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INSIDE

FUDGED FIGURES, GAS, AND DEBT: DIGGING INTO MDBS' "CLIMATE FINANCE"

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*** This is an updated and revised version of an opinion piece, originally published in African Arguments on 14 November 2024.***

In the first week of the COP29 climate talks in November 2024, the multilateral development banks (MDBs) announced a big commitment to increase their climate finance contributions for low- and middle-income countries to $120 billion by 2030. The MDBs, including the Asian Development Bank (ADB) and the Asian Infrastructure Investment Bank (AIIB), claimed to "drive transformative change" in global climate action. Side events, panels, and press releases all celebrated their achievements in aligning their activities with the Paris Agreement and delivering climate finance at apparently record levels – $125 billion in 2023.

But before they scale-up the quantity, the banks need to reassess the quality. A new report by Recourse, supported by 18 organisations and networks, tells a very different story – and raises critical questions about what "climate finance" actually is in the eyes of the MDBs. The report scrutinised the MDBs' own figures and found a plethora of problems. One of these is a lack of transparency on what is being counted. For example, Oxfam could not verify 40% – that's $7 billion – of what the World Bank claimed as climate finance for one fiscal year. The AIIB declared that they reached their target for 50% of their financing approvals to be for climate finance in 2022, three years early to their 2025 deadline, but failed to make the relevant data public.

The funding is also not flowing to where it is most needed. Almost half of all MDB climate finance for 2023 did not go to the world's most climate vulnerable countries. Instead, it went to Europe. Sub-Saharan Africa received a fraction – just 14% – and Asia little more – 21%. And despite public finance's particularly important role in supporting efforts to adapt to climate change impacts, almost 80% of MDB climate finance went to climate mitigation.

The financing models are equally concerning. Climate Action Network (CAN) International, a network of over 1,900 civil society organisations, calls for climate finance to be delivered as grants, yet just 4% of MDB climate finance in 2023 came in this form. 70% took the form of loans. The ADB reported an even higher level of loans at 96%, while the AIIB has no proper grant function at all. Disturbingly, this means that climate finance is worsening the debt crisis in many countries and further undermining countries' ability to deal with climate change.

Besides these critical issues lie a more fundamental problem – the fact there is no agreed definition of what "climate finance" is in practice. In this void, the MDBs have come up with their own principles for what type of projects count as climate finance, but with

MDB leaders at a joint event entitled "Available, Accessible and Affordable: Towards a Climate Finance Architecture that Delivers for All" at COP28 in Dubai, 4 December 2024. Photo by Fran Witt/Recourse.

some significant flaws. The only kinds of projects that are fully excluded are coal and peat projects, as well as those leading to deforestation. However, many other initiatives are allowed to be counted as climate finance, subject to some restrictions. This includes false solutions like carbon capture and storage, which is costly and not proven to work at scale, and highly polluting and greenhouse gas intensive waste-to-energy (WTE) incineration projects.

Another problem is that part of a project can be counted as climate finance, even when the rest of the project is highly greenhouse gas intensive. When scrutinising the MDBs' publicly available documentation, there are some surprising and concerning finds. The AIIB, for example, counted almost half of its $153 million funding for an airport expansion project in Turkey as climate finance, disregarding the fact it will double the airport's capacity – and in turn, more than double its emissions. The same bank also counted part of a greenfield gas power plant set to run for at least 22 years as climate finance – despite the long-term carbon lock-in that it represents for Bangladesh, one of the world's most climate-vulnerable countries. There is even evidence an MDB counted funding of a mega LNG project in East Africa as climate finance, according to OECD.

But the Paris Agreement isn't just about greenhouse gas emissions and environmental destruction – it also calls for human rights obligations to be respected and promoted. Yet the MDB principles for climate finance are void of any requirement to protect and support those most vulnerable, including women and girls. They are completely gender blind. According to the MDBs, they rely instead on their own policies, which differ across the banks. But there is a wide range of evidence showing how these are lacking in numerous respects. For example, the AIIB and the ADB counted their investments in a hydroprower project in Nepal that has severely marginalised and displaced local Indigenous peoples, with women worst impacted, as 100% climate finance. In Mongolia, civil society is protesting a "climate smart" mining project, also counted as 100% climate finance by the ADB, due to the high risks to local communities, including Indigenous peoples.

As the outcome of COP29 emerged in the small hours of Sunday 24 November, it was clear that calls for trillions of dollars in grants was not to be agreed on. Far from this, an inadequate goal of just $300 billion by 2035 was pushed through, relying on multiple financing sources including a substantial role for the MDBs. The increased dependence on MDBs to deliver climate finance is a diversion that will enable private sector profit-making out of the climate crisis and allow developed countries to dodge accountability. Climate finance should prioritise vulnerable groups, such as farmers, workers, women, Indigenous peoples, and the most marginalised communities in developing countries. But until the MDBs reform for the better and start to genuinely address the climate challenge rather than fudging the figures, this outcome is set to hinder rather than help progress towards the Paris Agreement's goals. It risks taking climate finance even further away from the people who need it the most.

AIIB'S QUIET TIES TO CONTROVERSIAL BHOLA IPP GAS PLANT RAISE ACCOUNTABILITY QUESTIONS

Urgewald

The 220 MW Bhola IPP gas-fired power station in Bangladesh's Bhola district represents both development and controversy. Initially sponsored in 2018 with a $60 million loan from the Asian Infrastructure Investment Bank (AIIB) and an equal contribution from the Islamic Development Bank, the project promised energy solutions but has since left a trail of complaints. Allegations of forceful land acquisition, environmental deterioration, and a lack of significant community consultation have dogged the project.

Despite mounting evidence and formal complaints submitted by advocacy groups like CLEAN and the NGO Forum on ADB, the AIIB dismissed their concerns in April 2022, citing insufficient engagement with its management. Soon after, the bank abruptly withdrew from the project, offering no plan to address the unresolved issues it left behind.

The Discreet Exit That Wasn't
The AIIB's exit from Bhola IPP was far from final. Following its withdrawal, the project ownership underwent significant changes. The original owner, Shapoorji, divested its 49% stake, which was acquired by Actis through its Energy Fund 5. By mid-2022, Actis transferred control of its stake to Bridgin Power, a subsidiary established to manage the investment.

Despite its apparent withdrawal, the AIIB has approved a $100 million investment in Actis for the end of 2023. This investment raised suspicions that the bank was indirectly backing Bhola IPP through its financial ties to Actis. Furthermore, in July 2023, the AIIB allocated $80 million to its BIC IV capital market project, which is managed by Bayfront Capital and in which the bank owns 30%. Bayfront's portfolio includes a $14.3 million stake in Nutan Bidyut (Bangladesh) Ltd, which operates Bhola IPP.

Accountability Through Intermediaries
Critics argue that the AIIB's funding practices obscure its accountability. By routing investments through intermediaries like Actis and Bayfront Capital, the bank continues to be financially tied to Bhola IPP while avoiding direct responsibility for the project's adverse impacts.

"The AIIB's withdrawal from Bhola IPP was neither a responsible exit nor a true disengagement," says a representative from the NGO Forum on ADB. "The bank's continued indirect funding disregards the damage already caused to local communities and fails to uphold the environmental and social standards it professes to champion."

The AIIB has defended its actions by stating that its responsibilities ended once the initial funding was disbursed and ownership of the project changed. However, this rationale fails to account for the lingering harm to local agriculture and livelihoods, as well as the unresolved grievances of affected communities.

A Broader Problem
The Bhola IPP case demonstrates systemic concerns with the way multilateral development banks use financial intermediaries. While these frameworks are flexible, they frequently lack transparency, allowing institutions to avoid responsibility for the real-world consequences of their investments.

For the communities impacted by the Bhola IPP, the story is one of betrayal. Promised growth has been at the expense of their land, ecology, and way of life. For campaigners, the case highlights the critical need for stronger supervision and genuine accountability in foreign finance.

As the AIIB expands its reach, it faces growing calls to ensure its funding practices align with its stated commitments to environmental and social responsibility. Until then, projects like Bhola IPP will continue to serve as cautionary tales about the hidden costs of development.

This article is based on information from Urgewald's AIIB & Bhola IPP Briefing (August 2024), available at Urgewald's website.

GROWING CONCERNS OVER LAND GRABBING, ENVIRONMENTAL DAMAGE, AND HUMAN RIGHTS VIOLATIONS IN THE MANDALIKA PROJECT

Dwi Sawung, Wahana Lingkungan Indonesia (Walhi)
Jen Derillo, NGO Forum on ADB

The Mandalika Project, a large development effort on Indonesia's Lombok Island, has continued to draw widespread criticism for its controversial impact on local communities and the environment. Initially planned in the 1980s, the project stagnated for decades until it gained momentum in 2014, when the Indonesian government revived its plans and secured financing from the Asian Infrastructure Investment Bank (AIIB) in 2018. Since then, it has faced claims of land grabs, forced evictions, environmental degradation, and human rights breaches.

One of the main concerns surrounding the Mandalika Project is the rapid and aggressive land grab that has taken place since the government's renewed commitment to the development. Affected communities have reported that many families were forcibly evicted from their homes, often without compensation or due process. This trend is reflective of broader issues within development projects that prioritize economic growth and infrastructure development over the needs and rights of local communities.

The involvement of the AIIB in the project has further fueled these concerns. The bank backed the Indonesia Tourism Development Corporation (ITDC), which has been accused of coercing villagers to leave their land to facilitate construction efforts. The AIIB's backing of such a project raises critical questions about the role of international financial institutions (IFIs) in promoting sustainable development, as its focus on rapid expansion often appears to overshadow human rights protections. By prioritizing financial gain, the AIIB risks exacerbating existing inequities and disenfranchising vulnerable groups.

The Mandalika Project highlights a critical flaw in the approach of IFIs like the AIIB: the lack of proper environmental and social safeguards. When development finance focuses on short-term economic objectives, it can have long-term negative consequences for local communities and ecosystems. This issue raises an important question about the AIIB's accountability—whether it is sufficiently scrutinizing the projects it finances or whether it is complicit in violations of human rights and environmental degradation. As the Mandalika Project continues, there is an urgent need for reform in development financing, with greater attention given to human rights and environmental factors.

Affected communities have voiced their demands for justice, including calls for fair compensation for land, rectification of erroneous payments, and proper resettlement for those forcibly displaced. These demands highlight the critical importance of respecting land rights, especially in an area where local livelihoods are closely tied to the land.

Environmental concerns have also been raised by organizations such as WALHI (Friends of the Earth Indonesia). They have warned of the Mandalika Project's potential to cause environmental harm, including increased flooding and landslides, as a result of disrupted natural landscapes. WALHI has urged the AIIB to freeze loan payments until a comprehensive environmental study is conducted and the socio-economic consequences for affected areas are addressed. This request underscores the need for thorough environmental impact assessments and meaningful community engagement before large-scale development projects move forward. Failing to address these issues can lead to irreversible damage to ecosystems and local livelihoods.

Adding to the urgency of the situation, the Indonesian government has yet to pay the licensing fees for the upcoming MotoGP race, scheduled for the end of September 2024. This delay has created uncertainty surrounding the event, which may have a more significant impact on the already affected local communities. If the race is canceled, it could signal a larger failure in the government's project planning and implementation, calling into question the long-term viability of the Mandalika Project. The MotoGP event was expected to serve as a major draw and boost for regional economic growth, but its likely cancellation raises doubts about the project's ability to deliver on its promises to the local population.

These developments also highlight the disconnect between high-profile development projects and the realities of local communities. The government's failure to handle immediate financial and operational issues while protecting the rights and livelihoods of local populations demonstrates the need for a more transparent and accountable approach to such projects.

The latest updates on the Mandalika Project further underscore the growing pressure on the AIIB and other stakeholders to reconsider their involvement in such initiatives. In September 2024, UN experts raised alarm over the potential irreparable harm to Indigenous peoples' rights, emphasizing the need for urgent action to safeguard affected communities (OHCHR, 2024). Meanwhile, environmental organizations have raised concerns about the project's impact on the local ecosystem, with WALHI calling for a halt to AIIB financing until further studies are conducted (Mongabay, 2023).

As the AIIB continues to invest in the Mandalika Project through intermediaries, critics argue that this practice not only obscures the bank's involvement but also undermines its commitment to high environmental and social standards. The situation calls into question the transparency and ethical standards of international financial institutions and their responsibility for the outcomes of the projects they finance.

Moving forward, it is clear that the Mandalika Project represents a significant challenge for both the Indonesian government and the AIIB. If the project is to be truly sustainable, it is essential for the AIIB to take responsibility for its investments, ensure stricter safeguards, and work with affected communities to achieve a fair and equitable resolution. The lessons learned from this project should serve as a crucial guide for future development efforts, ensuring that they benefit all stakeholders, rather than prioritize financial gains at the expense of human rights and environmental integrity.

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Sirkuit Mandalika (Mandalika MotoGP Circuit) entrance gate.
Photo by Indra Saputra Ahmadi

MAJOR SHAKE-UP IN CHINA'S FINANCIAL REGULATION REQUIRES ADVOCACY SHIFT

Urgewald

Significant changes to China's financial regulatory system happened with implications for our advocacy work, according to updates released after the publication of Who is Who No. 3: Chinese Commercial Banks - An NGO Guide in 2023. These measures, announced in March 2023 by the Central Committee of the Communist Party of China (CCP) and the State Council, aim to tighten financial governance over the following decade, but they also represent a significant shift in how and where lobbying efforts must be directed.

The overhaul centers on consolidating financial oversight under CCP leadership. Key changes include the reinstatement of the Central Financial Work Commission (CFWC), the establishment of the National Financial Regulatory Authority (NFRA), and the abolition of the Financial Stability and Development Commission. Previously, China's financial system was primary regulated by four main bodies: the People's Bank of China (PBoC), the China Banking and Insurance Regulatory Commission (CBIRC), the Financial Stability and Development Commission, and the China Securities Regulatory Commission (CSRC). The new structure substantially diminishes the roles of the PBoC and CBIRC, while boosting Party oversight through the CFWC and NFRA.

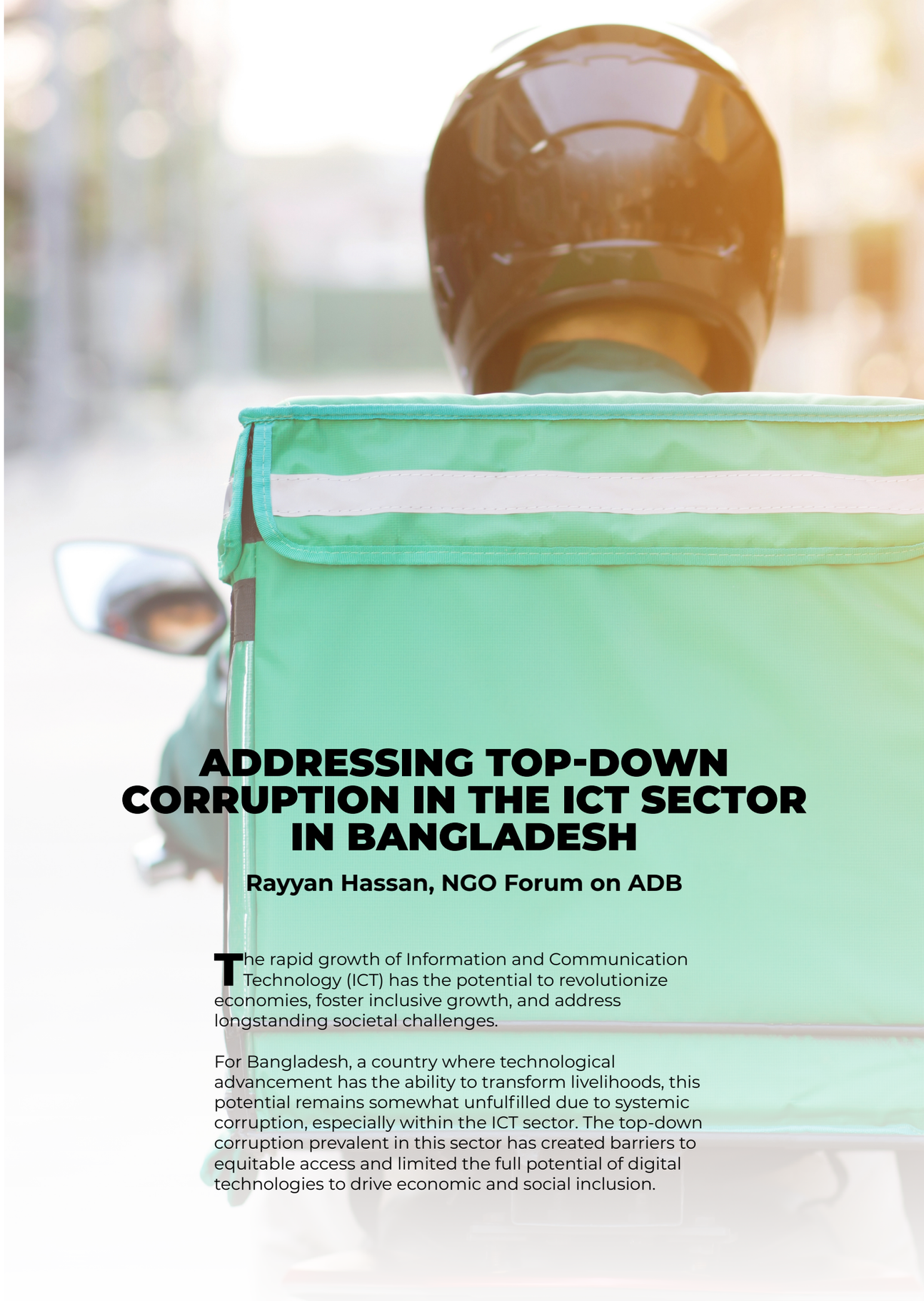
The CFWC, which was last active between 1998 and 2003, has been revived and is now led by Vice Premier He Lifeng, a member of the CCP's influential Politburo Standing Committee. The panel will oversee the Party's ideological and political role in the financial industry, consolidating power at the highest levels. Meanwhile, the NFRA has taken over the obligations of the defunct CBIRC as well as portions of the PBoC's functions. The NFRA, which reports directly to the State Council, now oversees the majority of the financial industry (excluding securities) and is managed by Li Yunze.

The PBoC, once a key regulator, has also undergone significant restructuring. Its nine regional branches have been replaced by 31 provincial and five city-level branches, while county-level branches have been eliminated. The CSRC, in contrast, has seen its role expanded, taking on responsibility for enterprise bond issuance in addition to its duties as the capital market regulator.

For advocacy groups, these changes require a rethinking of strategy. The PBoC and CBIRC, once critical for advocacy efforts, are no longer primary points of engagement. Instead, attention must shift to the newly influential CFWC and NFRA. The CSRC, with its expanded responsibilities, also presents new opportunities for advocacy related to securities and bond issuance.

These structural reforms reflect the CCP's drive to centralize control over financial regulation, aligning it more closely with Party objectives. Advocacy organizations must now navigate a landscape where political and ideological considerations play an even greater role in shaping financial policy. Understanding this new regulatory architecture will be essential for effective engagement in China's financial sector.

This article draws on information from the supplement to Who is Who No. 3: Chinese Commercial Banks – An NGO Guide (2023), published by Urgewald. The full supplement is available at Urgewald's website.



ADDRESSING TOP-DOWN CORRUPTION IN THE ICT SECTOR IN BANGLADESH

Rayyan Hassan, NGO Forum on ADB

The rapid growth of Information and Communication Technology (ICT) has the potential to revolutionize economies, foster inclusive growth, and address longstanding societal challenges.

For Bangladesh, a country where technological advancement has the ability to transform livelihoods, this potential remains somewhat unfulfilled due to systemic corruption, especially within the ICT sector. The top-down corruption prevalent in this sector has created barriers to equitable access and limited the full potential of digital technologies to drive economic and social inclusion.

The political economy of corruption in Bangladesh's ICT sector

Corruption in Bangladesh's ICT sector can be characterized by the intersection of political influence, patronage networks, and inefficiencies in regulatory frameworks. Political economy theory suggests that corruption, particularly in developing countries, often stems from the interaction between political elites and economic interests, where state resources are manipulated for personal or group gains. In Bangladesh, this is evident in the manipulation of public procurement processes, the lack of transparency in government initiatives, and favouritism in awarding contracts to politically connected firms.

The ICT sector, like many others in Bangladesh, has been vulnerable to this form of corruption due to its rapid growth, the influx of foreign investment, and the importance of technology in both governance and business.

An example of this is the procurement of software, hardware, and telecommunications services, where firms with political connections often receive lucrative contracts regardless of their efficiency or the quality of their offerings. For instance, the National ID card project, which relies heavily on ICT infrastructure, has been marred by allegations of overpricing, delays, and involvement of politically influential contractors. Similarly, the allocation of spectrum licenses for mobile networks and broadband services has raised concerns about the lack of competitive bidding, as well as the influence of political elites in decision-making.

Moreover, Bangladesh's regulatory environment exacerbates this corruption by failing to create an accountable and transparent framework. The Bangladesh Telecommunication Regulatory Commission (BTRC) has faced criticism for its opaque decision-making processes and inability to enforce regulations that ensure fair competition and market entry. This has led to a concentration of market power in the hands of a few large players, stifling innovation and hindering small and medium-sized enterprises (SMEs) from participating in the digital economy.

Top-down corruption: Implications for the digital divide

The consequences of top-down corruption in Bangladesh's ICT sector are far-reaching. Firstly, it has perpetuated the digital divide by limiting access to ICT resources for underserved communities. As corruption channels resources away from public initiatives aimed at expanding internet access and digital infrastructure, rural and marginalized populations continue to face significant barriers to digital inclusion.

In a country where 60% of the population resides in rural areas, the failure to prioritize equitable ICT distribution is a critical issue. For example, the rollout of high-speed internet in rural areas has been sluggish due to corrupt practices that prioritize urban-centric projects, often benefiting the wealthier segments of society. In addition, public-private partnerships (PPPs) that could potentially bridge this gap often fail to materialize or are mismanaged due to lack of proper oversight and accountability. The limited access to digital technologies in these areas hampers economic growth, educational opportunities, and access to health services, all of which increasingly rely on digital platforms.

Furthermore, the concentration of market power within the hands of a few large ICT companies, often linked to political elites, leads to higher prices for digital services, which disproportionately affects lower-income households. This dynamic exacerbates income inequality and limits the broader societal benefits of ICT, such as the opportunity for digital entrepreneurship and e-commerce, which could provide new avenues for economic mobility.

Bridging the digital divide: Policy recommendations for 2025 and beyond

As Bangladesh moves toward 2025 and beyond, addressing the top-down corruption within the ICT sector is crucial to ensuring equitable access to digital technologies. The following policy recommendations aim to address the structural factors contributing to corruption and promote digital inclusion across the country.

- **Strengthening governance and transparency in ICT procurement**

A key step in addressing corruption is improving governance and transparency in public procurement processes. To ensure that contracts for ICT infrastructure are awarded based on merit and efficiency, Bangladesh should implement more stringent auditing and oversight mechanisms. The government could establish independent procurement bodies with the power to review and monitor contracts for transparency. Digital platforms that provide public access to procurement data could further enhance transparency and reduce opportunities for corruption.

- **Decentralizing ICT policy and infrastructure development**

To avoid the concentration of ICT resources in urban areas, Bangladesh should focus on decentralizing its digital infrastructure development. The government could incentivise local governments to spearhead initiatives that expand broadband access in rural and underserved regions. Additionally, the establishment of community-driven digital hubs could empower local communities and facilitate grassroots digital literacy programs, ensuring that

the benefits of ICT reach beyond urban centers.

- **Promoting inclusive public-private partnerships (PPPs)**

PPP models that are focused on inclusion and accountability can play a critical role in expanding access to digital technologies. However, these partnerships must be reformed to prioritize public interest and reduce political influence. Transparent, competitive bidding processes should be enforced, and a greater focus should be placed on the social impact of PPP projects, ensuring that initiatives in rural and underserved areas are not neglected.

- **Enhancing digital literacy and capacity building**

Bridging the digital divide in Bangladesh requires not just infrastructure but also human capital. The government should invest in large-scale digital literacy programs that target both rural populations and women, who often face greater barriers to ICT access. Capacity-building programs should focus on equipping citizens with the necessary skills to navigate the digital economy, such as coding, e-commerce, and digital marketing.

- **Strengthening regulation and competition in the ICT sector**

In order to create a more competitive and inclusive digital market, Bangladesh should enhance its regulatory framework. The BTRC and other regulatory bodies should be empowered to enforce fair competition laws and prevent monopolistic practices. Measures to encourage market entry for SMEs, especially those run by women and marginalized groups, should be prioritized to foster a more diverse digital economy.

The digital divide in Bangladesh remains a pressing challenge, one that is exacerbated by top-down corruption in the ICT sector. However, with the right policies and reforms, Bangladesh has the potential to bridge this divide and ensure that ICT serves as a tool for inclusive development. By addressing corruption, improving governance, decentralizing digital infrastructure, and promoting inclusive public-private partnerships, Bangladesh can create a more equitable digital landscape in 2025 and beyond. In doing so, the country will not only unlock the full potential of its ICT sector but also contribute to the broader goal of sustainable and inclusive economic growth.

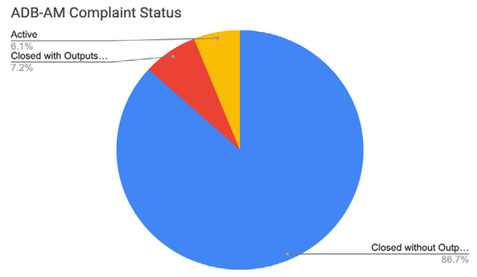
THE ADB'S ACCOUNTABILITY MECHANISM: AN UPHILL BATTLE FOR COMMUNITIES

Ishita Chakrabarty, Accountability Counsel

When the Asian Development Bank (ADB) emerged in the 1960s, the premise was that developing countries' priorities, especially in the Asia-Pacific region which was then amongst the world's poorest, required moving away from Western-dominated financial institutions and establishment of a regional bank. Proponents of this new bank believed that it could supplement the Bretton Woods Institutions, which were mired in controversies around governance and voting rights. By 2024, ADB has grown to become the largest Multilateral Development Bank (MDB) in the region in terms of project numbers, overtaking its counterparts, the International Finance Corporation and World Bank (which are placed at a distant second and third respectively) and finally, the Netherlands Development Finance Company (FMO). Since its inception, ADB has admittedly done some things differently - including consolidating its capital base to ensure larger financial capacities*, promising to address not simply economic growth but also inequalities, centering gender in its workstream and as an operational priority, and more recently, even taking on the mantle of being "Asia-Pacific's climate bank", committing to increase its financial capacities and disbursements specifically for climate finance purposes. From January 2016 to October 2024 (our period of analysis), ADB investments in the South Asian region** stood at a ball-park figure of USD 63 billion. ADB had invested in or approved investments for close to 834 projects during this time (projects approved, active, closed, and completed), of which some were transboundary infrastructure projects.

Background

Despite its vision however, ADB has consistently shown that it is not very different from its contemporaries, both, in terms of its governance and decision-making processes, and also in its operations and project implementation. In South Asia specifically, ADB invested in 834 projects (excluding proposed and cancelled projects). Between the same time (2016-2024), ADB received over 180 complaints to its Accountability Mechanism (AM) from the region, also the highest amongst the MDBs [1]. The Accountability Console, a database that tracks complaints to MDB accountability mechanisms from across the globe, found that most of the ADB complaints were "closed without outputs", meaning that most of the complaints failed to produce any investigation report, or an agreement between the parties (complainants, borrower-clients, and the MDBs).



But why are these couple hundred complaints, against the thousands of ADB-financed projects, that significant? For one, community or CSO complainants may not be fully aware of the presence of the AM itself, since it is unclear how many borrower clients consistently disclose the existence of the AM, and how extensively the ADB monitors this. The number of complaints that evoke lack of access to project information, and the AM's own acknowledgement in its Impact Assessment that the lack of information is a possible reason for the low number of complaints processed, could indicate not very. But let us move to the complaints that do find their way into the system.

Once they are into the system, they face another hurdle their way - the eligibility requirement.

Crossing the great barrier: Eligibility Assessment

Usually on receipt of complaints, the AM screens it for admissibility where it adjudges if the complaint falls within its mandate. This includes assessing that it does not relate to procurement or corruption issues, is not frivolous or anonymous, and is made by at least two complainants. Next, the complaint is forwarded to the Office of the Special Project Facilitator (OSPF) or the Compliance Review Panel (CRP), which are the two separate offices within the AM. Depending on whether the complainants opt to solve their problems, or focus on an inquiry into whether the ADB has complied with its own policies, the complaint moves within these two offices respectively.

The complaint is screened for eligibility, where the AM adjudges if the substance of the complaint is related to the actions or omissions of the Bank in terms of formulating, processing, or implementing the project, and is serious enough to warrant further processing of the complaint (later, for compliance review). While these make up the criteria for finding eligibility, a complaint can also be excluded from eligibility on the ground that the complainants did not make a "prior good faith efforts" with the ADB. Finally, the OSPF and the CRP produce their opinions in the form of Eligibility Assessments. Where complaints are found ineligible, the OSPF/CRP forwards them to the concerned Operations Department for resolution at their level, or at the project-level.

At least 52 out of the over 180 complaints have been found ineligible on the lack of "prior good faith efforts" grounds [2]. Other reasons include, (1) the Operations Department is working with the concerned authorities in order to resolve the complaint (with or without involving the complainants also), (2) complainants are not directly affected peoples, or not foreseen to be project affected, (3) the complaint is not within their mandate (without further explaining why), (4) the AM's intervention is "unhelpful" (again, not further explained), (5) the complaint was filed beyond limitation periods, and (6) the existence of a parallel complaint with another mechanism.

Good faith efforts: But only for the Complainants?

At one of the AM's Outreach meetings recently, participants - all project affected peoples or those who stood to be potentially affected, and wanted to bring complaints to the AM - were curious about what this "prior good faith efforts" implied. The response was, "reaching out to any person within the ADB was enough". But in practice, demonstrating "prior good faith efforts" has not been as easy as the AM claimed in its Outreach exercise. In practice, the AM has often interpreted "prior good faith efforts" in an overly technical way, even where complainants' have demonstrated genuine efforts.
For instance, the AM excluded the complaint, simply because complainants did not specifically reach out to the Operations Department (also, this case complaint), or, the Department did not

of complaints turning futile by this technical exactedness of the AM over its "prior good faith efforts".

In some cases, the complainants engaged over project related issues with the Operations Department and the ADB team repeatedly, without response, until the matter was brought to the court and was no longer eligible, or the company went insolvent and the loan closed.

In the former scenario, the OSPF denied eligibility on the grounds that the matter was not taken up with the Operations Department specifically (even though complainants had informed the executing agency, ADB project officers). Eventually, when the period for rationalising its ineligibility decision came, the SPF also claimed that the project team sought to close it on their part, now that the matter was before the courts ("sub-judice"). But there is no provision under the AM's Policy currently that excludes sub-judice matters as ineligible. Moreover, the complaint brought before the SPF went beyond the specific issue subjudice (ownership of land). On the other hand, the project team seemed willing to re-consider the executing agency's request to continue with the project nevertheless.

In the latter scenario, for over 3 years, between 2014 and 2018, complainants who were aggrieved by serious labour rights violations, continued approaching the project level authorities, state authorities and eventually, the ADB project team. They even appeared at the ADB's Annual General Meetings in an attempt to convince the Board of Directors to take action. By the time the complaint finally came to the OSPF, the project proponent had turned insolvent and the project had passed onto the government. Since the period of 2 years had passed since the loan closing, there was nothing that the OSPF could do - except, make a comment "strongly encouraging" discussions between ADB Management and the complainants.

For some cases, requiring good faith also defies logic. For example, in several cases, complainants might have resubmitted complaints to the AM over the same project, only to be dismissed on account of some technicality.

Or, they might have submitted complaints to the responsible executing authorities, filed court complaints, and subsequently filed a complaint with the AM desiring the exercise of compliance review function, since the project issues were never rectified. In two such cases, complainants had even received court orders in their favour, orders which clearly vindicated the illegalities that the project suffered from. Despite that, the executing agency with support from the ADB Management, continued with the project, in what could be termed as a clear contempt of court process (see cases Power Distribution Enhancement Investment and Rajasthan Renewable Energy Transmission Investment Program).

These blatant violations of even the national laws as the minimum standard highlight serious gaps in the exercise of monitoring and supervision obligations of the ADB team. Or in other words, they raise non-compliance concerns.
The AM in its adjudication should consider the immediacy that the issues demand, and the fact that often project complainants try different avenues that are more immediately available / tangible before filing complaints. For example: in several cases, complainants reached out multiple times to the executing agencies, district officials, or even lodged cases before judicial systems, without receiving response or redress. At least from a compliance review perspective, the refusal from the project authorities to rectify Safeguard violations that pose negative impacts for communities, should indicate a preliminary lack of supervision by the ADB team over the project's "processing and implementation" - an observation which as it appears, is possible to make, if willing. The AM should realise the

enormity of efforts that it takes on part of the communities to come together to file a complaint to such a mechanism in the first place, as communities are often told that their efforts are in vain, or would result in them losing the little benefits or compensation they were offered initially, or simply, to avoid confrontation with officials that might exacerbate pre-existing risks.

What precludes further scrutiny of the AM's complaints processing is a lack of adequate rationale - at least one that is publicly available, and the lack of all complaint-related information (minus the identification of complainants that would be validly retracted in case of request, or threat of reprisal). Although this lack of information goes beyond complaint and rationale for ineligibility, this is a matter for another article. In general though, this lack of information makes it difficult to assess whether the ineligibility was justified, or whether the complainant truly achieved redress for their issues. Additionally, it smacks of a lack of predictability around the AM process, which contravenes the effectiveness criteria for non-judicial grievance mechanisms, per the UN Guiding principles.

It is unfortunate that so far within the region, the few instances in which the AM has provided some meaningful result for the community, or overseen the provision of such result through its tracking of the complaint, once forwarded to other departments, is limited to a mere 13 out of over 180 complaints. These have taken the form of realignment of parts of the project, information clarification/ disclosure, agreements towards renewed consultations, re-valuation of land rates or revised studies and assessments, increased compensation rates, and plenty of internal lessons [3]. This does not however imply that all agreements have been realised, or even further that communities have achieved remedy. Imagine if for a Bank-financed project that expropriates your lands to construct a power plant, that already displaces, uproots livelihoods, and the social fabric of the community - no amount of renewed consultations, or internal lessons on instituting more grievance mechanisms, can effectively remedy that which the community has already lost. The AM as it itself admits, does not have the power to suspend project works in the interim, nor are its recommendations enforceable. For the limited results that it can achieve though, it should not be gatekeeping the AM, if its objective is as it claims, to provide a "forum for those affected to voice their concerns".

Instead, the AM should ensure that it does not interpret the already high barrier that is set for "prior good faith efforts", in a manner that further precludes accessibility for complainants. Instead, as a mechanism dedicated to both, internal as well as external accountability for ADB projects, it should ensure that its eligibility determinations are context-dependent. This could include, assessing the viability of raising issues with project authorities or the ADB Operations Department, the possibility of retaliations, the fact that the project loan or project construction is at an advanced stage, strong and independent evidence supporting the complainants' claims. Instead of dismissing complaints outright, it should see how it can support complainants in overcoming an otherwise technical exclusion that has no bearing on the substance of their claims - for instance, by actively working with the complainants to remedy this defect, or even when it forwards the complaint to the Operations Department, by taking regular updates on the resolution of cases.

Note: The AM is currently undergoing review, and even the external reviewer's report for Phase 1 of the AM Review acknowledged the "prior good faith efforts" requirement as an issue to accessing the AM, and the recommendations of the Good Policy

respond to their complaint. This puts an additional onus of engagement on the complainant, of either reaching out to additional actors, or of waiting for a response even while they continue to suffer project related violations and harm (whereas interpreting good faith engagement would have required the concerned staff to respond).

In the Rajasthan Urban Sector Development Program case, the complainants reached out to the Operations Department, admittedly after submitting the complaint (so, not "prior"), but as soon as they were apprised of the good faith policy, in their first meeting with the OSPF. They received no further response from the Department during the length of the complaint. The OSPF possessed special information that the Operations Department was already made aware of the issues, and was making "internal efforts" that were never even communicated to the complainants. OSPF closed this complaint despite the acknowledgement that there was nothing further that the complainants could do in this case, and needless to say, they received no further response even as of the date of complaint closure.

In the Shapoorji Affordable Housing Project case, a complaint where amongst others, complainants claimed involuntary resettlement and forcible land acquisition, the CRP dismissed the complaint on grounds of a single technicality - the complainants had not elaborated all of their "distinct and shared concerns". This raises several concerns: (1) the complainants had already raised their issues multiple times with the project authorities over a two-year period - first in 2020, with the formal complaint submitted in 2022; (2) the Operations Department itself acknowledged that the issues raised in the complaint before the CRP matched those they had previously received; and, (3) it prompts the question - should the CRP have required such legal exactedness of the complainants? If the purpose of demonstrating "prior good faith efforts" is to alert the Operations Department and provide an opportunity to address the issues, then how should it be interpreted? Is the AM's insistence on being the "last resort" ultimately counterproductive? And what becomes of all these internal lessons that the AM highlights after every complaint, admissible or not. Is the Operations Department failing to learn from these complaints, especially when multiple complaints reveal recurring issues and patterns for concern with respect to the same project?

To its credit, in some cases, the AM did forward these complaints with the added observation on the Operations Department's crucial role in enablement of the good faith standard, and how this was pending in the immediate case, but that does not do much for a complaint that is still dismissed.

In some cases, however, the AM actively jeopardised the complainant's claims. For example, in the Nepal Decentralised Rural Infrastructure and Livelihood Project complaint, while still finding it ineligible, the OSPF in its assessment went on to echo the Management, reiterating the benefits that the industrial road project posed for the nation as a whole. This implication that the project's potential benefits offset the negative impacts relied solely on the project completion reports and mission reports. For that matter, these reports also mentioned the issue of compensation being delayed, which was also the core of the SPF complaint, but the AM conveniently ignored them. Complainants had already raised their concerns with both state authorities as well as the ADB staff.

Which raises the question - *should eligibility - the first stage of complaint - be such a pain-staking process?*

When "good faith", becomes too late: There is also the very real possibility

Paper, published by 11 international organizations on IAM policies, that this should not be a pre-condition to filing complaints.

ENDNOTES

* This includes for example, combining its ordinary and special fund capital bases for increased lending, and risk-bearing, promoting financial instruments like blended or syndicated finance, exploring co-financing, reinvesting earnings to not rely heavily on additional external capital infusions.

**According to ADB, Pakistan is a part of the Central-West Asia Regional Department, but for purposes of this Research, I have referred to the South Asia region geographically* and not in terms of the ADB's Operation Department divisions.

[1] The number of ADB projects and complaints filed to the mechanism cannot be exact equivalents for several reasons since complaints against newer projects might only emerge later in the project cycle, meaning that there might be projects approved before the 2016 cut-off period that are currently seeing complaints, or the number of complaints might also be relatively lower if newer projects have since come up for which complaints might only be lodged later than our period of analysis. Additionally, the 181 complaints is also an estimated figure as some of the complaints are only recorded on the AM Registry and not on the SPF-CRP complaint sites.

[2] Note that out of the 180 complaints, there are also complaints where full complaint related information as well as rationale for ineligibility might not have been available.

[3] This is with some exceptions, like the Malir expressway sub-project under the Supporting Public-Private Partnership Investments in Sindh Province, where the complaint directly or indirectly led to discussions between the Operations Department and the Pakistan government, clarification of the projects' non-alignment with ADB's priorities as a climate bank, and the government agreeing to take the project off their proposed projects for ADB funding. See the assessment.

BLOG CROSSPOST NOTE

This article was originally published in the Accountability Console Newsletter, where AC's Research team shares research and insights from the world's most comprehensive database of Independent Accountability Mechanism (IAM) complaints, the Accountability Console. Click here if you would like to subscribe to the monthly Console Newsletter.

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