non-inclusive:***

1. The Proposed Framework envisages a carveout of the applicability of the trail Bank's safeguards and accountability policies and yet there has been little disclosure of information nor any real attempt to consult affected communities in Asia who bear the most risk.
  - a. The only document disclosed is one presentation, which is severely lacking in detail. Please disclose the following documents:
    - i. Any comparative assessment of the applicable ADB and WB policies, including where ADB and WB policies are **NOT** consistent.
    - ii. Any assessment of the impacts of this proposal on the quality of due diligence and monitoring on a project or on the quality of the available remedy for affected communities.
  - b. The process of consultation with stakeholders has been non-inclusive:
    - i. The Proposed Framework will lead to changes in both ADB's and WB's policies and yet there has been no attempt at a real consultation

- ii. The 30-day comment period (expanded from less than 20 days) is not sufficient to meaningfully consult with CSOs or affected communities, nor does it give us sufficient time to collect and share relevant data.
- iii. We understand that the approval of the FMRF will be followed by a Framework Agreement. It is unclear whether the Framework Agreement will be based on consultations, publicly disclosed, or approved by the Board.
- iv. We recommend that the IAM of each institution review the Framework Agreement to identify any risks to the Bank's E&S and accountability obligations.

***The Proposed Framework leads to a dilution of Banks obligations on preventing and remedying harm:***

1. Both institutions have an international legal obligation to prevent and remedy harm that is tied to its underlying finance and cannot be delegated. Under this framework, the trail lender would still contribute millions of dollars to the project and thus could still contribute to harm to communities. The responsibility to remedy harm doesn't vanish just because the financier did not apply their safeguards. It is connected to the underlying harm, and the trail financier always shares responsibility for that harm and thus must contribute to remedy. An institution foreclosing access to its IAM, while simultaneously not providing clear details on how *it* will be held accountable for its funding and actions, could lead to a court [piercing its immunity](#).
2. The FMRF needs to balance increased efficiency with its duty to prevent and remedy harm. One concrete way is for the trail financier to retain certain obligations under the Framework Agreement. At minimum, the trail financier should (i) regularly coordinate with the lead financier for project updates around implementation of safeguards, (ii) monitor public information about the project, and (iii) reserve the right to conduct a site visit in certain situations. Crucially, when the trail financier is presented with credible information about harm, they should be required to intensify their engagement in project supervision. Not doing so can lead to [significant risks](#) to both affected communities and to the institution.
3. The Proposed Framework further leads to three major issues:

- a. *Dilution of the highest standards of accountability:* The WB and ADB policies around accountability are not harmonized, nor substantially consistent. In fact there are some [significant differences](#) in terms of independence, accessibility, and effectiveness. This can have material effects on the rights of communities who want to file a complaint. For example, communities can file to the ADB Accountability Mechanism up to 24 months after the loan or grant closing date, whereas the World Bank Accountability Mechanism can only receive complaints up to 15 months after the loan closing date. This means that both WB and ADB projects will be applying lower standards of accountability to its co-financed projects than it would in its other projects. Moreover, the institutions also have subjective differences. For example, WB DRS has much fewer years of experience than ADB's SPF, and ADB's applicability of the eligibility criteria of "prior engagement with management" is more restrictive than WB's. Portraying the two IAMs as substitutable does not account for the policy or practice differences.
- b. *Restriction of community choice:* The challenges communities face in receiving outcomes are well documented. There are concerns about independence, accessibility, security, and effectiveness. Our latest data [demonstrates](#) that only a miniscule number of cases ever lead to outcomes of which fewer are implemented. Under these circumstances, affected communities should have the ability to decide which process they trust to safely and effectively hear their concerns. Under some circumstances, affected communities also choose to file to *both* mechanisms and in fact the combined technical expertise of both IAMs can be crucial to remedy. Communities should still have this option under the new framework.
- c. *Withdrawal from obligation to provide remedy:* Until now, both WB and ADB would be responsible for providing remedy when harm occurs. This includes by
- i. funding the cost of remedial measures.
  - ii. conducting assessments that support remedy, for example monitoring noise levels, conducting environmental assessments.

- iii. providing technical assistance to the client and supervising the implementation of remedial measures by the client.

Under the Proposed Framework, the entire obligation will be on the lead financier, further weakening the likelihood that communities receive remedy.

- 4. The Proposed Framework raises **urgent questions** around accountability and remedy that need to be clarified:
  - a. How will projects be selected under the Proposed Framework? Who will select these projects? Will there be exclusions such as for Category A/B projects, given the additional risks they pose?
  - b. How does the Board approval of the project work under the Proposed Framework? Will the Board be able to effectively review the underlying assessments and require more information, if their own institution is not involved in the preparation of the project? Or will the project team of the lead financier be accountable to the Board of the trail financier?
  - c. If the Board receives allegations about harms tied to its financing, in the absence of the applicability of its Accountability Mechanism, how would they investigate whether their financing is in fact tied to the harm?
  - d. If the lead financiers IAM confirms harm, what would the trail institution's role be in providing remedy? Would the lead financier undertake the entire obligation of costing, providing technical assistance, and supervising remedial actions? Further, what happens if the harm is tied to the part of the project financed directly by the trail institution?

**Considering these concerns and questions, we recommend improvements to the consultation process and the following changes to the Proposed Framework to safeguard accountability and remedy:**

- 1. Affected communities should be able to access the accountability mechanisms of both institutions. The accountability mechanism of the trail institution should retain its ability to investigate the harm, review the trail institution's actions and decisions in financing the

project, any non-compliance with its obligations under the Framework Agreement, and provide remedy to affected communities. IAMs, including the World Bank Accountability Mechanism and the ADB Accountability Mechanism, have a long history of jointly addressing complaints of co-financed projects, and continuing access to each financier's IAM does not pose significant burdens for the client.

2. We strongly believe that communities should have access to both mechanisms. However, any proposal in which only the accountability mechanism of the lead financier applies must incorporate the following parameters:
  - a. the highest standards of accountability should apply. This determination should be done with the input of civil society organizations and be included in the Framework Agreement between the two institutions. As independent accountability mechanisms are supposed to be independent from each institution's management, this determination should be made by the IAMs themselves.
  - b. the trail institution should still be required to help facilitate remedy, which may include preparing a remedial action plan and implementing it under the monitoring of the trail institution's accountability mechanism.

However, this option still would not address the dilution of the Banks' core obligations and the increased risks to communities.

We understand that other groups will be providing additional recommendations to address the concern about the dilution of safeguards standards, and we encourage each Bank to address those concerns. Further, understanding that this is a pilot framework, we call on the World Bank's Independent Evaluation Group and the ADB's Independent Evaluation Department to conduct independent evaluations of the pilot so that the Banks can address any shortcomings.

Sincerely,

Accountability Counsel – Global

Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE) – Asia

Asian Forum for Human Rights and Development (FORUM-ASIA) – Regional, Asia  
Bank Climate Advocates – International  
Bank Information Center – United States  
Buliisa Initiative for Rural Development Organisation – Uganda  
CEE Bankwatch Network – Czech Republic  
Community Empowerment and Social Justice Network (CEMSOJ) – Nepal  
Global Labor Justice – United States  
GongGam Human Rights Law Foundation – South Korea  
Green Advocates International – Liberia  
Inclusive Development International – United States  
Initiative for Right View – Bangladesh  
International Accountability Project – Global  
International Rivers – Global  
Jamaa Resource Initiatives – Kenya  
KRuHA – People’s Coalition for the Right to Water – Indonesia  
LRC – Philippines  
Lumière Synergie pour le Développement – Senegal  
MenaFem Movement for Economic, Development and Ecological Justice – MENA/Morocco  
Observatoire d’études et d’appui à la Responsabilité Sociale et Environnementale – Democratic  
Republic of the Congo  
Oyu Tolgoi Watch – Mongolia  
Reality of Aid – Asia Pacific – Philippines  
Recourse – Netherlands  
Rivers without Boundaries Coalition – Mongolia  
Urgewald – Germany