

THE ADB'S POLICY FRAMEWORK AND INDEPENDENT ACCOUNTABILITY MECHANISM

How Can You Hold the ADB Accountable?

The ADB has developed policies and strategies to guide its operations. ADB Board approved *policies* are translated into an *Operations Manual* by Bank staff which serves as a guide for staff on how to implement the policies. It is important for civil society to be aware of the Policies and Operations Manual because (1) they outline the rights that citizens have when ADB operates in their country, including the right to be informed, consulted, and provide their opinions and concerns about projects that may affect them, (2) they include provisions for protecting the environment, and (3) the ADB is obligated to comply with these policies during the preparation and implementation of all projects.

The ADB's Strategy and Policy Department (SPD) is responsible for overseeing the development of policies and guidelines at the ADB. The Regional and Sustainable Development Department (RSDD) is tasked with monitoring and ensuring ADB's compliance with its own policies and guidelines. Contact information for these departments is available in Appendix III of the Toolkits.

ADB Policies and the Operations Manual can be found on the ADB's website at:

- Policies: <http://www.adb.org/Development/policies.asp>
- Operations Manual: <http://www.adb.org/Documents/Manuals/Operations/default.asp?p=aadb>

Highlights of some key policies

POLICY/ APPROVAL DATE	KEY FEATURES	ADB CONTACT ¹
Safeguard Policies		
Environment Policy: November 2002 OM: October 2003	<ul style="list-style-type: none"> - Requires borrower to evaluate the environmental impacts of projects and identify mitigation measures - Requires that the public (especially project stakeholders) be involved in this evaluation process and in monitoring implementation of mitigation measures - Requires public disclosure of summary environmental impact assessments to the general public 120 days before the Board votes on a project. Full environmental impact assessments are released upon request. - Requires that project's potential for environmental impact be evaluated and mitigated² 	<p>Director, Environment and Social Safeguard Division, Regional and Sustainable Development Department (RSDD).</p> <p>Chief Compliance Officer, RSDD.</p>

POLICY/ APPROVAL DATE	KEY FEATURES	ADB CONTACT
Safeguard Policies		
Involuntary Resettlement Policy: August 1995 OM: October 2003	<ul style="list-style-type: none"> - Emphasizes that involuntary resettlement should be avoided where possible - Resettlement plans must be developed in consultation with affected people - Project-affected communities must be compensated - Affected people should be fully informed - Absence of legal land title should not be barrier to compensation - Affected communities must be at least as well off economically and socially after the project as they were prior to the project 	Chief Compliance Officer, RSDD.
Indigenous Peoples Policy: 1999 OM: May 2004	<ul style="list-style-type: none"> - Says that the Bank should engage with indigenous people directly - Initiatives should be conceived, planned, and implemented, to the maximum extent possible, with the informed consent of affected communities - Indigenous Peoples Plans must be developed - Effective approaches to sharing information with indigenous communities must be used (meaning use of culturally appropriate methods should be used) - In each Developing Member Country (DMC), ADB adopts the national classification of indigenous people as identified in national constitutions 	Director, Environment and Social Safeguard Division, RSDD. Chief Compliance Officer, RSDD.
Sector Policies		
Forestry ³ Policy: February 1995	<ul style="list-style-type: none"> - Prohibits ADB from funding projects that contribute significantly, directly or indirectly to deforestation or degradation and depletion of forests - EIA must be conducted of any project that may affect forests 	Unsure at this point Chief Compliance Officer, RSDD.
Other Key Policies		
Confidentiality and Disclosure of Information ⁴ Policy: August 1994 OM: October 2003	<ul style="list-style-type: none"> - Requires that project profiles be published - Responses to information requests must be provided in a timely fashion (generally within no longer than 22 days, with some additional time allowed for translation of requests) - Certain project documents are publicly available after Board approval - Summaries of environmental assessments available prior to loan approval 	Principal Director, Office of External Relations
Benefit Monitoring and Evaluation OM: January 1997	<ul style="list-style-type: none"> - Requires that benchmark information be prepared during feasibility study phase to serve as a basis for monitoring and evaluation, and to ensure that the project is responsive to the needs and interests of project beneficiaries - Requires that information be obtained about tribal minority groups and communities that may be displaced - Requires that information on the demographic, sociological and economic conditions of the communities that will be affected by the project be prepared 	Director, Operations Evaluation Department

POLICY/ APPROVAL DATE	KEY FEATURES	ADB CONTACT
Incorporation of Social Dimensions in Bank Operations ⁵ OM: January 1997	<ul style="list-style-type: none"> - Requires an Initial Social Assessment (ISA) for every project to identify the people who may be beneficially or adversely affected by the project - Requires a participatory development process - including participation in all stages of project design and implementation - States that the ADB will seek to provide social safety nets and compensation mechanisms, particularly for vulnerable groups that may be adversely affected by the project 	Chief Compliance Officer, RSDD.
Anticorruption Policy: June 1998 OM: October 2003	<ul style="list-style-type: none"> - ADB staff are required to report to the Office of the General Auditor for investigation of any allegations or evidence of corruption that they receive or encounter - Establishes a mechanism and procedures for investigating and taking action on allegations of corruption in Bank projects and programs - Protects the identity of those filing corruption complaints if they would like to remain anonymous - Requires ADB staff to assess corruption risks throughout entire range of ADB operations and in all stages of the project cycle - ADB blacklists firms found guilty of corruption, though this list is not made available to the public 	General Auditor
Gender and Development Policy: May 1998	Requires an initial poverty and social assessment (IPSA) be conducted as early as possible for all ADB loans and programs, of which gender analysis must be an essential component. This assessment requires participation of groups that stand to be affected by the project.	Director, Poverty Reduction and Social Development Division, RSDD
Poverty Reduction Policy: November 1999 OM: October 2003	<ul style="list-style-type: none"> - All ADB loans and technical assistance must be geared to contribute to the reduction of poverty - In selecting projects ADB must favor those that promise the biggest return in terms of poverty reduction 	Director, Poverty Reduction and Social Development Division, RSDD.
Economic Analysis of Projects OM: December 2003	<ul style="list-style-type: none"> - States that alternatives to proposed projects should be evaluated and considered, as well as what will happen without the proposed project - Reasons for selecting the ultimate design as opposed to other alternatives should be clearly explained - Staff must identify groups that are likely to gain or suffer as a result of the project, and identify the extent of this loss or gain 	Assistant Chief Economist, Economic Analysis and Operations Support, Economics and Research Department

In spite of this policy framework, problem projects are pervasive

Although the policies listed above are supposed to safeguard the environment and vulnerable communities from the negative impacts of ADB lending, environmental and/or social and economic harm resulting from ADB funded operations is widespread. Over the years, project specific campaigns conducted by both NGOs and affected communities have revealed a persistent failure on the part of

the ADB to enforce its own policies. NGOs involved in the campaign to reform the ADB attribute this failure to a pervasive emphasis on quantity versus quality of projects and programs within the Bank. Rather than being rewarded for strong policy compliance, staff promotions and evaluations at the ADB are heavily influenced by the amount of money that is “pushed out the door.” Staff failure to comply with these policies generally goes unpunished.

As a result, the policy framework alone does not provide guarantees against problem projects. However, having familiarity with these policies will allow CSOs to attribute problems with a particular project to the ADB's failure to comply with its own policies, thereby strengthening their case. When raising concerns about a project, whenever possible, CSOs should mention the policies they believe the ADB is violating and explain the problems that have resulted from this policy non-compliance. If you would like help in identifying potential policy violations, several of the organizations listed in Appendix VII can provide assistance.

Accountability Mechanism

The Accountability Mechanism (approved in 2003) is a tool available for communities adversely affected by ADB projects. Under international law the ADB, like other Multilateral Development Banks (MDBs), has immunity from any legal jurisdiction, meaning that no legal action can be taken in a court against the institution in any of its member countries. As a result, the Accountability Mechanism is the only institutional platform through which project-affected people can raise their concerns with the ADB and have them evaluated by an independent, impartial and neutral body.

The ADB's Accountability Mechanism consists of *two complementary functions*, a **consultation phase** and a **compliance review phase**. The consultation phase is intended to assist project-affected people with specific problems caused by ADB projects through a range of informal methods with the consent and participation of all parties involved. This phase is run by a Special Project Facilitator (SPF) who reports to the ADB President. The policy requires that all complaints must first be filed with this office. However, if the requesters feel that this process is not satisfactory, they can choose to have their case addressed by the Compliance Review Panel (CRP) after certain procedures have been completed.

The compliance review phase determines whether the ADB has violated any of its operational policies and procedures throughout the formulation, processing, or implementation of a project that directly, materially, and adversely affects local people. This phase is run by an independent three-person Compliance Review Panel (CRP) which reports to the ADB Board of Directors.

How to File a Claim: Office of the Special Project Facilitator⁶

In order to file a claim, complainants must first direct their request to the Office of the Special Project Facilitator.

No specific format is required as long as the request contains all the required information.

Who is eligible?

Complaints to the SPF can be filed by:

- (1) Any group of two or more people (such as an organization, an association or a group of individuals) who are being directly affected, or are likely to be affected, by an ADB-assisted public or private sector project located in their borrowing member country, or a member country adjacent to their country.
- (2) A local representative, such as a non-governmental organization (NGO), who files on behalf of a directly affected community, with proof that s/he has been authorized to do so by that community;
- (3) In exceptional cases where local representation is not available, such as in countries where local NGOs are not allowed to operate, or where there is a fear of government retaliation, a non-local representative can file on behalf of a directly affected community, with proof that s/he has been authorized to do so by that community. The SPF must agree to this representative.

Complaints can be filed on both pending projects and those that have already been approved. However, complaints cannot be filed about projects for which a project completion report has already been issued by the ADB; this generally happens between one to two years after the project is completed.

Complaints must be submitted in writing and be specifically addressed to the Special Project Facilitator. They can be sent by mail, facsimile, electronic mail, hand delivery to the SPF at ADB headquarters and to any ADB Resident Mission, representative office, or country office, which will forward the complaint unopened to the SPF. Complaints can be submitted in any of the official or national languages of the ADB's DMCs. Complainants can request that their identities be kept confidential. In such cases, their identities will be kept secret, even from other Bank staff. The SPF cannot accept anonymous complaints.

What must be said in a complaint to the SPF?

A complaint must include:

- (1) A statement that the complainant is, or is likely to be directly harmed by an ADB project.

- (2) A statement that the harm is, or will be, caused by the ADB's actions or omissions.
- (3) A description of the harmful effects.
- (4) The identity and contact information of the complainant, and if applicable, of any representative.
- (5) In cases where the complaint is filed by a representative on behalf of a community, proof of the representative's authority. The affected community can either sign the claim itself or provide written authorization designating their representative.
- (6) A brief description of the project, including the name and location if available.
- (7) The ways in which the complainant would like the ADB to help.
- (8) A description of steps taken by the affected community to raise their concerns with Bank Management.

If any of the above information cannot be provided, the complainant should explain why.

What happens after a complaint is filed with the SPF?

1. SPF Registers and Acknowledges the Complaint:

Once the SPF receives the complaint, s/he must let you know within 7 days, in writing, that s/he has received it. The complaint is also registered in the "Complaints Registry", sent to ADB Management, and posted on the SPF's website.

2. SPF Determines if the Complaint is Eligible

The SPF has 21 days from the time s/he receives the complaint to determine if it is eligible (based on the criteria listed above under "Who is Eligible?"). To determine eligibility, the SPF reviews project documents at ADB's headquarters and may also visit the project area and meet personally with the complainants. If the SPF finds the case is not eligible, s/he will inform the complainants in writing of the reasons why, and will also let the complainants know that they may file a complaint with the CRP.

3. SPF Reviews the Complaint and Proposes a Problem-Solving Method

If the SPF accepts the complaint, s/he will begin to thoroughly review the case by visiting the project site, interviewing all the parties involved (the complainants, the project's executing agency, the borrowing government and staff from ADB), and reviewing project documents. During this review the SPF will evaluate what

the problems are and will suggest ways in which the problems raised by the complainants can be addressed.⁷ S/he will put her/his findings and recommendations into a report which is sent to the complainants, the relevant ADB operations department, and ADB's President.

At this point the complainants have seven days to decide on the two options. If they are unhappy with the SPF's recommendation, they can step away from the consultation process and file a complaint with the CRP. If they are happy with the SPF's proposed course of action, they can continue with the consultation phase.

4. Complainants and ADB staff comment on SPF's proposal; SPF submits final proposal to ADB President for Approval

If the complainants decide to continue with the consultation phase, both the complainants and the ADB operations department have 14 days to provide comments to the SPF's proposal. The SPF then takes into account their comments while preparing a final proposal, which s/he then sends to the President of the ADB for approval. If the President approves, implementation of the SPF's proposal begins.

5. Implementation of Problem-Solving Method

During implementation of the SPF's proposal, the complainants are free to walk away from the process at any time if they are not satisfied with how things are going, and they can file a complaint with the CRP. It is important to note that any of the other parties involved in the negotiation, with the exception of the SPF, can also walk away from the process at anytime if they are not satisfied.

When implementation of the problem-solving method is complete, the SPF writes a draft report explaining whether the consultation phase was successful, what agreements were reached (if any), including any remedial actions, and makes a recommendation. The SPF submits this report to the President who makes the final decision about what remedial actions will be implemented. A report with the President's final decision is sent to the complainants and the other parties involved.

Filing a Claim with the Compliance Review Panel

Who is eligible?

Anyone who meets the eligibility requirements for filing a claim with the SPF, and has done so, is eligible to file a claim with the CRP. A requester will be informed of

the final ADB decision on his/her request at least 128 days⁸ after the complainant was registered at the ADB.

If the SPF has already found the case to be eligible, the CRP determines whether the harm caused is a result of any ADB violation of its policies and operational procedures. If the SPF has found the case to be ineligible, the CRP determines independently whether in its judgment the request for compliance review meets the CRP's eligibility criteria.

Why should a claim be filed with the CRP if it has already been filed with the SPF?

Complainants may want to file a claim with the CRP if one of the following things were to occur during the SPF process:

- The SPF finds the complaint to be ineligible
- The complainant is not satisfied with the SPF's assessment of the case and the proposed problem-solving method
- If during the time in which the problem-solving method is being carried out, the complainant is not satisfied with its results, and wishes to walk away from the consultation phase
- If during the time in which the problem-solving method is being carried out, the complainant is satisfied with the results, but believes there are serious ADB policy violations that should be addressed, the complainant can file a claim with the CRP while continuing to participate in the problem-solving method.

What must be said in a complaint to the CRP?

A complaint to the CRP should include the same information that would be submitted in a claim to the SPF. Although complainants are not required to cite specific policies which they believe the ADB has not complied with, they may choose to do so.⁹

What happens after a complaint is filed with the CRP?

1: CRP receives and Files Request

Complainants file a request at the OCRP after first having undergone the "consultation phase" with the SPF. Complainants can refer cases to the CRP at Step 3 of the SPF process (if the SPF finds the complaint ineligible) or at step 5 (if the complainant finds the

SPC process not meaningful).

2. CRP Registers and Acknowledges Complaint

The CRP will register a complaint within 7 days of receiving it. It will also register it on the ADB's website, inform the Board, and issue a press release acknowledging receipt of a complaint.

3. Eligibility of Complaint is Determined

The CRP determines eligibility 14 days after the registration of the complaint. However, if the request was initially deemed ineligible by the SPF, then the CRP will determine eligibility within 21 days. In the event the requester does not mention any specific policy violations in the complaint, the CRP will determine these as well. The CRP may consult all stakeholders to assist it in determining eligibility, and may also conduct a site visit.

4. Authorization of the Board to conduct Compliance Review

The Board responds on a "no-objection" basis to the CRP report on a particular complaint within 21 days of having received it. Within 7 days of the Board report, the CRP will inform the requester of the Board's decision on authorization and the decision will also be posted on the ADB website.

5. Conducting the Compliance Review

The CRP's review is not time bound. The Terms of Reference of a review and its proposed timeframe have to be "cleared" with the Board Compliance Review Committee (BCRC) and will be publicly posted within 14 days of the Board authorization (mentioned in step 4). All stakeholders will be consulted by the CRP during this period and the CRP will review all background documentation and may also conduct a site visit provided consent of the country concerned (or the private sector sponsor) has already been obtained.

6. CRP Draft Report Issued

The draft report of CRP's findings is shared with ADB Management and the requester once the CRP has completed its review.

7. Response to Draft Report by Management and Requester

The inspection requester (complainant) and ADB Management have 30 days to comment on the CRP's draft report from the day they receive it. The decision to incorporate views rests with the CRP.

8. Final Report of the CRP

Within 14 days of receiving responses from requesters and Management and having incorporated changes as necessary, the CRP issues its final report to the Board. The final report will contain findings of the CRP investigation and recommendations to ensure the project is brought into compliance with ADB policies. If required, the CRP can also propose changes in the scope of the project. The comments of the Management and requesters submitted earlier will be attached to the final report. The final report will not be shared with Management or requesters.

9. Board Decides on CRP Recommendations

The Board will issue its final decision on the recommendations proposed by the CRP (regarding mitigation of harm or how to bring the project into compliance) within 21 days of receiving the CRP's final report. The requester will receive the Board decision, the CRP final report, and all responses within 7 days of the Board decision. This will also be posted on the ADB website.

10. Monitoring of Recommendations

The CRP will monitor the implementation of the Board's recommendations regarding remedial measures and will report against these to the Board on an annual basis.¹⁰ A participatory approach will be taken during the monitoring stage and all stakeholders will be consulted to determine progress on implementation. Site visits may also be conducted.

What is the Board Compliance Review Committee (BCRC)?

The BCRC is a sub-committee of the ADB Board of Directors. It is required to (i), clear the draft Terms of Reference and Timeframe of a particular complaint as proposed by the CRP, and (ii) review the CRP's draft monitoring reports before these are finalized and forwarded to the full Board. The BCRC is composed of 6 Board members; four are EDs from regional countries (at least three must be from borrowing countries) and two from non-regional countries.

Are there any restrictions to the Accountability Mechanism?

The Accountability Mechanism does not deal with complaints that are:

- About actions that are not related to something the ADB did or was supposed to have done
- About decisions made by the ADB, or the borrower, on procurement of goods and services, including consulting services
- About allegations of fraud or corruption (as these are addressed by the Anticorruption Unit)
- About a project for which a project completion report (PCR) has been done (generally 1 – 2 years after the project has been completed)
- About a complaint already considered by the new Accountability Mechanism or by the previous Inspection Function, unless there is new evidence presented that was not known at the time of the original complaint
- About the adequacy or suitability of ADB's existing policies and procedures
- Frivolous, malicious, trivial, or generated to gain competitive advantage
- About a matter within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or related to ADB personnel matters
- About ADB's non-operational housekeeping matters, such as finance and administration.

Possible Limitations of the Accountability Mechanism

Established in 2003, the Accountability Mechanism has only been in effect for a short time, so it is difficult to predict how effective it will be in addressing the concerns of project-affected communities. However, we can speculate on what the potential limitations will be based on the mechanisms, procedures and the experiences of past inspection cases at the ADB, the World Bank and other MDBs.

It is important to remember that the mandate of the Accountability Mechanism is limited only to the investigation of violations of ADB policies. It cannot judge whether a borrowing government fulfilled its obligations under the loan contract. Also, SPF and the CRP can only make recommendations to the ADB President and Board of Executive Directors, respectively, about what should be done to address a project's problems. Only the President can make a final decision about a course of action recommended by the SPF, and only the Board of Executive Directors can make a final decision about policy violations and remedial measures identified by the CRP. Groups

filing complaints with the Accountability Mechanism therefore have no guarantee that they will be compensated for harm suffered, or that a destructive project will be stopped, as a result of going through this process, even if the SPF's and/or CRP's findings are in their favor. The outcome of a complaint can thus never be certain.

Similarly, implementation of remedial measures is the responsibility of borrowing governments. Thus complainants and the affected community must put sufficient pressure on their government in order to ensure the government implements remedial measures. Site visits by the SPF and/or CRP are also not guaranteed in the new Accountability Mechanism; prior permission must be obtained by the ADB from the borrowing government concerned before a visit can be conducted.

What else can you do once you have filed a complaint?

It is useful to think of using the Accountability Mechanism as just one institution in the effort to seek redress for harm that a project may have caused. Other institutions, such as one's own government (the different levels of it, and different functions of the legislative, executive and judicial branches), the press/media, and national and international civil society should also be used strategically during the overall accountability effort. Alliances can be built with relevant organizations and institutions which can then be used at the right moment to enhance the weight of one's argument.

Why do some people choose not to file a complaint?''

It is important to consider what the implications of filing a complaint at the ADB may be. Preparation of a complaint, and the accompanying mobilization (of the affected community, other civil society actors) and the constant monitoring and information sharing that is required to successfully engage in the process, can be time consuming. Thus judging how much time such an effort might take, and then preparing for it, is always a useful exercise

to undertake prior to filing a case.

Also, the issue of possible retaliation (physical or otherwise) must also be considered. For instance, there could be some individuals and/or institutions that may not be happy if a particular project is singled out for greater oversight and scrutiny. Thus the risk of retaliation must be understood and mitigated against. The ADB does allow for submission of anonymous complaints but it may still be possible to determine or guess the complainant's identity.

Taken together, conducting a cost-benefit analysis of filing a complaint is always a useful exercise. It would allow one to see if spending the time, effort, resources and dealing with possible risks of retaliation is worthwhile. The use of other strategies, in coordination with an inspection case or independently, should also be considered to see if the Accountability Mechanism can be part of a broader strategy.

Contact information for ADB Accountability Mechanism

1. Office of the Special Project Facilitator (OSPF)
Special Project Facilitator
Asian Development Bank
6 ADB Avenue
Mandaluyong City
0401 Metro Manila, Philippines

Tel: (63-2) 632-4825
Fax: (63-2) 636-2490
Email: spf@adb.org

2. Office of the Compliance Review Panel (OCRP)
Secretary, Compliance Review Panel
Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Philippines
Tel: +632 632 4149
Fax: +632 636 2088
Email: crp@adb.org

Endnotes

¹ For the names and contact information of the officers that currently hold these titles see Appendix III.

² The policy requires that projects be categorized as “A” if they could have significant adverse environmental impacts, and that an Environmental Impact Assessment (EIA) be conducted. Projects are categorized as “B” if they could have some adverse environmental impacts, but of lesser degree than category “A” projects. An initial environmental examination (IEE) is required to determine whether significant environmental impacts warranting an EIA are likely. If an EIA is not needed, the IEE is regarded as the final environmental assessment report. For more information on these and other categorizations see OM on Environmental Considerations in ADB operations (http://www.adb.org/Documents/Manuals/Operations/OMF01_29oct03.pdf).

³ This policy will be under review until the end of 2004. An OM has never been issued for the 1995 policy.

⁴ Based on the 1994 policy; this policy will be in effect until March 2005 when it will be replaced by a new Public Communications Policy (PCP).

⁵ An updated OM is under preparation.

⁶ See also ADB Document “A Guide to the Consultation Phase of the ADB Accountability Mechanism” at

http://www.adb.org/SPF/Documents/Guide_consul_phase.pdf and http://www.adb.org/SPF/Documents/OSPF_flyer.pdf

⁷ This can include facilitating dialogue between all the parties involved until a solution agreed upon by all can be reached, or proposing a mediation process.

⁸ “Days” mentioned in Accountability Mechanism are calendar days.

⁹ ADB’s operational policies and procedures that apply to the project under compliance review will be (i) in the case of a proposed project, those that were in effect when the complaint was filed with the SPF; and (ii) in the case of an ongoing project, those that were in effect at the time of Board approval with respect to the formulation or processing of the project, and those that were in effect when ADB’s alleged act or omission took place with respect to the implementation of the project. A “proposed project” refers to a project under preparation that has not yet been approved by the Board of Directors or the President (as delegated by the Board), and an “ongoing project” refers to a project that has been approved by the Board of Directors or the President (as delegated by the Board) and is being implemented.

¹⁰ The Board can also propose a different monitoring timetable if required.

¹¹ This section borrows heavily from the “*Strategic Guide: Strategic Tips for filing complaints with international financial institutions*” prepared by Friends of the Earth-International and International Accountability Project, 2004. This guide is available at: http://www.foei.org/publications/pdfs/strategic_guide.pdf