

## The Asian Development Bank (ADB) Accountability Mechanism

### What is the Asian Development Bank (ADB)?

Founded in 1966 and headquartered in Manila, Philippines, the ADB is a multilateral development bank that is owned by 67 member countries—of which 48 are from Asia, and 19 are from outside Asia. The ADB’s mission is to alleviate poverty in Asia and the Pacific through loans, technical assistance, grants, guarantees (insurance) and investments intended to create economic growth in its developing member countries.<sup>58</sup>

### What is the ADB’s Accountability Mechanism?

The ADB’s current Accountability Mechanism went into effect on May 24, 2012.<sup>59</sup> The Mechanism consists of two functions:

- **The Problem Solving Function**, run by the Special Project Facilitator (SPF); and
- **The Compliance Review Function**, run by the Compliance Review Panel (CRP).

All complaints go to the Complaints Receiving Officer (CRO). The CRO then forwards them to either the Office of the Special Project Facilitator (OSPF) or the Office of the Compliance Review Panel (OCRCP), according to the preference of the complainant.

### Eligibility

For both functions, two or more people who are “directly, materially, and adversely affected by an ADB-assisted project” can file a complaint to the ADB Accountability Mechanism. Additionally, a local

### ADB QUICK SUMMARY

You may file a complaint to the ADB Accountability Mechanism if:

- You are part of a group of two or more people; and
- You have been directly harmed or are likely to be harmed by an ADB-supported project.

The Complaints Receiving Officer (CRO) will respond to your complaint and forward it to the function of your choosing (*Compliance Review* or *Problem-Solving*). The appropriate function will determine eligibility and conduct investigations.

The Special Project Facilitator (SPF) will determine eligibility, attempt to facilitate an agreement among all the parties involved that addresses the problems you are facing, and monitor the implementation of this agreement. You can walk away from this process at any time and request a *compliance review*.

The Compliance Review Panel (CRP) will determine eligibility, conduct an investigation, and decide whether or not the ADB has complied with its own policies and procedures. The CRP also requires complainants to show that the harm they allege is caused by the ADB’s failure to comply with their own policies, and that the noncompliance was serious. You will get to comment on the CRP’s draft report before it is finalized and sent to the ADB Board for a decision. Once you begin the *compliance review* process, you cannot then go back and use the *problem solving* function for the same issues, unless the CRP finds your complaint ineligible.

<sup>58</sup> See <http://www.adb.org/about/overview>.

<sup>59</sup> The current Accountability Mechanism Policy replaces the previous 2003 Accountability Mechanism Policy, which expired on May 23, 2012.

representative can file on behalf of a project-affected group if the project-affected people are clearly identified, and it can be shown that the representative has the authority to represent them. According to ADB policy, in special cases where local representation is unavailable and the SFP or CRP agree, a nonlocal representative may file on behalf of a project-affected group, however it is currently unclear how the ADB is determining in practice whether nonlocal representatives can file complaints. In addition to representatives and project-affected people, ADB Board members may file a complaint for Compliance Review.

There is a list of exclusions that will disqualify a complaint. Exclusions for both functions include complaints made about actions not related to ADB's actions, about projects in which two or more years have passed since the grant or loan closing date, and complaints which did not first make a good effort to solve the problem with the Operations Department. The good faith effort is required with the Operations Department, but not with the local grievance mechanisms, although the ADB will encourage complainants to first address problems with project-level redress processes.

Additional eligibility and requirements and exclusions specific to each function are described in detail below.

### **How to File a Complaint**

All complaints, with either the Problem Solving function or the Compliance Review function, go through the CRO, and must contain the following information:<sup>60</sup>

- The identity and contact information for the two or more people filing the complaint;
- The identity and contact information for any representative a complainant chooses to work with, along with proof that the representative is authorized to represent the complainant;
- Whether the people filing the complaint choose to keep their identities confidential;
- Whether the complainants wish to go through *Problem Solving* with the OSPF or the *Compliance Review* with the CRP;
- A brief description of the ADB-assisted project, including the name of the project and location;
- A description of the direct and material harm that has been, or is likely to be, caused to the people submitting the complaint;
- A description of the good faith efforts to address the problems first with the relevant operations department, and the results of these efforts; and
- If, in a complaint requesting *Compliance Review*, the complainants have already tried to address the concerns through *Problem Solving* through the OSPF, the complaint must also describe the efforts and the results of the efforts to resolve

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<sup>60</sup> See ADB Accountability Mechanism Policy 2012 , ¶ 150-51.

matters with the OSPF.

The complaint may also include the following optional information:<sup>61</sup>

- An explanation of why the complainants believe the direct harm has been or will be caused by the ADB's failure to follow its policies and procedures;
- A description of the policies and procedures that have not been followed;
- A description of efforts to address the problems with the project-level grievance mechanisms concerned, and the results;
- The desired outcome or remedies; and/or
- Any other relevant information with supporting documents.

### **Process Once a Complaint is Filed**

Once the CRO has received a request, the CRO will register the complaint on the website and will inform the SPF, CRP Chair, and the Operations Department involved within two days. The CRO will acknowledge receipt of the complaint to the complainants, and will provide an information packet about the Accountability Mechanism within two days. In this correspondence, the CRO will let the complainants know that they have 21 days to change their mind regarding which function to use, and will ask for clarifications to the complaint if necessary.

The CRO will decide whether to forward the complaint to the SPF or CRP within five days of the complainants' deadline to change their minds on the function, and will inform all relevant parties within the Accountability Mechanism and ADB operations about the decision. The relevant parties then have three days to respond with objections or concerns about the CRO's decision. Within two days of forwarding the complaint, the CRO will provide complainants with information about the process, including the contact person and the next steps to take.

### **The Problem-Solving Function of the ADB Accountability Mechanism**

The Problem Solving Function is designed to “assist people directly, materially, and adversely affected by specific problems caused by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned.”<sup>62</sup> The Problem Solving Function has a broader scope than the Compliance Review Function.

The Special Project Facilitator (SPF), hired by the President of the ADB with input from the Board, is the individual in charge of the Problem Solving function. The SPF works with project-affected people to solve specific problems with ADB projects in an informal manner using a variety of methods. The three staff members of the OSPF support the SPF in his/her work.

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<sup>61</sup> ADB Accountability Mechanism Policy 2012, ¶ 152.

<sup>62</sup> ADB Accountability Mechanism Policy 2012, ¶ 126.

## **Complaint Process Using the Problem-Solving Function**

The SPF has 21 days from the time the request is received to determine whether or not the request is eligible. In addition to meeting the general complaint eligibility requirements, the complainant(s) must convince the SPF that the SPF's involvement could be useful in resolving the dispute in order to be deemed eligible for problem solving. The SPF will generally assess whether their involvement will be useful through consultations with groups or individuals involved in the complaint. If the request is eligible, the SPF will conduct an investigation through interviews, review of documents, meetings with staff, and other techniques. The SPF reports the findings to, and requests comments from, the President, the complainants, the borrowers, and relevant Operations Departments. Upon consideration of the comments, the SPF will then decide whether to proceed with the problem-solving process.

Once the problem-solving goes ahead, the details of the process will vary according to the circumstances of each situation. Any party can leave the process at any time, which ends the problem-solving phase. When the process has been completed, the SPF will complete a report and deliver it to all parties involved, regardless of whether or not an agreement had been reached.

Once the problem-solving process has ended and there was no agreement or the agreement is in the implementation stage, the complainant can file with the Compliance Review function. The SPF will monitor the implementation, which typically will not go beyond two years. The SPF will complete a final report when the implementation is complete.

## **The Compliance Review Function of the ADB Accountability Mechanism**

The Compliance Review function allows project-affected people to file requests for review where they believe the ADB has violated its own policies or procedures in ADB-assisted projects.<sup>63</sup> In this process, a member of the three-person Compliance Review Panel (CRP) conducts an investigation and determines whether the ADB is in compliance. The CRP examines “whether the direct and material harm alleged by the complainants is the result of ADB’s failure to follow its operational policies and procedures in the course of formulating, processing, or implementing an ADB-assisted project.”<sup>64</sup> There must be evidence that there is direct and material harm, noncompliance by the ADB, and that the Bank’s failure to comply with its policies caused the harm described.

## **Complaint Process using the Compliance Review Function**

Within five days of receiving the complaint, the CRP will determine if it has the power or authority to handle the complaint. If so, the CRP will forward the complaint to Management, giving them 21 days to respond, and will also copy the Board Compliance Review Committee (BCRC), a standing committee made up of six Board Members,<sup>65</sup> on the

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<sup>63</sup> See The ADB Compliance Review Panel Homepage at <http://compliance.adb.org/>.

<sup>64</sup> See The ADB Accountability Mechanism Policy 2012, ¶ 145.

<sup>65</sup> See <http://www.adb.org/about/board-compliance-review-committee>.

communications. Management may respond with evidence that the ADB has complied with all of its policies and procedures, or it may show that the ADB has not complied, but Management is taking steps to fix these problems and bring the project into compliance with ADB policies.

The CRP will then determine whether the complaint is eligible for Compliance Review within 21 days of receiving Management's response. This eligibility determination is based on whether the CRP believes there is enough evidence that the ADB's failure to follow its own policies caused harm to the complainants to warrant a compliance review. The CRP must also determine that the ADB's failure to follow its rules is serious enough for a full review by their office. Complainants are generally encouraged to submit all information and evidence they can to support their complaint to meet the CRP eligibility requirements. Additional exclusions for Compliance Review Function eligibility include: complaints related to actions that are the sole responsibility of another party or have to do with the member country's laws and do not relate to the ADB's compliance with its own policies; complaints that are currently being dealt with in the Problem Solving Function by the SPF; and complaints about matters already considered by the CRP.

The CRP will inform all parties involved when eligibility is determined. If the complaint is found to be eligible, the CRP will ask the Board to authorize a Compliance Review. The Board must make the decision to allow or not allow Compliance Review within 21 days. The CRP will then inform the complainants within seven days of the decision.

Once the Board has given approval for the compliance review, the CRP has ten days to create a plan for how it will investigate the claim. This plan must then be approved by the BCRC. Once the Board has approved an investigation and the BCRC has approved the plan, the CRP will begin such steps as meetings with relevant parties, reviews of pertinent documents, and visits to the site. The length of the investigation will depend on factors such as the complexity of the request, the project and scope of the alleged policy violations.

After the investigation is complete, the CRP will share its draft report with ADB management, the BCRC, the complainants, and the borrower of the ADB loan. All of the parties will then have 45 days to comment on the draft report. Within 14 days of receiving comment, the CRP will then issue its final report with its conclusions about whether the ADB violated its policies and caused harm as a result. This final report will be first sent to the Board and the BCRC for the Board's consideration before it is sent to anyone else. Within 28 days of the Board's receipt of the final report, it will be released to the complainants, Bank Management, and other parties involved.

If the report concludes that the ADB violated its policies and thus caused the complainants harm, Bank Management will submit a report to the Board with suggestions on ways to improve the project and fix the problems it has caused. The Board will then make a decision about the proposed suggestions and the future of the project. Any decisions about the suggested improvements or corrective measures will be released to the complainants and the borrower. The CRP will monitor the implementation of any improvements or corrective measures approved by the Board. The time frame for

monitoring will vary, but will generally not go past three years. A final report will be produced upon completion of the CRP's involvement in the case.

### **Policies and Procedures That May Apply in Claims to the ADB Mechanisms**

The ADB has a set of policies that it is required to follow in its operations. If possible, these policies should be referenced in complaints if project-affected people believe the policies have been, or are likely to be violated. ADB policies include the Safeguard Policy Statement that covers the Environment, Involuntary Resettlement and Indigenous Peoples, and "Sector Policy Papers" on topics such as Energy, Forestry, and Water.<sup>66</sup> The ADB's "Operations Manual" contains more details instructions for bank staff on how to implement these various policies.<sup>67</sup>

The policies that apply to proposed projects are those that were in effect when the complaint was filed. For existing projects, the policies that apply are those that were in effect when the ADB's Board of Directors approved the project. However, the only Accountability Mechanism policy that applies is the one that was in effect at the time the complaint was filed to the ADB.

For more information on ADB policies, please see NGO Forum and Bank Information Center's "Unpacking the ADB: A Guide to Understanding the Asian Development Bank."<sup>68</sup>

### **The ADB's Information Sharing and Disclosure Policy**

The ADB's Public Communications Policy of 2011<sup>69</sup> entitles the public to receive information about ADB-assisted activities, as well as provide feedback to the ADB about project design and implementation. Under this policy, people have the right to the following types of information, among other documents, in a timely and clear manner:

- Country Partnership Strategies and Regional Cooperation Strategies (CPS and RCS) and key supporting documents
- Project Data Sheets (PDS), including summary information on a project or program during processing and implementation
- ADB Safeguard Policies
- Project Safeguard Documents
- ADB Project or Program Information Documents (PIDs)
- Environmental Assessments in draft, review, and final stages, which includes Environmental Impact Assessments
- Resettlement Planning Documents

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<sup>66</sup> See ADB Policies at <http://www.adb.org/Development/policies.asp>.

<sup>67</sup> See ADB Operations Manual at <http://www.adb.org/documents/operations-manual>.

<sup>68</sup> The BIC ADB Toolkits for Activists, including the Guide in five languages, is available for download from <http://www.bicusa.org/en/Article.1630.aspx>.

<sup>69</sup> See <http://www.adb.org/sites/default/files/pcp-2011.pdf>. See also BIC's ADB Toolkits for Activists, <http://www.bicusa.org/en/Article.1630.aspx>.

- Indigenous Peoples Plan (IPP) and/or Indigenous Peoples Planning Framework, and Indigenous Peoples Monitoring Reports
- Equivalence and Acceptability Assessments in draft, review, and final stages
- Initial Poverty and Social Assessments
- Technical Assistance Reports
- Report and Recommendation of the President (regarding Board approval of projects)
- Legal Agreements for Sovereign Projects
- Project Administration Memorandum
- Social and Environmental Monitoring Reports
- Loan Agreements and Project Agreements
- Schedule and Minutes of the Meetings of the ADB Board of Directors
- Information not normally disclosed *if* the public interest in disclosing the information outweighs the harm that the disclosure may cause (see paragraph 99 of the ADB Public Communications Policy).

Under the ADB’s Public Communications Policy, there is a presumption in favor of disclosure, so long as the information requested doesn’t compromise the Bank’s decision-making process; contain private personnel details; pose a threat to financial markets or the ADB’s legitimate financial interests; pertain to confidential material, such as information covered by a nondisclosure agreement or attorney-client privilege; contain details that could jeopardize someone’s safety; or relate to allegations of misconduct or corruption.

The ADB provides public access to the information above through its Public Information and Disclosure Unit, known as the “InfoUnit.” You may request information through the InfoUnit website, available through [http://adb.org/email/17162/field\\_email](http://adb.org/email/17162/field_email) or you may email the InfoUnit at [disclosure@adb.org](mailto:disclosure@adb.org). You may also contact your nearest ADB Country Office to request information.<sup>70</sup>

The InfoUnit’s contact information is:

Public Information and Disclosure Unit (InfoUnit)  
 Department of External Relations  
 Asian Development Bank  
 6 ADB Avenue  
 Mandaluyong City  
 1550 Metro Manila, Philippines  
 Tel: + 632 632 4444  
 Fax: + 632 636 2444  
[disclosure@adb.org](mailto:disclosure@adb.org)

The InfoUnit has a two-stage appeals process that you may use if you believe that you have not been given information that you deserve. You may make a written request for

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<sup>70</sup> A list of Country Offices is available at <http://www.adb.org/about/departments-offices>.

review to the Public Disclosure Advisory Committee (PDAC) at the address above. “The appeal will be acknowledged within 5 working days and a decision will be given no later than 20 working days from receipt of the appeal.”<sup>71</sup>

If the PDAC upholds the denial of your request, you may file a written appeal to the Independent Appeals Panel (“IAP”) within 90 days, alleging that the ADB violated its Public Communications Policy by restricting access to this information. Appeals should be in the form of a brief letter that describes the information originally requested, and why you think ADB policy or the public interest override requires its disclosure. Appeals may be addressed to the Independent Appeals Panel and submitted by mail, email, or fax to the Public Information and Disclosure Unit’s address above. The IAP is required to consider all appeals within 45 days of receiving a request. After reviewing the written appeal, the policy exceptions, and any statements made by the ADB or parties opposing disclosure, the IAP has the power to uphold or reverse the decision of the PDAC. The IAP’s decision is final.

### **Example of a Complaint to the ADB Accountability Mechanism**

In 2002, the ADB approved a loan to Sri Lanka for construction of a highway that would cross four river basins, cut through 100 small and large wetlands and paddy fields, pass through numerous villages, and require the destruction of 1,300 houses. Altogether, it was estimated that 5,683 households would be affected by the project.<sup>72</sup> In June 2004, a group of project-affected people filed a complaint to the ADB Accountability Mechanism with both the Special Project Facilitator (SPF) and the Compliance Review Panel (CRP) arguing that the project failed to comply with ADB policies on, among other things, the environment, land acquisition practices, lack of consultation, and involuntary resettlement.<sup>73</sup> The complainants argued that the project violated their human rights and caused a loss of homes and livelihoods. The complainants sought changes to the project planning and design, including that the ADB pay full compensation for resettlement, consider alternative routes for the road to minimize the need for resettlement, and fully consult with affected people after completion of the new assessment. Additionally, the complainants asked for the suspension of loan disbursements and the establishment of an independent committee to investigate the potential for an alternative placement of the road.

The SPF found the request for problem solving eligible 15 days after it was filed and arranged a series of meeting with the complainants and other stakeholders to take place over the course of the next several months. During the problem solving process, the SPF heard the complainants’ grievances about the inadequate and threatening consultations that had occurred, about the lack of proper resettlement compensation and aid, and the questionable impact assessments that did not properly document the impending harm to the environment and to cultural sites.

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<sup>71</sup> See <http://www.adb.org/site/disclosure/pcp-implementation/appeals>.

<sup>72</sup> ADB-JBIC Funded Southern Transport Development Project, Sri Lanka: A Fact-finding Report on Status of Resettlement Implementation Plan, Prepared by Bank Information Center, NGO Forum on ADB and Center for Environmental Justice (June 2006).

<sup>73</sup> *Id.*

Following the conclusion of consultations in February 2005, the SPF released a final report in March 2005. The report included a series of findings favorable to the complainants, including that the consultations and information given to the project-affected people were insufficient, that the land acquisition process and resettlement plan had serious shortcomings, and that adverse environmental impacts would result from the project. However, the SPF concluded that halting disbursement of funds would actually hinder the problem solving process. The consultation period ultimately ended without the parties agreeing to any sort of mediated settlement, despite the involvement of an international mediator/facilitator.

At the time of the review and assessment, the SPF noted “all three parties seemed to have reached a point where they realized that their options were limited.” The international mediator likewise determined that “the complainants’ perceived grievances were incapable of resolution within the forum of a mediated settlement... [and] could only be effectively sanctioned within the judicial system.” Thus, the SPF concluded the problem solving process with a series of recommendations to increase the participation of project-affected people and conduct more extensive studies on the adverse impacts that would arise from the project. According to the report conducted by Bank Information Center, NGO Forum on the ADB, and Center for Environmental Justice, many of these recommendations have not been fully implemented and several problems remain outstanding.<sup>74</sup>

After the ADB’s CRP determined the request was eligible, the Board of Directors authorized a compliance review and the CRP conducted an investigation. The CRP issued its findings and recommendations in its Final Report in June 2005. The CRP noted that the ADB had not complied with the environmental impact assessment requirements for the project, that no gender assessment had been done despite the project’s large impact on women, and that the plans for involuntary resettlement had been changed without public participation, which violated ADB policy. The CRP issued a series of recommendations to the ADB concerning how the project should be brought into compliance.

The Board approved the CRP’s recommendations in July 2005. Thereafter, the CRP took steps to officially monitor the ADB’s compliance with its recommendations. By August 2005, ADB Management prepared a “course of action” plan to implement the recommendations made by the CRP. The CRP’s monitoring report notes that ADB Management prepared the “course of action” without input from the complainants.<sup>75</sup> The CRP advised Management to consult with the complainants and return with a revised plan, which they did. The CRP’s monitoring efforts included review of ADB Management’s monitoring reports, a visit to the project site, and review of additional documents requested by the CRP. The CRP determined that while the ADB had complied with some of the CRP’s recommendations, they had only partially complied or not complied at all with many others.

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<sup>74</sup> *Id.*

<sup>75</sup> ADB Accountability Mechanism Compliance Review Panel, Annual Monitoring Report 2005-2006 to the Board of Directors on CRP Request No. 2004/1 on the Southern Transport Development Project in Sri Lanka (ADB Loan No. 1711-SRI[SF]) (July 11, 2006), available at [http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-MonitoringReport2006.pdf/\\$FILE/STDP-MonitoringReport2006.pdf](http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-MonitoringReport2006.pdf/$FILE/STDP-MonitoringReport2006.pdf).

As this case demonstrates, the ADB has made some efforts to bring the project into compliance *because of* the project-affected peoples' request to the SPF and the CRP, however several problems are outstanding and the results have not quite met the expectations of the complainants. With the continued monitoring role of the Accountability Mechanism, the complainants have a means of communicating continuing problems with the project to the ADB, yet many of their concerns related to resettlement and compensation have yet to be resolved. Although the ADB is still in violation of many of its policies, the reports of the SPF and the CRP have brought attention to deficiencies, and the ADB is now under pressure to make change.

### **Where to Submit a Complaint**

Requests must be in writing and should be addressed to the Complaints Receiving Officer (CRO). The CRO accepts requests by mail, facsimile, electronic mail, or by hand delivery to the CRO at ADB headquarters:

Complaints Receiving Officer  
Asian Development Bank  
6 ADB Avenue, Mandaluyong City  
1550 Metro Manila, Philippines  
amcro@adb.org  
Tel: + 63 2 632 4444  
Fax: + 63 2 636 2444

Complaints will also be accepted by any ADB office such as a resident mission, regional office, or representative office, which will forward them unopened to the CRO.