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Submission to the Accountability Mechanism Review

The Accountability Mechanism (AM) has been in implementation since 2003. However, 27 cases are being registered under the Consultation Phase, first phase of AM, in seven years. Out of which, 10 were deemed as eligible. Seventeen (17) complaints were declared as not eligible by Special Project Facilitator (SPF) particularly due to administrative issues, i.e. 10 complaints were not raised to the Operations Department (OD) prior to the filing of said complaints. Furthermore, in its second phase, Compliance Review Phase, only 3 complaints were registered so far. There was a five-year gap from 2004 to 2009 as not a single complaint was filed to the Compliance Review Panel (CRP). This was not because the ADB is doing well with their projects. But on the contrary, it indicates that this policy has not been effective enough to raise the interest and the capacity of the affected people to file such highly technical complaints.

Based on the experiences gathered from more than 40 ADB-funded projects, including 11 complaints registered under the AM by members of the NGO Forum on the ADB, we conclude two major facts: first, the lack of information about AM and its procedures among affected people especially during the early stages of the project; and second, the lack of trust and confidence among affected people in filing a complaint to the ADB in resolving their grievances. There are persisting problems about the effectiveness and constraints faced by affected people as they seek AM to holding the ADB accountable for its financing in their respective places due to different political realities.

Issues for considerations in the AM review are as follows:

Lack of information

There is a tremendous lack of information on the AM as well as about project components, including their respective impacts, among project-affected people in ADB-funded projects and programs in developing member countries (DMCs). Project-affected people don't know if they can file their grievances in such a forum. As the current AM is a separate mechanism from the project, this leads to lack of knowledge in addressing their grievances against the impact of a project. Most borrowers, including implementing agencies, either are not informed or are not informing project-affected people about this mechanism at the earliest stage of the project cycle. The AM must be included as a mandatory component of each ADB-funded or co-financed projects.

'Directly affected materially and adversely'

Impacts of a project go beyond being material and direct. Changing of the environment, shelters and livelihoods, and cultural heritage will not only cause material harm such as loss of shelter and livelihoods, but also non-material harm such as loss of cultural lives, increasing oppression and gender injustices, and human rights violations, among others.

However, the AM limits its scope to people who are "directly affected materially and adversely." Though the Environmental Impacts Assessment (EIA) under the 2009 Safeguard Policy Statement, for example, requires assessment of direct and indirect environmental impacts. It means, there is an acceptance that impacts of a project may also be indirect. The AM must broaden its scope to include 'indirect' and 'non-material' harm to the people.

Furthermore, there are project impacts on a larger scale to the environment, and social, political and cultural lives.

Who can file a complaint

In most cases, there are no local grievance mechanism where individuals can settle their problems. There should not be a restriction on minimal numbers of complainant. Any individual who has concern, interest, or has been affected by a project can file a complaint. Attention must be paid to the most discriminated groups like women and indigenous people in view of their suppressed status in society. Requests from local, national and international legal entities/bodies, whom statutes clearly set forth in their mission and objectives to protect international rights and the environment also should be admitted.

Filing complaints to SPF/CRP

The complainant should be provided the choice to file his/her case either to the SPF or CRP, or even file it simultaneously to both AM phases. For this purpose, SPF and CRP should provide information about the maximum assistance they can provide to affected people. Considering that there are ADB projects located in remote areas, requests should be allowed to be submitted in writing in local language and a form which is familiar and comfortable to the complainant.

Transparency of eligibility process and grievance mechanism if SPF deems a complaint as not eligible

The process to determine eligibility of a complaint at the SPF level heavily depends on opinions from ADB staff, the Executing Agency (EA)/government or PPS (private project sponsor). Those opinions should be made public when a decision is made. Furthermore, a grievance or appeal mechanism must be provided if a complainant doesn't agree with the decision made.

Assessment of a project as a whole

AM is designed to find solution to a problem caused by a project, either through problem solving or investigation of non-compliance to policies. Non-compliance to policies will definitely affect the whole project. The existing role of the CRP should not merely be confined to providing specific project site solution where the complaint comes from. In order to make sure a comprehensive and adequate result or solution, submitted complaint should be treated as the basis to review the whole project. ADB can stop further the implementation of a project if they found major problems at the preliminary investigation of the SPF and/or CRP.

Expansion to wider range of issues

It is desirable to include issues other than the ones raised in a complaint. During an investigation by the SPF, usually local communities only come to know related problems and violations under the project. However, relevant problems other than specified in the complaint are not considered by SPF as it is necessary to write and file a new complaint.

PCR should not be the cut-off date for non eligibility

Projects related to changing environment and involuntary resettlement usually trigger long-term impacts beyond the project completion report (PCR). However, the eligibility of the complaint depends on the release of the PCR. Acceptance of complaints to the accountability mechanism should not be limited until after issuance of the PCR. The complaint must be accepted as long as a borrowing country is repaying the loan amount to the ADB.

Private Sector Operations

In line with the Public Communication Policy (PCP), the AM also protects the confidentiality of the private sectors projects. The issue of business confidentiality is critically looked at in the on-going review of the ADB PCP. The private sector operations must be included in the purview of the AM as it directly contravenes the right to information – an important country-system constitutional provision.

Financial Intermediaries and Co-financing

The AM does not clearly define its application on financial intermediaries or on co-financiers

when it comes to private sector operations. The AM must expand its mandate on co-financing projects as well as Financial Intermediaries. Like in the case of the Southern Transport Development Project (STDP) in Sri Lanka, the CRP recommended that ADB management should review its co-financing arrangements for the project to strengthen its compliance to the Safeguard Policy. Although a Memorandum of Understanding was signed between ADB and JBIC, the MOU did not address the issue of co-financing compliance.

Immediate response rather than lengthy process

The inspection and investigation process, as well as its procedures, are too lengthy, complicated and difficult for most affected people. At the beginning, the first full investigation also raised concerns about the independence, credibility, transparency and dissemination of information, and the effectiveness of the inspection.

AM is very complicated and usually takes a long time to attend to complaints. AM should not burden the local communities to find all policy violations and it should be the role of AM to find them or hire independent legal and technical experts to find such policy violations. The mechanism needs to be improved and simplified. It should take shorter time. The operations department has not always been responsive. It is a waste of time for affected people to file their grievance to ADB management and borrower government just to have their respective complaint declared eligible at the SPF. Although affected people may have already filed the case to the SPF or CRP, project implementation continues, hence adding more burden to affected people. A project's implementation should be put on hold while awaiting the declaration of a complaint's eligibility unless the grievances have been addressed completely and satisfactorily with utmost participation of project-affected people.

Lack of trust among affected people

AM should be very concerned on the different political realities in the member countries. Affected people fear their respective oppressive governments. This is one of the reasons why they don't show their disagreement to a project, not to mention file complaints against a project implemented by the government or a private sector project supported by the government. The AM in its provisions mention that the SPF or CRP will keep the identities of the requesters confidential if requested. This has not been the case. The requesters feel that due to their case they have been intimidated by executing agencies. In such situations, women in particular become vulnerable to physical and psychological harassment. Many affected people believe that due to their name in the complaint, they were treated badly by the executing agencies. There are no clear provisions in the AM, outlining its responsibilities, in dealing with fears of affected people from the possibility of being harassed by the executing agencies in borrowing countries.

SPF and CRP: Monitoring, investigation and its function

The process is too bureaucratic which affected people don't understand. The CRP monitoring and investigation process is not satisfactory. It is recommended that the CRP team needs assistance of technical experts to evaluate the specific issues under a complaint. Many are in the opinion that CRP must have a technical advisory, advising them on technical issues such as compensation, value of land and property, and environmental, among others.

It is believed that there is a limitation in the CRP's function. The 2006 CRP monitoring report on STDP in Sri Lanka shows that the ADB management and the executing agency did not comply with most of the remedial action proposed in the CRP report issued in July 2005. It is also recommended that the CRP must be allowed to appoint its own Secretary, not by the management, who will assist them in their tenure. The responsibility of the CRP must be clearly mentioned in the policy. The CRP must also have an emergency fund, approved by the Board of Directors, to address the grievances of the affected people.

The SPF and CRP procedures, as well as the language used, are too technical. Most project-affected people are incapable of understanding those technical terms to file their cases to the AM. There is a need to simplify the technicalities of the CRP language and procedures.

After the inspection, the CRP sends the inspection report to the Board management and submits its response. Like the Japan Bank for International Cooperation that sends its Examiner report to all the parties concerned, CRP report must be shared with the Requester and pay attention to opinions provided, and may send the opinions to the management. Minutes of Board discussions and deliberations about the report should be open to the public.

Both SPF and CRP, should proceed with claims, regardless of the cases filed under local legislations. In the case of STDP, the ADB used the argument that there is a case pending in the Supreme Court which delayed the process.

AM should be highly independent from ADB management. It is not acceptable for the SPF nor CRP to hire former Banks staff to the positions. There has been painful experience for the claimants when certain SPF and CRP staff acted bias towards the ADB.

Corruption

The AM excludes the corruption issue in its ambit. Although the office of the Anti-Corruption and Integrity deals with allegations of fraud and corruption it fails to combat corrupt practices in the project management at the local and national levels. The present review must look at paragraph 72 in the policy.

We are strongly requesting the Joint Working Group of the AM Review to consider the issues on the existing AM for its review. We emphasize that the review must attempt fill in principle gaps in the existing policy and to make Accountability Mechanism more accountable and responsible to project-affected people.

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Annex 1

List of related documents

Reviewing of the ADB Accountability Mechanism

< <http://forum-adb.org/docs/201010-am-review-comments-cambodia-ngos.pdf> >

With only one case filed from Cambodia, local groups submit their concerns on the existing Accountability Mechanism.

Problems of the Accountability Mechanism of the Asian Development Bank

< <http://forum-adb.org/docs/Indo-AM-Problems.pdf>>

By the Indonesian Group of NGO Forum on the ADB

Indonesian members of the Forum presents the pressing issues in the existing Accountability Mechanism and suggests a set of recommendations in making the mechanism more responsive to the concerns of the affected people.

ADB Accountability Mechanism in Central Asia and the Caucasus

< <http://forum-adb.org/inner.php?sec=13&ref=extras&id=197>>

By Maya Eralieva, September 2010

As the number and amount of investment has been increased in the countries, the number of issues regarding the impacts of the project has also increased. This paper looks into the ongoing issues on the existing AM of the ADB in Central Asia and the Caucasus.

End of the road: Is the ADB accountable in Sri Lanka road project?

< <http://forum-adb.org/inner.php?sec=4&id=187&b=1>>

By Hemantha Withanage (CEJ) and Dr Avilash Roul, September 2010

The effectiveness of the ADB' Accountability Mechanism is put to test in Sri Lanka. As the Compliance Review Panel is about to finish its task on the controversial Matara-Colombo Highway, people's concerns are still unresolved. Where should they go now?

Holding ADB Accountable: A Look at the Present Accountability Mechanism

< <http://forum-adb.org/inner.php?sec=13&ref=extras&id=197>>

by Tea Soentoro, August 2010

As the ADB conducts a review of its Accountability Mechanism, Forum comes up with this briefing paper that provides a glance on the existing Accountability Mechanism of the ADB. It takes a look into the gaps and barriers in filing complaints, and the present constraints of the AM.

Effectiveness of Accountability Mechanism in Central Asia and Caucasus (news article)

< <http://forum-adb.org/inner.php?sec=4&id=185&b=1>>

By Maya Eralieva, September 2010

The OSPF recently declared the case of the Education Sector Reform Project in Tajikistan eligible. Out of the five complaints in Central Asia and the Caucasus, two were deemed eligible under the Accountability Mechanism. This article talks about concerns on the AM in the region.

Rationality of accountability: ADB must look beyond PCR (news article)

< <http://forum-adb.org/inner.php?sec=4&id=186&b=1>>

By Dr Avilash Roul, September 2010

Under the existing Accountability Mechanism, complaints against a project can be filed until the release of its project completion report. Forum takes on the bank's "leave-it-and-forget-about-it" attitude when communities miss the deadline.

Accountability Mechanism: A Jailbird of Democracy (news article)

< <http://forum-adb.org/inner.php?sec=13&ref=extras&id=193>>

by Hemantha Withanage, 2006

This article questions the effectiveness of the AM, pointing out bureaucracy in the government and in the ADB serves as the biggest barrier to local communities.

Handling the Symptoms but not the Disease (news article)

< <http://forum-adb.org/inner.php?sec=4&id=134&b=1>>

by Tea Soentoro, November 2009

This article questions the capability of the upcoming review of the AM in addressing principle gaps and making the Bank more accountable and responsible to project-affected people.