



# A SOURCEBOOK ON THE COMPLIANCE REVIEW FUNCTION OF ADB'S ACCOUNTABILITY MECHANISM

JUNE 2019



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6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines  
Tel +63 2 632 4444; Fax +63 2 636 2444  
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On the cover: ADB-assisted projects have a wide scope and improves the lives of a wide variety of people. The compliance review function of ADB’s Accountability Mechanism improves project implementation and impact (photos by ADB).

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# Foreword

The Asian Development Bank (ADB) is mandated to help reduce poverty and improve the quality of life of the citizens of its developing member countries. ADB works toward this goal through project loans, grants, technical assistance, and equity investments that promote economic and social development across Asia and the Pacific.

As an institution with a focus on inclusive and sustainable development, ADB sees to it that the projects it finances cause no harm to the communities and people concerned. ADB believes that development should be pursued sustainably, resiliently, and inclusively without causing unnecessary environmental degradation, involuntary resettlement, or other material harm that hits the poor the hardest. Ensuring compliance with ADB's operational policies and procedures, which are designed to protect people, communities, and the natural environment, mitigates the adverse effects of development projects.

From the preparatory phase until operation, ADB intends to achieve compliance with its operational policies and procedures in designing, processing, and implementing ADB-assisted projects. During project planning and implementation, most issues are averted with the help of well-developed audit, supervision, quality control, and evaluation systems, and problems that occur are addressed. For complaints at the project level, all ADB-assisted projects include a grievance redress mechanism, which allows people affected by the projects to seek relief for their concerns. Complaints that are not satisfactorily resolved through this mechanism may be brought to the attention of ADB's operations departments, to be dealt with as part of their problem solving and compliance efforts.

The complementary ADB Accountability Mechanism has a policy compliance review function designed specifically as a grievance redress platform of last resort for affected people and communities. First established in 1995, the mechanism was updated and improved with the issuance of the Accountability Mechanism Policy in 2003 and the latest version of the Policy in 2012. This mechanism is aligned with international standards and practices of multilateral development banks in establishing accountability to the public while still allowing for the continued exercise of immunity from the legal process—a necessary aspect of the operations of international organizations.

ADB's Accountability Mechanism has two functions: problem solving and compliance review. This sourcebook seeks to improve understanding of the compliance review component by describing the function in greater detail.

This sourcebook and the series of four guidebooks were prepared particularly for ADB Management and staff, government, affected people and their representative or partner nongovernment organizations or civil society organizations, and private sector borrowers. The contextual overview provided by this sourcebook will aid comprehension of the compliance review function by presenting the role of each party and the information expected of each, at every stage of the process.

Through the documentation, case studies, and best-practice examples contained here, ADB and its partners in development—governments and private sector borrowers alike—should gain a clearer understanding of their actionable options. They should also become even better equipped to act effectively through the compliance review, in response to the concerns of people who may experience undue adverse effects or harm from ADB-assisted projects that fail to meet the rigorous standards of ADB’s policies and procedures. This sourcebook and the individual guidebooks will likewise serve as training materials for the outreach missions of the Office of the Compliance Review Panel.

This sourcebook does not supersede the Accountability Mechanism Policy 2012. In case of any discrepancies between this sourcebook and the Accountability Mechanism Policy 2012, the latter, along with Operations Manual L.1, will prevail.

**Dingding Tang**

Chair, Compliance Review Panel and  
Concurrent Head, Office of the Compliance Review Panel  
Asian Development Bank

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The preparation of this sourcebook was supervised by Munawar Alam, OCRP Advisor; and Josefina Miranda, Senior Compliance Review Officer. They were assisted by Julie Anne B. Mapilisan-Villanueva, Associate Compliance Review Coordinator and Oma Janessa Guatno, Administrative Assistant. Dingding Tang, Chair of the Compliance Review Panel and concurrent Head of the OCRP, provided overall project guidance. The OCRP is grateful to Irum Ahsan, Principal Counsel, Office of the General Counsel, for always providing her feedback and inputs readily.

The ASSIST team for this project was managed by Karthikeyan Subburaman, Regional Director; and Geeta Keswani, Project Coordinator. The publication was produced by Jorge Mata, Creative Director; Mark Christian Villena, Senior Writer; and Michelle Ann Ramirez, Editor.

# Abbreviations

ADB	–	Asian Development Bank
BCRC	–	Board Compliance Review Committee
CRO	–	complaint receiving officer
CRP	–	Compliance Review Panel
CSO	–	civil society organization
DMC	–	developing member country
EBRD	–	European Bank for Reconstruction and Development
EIB	–	European Investment Bank
EIA	–	environmental impact assessment
EMP	–	environmental management plan
ESIA	–	environmental and social impact assessment
FAQ	–	frequently asked questions
GRM	–	grievance redress mechanism
IEE	–	initial environmental examination
IFC	–	International Finance Corporation
IFI	–	international financial institution
IRC	–	Inter-ministerial Resettlement Committee, Cambodia
NGO	–	nongovernment organization
OCRCP	–	Office of the Compliance Review Panel, ADB
OGC	–	Office of the General Counsel, ADB
OM	–	Operations Manual
OSPF	–	Office of the Special Project Facilitator, ADB
SDCC	–	Sustainable Development and Climate Change Department
SPF	–	Special Project Facilitator
SPS	–	Safeguard Policy Statement
TOR	–	terms of reference

1

Introduction

**Brighter future.** A biology student from the Champasak University in the Lao People's Democratic Republic now enjoys an expanded and improved higher education system as part of ADB's Strengthening Higher Education project.



# 1

## Introduction

The mission of the Asian Development Bank (ADB) is to reduce poverty in Asia and the Pacific through economic growth and cooperation. It is also important for ADB to protect people from harm, an intensifying factor in poverty, which may sometimes be an unintended effect of the development projects ADB finances. To ensure protection of communities and the environment, ADB has clear operational policies and procedures, such as the Safeguard Policy Statement 2009, which must be followed in the design and operation of ADB-assisted projects. Project documents drawn in accordance with those policies must be prepared by both government and private sector borrowers<sup>1</sup> before their projects can be approved.

In the ADB Charter, like other multilateral development institutions, ADB is granted immunity from suit in the courts, as protection from partiality and interference. But as ADB must also be held accountable for any harm that may ensue from lapses on its part in the enforcement of its operational policies and procedures in borrowers' projects, the Accountability Mechanism was instituted, alongside redress mechanisms already in place. The Accountability Mechanism<sup>2</sup> provides balance to ADB's immunity from suit, by giving people affected by ADB-assisted projects the ultimate recourse for expressing their complaints and having them addressed if solutions are not reached at the fundamental stages of complaint handling.

An effective accountability mechanism ensures compliance with ADB's operational policies and procedures. It complements the existing grievance redress mechanism (GRM) at the project level, as well as problem solving and compliance efforts at the operations department level. These efforts at the project and operations department levels underscore the primary importance of existing ADB mechanisms for addressing the legitimate concerns of people affected by ADB-assisted projects.

The Accountability Mechanism is designed to further enhance the effectiveness of ADB's development initiatives and continuously improve the quality of its projects by being responsive

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<sup>1</sup> In this document, the term borrowers also include recipients and beneficiaries of grants, equity financing, guarantees, and other forms of ADB financing.

<sup>2</sup> Asian Development Bank (ADB). 2012. *Accountability Mechanism Policy*. Manila. [https://lnadb4.adb.org/diro035p.nsf/attachments/accountability-mechanism-policy-2012.pdf/\\$FILE/accountability-mechanism-policy-2012.pdf](https://lnadb4.adb.org/diro035p.nsf/attachments/accountability-mechanism-policy-2012.pdf/$FILE/accountability-mechanism-policy-2012.pdf)

to the concerns of project-affected people, and fair to all project stakeholders. Its fundamental objective is to address the concerns of stakeholders who are directly affected by ADB projects—the project-affected communities.

To be an efficient and cost-effective tool, the Accountability Mechanism was designed to reflect the highest professional and technical standards in staffing and operations while maintaining independence and transparency in its processes. Its processes are, for the most part, time-bound, to ensure the timely implementation of appropriate solutions.

## 1.1 ABOUT THIS SOURCEBOOK AND ITS READERSHIP

This sourcebook on ADB's compliance review process serves as a comprehensive resource for all stakeholders in the process. It (i) gives background information about the two functions of ADB's Accountability Mechanism and a general description of these functions; (ii) elaborates on the compliance review process, including the role of each stakeholder at every step of the process; (iii) serves as an advisory resource on the actions and information expected of each stakeholder throughout the process; (iv) provides documentation and illustrative models as a guide to implementation or action; and (v) identifies all ADB operational policies that are subject to compliance review.

This sourcebook was conceived as a reference material complementing the Accountability Mechanism Policy, reinforcing and clarifying its content by expounding on how the policy is currently implemented and providing clear examples from actual cases of good practices and other options that may be considered. Its structure follows the flow of information that may be needed as a request for a compliance review is considered, submitted, and processed, all the way to the monitoring of remedial efforts to ensure compliance with ADB's operational policies and procedures and mitigate harm in an ADB-assisted project.

This sourcebook was written with the information needs of the various stakeholders in a compliance review process in mind. These stakeholders are (i) ADB Management and staff; (ii) governments of developing member countries (DMCs); (iii) affected people and their representative or partner nongovernment organizations (NGOs) or civil society organizations (CSOs); and (iv) private sector borrowers. The sourcebook is being published alongside a series of four guidebooks aimed at aiding the aforementioned stakeholders in understanding the Accountability Mechanism and appreciating its importance as an instrument for enhancing ADB's development effectiveness in achieving inclusive and sustainable development.

This sourcebook does not supersede the Accountability Mechanism Policy. Rather, it is an instrument for providing a better understanding of the policy and of the actions required under it. **In case of discrepancies between this sourcebook and the Accountability Mechanism Policy, the policy and its relevant operations manual section (Operations Manual L.1) will prevail.**

## 1.2 SIGNIFICANCE OF INDEPENDENT ACCOUNTABILITY MECHANISMS AND COMPLIANCE REVIEW PRACTICES OF INTERNATIONAL FINANCIAL INSTITUTIONS

The 1990s witnessed a strong clamor for international financial institutions (IFIs) to adopt the principle of accountability in projects they finance. International NGOs and CSOs initiated the clamor in order to enhance development effectiveness and project quality, and provide a measure of transparency, accessibility, and accountability to the public. As a result, IFIs eventually established accountability mechanisms and compliance review efforts in their operations, through offices that were part of the organization's internal structure, yet provided an independent forum accessible to affected people in development projects seeking resolution of claims of harm.

ADB's Accountability Mechanism came about in due course, and accountability mechanisms and compliance review practices have so far been instituted by almost all other IFIs and international organizations. These include the World Bank, the Inter-American Development Bank, the African Development Bank, the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB), the International Finance Corporation (IFC), the Asian Infrastructure Investment Bank, the Green Climate Fund, the Japan Bank for International Cooperation, the Overseas Private Investment Corporation, the United Nations Development Programme, and many others, particularly those allied with the Independent Accountability Mechanisms Network or IAMnet (see <http://independentaccountabilitymechanism.net/>).

## 1.3 BRIEF HISTORY OF THE ESTABLISHMENT OF ADB'S ACCOUNTABILITY MECHANISM

In response to the clamor for accountability measures, the ADB Board of Directors (or Board) approved the establishment of an inspection function in December 1995. This provided a forum for people affected by ADB-assisted projects to appeal to an independent body in matters relating to ADB's compliance with its operational policies and procedures.

Since the establishment of the inspection function, ADB has received eight requests for inspections, but only two were deemed eligible. Concerns about the effectiveness of the inspection function in relation to these two complaints necessitated a review of the function in 2002–2003. Extensive consultations within and outside ADB confirmed the need for an independent accountability mechanism responsive to affected people's concerns and for more problem solving measures within its processes.

The review of the inspection function resulted in ADB's Accountability Mechanism of 2003, which was distinguished by the introduction of two separate but complementary phases: consultation<sup>3</sup> and compliance review.<sup>4</sup> ADB was the first IFI to establish an accountability mechanism that went beyond an inspection function, especially as it now applies to both public and private sector operations. The two functions of the 2003 Accountability Mechanism allowed for either a range of flexible and informal methods of resolving complaints (consultation phase) or for an investigation of alleged violations of ADB's operational policies and procedures that have resulted or may result in harm (compliance review phase).

The Accountability Mechanism of 2003 exhibited particular strengths in its being complementary to problem solving and compliance systems already in place in ADB's operations. It especially emphasized the institution of the GRM in all ADB-assisted projects, along with the compliance and problem solving efforts of ADB's operations departments and the various offices tasked with audit, evaluation, anticorruption and integrity policies and systems, and risk management.

Despite these strengths, improvements were warranted over time in several aspects of the 2003 policy. Back then, the policy required recourse to problem solving before a request for a compliance review could be made. A fundamental issue was the lack of direct access for affected people to the compliance review function.

By 2011, a review of ADB's Accountability Mechanism Policy led to further evolution of the mechanism as an instrument of ADB's development effectiveness. This effort was guided by the objective of improving responsiveness to affected people's needs, and reinforcing ADB's institutional capacity for efficiency, awareness, and learning. After a rigorous review of its Accountability Mechanism Policy of 2003, which included internal and external consultations among ADB's various stakeholders, ADB released an updated policy document in 2012.

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<sup>3</sup> The 2003 policy referred to the "problem solving" function as the "consultation" phase.

<sup>4</sup> The term "compliance review" is used in the 2003 policy to avoid negative associations with the term "inspection."

## 1.4 ADB'S ACCOUNTABILITY MECHANISM POLICY OF 2012

The Accountability Mechanism Policy of 2012 has two objectives: (i) to provide an independent and effective forum where people adversely affected by ADB-assisted projects can report their concerns and seek solutions to problems; and (ii) to allow a review of compliance by ADB with its operational policies and procedures, to uncover weaknesses that may have caused, or could cause, direct and material harm.

The Accountability Mechanism offers an alternative means of resolving problems that were not addressed or solved at the project and operational levels. It is the GRM of last resort for affected people, complementing ADB's other existing systems for this purpose.

The Accountability Mechanism is designed to (i) increase ADB's development effectiveness and project quality; (ii) respond to the concerns of project-affected people and ensure fairness to all stakeholders; (iii) reflect the highest professional and technical standards in its staffing and operations; (iv) be as independent and transparent as possible; (v) be cost-effective and efficient; and (vi) complement other supervision, audit, quality control, and evaluation systems at ADB.<sup>5</sup>

ADB abides by the principle that legitimate concerns of project-affected people, at any point in the project cycle, must be resolved early on, wherever possible. The Accountability Mechanism is a "last-resort" mechanism as ADB must continue to strengthen its project design, implementation, and learning mechanisms to prevent problems and ensure compliance from the outset.

Serving both as a governance and development effectiveness tool, the Accountability Mechanism has taken on an oversight character to strengthen accountability for the impact of ADB-assisted projects on people. Its design recognizes and supports well-developed audit, evaluation, process improvement, and learning systems now at work in ADB. Lessons learned from the implementation of the Accountability Mechanism may also inform future actions to improve project design and implementation.

In this context, ADB Management and staff, as well as ADB borrowers, as ADB's partners in development, are enjoined to regard the complaint process as a forum for constructive criticism or feedback, an opportunity to rectify and learn, and a means to improve project performance.

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<sup>5</sup> ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

## 1.5 COVERAGE OF ADB-ASSISTED PROJECTS AND COOPERATION BETWEEN ACCOUNTABILITY MECHANISMS OF INTERNATIONAL FINANCING INSTITUTIONS COFINANCING A PROJECT

ADB's Accountability Mechanism accepts only complaints made about ADB-assisted projects. An ADB-assisted project is a project financed or administered by ADB and implemented in partnership with a government borrower in ADB's sovereign operations or with a private sector borrower in ADB's nonsovereign operations. The Accountability Mechanism covers projects financed or administered by ADB, solely or in partnership with cofinanciers.<sup>6</sup> These are projects that are already under implementation, as approved by the ADB Board of Directors, or projects that have yet to be implemented by the borrower, pending approval by the Board, but are being considered and are already in the pipeline for loan approval and have been announced on ADB's project website. Also covered are programmatic operations, such as multitranches financing facilities, additional financing, and policy-based lending.<sup>7</sup>

In a compliance review of an ADB-cofinanced project, the Compliance Review Panel (CRP) will coordinate its activities with those of the accountability mechanism of any other cofinancing institution conducting a separate compliance review of the same project.<sup>8</sup> Though each IFI has its own approach to compliance investigation and to the design and monitoring of the implementation of remedial actions, cooperation is encouraged to produce efforts that are likely to achieve the same material objectives in meeting compliance and safeguard policy guarantees. (See Boxes 1.1, 1.2, and 1.3 for case examples.)

No codified guidelines for cooperative efforts at compliance review are currently in place, but joint working arrangements between accountability mechanisms of cofinancing IFIs may be established through a memorandum of understanding or a similar instrument between institutions or their Independent Accountability Mechanisms (IAMs). Beyond information sharing between these IAMs, cooperation in handling common cases may result in efficiencies and more comprehensive results from joint investigations, joint reports, and joint monitoring missions. This would be the benefit of developing good strong partnerships between all cofinancing institutions involved in a project.

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<sup>6</sup> Para. 207 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 39.

<sup>7</sup> Para. 142, item IV, footnote 41 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 29.

<sup>8</sup> Para. 131, item III in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 26.

### Box 1.1: Case Studies of Complaints Made about a Current or Pending Project

**Project already approved by the ADB Board of Directors.** The Accountability Mechanism of the Asian Development Bank (ADB) covers projects and programs that have already been approved by the ADB Board of Directors, such as Georgia's Sustainable Urban Transport Investment Program, valued at \$1.1 billion. This program is scheduled for implementation from 2010 to 2020 by the Government of Georgia and its executing agency, the Municipal Development Fund of Georgia. As partial funding, a multitranche financing facility (MFF) loan of up to \$300 million was approved by ADB in July 2010, to be implemented between 2010 and 2018. In November 2013, tranche 3 of the MFF amounting to \$73 million of the total project cost of \$118.2 million was approved by the ADB Board of Directors.<sup>1</sup>

Four complaints were filed over a portion of the project, the Tbilisi–Rustavi Road Link (section 2, subproject 1). These were received by the Compliance Review Panel in March 2016, November 2016, December 2017, and October 2018 respectively.<sup>2</sup>

**Projects pending approval by the ADB Board of Directors.** Similarly, ADB's Accountability Mechanism also covers projects that have yet to be implemented by the borrower, pending approval by the Board, but are being considered and are already in the pipeline for loan approval and have been announced on ADB's project website.

An example is Georgia's Nenskra Hydropower Project.<sup>3</sup> Preparations for the project began with a feasibility study made by the Government of Georgia between 2009 and 2011. An environmental and social impact assessment (ESIA) was completed in 2015, and the government awarded an environmental permit in October 2015 for a private sector project of Joint Stock Company Nenskra Hydro, which is owned by Korea Water Resources Corporation. Private sector loans were proposed to a lending group of multilateral development banks, which requested further ESIA studies in 2017. A draft revised ESIA was disclosed during public consultation meetings in Georgia in mid-2017, and the final version was uploaded to the ADB project website in November 2017. Project implementation was expected to begin by mid-2018 and to be completed in 5 years.

<sup>1</sup> ADB. 2018. *Georgia: Sustainable Urban Transport Investment Program – Tranche 3*. Manila. <https://www.adb.org/projects/42414-043/main#project-pds>

<sup>2</sup> Links to each of the complaints and their status are at <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/BDAO-7XGAWN?OpenDocument&expandable=2>.

<sup>3</sup> ADB. 2018. Compliance Review Panel. *Report on Eligibility on Compliance Review Panel Request No. 2017/4 on the Georgia: Nenskra Hydropower Project (Project Number: 49223-001)* Manila. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-ATX46V?OpenDocument>.

**Box 1.2: Case Study of Complaint Made about a Current or Pending Project being Financed or Administered by ADB in Partnership with Cofinanciers**

In December 2017, a complaint requesting a compliance review was filed by affected people of the Svan ethnic group. The complaint alleges potential harm with the continuation of the project, claiming that inadequate public consultation, lack of transparency, and denial of participation in decision-making processes would likely result in adverse geological and microclimate effects that may affect the traditional Svan lifestyle and social structures.

Before the complaint was received by the Compliance Review Panel, two letters dated July and September 2017 were also sent to the lending group, which includes the Asian Development Bank, the European Investment Bank, the European Bank for Reconstruction and Development, and the Export-Import Bank of Korea.

Source: Asian Development Bank

**1.5.1 A Summary of Complaints Requesting Compliance Review Under the Accountability Mechanism**

Under the Accountability Mechanism of 2003, complaints requesting for a compliance review have been made on seven projects. Most of these complaints concern the inadequacy of resettlement planning, infrastructure, and compensation; an insufficiency of measures to address loss of livelihood or unemployment; and insufficiency of public communication efforts on the adverse environmental effects of a project or its impact on increasing health risks for affected people. Similar concerns have been registered on the complaints requesting a compliance review received under the Accountability Mechanism Policy of 2012, varying in particular circumstance unique to the context of the project, such as on the environmental, economic, and social impact of project construction in an urban or rural setting; on particular concern regarding resettlement; and on the public communications aspect of such projects, with regard to meaningful consultation and dissemination of information on health or environmental risks, and on mitigation measures taken.

As of March 2019, the CRP has received 12 complaints requesting compliance review under the Accountability Mechanism Policy of 2012. Of these, five have been found eligible by the CRP, while seven have been determined as ineligible or out of scope for a compliance review. The CRP Complaints Registry, which lists all the complaints received by the CRP, including status of and CRP reports on each complaint is at <https://lnadbg4.adb.org/diro035p.nsf/alldocs/BDAO-7XGAWN?OpenDocument&expndable=2>.

### Box 1.3: Case Study of Cooperative Action between Cofinancing International Financial Institutions' Conducting Simultaneous Compliance Reviews

The Accountability Mechanism of the Asian Development Bank (ADB) also covers ADB-cofinanced projects, such as the Mundra Ultra Mega Power Project in India. The project needed an investment of \$4.14 billion. A consortium of international banks, including international financial institutions (IFIs) and export credit agencies, extended up to \$1.8 billion in loans to the Tata Power Company (TPC), the project owner. Through its Private Sector Operations Department, ADB provided a loan of \$450 million to Coastal Gujarat Power Limited (CGPL), a subsidiary of TPC operating the project, as part of this loan total. Of the \$450 million, \$200 million was from a syndicated loan provided by KEXIM through a risk participation agreement. The other IFI involved in the project, the International Finance Corporation, provided \$1.35 billion in financing for the project together with the Korea Trade Insurance Corporation, BNP Paribas, and other international banks. The remaining \$2.34 billion comprised loans from local or national banks in India, and owner's equity.

A complaint was filed requesting for compliance review on 25 October 2013 by Bharat Patel, general secretary of Machimar Adhikar Sangharsh Sahatan (MASS, the Association for the Struggle for Fishworkers' Rights). Patel was representing about 12 affected persons, and two MASS members, Gajendrasinh Bhimaji Jadeja and Harun Salemamad Kara.<sup>1</sup> Kara and three others lodged a similar complaint in June 2011 to the Compliance Advisor Ombudsman of the International Finance Corporation, which was also funding the project.

Before starting its compliance review investigation, the ADB Compliance Review Panel (CRP) communicated with the Compliance Advisor Ombudsman of the International Finance Corporation and the Multilateral Investment Guarantee Agency, which had already completed an investigation of this project complaint.<sup>2</sup> During its investigation, the CRP requested for information from the other institutions involved in the project, and took that information into account in the course of its investigation.

<sup>1</sup> Para. 4 in ADB. 2013. Compliance Review Panel. *Report on Eligibility on CRP Request No. 2013/1 on the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). page 1.; ADB. *Mundra Ultra Mega Power Project*. Manila. [https://lnadbg4.adb.org/diro035p.nsf/attachments/CRP%20Mundra%20Eligibility%20Report%2020Jan%20FINAL%20Edited%20Managements%20Response.pdf/\\$FILE/CRP%20Mundra%20Eligibility%20Report%2020Jan%20FINAL%20Edited%20Managements%20Response.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/CRP%20Mundra%20Eligibility%20Report%2020Jan%20FINAL%20Edited%20Managements%20Response.pdf/$FILE/CRP%20Mundra%20Eligibility%20Report%2020Jan%20FINAL%20Edited%20Managements%20Response.pdf)

<sup>2</sup> Para. 9, item VI, in ADB. 2013. Compliance Review Panel. *Terms of Reference for Compliance Review on CRP Request No. 2013/1 on the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). page 3.

A link to the updated Complaints Registry maintained by ADB's Complaint Receiving Officer,<sup>9</sup> including an archive for complaints<sup>10</sup> filed from 2012 onwards, can be found here: How to File a Complaint for Compliance Review (<https://www.adb.org/site/accountability-mechanism/complaints-receiving-officer/complaints-registry2.1>).

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<sup>9</sup> ADB's Complaint Receiving Officer (CRO), receives complaints seeking access to the Accountability Mechanism. For more information on the CRO's role, please see section 2.5.10 Complaint Receiving Officer.

<sup>10</sup> Note: The registry in this link includes complaints that involved matters not covered by the Accountability Mechanism.

# 2

## Submitting a Complaint to the ADB Accountability Mechanism for a Compliance Review

**Rooted.** Growing mangroves along the Tarawa beach in Kiribati is one of ADB's approaches to counter climate change.



## Submitting a Complaint to the ADB Accountability Mechanism for a Compliance Review

### 2.1. HOW TO FILE A COMPLAINT FOR COMPLIANCE REVIEW

#### 2.1.1 Who Can File a Complaint

**Two or more affected people.** A complaint may be filed by any group of two or more persons directly and materially harmed or likely to be harmed by an ADB-assisted project; or by any group of two or more persons residing in an ADB member country adjacent to the country hosting the ADB-assisted project, who have been directly and materially harmed or are likely to be harmed by the ADB-assisted project. (See Box 2.1 for case examples.)

Complainants should provide all the necessary information for the filing of a complaint, such as a description of prior good faith effort made with the operations department for problem solving and compliance efforts. Relevant correspondence pertinent to the complainants' concerns are to be attached, to show that the concerns have not been addressed to the satisfaction of the complainants or to show that their concerns remain unacknowledged or unaddressed by the operations department, despite the passing of a reasonable amount of time since the initiation of good faith efforts to seek redress for their concerns.

Complainants are encouraged to provide preliminary evidence to support the allegation of actual or potential harm and its tenable link to noncompliance with ADB's operational policies and procedures.

Complainants are expected to be honest and straightforward regarding the extent of the harm to themselves or their property that has resulted from, or is likely to result from, an ADB-assisted project. This will help ADB Management and the project owner expedite resolution.

**A local or nonlocal representative of affected persons.** A local representative of affected persons may also file a complaint if proof of authorization is presented. A local representative is an individual empowered to represent the affected people's interests by means of a simple written authorization issued by the complainants. One of the complainants may also act as the

local representative of all the complainants, as long as this individual is duly authorized by the group through a written document.

The complainants have the option to organize themselves and select a representative to stand for their interests in the compliance review process. If affected people encounter difficulty in filing a complaint, they may coordinate with NGOs or Civil Society Organizations (CSOs) in their region or within their country, to obtain assistance in filing a complaint or to seek representation for their interests throughout the processes of the Accountability Mechanism. Assistance in filing a complaint may be limited to the responsibilities of advising the complainants and providing them with technical or legal assistance in filing a complaint, with the complainants executing the necessary actions in the compliance review. In contrast, representation would mean acting on behalf of the complainants with regard to these duties.

In exceptional cases where a representative from a local NGO or CSO or other representative can ably represent their interests, complainants may also seek nonlocal representation, such as from a staff of NGOs or CSOs outside their region or their national borders, but only with the consent of the CRP or the Special Project Facilitator (SPF), upon the complainants' presentation of sufficient proof to allow for an exception.<sup>11</sup> If opting for representation through partnership with an NGO or CSO, or through a representative chosen from among themselves, the complainants must provide a written authorization for that representative upon filing of the complaint.

A nonlocal representative may be accepted with the concurrence of the CRP chair in exceptional cases where local representation is unavailable. In such cases, the project-affected people must be clearly identified, and they must provide sufficient evidence of authority that the complaint is being filed on their behalf.<sup>12</sup>

**ADB Board member.** A complaint alleging substantial violation of ADB's operational policies and procedures may also be filed by one or more ADB Board members after the concerns have been raised with ADB Management. Concerns reported must have, or are likely to have, a direct, material, and adverse effect on a community or on individuals residing in the country where the ADB-assisted project is located; or in an adjacent ADB member country.<sup>13</sup> The conduct of the compliance review requested by a Board member will not affect or limit the existing rights of Board members to request or initiate reviews of ADB policies and procedures.

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<sup>11</sup> Paras. 138 and 155 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 28–32.

<sup>12</sup> Para. 138 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 28.

<sup>13</sup> Para.139 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 28.

### 2.1.2 Requirements for Filing a Complaint

**Two or more complainants.** The request for a compliance review must be made by at least two complainants. The experience of harm can thus be verified by another person. This requirement also reinforces the substance and materiality of the complaint, and serves as a deterrent against grievance reports motivated merely by self-interest or vendetta.

Complainants may come from the same family, as the two-complainant rule is concerned only with verifying the occurrence of severe effects that may be linked to an aspect of the project. Such complaints are accepted and assessed strictly on their merits, and evidence is sought to establish the severity of harm and its causal link to noncompliance. The complaints would be processed in the same manner as other cases with more than two complainants, given that the requirement of a minimum of two complainants is met. Family members being party to a complaint would neither diminish nor bolster the integrity of a complaint, without the other attendant facts of noncompliance and causality being established.

**Good-faith effort.** Good-faith effort is another requirement. This means that complainants must have exhausted efforts to seek solutions through the operations department concerned or the project's GRM. Affected people may access the Accountability Mechanism as a last resort in filing a complaint. With this, complainants are encouraged to approach the project's GRM first before proceeding to the operations department of ADB, to facilitate the prompt resolution of issues. If a resolution is not sufficiently reached through the GRM, a complaint may then be submitted to the operations department.

While seeking a resolution through the GRM is encouraged, it is not a prerequisite to the filing of a complaint with the Accountability Mechanism. Neither would the lack of a complaint filed with the operations department bar two complainants from accessing the Accountability Mechanism. However, the lack of good faith effort made with the operations department is considered grounds for ineligibility of a complaint. Complaints that reach the Accountability Mechanism without prior good faith effort by the complainants to address their complaint to the ADB operations department concerned will be forwarded by the CRP chair to the operations department concerned for appropriate action.

**Written requirements.** Complaints written in English are preferred, but any complaint in the official language of the country where the project is located is acceptable. In previous compliance review cases, complainants have approached NGOs or CSOs that they trust, to obtain guidance in preparing the complaint or to seek representation. If a complaint is submitted in a language other than English, the Office of the Compliance Review Panel (OCRCP) will have the document translated, and will therefore require more time to process the complaint.

**Box 2.1: Qualifying for the Two-Complainants Requirement**

The complaint should be filed by at least two affected persons, who may be related or unrelated to each other. Kinship neither reinforces nor diminishes the validity of the complainants' claims, and neither would any fact proving that complainants are not related have an effect on the validity of any claims. As long as all of the complainants can qualify that they are harmed, or are likely to be harmed, by any project with assistance of the Asian Development Bank (ADB), their claims would be considered by the Compliance Review Panel in their assessment for the complaint's eligibility.

In a problem solving case in Nepal, two family members—a husband and his wife—initially submitted a complaint letter to the complaint receiving officer. When the couple was asked to accomplish the complaint form, the husband's mother affixed her signature too, becoming the third complainant. The complainants alleged that no consultation was held with the landowner (i.e., the husband's mother) regarding the project, including options on land acquisition that require their consent. It was also alleged that the landowner's husband (i.e., the husband's father) was forced to sign a voluntary land donation agreement though he was not the legal owner. Although problem solving was requested, the acceptance of the complaint for processing by ADB's Accountability Mechanism illustrates the same principle used in dealing with requests for a compliance review.

The qualifying factor in this instance was the fact that two affected persons could legitimately claim that they were adversely affected by an ADB-assisted project. It did not matter that these two complainants were from the same household or that the landowner's husband or the initial complainants' father in this family unit had objected to the filing of the complaint. What mattered was that a substantial allegation of harm qualifying a complaint was made by two legitimate complainants.

Source: Asian Development Bank

The complaint must specify the following:

- (i) name, designation, address, and contact information of each complainant;
- (ii) if a complaint is made through a representative, identification of the project-affected people on whose behalf the complaint is made and evidence of the authority to represent them;
- (iii) the complainants' expectations of confidentiality;
- (iv) the complainants' choice between problem solving and compliance review;
- (v) a brief description of the ADB-assisted project, including its name and location;
- (vi) a description of the direct and material harm that the complainants have experienced, or are likely to experience, because of the ADB-assisted project;
- (vii) a description of the complainants' good faith efforts to have the problems addressed first of all by the operations department concerned, and the results of these efforts; and
- (viii) if applicable, a description of the complainants' efforts to have the complaint addressed by the special project facilitator (SPF), and the results of these efforts.

How a complaint is filed is explained in detail at <https://www.adb.org/site/accountability-mechanism/how-file-complaint>. The three-page complaint form downloadable at [https://www.adb.org/sites/default/files/page/183517/am-complaint-form\\_o.docx](https://www.adb.org/sites/default/files/page/183517/am-complaint-form_o.docx) and indicates the minimum information needed from the above list to file a complaint.

Complainants may also provide the following optional information:

- (i) an explanation of why the complainants claim that the direct and material harm stated in the complaint is, or may be caused by the alleged failure of ADB to follow its operational policies and procedures in the course of formulating, processing, or implementing the ADB-assisted project;
- (ii) the desired outcome or remedies that the complainants believe ADB should provide through the Accountability Mechanism; and
- (iii) any other relevant matters or facts, with supporting documents.

## 2.2 PROCESS OF FILING A COMPLAINT

Complainants may initially seek information about ADB's Accountability Mechanism through social media messaging services maintained under its name, but to make a formal complaint, they must file their complaints in writing and address them to the complaint receiving officer (CRO) at ADB headquarters. Complaints to ADB's Accountability Mechanism can be submitted by e-mail, regular mail, personal delivery, or any other electronic or physical means. Complaints to the Accountability Mechanism may also be accepted at any ADB office, which must then forward these to the CRO.

The CRO ensures easy accessibility as the first point of contact under the Accountability Mechanism for project-affected people. It facilitates and tracks the progress of the complaint in the initial stages of filing, and provides a measure of transparency and responsiveness in the Accountability Mechanism. If no prior good faith effort has been made to have the operations department concerned address the problem, the CRP chair or the SPF will forward the complaint to the ADB operations department concerned. Confidentiality will be maintained throughout the Accountability Mechanism process if the complainants request it.

Part of the information required upon the filing of a complaint is the complainants' choice between problem solving with the SPF or compliance review with the CRP. The complainants must clearly indicate their preference.

Within 2 days of receiving the complaint, the CRO furnishes an Accountability Mechanism information packet to the complainants. Since the CRO must, at all times, maintain neutrality,

complainants are advised to study this material, which informs them of their options. It is not within the purview of the CRO to advise the complainants regarding which complaint resolution option to choose.

The complainants must inform the CRO within 21 calendar days about their final choice between problem solving and compliance review. They must make use of this opportunity to study the Accountability Mechanism information packet and make an informed choice. They can either confirm their initial choice indicated in their letter of complaint or change their preference.

## 2.3 TWO APPROACHES TO COMPLAINT RESOLUTION: PROBLEM SOLVING AND COMPLIANCE REVIEW

The Accountability Mechanism has two approaches to addressing the concerns of project-affected persons: problem solving and compliance review (Figure 1).

### 2.3.1 Problem-Solving Function

Led by the SPF, problem solving responds to complaints involving at least two persons who are directly affected or likely to be affected by any aspect of an ADB-assisted project. A range of informal and flexible methods may be applied to build consensus and negotiate solutions.

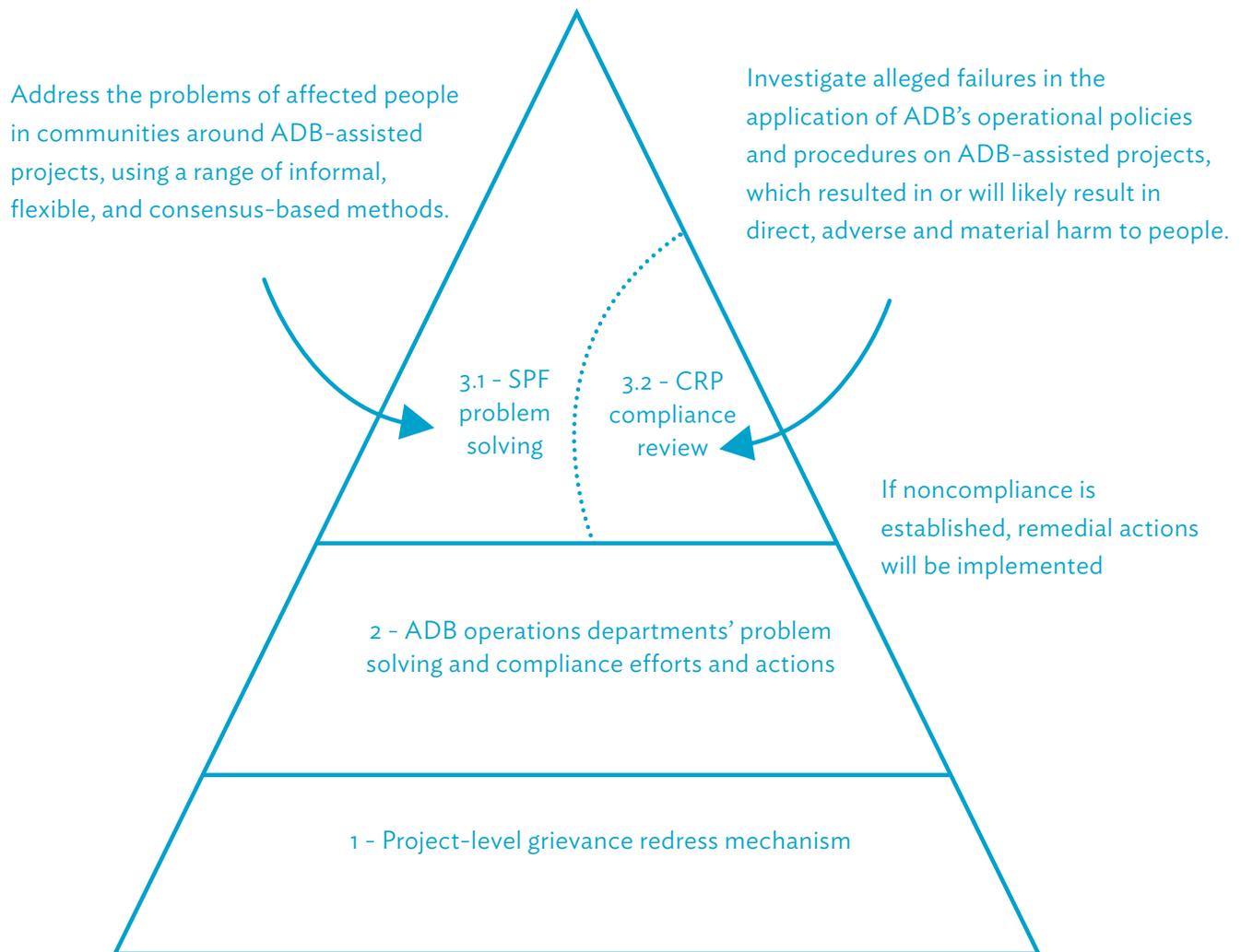
Generally, complainants are expected to be informed of any agreement reached on remedial actions about 180 working days after the registration of the complaint, excluding time allowed for processes with no prescribed time period.

The SPF heads the OSPF, which comprises one international staff member and two administrative or national staff members. The OSPF may also engage technical experts to assist in its work.

### 2.3.2 Compliance Review Function

The compliance review, under the CRP, investigates allegations of noncompliance by ADB with its operational policies and procedures that have resulted, or are likely to result, in direct and material harm to people affected by an ADB-assisted project.

Figure 1: Problem-Solving and Compliance Framework for ADB-Assisted Projects



ADB= Asian Development Bank, CRP= Compliance Review Panel, OSF = Office of the Special Project Facilitator

Source: ADB. 2012. *Accountability Mechanism Policy* 2012. Manila.

Compliance review focuses on ADB's adherence to its operational policies and procedures, and on any findings of noncompliance, in determining if it resulted in direct and material harm or will likely result in such harm. It does not inquire into the conduct of the government or private sector borrower, or the executing or implementing agency, unless that information is directly relevant to understanding and assessing how ADB complied with its operational policies and procedures.

The CRP holds project site visits and meetings to understand how ADB staff and the project team worked together with government officials or private sector personnel to ensure compliance by the ADB-assisted project with ADB's operational policies and procedures at all stages of the project cycle.

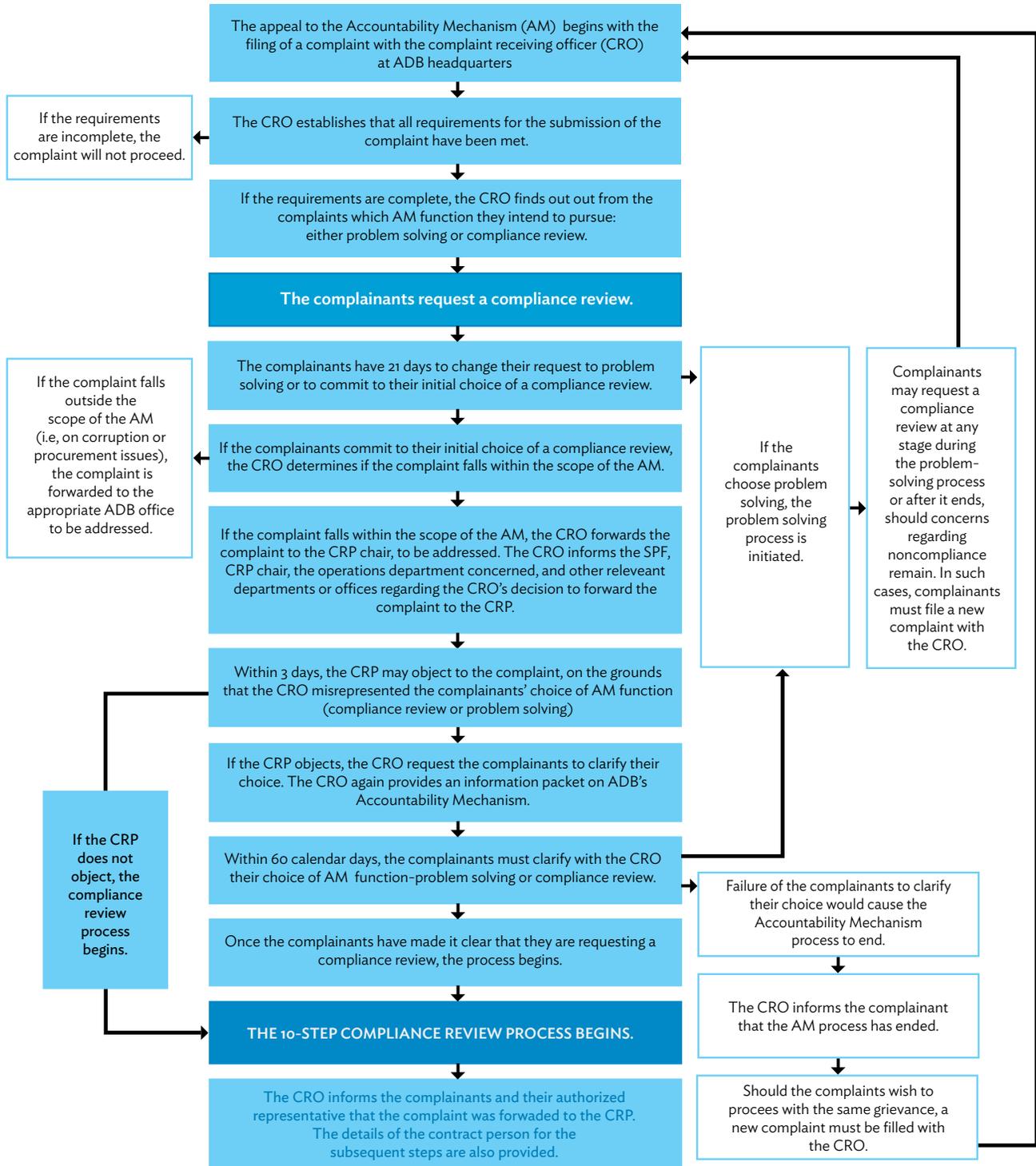
The compliance review process follows 10 steps:

- (i) request for a response from ADB Management;
- (ii) determination of eligibility of the complaint;
- (iii) Board authorization of the compliance review;
- (iv) conduct of the compliance review;
- (v) issue of the CRP's draft report;
- (vi) issue of the CRP's final report;
- (vii) Board consideration of the CRP's report;
- (viii) remedial actions by Management;
- (ix) Board decision; and
- (x) monitoring and conclusion.

The 10-step compliance review process begins when the CRO forwards the complaint to the CRP chair (Figure 2). At each step, the CRP and the various stakeholders take on specific functions and tasks. The stakeholders are the ADB Management and staff, borrowers (the government of a DMC or a private sector client), and the complainants or project-affected people, whose interests may be represented by an individual of their choice, coming from within their own ranks, from an NGO or CSO, or from elsewhere.

As the CRP is an independent body and not part of ADB Management and operations, it coordinates and engages with ADB borrowers only through ADB Management.

Figure 2: Initiating a Compliance Review



ADB = Asian Development Bank, AM = Accountability Mechanism, CRO = complaint receiving officer, CRP = Compliance Review Panel, OD = operations department, SPF = special project facilitator.

Source: ADB. 2012. *Accountability Mechanism Policy*, 2012. Manila.

While some procedures in a compliance review are time-bound, some processes are complex and dependent on factors that may consume an indeterminate amount of time.<sup>14</sup> Experience indicates that eligibility assessment, the most time-bound step in the process, typically takes about 2 months. About 9–12 months usually pass between the time the Board authorizes the compliance review and the time the CRP submits its report to the Board. Implementation of remedial actions and the prescribed monitoring runs up to 3 years. The entire compliance review process, from complaint submission to closure, therefore, lasts for about 4 years.

To keep the compliance review process on track and working effectively with a satisfactory degree of transparency, the CRP relies on administrative and operational support from the OCRP.

### 2.3.3 Differentiating Problem Solving from Compliance Review

Noncompliance with ADB's operational policies and procedures as the probable cause of harm is the fundamental qualifying aspect of a request for a compliance review. Compliance review has a corrective function because it implements Board-approved remedial actions that bring a project back from noncompliance to compliance with ADB's operational policies and procedures.

In addition, the compliance review function involves the Board. The Board

- (i) considers the CRP's eligibility and compliance review reports,
- (ii) is informed through the CRP's annual monitoring reports,
- (iii) authorizes a compliance review, and
- (iv) approves the ADB Management's proposed remedial action plan.

Further, the CRP reports to the Board through the Board Compliance Review Committee (BCRC).

In a compliance review, a legitimate claim of harm attributable to noncompliance with ADB's operational policies and procedures is addressed by remedial actions designed to bring about project compliance with ADB's operational policies and procedures. As a best practice, meaningful consultation with project-affected people also takes place during the preparation of the remedial action plan. The CRP comments on this proposed plan before it is submitted to the Board, which then considers it for approval. During this process, the Board may require revisions in ADB Management's proposed remedial actions, until a plan satisfactory to the

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<sup>14</sup> Postponements or rescheduling may also happen because of unforeseen circumstances like weather or security concerns. Time is also flexible for language translation on documentation; on requests for extension to provide information or to file documents; and the conduct of the compliance review itself.

Board is developed. Once the plan is approved, the remedial actions are implemented by ADB Management together with the borrower, and monitored for compliance and effectiveness by the CRP.<sup>15</sup> This implementation period usually takes no more than 3 years but may be extended with Board approval, if warranted by the CRP's findings in its annual monitoring reports and recommended by the Board Compliance Review Committee (BCRC).<sup>16</sup>

Problem solving, on the other hand, can be resorted to even when the adverse effects that are the subject of the complaint are not attributable to ADB's noncompliance with its operational policies and procedures. The process focuses on seeking remedy for harm caused by a project, or the prevention of any likelihood of harm particular only to the complainants, and not necessarily applying to all the people who have been harmed, or are likely to be harmed, by the project. Relative to a compliance review, complaint redressal under the problem solving function is generally more expedient than under the compliance review function. To this effect, it is also less costly and more efficient for the complainants to lodge a complaint with the SPF than with the CRP.

In problem solving, a legitimate concern over adverse effects from a project is addressed by remedial actions proposed through consensus building among the affected people, the borrower, ADB Management, and the SPF.

Whichever process is chosen—problem solving or compliance review—the filing of a complaint with the Accountability Mechanism will not outrightly suspend or affect the design or implementation of an ADB-assisted project, unless the borrower and ADB reach an agreement to suspend the project or to make changes.<sup>17</sup>

A related discussion in 2.1.2. Requirements for Filing a Complaint details the information requirements of these Accountability Mechanism processes.

### 2.3.4 Choosing between Problem Solving and Compliance Review

To address their complaint, complainants may choose between problem solving and compliance review. Such a decision must be made by the complainants themselves, with no direction or influence from the CRO, the SPF, or the CRP.

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<sup>15</sup> Para. 191 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 37.

<sup>16</sup> Paras. 190-194 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 36-37.

<sup>17</sup> Para. 140 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 28.

Complainants may initially opt for problem solving if they believe that their complaint may be served by this means. This is without prejudice to their recourse to a compliance review, should they have substantial concerns with noncompliance as the cause of harm.

When complainants opt for problem solving and the process is completed, with or without agreement reached on remedial measures, they may subsequently file a new complaint with the CRO, requesting a compliance review. (See Box 2.2 for case examples.)

Complainants can request a compliance review upon completion of step 3 in the five-step problem solving process. Step 3 is when the SPF collaborates with the borrower, the concerned operations department, and the complainants (and their representatives, if any) using various approaches to problem solving with the consent of all the parties involved. It is in this step where remedial actions are drawn. Completion of this step is signaled by the submission of the SPF's problem solving report on the complaint to the President of ADB.<sup>18</sup>

A sample problem solving report can be found at <https://www.adb.org/sites/default/files/page/42458/mon-45007-004-problem-solving-report-201901-en.pdf>.

Complainants can exit or disengage from either the problem solving or compliance review process at any time, and thus terminate the process. But they cannot switch from compliance review to problem solving midway through the compliance review process, or request problem solving after the completion of a compliance review. This is because compliance review warrants a broader application of remedial measures that benefit not only the specific complainants but an entire class of affected people.

Complainants can provide additional information or evidence relating to the complaint during the problem solving or compliance review process. However, complaints about other issues must be filed as new complaints. The CRP and the SPF will determine independently whether the complaint meets their respective eligibility criteria, and will share information and analysis regarding the complaint.

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<sup>18</sup> Paras. 169–173 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 33–34

### Box 2.2 : Case Study on Transitioning from Problem Solving to a Request for a Compliance Review

Complainants may initially opt for the problem solving function of the Accountability Mechanism and later choose the compliance review function instead, as they did in the Greater Mekong Subregion: Rehabilitation of the Railway Project in Cambodia. Before filing a complaint with the Asian Development Bank (ADB) Compliance Review Panel (CRP) on 28 August 2012 requesting a compliance review, the complainants filed a request for problem solving, which the ADB Office of the Special Project Facilitator (OSPF) deemed eligible on 11 January 2012. An agreement on a course of action was reached on 22 August 2012. It was worked out in consultation between the affected people, the operations department concerned—the ADB Southeast Asia Department—and the Cambodian government’s Inter-ministerial Resettlement Committee. Negotiations had reached step 7 of the problem solving process (under the Accountability Mechanism Policy of 2003) when the complainants requested the CRP to undertake a parallel investigation into ADB’s compliance with its operational policies and procedures. They stated “they do not believe that the OSPF process will effectively address the non-compliance issues with which they are concerned”.<sup>1</sup>

The complainants’ dissatisfaction was primarily triggered by the rejection of their request for a review of the implementation of the resettlement plan and the conduct of the detailed measurement survey. The rejection compounded the perceived limitations set on the complainants’ free choice of representation in the mediation process, which, they believed, weakened their bargaining position. They were unable to choose to be represented by nongovernment organizations with specialized knowledge of ADB’s safeguard policies. The resulting power imbalance and procedural limitations of the problem solving process, which allowed them to initiate a request for a compliance review only upon reaching step 7, led to their reluctant acceptance of the existing course of action between stakeholder parties. At that point, the complainants believed it was in their best interest to have a rigorous reassessment of compliance, with regard to ADB’s Policy on Involuntary Resettlement, especially as they considered a full corrective action plan to be warranted, to bring the project back into compliance with ADB’s operational policies and procedures and mitigate the harm caused.<sup>2</sup>

<sup>1</sup> Paras 3 and 5 in ADB. 2012. *Report on Eligibility on Compliance Review Panel Request No. 20126/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*. Manila (Loan 2288 and Loan 2602/ Grant 0187 [Supplementary]). pages 5–6.; Executive Summary and Para. 3 in ADB. 2014. *Final Report on Compliance Review Panel Request No. 20126/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*. Manila (Loan 2288 and Loan 2602/ Grant 0187 [Supplementary]). <https://lnadbg4.adb.org/diro035p.nsf/alldocs/RDIA-8XT5DA?OpenDocument>

<sup>2</sup> Paras 80–85 in ADB. 2012. *Request for Compliance Review: Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia Project*. Manila (Loan 2288 and Loan 2602/ Grant 0187 [Supplementary]). pages 18–19. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/RDIA-8XT5DA?OpenDocument>

## 2.4 ACCEPTANCE OF A COMPLAINT

The following five requirements need to be met at the initial stage of filing, for the CRP to consider accepting a complaint for a compliance review:

- (i) The complaint must be about an ADB-assisted project.
- (ii) No more than 2 years must have elapsed since the closing date of the project.
- (iii) At least two individuals directly and materially harmed or likely to be harmed by the project are filing the complaint.
- (iv) Alleged harm may be linked to noncompliance with ADB's operational policies and procedures.
- (v) Prior good faith effort to address the problem was made with the operations department concerned.

### 2.4.1 Requirements for Consideration of a Complaint

The eligibility of a complaint accepted for compliance review or for problem solving will be determined at a later stage of the process, according to criteria specific to the Accountability Mechanism function.

For complaints for which a compliance review is requested, eligibility is determined in step 2 of the 10-step compliance review process (section 3.1.3, Eligibility Determination by the CRP).

Complaints are excluded from consideration under the compliance review function if they concern the following:<sup>19</sup>

- (i) issues unrelated to ADB's actions or omissions while formulating, processing, or implementing ADB-assisted projects;
- (ii) matters that complainants have not made good faith efforts to address with the operations department concerned;
- (iii) issues concerning an ADB-assisted project for which more than 2 years have passed since the loan or grant closing date;
- (iv) matters that are frivolous, malicious, trivial, or generated to gain competitive advantage;
- (v) decisions made by ADB, the borrower or executing agency, or the private sector client regarding the procurement of goods and services, including consulting services;
- (vi) allegations of fraud or corruption in ADB-assisted projects or misconduct by ADB staff;
- (vii) issues related to the adequacy or suitability of ADB's existing policies and procedures;

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<sup>19</sup> Para. 142 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila Manila, page 29.

- (viii) issues regarding the jurisdiction of ADB's Appeals Committee or Administrative Tribunal, or issues relating to ADB personnel matters; or
- (ix) issues regarding ADB nonoperational administrative matters, such as finance and administration.

The compliance review function also excludes complaints that<sup>20</sup>

- (i) relate to actions for which other parties, such as a borrower, executing agency, or potential borrower, are responsible, unless the conduct of these other parties is directly relevant to an assessment of ADB's compliance with its operational policies and procedures;
- (ii) do not involve ADB noncompliance with its operational policies and procedures;
- (iii) are being dealt with by the SPF up to the completion of step 3 under the problem solving function;
- (iv) relate to the laws, policies, and regulations of the borrowing country, unless they relate directly to ADB's compliance with its operational policies and procedures; or
- (v) matters already considered by the CRP, unless the complainants have new evidence previously unavailable to them and the subsequent complaint can be readily consolidated with the earlier complaint. In such cases, any resubmission or consolidation of the complaint should occur within 2 years after the loan or grant closing date.

Qualifying among the exclusions from eligibility for a compliance review detailed in these two preceding lists, or failing to qualify according to the basic criteria for the acceptance of a complaint outlined in section 3.1.1, Initial Assessment by the CRP, would make a complaint ineligible for acceptance under the compliance review function.

The conditions for eligibility must be sufficiently met to the satisfaction of the CRP, from the initial assessment of a complaint in step 1 of the 10-step compliance review process, based on the rules in section 3.1.1. Initial Assessment by the CRP, and for determining eligibility in step 2, according to the rules in section 3.1.3. Eligibility Determination by the CRP.

A complaint may be deemed eligible by the CRP if it does not fall under any of the exclusions, and when the CRP is satisfied that there is evidence of noncompliance, that the noncompliance has caused or is likely to cause direct and material harm to project-affected people, and that the noncompliance is substantial enough to warrant a compliance review.

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<sup>20</sup> Para. 148 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 30.

**Box 2.3 : Case Studies on Similar Concerns Across Multiple Complaints on the Same Project****Loan 3063: Sustainable Urban Transport Program—Tranche 3 in Georgia**

If an additional complaint is received by the Compliance Review Panel (CRP) on a matter already under consideration, the succeeding complaints may be consolidated with the first complaint. Such was the case with three complaints on Georgia's Sustainable Urban Transport Program. Four complaints requesting a compliance review were received by the CRP, the first two in March and November 2016. The first complaint was found eligible, and while the facts of the case in the second complaint may have made it eligible on the basis of harm and causality, the CRP concluded its qualification for exclusion from eligibility on the grounds of being a "matter already considered by the CRP" (see section 2.4.1 Eligibility Requirements for Consideration of a Complaint, item [v] in the 2nd set of rules on exclusions) made it categorically ineligible.

As the concerns of these complaints and the conditions they described were on similar grounds, the two complaints called for a consolidation of complaints, with the second complaint subsumed under the compliance review of the first. Any concerns raised under this second complaint would have likewise been addressed by Asian Development Bank (ADB) Management as part of the remedial actions resulting from the compliance review of the first complaint.<sup>1</sup>

A third complaint, filed in July 2017 initially requested problem solving with the special project facilitator (SPF), but was deemed ineligible as it concerns matters already under the purview of the CRP<sup>2</sup> with its ongoing compliance review on the first two complaints.<sup>3</sup> The third complaint was instead forwarded to the CRP in June 2018.<sup>4</sup>

In determining the complaint's eligibility, the CRP found the complaint eligible based on new evidence of noncompliance on issues not yet addressed in the remedial action plan resulting from the ongoing compliance review. However, the CRP considered the additional evidence not significant enough to warrant a separate compliance review. The CRP and ADB Management consider the prevailing remedial action plan to already encompass remedial actions needed to address issues of noncompliance on this third complaint, with coverage over the location and particularities of the third complaint subsumed under the same plan. The third complaint is essentially subsumed under the compliance review already undertaken, even as remedial actions will be designed and implemented particular to the circumstances of the subsequent complaint.<sup>5</sup>

As can be seen in this instance, a subsequent complaint requesting a compliance review while a previous complaint is already being processed by the CRP for an ongoing or possible compliance review may result in the consolidation of the concerns expressed in the complaints, especially if the subsequent complaint

may otherwise be found eligible based on sufficient evidence of harm or noncompliance. Since the remedial action plan (formulated after findings of noncompliance have been considered) encompasses the whole project, this plan is presumed to address the issues raised not only by the complainants, but by all project affected persons. Thus, the effects and applicability of remedial actions from a compliance review can be considered as reaching further than problem solving, as a compliance review may result in a more comprehensive package of remedies that negate the need for any further problem solving through the Accountability Mechanism.

A fourth complaint on this project was filed in October 2018 that is substantially of a different concern from the previous three. A discussion on this is found in the Case Studies and Best Practices of Good-Faith Efforts in Section 2.4.5.

**Box 2.3. continued****Greater Mekong Subregion: Rehabilitation of the Railway Project in Cambodia**

On matters already considered by an ongoing or concluded compliance review, legitimate concerns on a subsequent complaint may be addressed under the same remedial instruments of the prevailing compliance review, even if additional complaints may be found ineligible by the CRP on certain grounds. ADB Management and the borrower may work to address legitimate concerns on the basis of the same remedial action plan agreed upon to remedy the earlier complaint.

In Cambodia's Greater Mekong Subregion: Rehabilitation of the Railway Project, the CRP acknowledged a second request for a compliance review on 7 September 2015, months after a compliance review on the project concluded with a Board decision reached on 31 January 2014. This second group of complainants comprised members of households that claimed inadequate compensation due to misclassification or refused relocation from lack of consultation on their resettlement options and inadequacy of infrastructure at the resettlement site.<sup>6</sup>

ADB Management claimed that the conditions set forth in the complaint had already been considered by the CRP, ADB Management, and in the Board approved CRP recommendations that became the bases for the remedial action plan at the conclusion of the compliance review. The issue rested on the CRP's consideration with regard to any new evidence not previously available during the CRP's previous compliance review.

While the complainants' claim of a delay in the implementation of an expanded remedial action plan was not in dispute, the facts did not support their contention that the delay constituted new evidence in support of their claim. The complaint was found ineligible, but as the new complaint could be consolidated with the earlier complaint and addressed through the same Board decision, the CRP recommended that ADB Management work with the Cambodian government to establish specific time-bound actions to remedy these two categories of grievances.

<sup>1</sup> Complaint of the residents of 12-33 Block, Rustavi Highway, Tbilisi, Georgia, 29 January 2016; Complaint of the residents of Building No. 16 a/b, Rustavi Highway, Tbilisi, Georgia, 17 August 2016. Paras. 1, 2 and 7 in ADB. 2017. Compliance Review Panel. *Report on Eligibility on Compliance Review Panel Request No. 2016/3 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia* (Asian Development Bank Loan 3063). Manila, pages 1-3. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-AFR657?OpenDocument>

<sup>2</sup> Para 143 in ADB. 2012. *Accountability Mechanism Policy* 2012. Manila, page 29.

<sup>3</sup> Para. 9 in Compliance Review Panel. 2018. *Report on Eligibility on Compliance Review Panel Request No. 2018/1 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia* (Asian Development Bank Loan 3063). Manila. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-AFR657?OpenDocument>

<sup>4</sup> Complaint of 57 residents, initially submitted to the SPF on 22 June 2017, and forwarded to the CRP in August 2017. ADB. 2017. *Request for Compliance Review. Georgia: Sustainable Urban Transport Investment Program (Tranche 3) in Georgia*. Manila, page 2. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-AZY5CQ?OpenDocument>

<sup>5</sup> Paras. 7-15, and 33-35 in Compliance Review Panel. 2017. *Report on Eligibility on Compliance Review Panel Request No. 2018/1 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia* (Asian Development Bank Loan 3063). Manila, pages 2-5 and 11. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-AZY5CQ?OpenDocument>.

<sup>6</sup> Complaint of 23 residents, initially submitted to the SPF on 30 August 2015, and forwarded to the CRP on 7 September 2015, paras. 1-36 in ADB. 2015. Compliance Review Panel. 2015. *Report on Eligibility on Compliance Review Panel Request No. 2015/1 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia* (Asian Development Bank Loan 2288 and Asian Development Bank Loan 2602/Grant 0187 [Supplementary]). Manila, pages 1-9. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/RDIA-8XT5DA?OpenDocument>.

### 2.4.2 Eligibility Consideration with Duplication of Complaints

If succeeding complaints are filed over concerns that are essentially over the same material harm and alleged cause as the preceding complaint, all succeeding complaints may be accepted under the Accountability Mechanism but consolidated with the first complaint. A new investigation will not be conducted if an ongoing compliance review has already addressed the same issues. The CRO will process the complaint, which may be accepted or rejected by the CRP at its discretion, using its particular criteria to determine the eligibility of the complaint. Even if conditions may render the succeeding complaints eligible, the considerations behind rule (v) of the exclusions for compliance review (section 2.4.1. Eligibility Requirements for Consideration of a Complaint) recommend consolidation under a single complaint. The CRP shall adopt a practical and responsive approach in considering new complaints, to assure complainants that their concerns are effectively addressed. (See Box 2.3 for case examples.)

Relative to problem solving, the concerns of an entire class of complainants aggrieved by the noncompliance in a project may be addressed by the more comprehensive scope of remedial actions that may result from a compliance review. (See also section 2.3.4 Choosing Between Problem Solving and Compliance Review).

### 2.4.3 Preliminary Evidence of Noncompliance Resulting in Harm

For a compliance review to proceed, the CRP must be satisfied that there is evidence of the following:

- (i) noncompliance by ADB with its operational policies and procedures on the project;
- (ii) noncompliance causing direct and material harm to affected people on an ADB-assisted project (or causing the risk of such harm, if noncompliance continues); and
- (iii) noncompliance is significant or substantial enough to warrant a compliance review.<sup>21</sup>

The CRP must be satisfied that there is evidence of these three essential conditions during eligibility assessment of a complaint on an ADB-assisted project for the CRP to consider a complaint eligible for compliance review. Indications for these conditions must be present when a complaint is filed, even if objective proof for these may result only from a full compliance review or investigation approved by the Board.

For a complaint to be eligible for compliance review, the harm or risk of harm alleged in the complaint must result from noncompliance by ADB with its specific operational policies and procedures (see Appendix on ADB's Operational Policies and Procedures Covered by Compliance Review

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<sup>21</sup> Paras. 147 and 179 in ADB. 2012. *Accountability Mechanism Policy* 2012. Manila, pages 30–35.

for a complete listing). This causal link between noncompliance and harm must be provable beyond mere correlation (i.e., there must be a credible cause-and-effect relationship between the noncompliance and the harm).

If the harm cannot be attributed to noncompliance by ADB, a request for problem solving may be made. This makes the scope of the problem solving function broader than that of a compliance review, as only harm and its attribution to an ADB-assisted project need to be qualified on such a complaint. People who are directly and materially harmed by an ADB-assisted project, or who may be at risk of being adversely affected with the continuation of the project, can petition for remedy using this Accountability Mechanism function, regardless of whether or not the project complies with ADB's operational policies and procedures.<sup>22</sup>

If the cause or risk of harm can be attributed to noncompliance by ADB during the project's formulation, processing, or implementation, the complaint can be submitted for compliance review.<sup>23</sup>

Noncompliance is the fundamental criterion for a complaint in a compliance review, wherein failure by ADB to comply with specific operational policies and procedures of ADB (see appendix for ADB's Operational Policies and Procedures Covered by Compliance Review for the complete listing, and section 2.3.2. Compliance Review Function, on the scope of a compliance review) has caused harm, or will likely cause harm in a project, with the continued implementation of actions by the borrower.

As the actual element of noncompliance varies according to circumstances, its qualification as being sufficient to meet the requirement of a complaint for compliance review is left to the discretion and professional judgment of the CRP. The CRP determines a tenable causal link between the instance(s) of noncompliance and the harm that it/they may have caused or would likely cause.

#### 2.4.4 Evaluating Evidence of Noncompliance and Harm at Progressive Stages of Inquiry

The CRP's initial assessment will be based on documentary evidence gathered from the project website and the complaint, including other attached documents submitted by the complainants. During the eligibility determination for the complaint, the CRP's observations may be supplemented by a site visit and interviews with affected people, ADB Management and staff, and the borrower's organization.

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<sup>22</sup> Paras. 126 and 141 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila pages 24–28.

<sup>23</sup> Paras. 130 and 145 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 25–29.

On its evaluation of the preliminary evidence gathered during initial assessment and of ADB Management's explanation and the supporting evidence presented in Management's response (in step 1 of the 10-step compliance review process), and on its findings from observations or evidence gathered during the subsequent eligibility determination activities on a site visit in step 2 of the process, the CRP must recognize a tenable link between noncompliance and causality of harm, or risk of harm, to warrant its recommendation for Board authorization of a compliance review. (See Boxes 2.4, 2.5, 2.6, and 2.7 for case examples.)

Further investigation under a full compliance review will provide a definitive determination of noncompliance and prove or disprove its causality of harm. The findings of noncompliance from a full compliance review provide the basis for any remedial actions that may be warranted, if causality that relates the harm to noncompliance is affirmatively proven.

#### Box 2.4 : What Is Direct and Material Harm?

In the context of the Accountability Mechanism of the Asian Development Bank (ADB), a complaint is triggered by an allegation of direct and material harm experienced by the complainants as an adverse effect of an ADB-assisted project, or by an allegation that harm may result from its continued implementation. Harm is an adverse or negative effect that can be attributed to the activities of an ADB-assisted project. It should be found to have resulted directly from a noncompliance with operational policies and procedures, without any intervening actions or events that factor in the harm allegedly caused by noncompliance. Its impact must be significant, substantial, or severe, with a material, physical, and tangible result that is directly experienced and personally attested to by the complainants.

Such harm or potential risk of harm can be factually substantiated. It may typically be described as an injury, loss, impairment, or damage to person (a diminution of health, or risk of loss of life); property (movable or immovable); livelihood, quality of life; cultural heritage; environment (including biotic or abiotic natural resources, such as air, water, soil, and flora and fauna, and the ecological interactions between these, as well as landscape, among others); or the like, but not limited to these examples. The actual element of harm varies according to circumstances. Harm qualifies as sufficient to fulfill the primary requirement of a complaint upon the discretion and professional judgment of either the Compliance Review Panel or the special project facilitator, in their eligibility assessment after a complaint has been filed.

As one of the goals of the Accountability Mechanism is to address legitimate concerns over harm by people adversely affected by an ADB-assisted project, harm remains an essential condition in a complaint that results in an investigation into ADB's responsibility.

### 2.4.5 Good-Faith Efforts with the Operations Departments of ADB

Good-faith effort refers to the complainants' exercise of maximum effort, prior to filing a complaint with the Accountability Mechanism, in seeking redress or in voicing their concerns through complaints filed or communications with the ADB operations department concerned. After this primary opportunity for remedy with the operations department, as a means of "last resort," affected people may then file with the Accountability Mechanism for a complaint that has yet to be addressed to their satisfaction.

Upon filing a complaint with the Accountability Mechanism, complainants must describe and are encouraged to provide evidence of prior good faith effort made with the operations department. Complainants must attach documentation of complaints previously filed with the operations department over their concerns. This would include all relevant correspondence and minutes of consultations made with ADB's operations department, such as a record of e-mail or formal correspondence, or meeting minutes, or similar records of engagement and discussions. This would help prove assertions, such as a lack of response despite sufficient efforts made in good faith to communicate and seek redress of grievances. This may aid in proving that concerns have not been addressed to the satisfaction of the complainants, or that their concerns remain unacknowledged or unaddressed by the operations department, despite a considerable amount of time since their initial communication of concerns or the earlier filing of complaints (particularly after remedy has been sought with the project's GRM, and failing to reach a solution then, through remedy sought with the operations department). (See Box 2.8 for case examples.)

Under the Accountability Mechanism Policy, the lack of a good faith effort made with the operations department concerned is grounds for ineligibility (see section 2.4. Acceptance of Complaints) of a complaint filed with the Accountability Mechanism. The requirement for operations department-level address should not be seen, however, as a precondition for access to the Accountability Mechanism. If a complaint is filed with the Accountability Mechanism without prior good faith effort,<sup>24</sup> the complaint will be forwarded by the CRP chair or the SPF to the operations department concerned, for appropriate action.<sup>25</sup>

ADB's operations department would receive complaints from the complainants that find no relief from the solution offered by the project's GRM. The operations department's problem solving and compliance efforts offer a means to address affected people's problems prior to a compliance review. A good faith effort to seek a solution with the operations department, primarily through its resident mission, provides ADB Management and staff and the borrower

<sup>24</sup> Para. 195 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 37.

<sup>25</sup> Paras. 137, 142, 144, 151, 180, 195 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 28–40.

(either government or private sector) with an opportunity to address a complaint before such situations escalate to a compliance review with ADB's Accountability Mechanism.

As mandated by the Accountability Mechanism Policy, ADB operations departments will track the progress of resolving these complaints, and its results. It is recommended that ADB operations departments develop a system for tracking the progress of resolving project-related complaints. The tracking system should have a clear, time-bound process and should include actions done to address the complaints. Operations departments are urged to keep records of meetings, correspondence, and other relevant information showing how the complaints were addressed, for documentation. Throughout the process, operations departments should also be sensitive and aware of confidentiality or security issues relating to the complainants' identities, as may be requested.

After efforts to address these ineligible complaints are forwarded to the operations departments, these departments prepare a report that

- (i) summarizes the complaint and the actions taken to address it;
- (ii) details any decisions or agreements made; and
- (iii) gives an analysis of the results, along with the lessons learned.

The operations departments' efforts at problem solving and compliance are expected to avert further harm or risk of harm from noncompliance, to avoid subsequent complaints from being filed with the SPF or the CRP.

### Box 2.5: Case Study of Noncompliance and Causality of Harm in Georgia

In Georgia's Sustainable Urban Transport Program Program—Tranche 3, four complaints were filed by residents of particular buildings located near the construction site of the Tbilisi–Rustavi section of this highway rehabilitation and expansion project, the first three of which are primarily concerned with the adverse environmental and social impact of the road construction and operation. Complainants alleged that the construction of the highway presented a high risk of vibrational stress on the aging structures of their residential buildings. Their proximity to the proposed highway may also have an adverse effect on living conditions for visually impaired residents, as they may face difficulties in navigating a noise-polluted environment from the increased noise levels during the planned construction. The complainants also alleged a lack of meaningful public consultation, with the Georgia Municipal Development Fund exerting minimal effort to consult with the public (and the residents, in particular) during project planning between 2013 and 2015. They believed their interests would not be considered during project implementation without any strong assurance from the Government of Georgia.<sup>1</sup>

From its compliance review investigation, the CRP determined that there was evidence of likely direct, and material harm as a result of the following:

- (i) expected noise impact significantly above the permissible ADB noise standards;
- (ii) the possibility of loose building components collapsing during construction if no appropriate mitigation measures are to be done; and
- (iii) vibrations during construction, and reduced light resulting from the road alignment and construction of the noise shield barrier close to the apartment of vision-impaired people.<sup>2</sup>

<sup>1</sup> Complaint of the residents of 12–33 Block, Rustavi Highway, Tbilisi, Georgia, 2016; Complaint of the Residents of Building No 16 a/b, Rustavi Highway, Tbilisi, Georgia. Paras. 1–8 in ADB. 2017. *Report on Eligibility to the Board of Directors on Compliance Review Panel Request No. 2016/3 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). pages 1–4. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>; See also ADB. 2016. *Report on Eligibility to the Board of Directors on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program Tranche 3 in Georgia (Asian Development Bank Loan 3063)*. Manila. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-AFR657?OpenDocument>.

<sup>2</sup> Para. 75 in ADB. 2017. *Final Report on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). pages 30–31. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>.

Source: Asian Development Bank

### Box 2.6 : Aiding the CRP's Initial Assessment by Providing Evidence of Harm Allegedly Caused by Noncompliance

In filing their complaints on Georgia's Sustainable Urban Transport Investment Program— Tranche 3, the complainants provided detailed descriptions of their concerns, including photographs as evidence, along with a description of the consultation and survey conducted within the community. This was to ascertain the effects of the project in terms of risk and adverse impact on their living conditions.

After the initial assessment and eligibility determination, the Compliance Review Panel (CRP) recommended that the Board authorize a compliance review of the project, which the Board subsequently did.

The CRP investigated the project's compliance with the following Asian Development Bank (ADB) policies and operational procedures that were in effect when the project was processed and approved:<sup>1</sup>

- (i) Safeguard Policy Statement (2009);
- (ii) Public Communications Policy (2011);
- (iii) Operations Manual (OM) Section F1 (Safeguard Policy Statement), issued on 1 October 2013;
- (iv) OM Section C3 (Incorporation of Social Dimensions into ADB Operations), issued on 6 December 2010; and
- (v) OM Section L3 (Public Communications), issued on 2 April 2012.

From the CRP's investigation, it was found that ADB did not comply<sup>2</sup> with particular sections of ADB's Safeguard Policy Statement and its related OM sections. ADB's actions or omissions were listed as follows:

- (i) inappropriate choice of noise standards for the project;
- (ii) lack of adequate site-specific environmental impact and risk assessment and mitigation and management plan;
- (iii) failure to completely identify vulnerable and disadvantaged groups and assess and mitigate project impacts to these groups;
- (iv) insufficient consultations with vulnerable groups, especially vision-impaired people;
- (v) failure to assess the ecological impact of the project on the Mtkvari River; and
- (vi) inappropriate environmental categorization of the project.

<sup>1</sup> Para. 14 in ADB. 2018. *First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). page 4. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>.

<sup>2</sup> Paras. 22-80 in ADB. 2017. *Final Report on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). pages 7-32. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>.

### Box 2.7 : Case Study on Noncompliance and Causality of Harm in the Philippines

In May 2011, the Compliance Review Panel (CRP) acknowledged a complaint requesting compliance review on the Philippines' Visayas Base-Load Power Development Project, after being withdrawn from problem solving. This project, located at Naga City, Cebu, Philippines, is owned and operated by the KEPCO-SPC Power Corporation (KSPC).

Among other allegations, the complainants claim that the project would increase health risks to residents of nearby communities due to: (i) emissions of carbon dioxide (CO<sub>2</sub>) and pollutants such as sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) that may cause respiratory illnesses; (ii) spillage of coal during transport that may expose residents to hazardous, toxic metallic elements; and (iii) seepage from the Balili coal ash dumpsite that could contaminate marine life for human consumption. In their complaint, the complainants claimed that the Asian Development Bank (ADB) failed to comply with its Safeguard Policy Statement, its Public Communications Policy, its policies on clean energy and public consultation, and its standards on the conduct and subsequent disclosure of the environmental impact assessment (EIA) along with details on coal ash disposal.<sup>1</sup>

The Board authorized a compliance review in July 2011. In its review, the CRP found the project to be noncompliant with the Environment Policy (2002) provisions requiring updating of the EIA, a due diligence review of ash management, an environmental audit of the preexisting Naga power plant, ambient air dispersion modeling, and the preparation of an environmental management plan (EMP) for historic ash disposal sites.

The CRP also found ADB noncompliant with its Energy Policy (2009), in deciding to finance the coal-fired power plant without first ensuring compliance with social and environmental safeguards.<sup>2</sup> Upon CRP's review, harmful gases, such as SO<sub>2</sub> and NO<sub>x</sub>, from the project site were most likely affecting the health of community members, supported by regional data indicating that respiratory diseases were a common cause of illness in the area—higher than the national average with pneumonia leading the causes of death. The CRP also found that ADB failed to completely address risks, mitigate and be transparent of its environmental impact, and address the communities' health concerns. Because of these lapses, CRP found that ADB did not exercise rigorous due diligence in complying with social and environmental safeguards policies, thus making ADB noncompliant of its Energy Policy (2009).

On these conclusions, the CRP made four recommendations to bring the project into compliance, each of which ADB Management planned to address with a remedial action plan.<sup>3</sup> (This will be discussed in detail on the Case Study of Remedial Actions to Address Noncompliance.)

<sup>1</sup> Executive Summary and paras. 1-9 in ADB. 2012. *Final Report on Compliance Review Panel request No. 2011/1 on the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila (Loan No. 2612-PHI). pages 1-2.; See also ADB. 2011. *Report On Eligibility To the Board of Directors On Compliance Review Panel Request No. 2011/1 On the Visayas Base-Load Power Development Project In the Republic of the Philippines*. Manila (Bank Loan No. 7303 - PHI) Manila; ADB. Visayas Base-Load Power Development Project (2011/1). <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

<sup>2</sup> Executive Summary and paras. 15-48 in ADB. 2012. *Final Report on Compliance Review Panel Request No. 2011/1 on the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila (Loan No. 2612-PHI). Manila. pages 4-14. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

<sup>3</sup> Executive Summary and paras. 49-51 in ADB. 2012. *Final Report on Compliance Review Panel Request No. 2011/1 on the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila (Loan No. 2612-PHI). Manila. pages 14-15. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

**Box 2.8 : Case Studies and Best Practices of Good-Faith Effort**

**In case of contention about the sufficiency of a good faith effort, complainants can prove fair qualification with documentation, as the Compliance Review Panel (CRP) will resolve the matter judiciously.**

The Nenskra Hydropower Project in the mountain valley of Nenskra, Georgia, received a complaint filed by 10 affected persons belonging to the Svan ethnic group, alleging inadequate meaningful public consultation, lack of transparency, and denial of participation in decision-making processes on a project that may have adverse geological and microclimate effects. They claimed that the project will likely result to adverse effects on the traditional Svan lifestyle and social structures, from the increased risk of landslide and mudflows, reduced access to pasture and significant reduction of water and fishing resources, and health and agricultural issues from changes in frost and humidity resulting from the flooding of pastures and forests.

Earlier efforts had been made to raise concerns through protests and complaints in writing, but the complainants claimed that their concerns had neither been heard nor addressed and had been met with insufficient answers in available project documents. Two letters, dated July and September 2017, were sent to the lenders group, which included ADB, the European Investment Bank, the European Bank for Reconstruction and Development, and the Export-Import Bank of Korea. Even as ADB Management claimed that no good faith effort had been made since these letters had not been received by the proper operations department, the CRP was of the view that these constituted good faith efforts at resolving complaints earlier on. The CRP noted that lack of knowledge of ADB's organizational structure for complainants to make the proper address should not prejudice their opportunity to seek redress. Instead, it was the organization's shared responsibility, through whichever channel such complaints were coursed, for the communication to get to the office the sender intended to reach.

Not receiving an adequate response with ample time given after their earlier complaint, the complainants petitioned for a compliance review with ADB's Accountability Mechanism, which the CRP acknowledged on 7 December 2017.<sup>1</sup>

In contrast, on the fourth complaint filed with the CRP on Georgia's Sustainable Urban Transport Investment—Tranche 3 project, insufficiency of prior good faith efforts, including lack of documentation or detailed description on the results of such efforts, led the CRP to conclude ineligibility for a recommendation for a compliance review.<sup>2</sup>

Between the letter of complaint received by ADB's Georgia Resident Mission on 31 July 2018, and ADB's Central and West Asia Department's continuing effort at engaging a third-party appraiser to provide an independent valuation on the properties along with their continued communication with the complainants on such matters, the CRP considered it premature to conclude any sufficiency of the complainants' good faith efforts at resolving issues with ADB Management, pending the results of Management's continuing efforts (while also noting Management's obligation to provide timely progress on the process it initiated). Furthermore, examining the complainants' complaint documentation for a description of their good faith efforts, the CRP noted the lack of description of such.

**Box 2.8. continued**

Therefore, unlike the complaint on the Nenskra Hydropower Plant, the CRP was unable to qualify the eligibility of this fourth complaint on Georgia’s Sustainable Urban Transport Investment—Tranche 3 project at the prescribed time from filing, lacking sufficiency and qualification, which could only be helped with a detailed documentation.

<sup>1</sup> Green Alternative. 2017. Complaint on Nenskra Hydropower Plant Project in Georgia. Georgia: Nenskra Hydropower Project (2017/4) Paras. 1–9, 15, and 71 in ADB. 2018. *Report on Eligibility to the Board of Directors on Compliance Review Panel Request No. 2017/4 on the Georgia: Nenskra Hydropower Project*. Manila (Project No. 49223-001). pages 1–5 and 27. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-ATX46V?OpenDocument>.

<sup>2</sup> ADB. 2018. *Report on Eligibility on Compliance Review Panel Request No. 2018/2 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). Manila.

Source: Asian Development Bank

## 2.5 ROLES OF DIFFERENT STAKEHOLDERS

### 2.5.1 Affected People

The term “affected people” refers to individuals whose persons or properties were directly and materially harmed by an ADB-assisted project during its formulation, processing, or implementation. It also applies to individuals who would potentially be directly and materially harmed by the implementation of a proposed ADB-assisted project. In this sourcebook, the term also includes complainants and other people in the community surrounding a project who may experience adverse conditions described in a complaint. They may not initially or even necessarily be party to a complaint, but are likely to benefit from the remedial actions that may result from a compliance review.

Affected people can file a complaint on an adverse effect of a project that has had a material consequence directly experienced by them. A complaint may also be filed on potentially adverse effects that may result from the project’s planned implementation or continuing implementation.

### 2.5.2 Nongovernment and Civil Society Organizations

In this sourcebook, a nongovernment organization (NGO) is broadly referred to as an organization that is (i) not based in government, and (ii) not created to earn profit.<sup>26</sup> CSOs, on the other hand, refer to nonstate actors whose aims are neither to generate profits nor to seek

<sup>26</sup> Para. 4 in ADB. 2004. *Cooperation between Asian Development Bank and Nongovernment Organizations*. Manila. page 3.

governing power, but to unite people in advancing shared goals and interests, and maintain a presence in public life for the purpose of expressing the interests and values of their members or others, typically based on ethical, cultural, scientific, religious, or philanthropic considerations. These include NGOs, professional associations, foundations, independent research institutes, community-based organizations (CBOs), faith-based organizations, people's organizations, social movements, and labor unions.<sup>27</sup>

With the Accountability Mechanism, people adversely affected by an ADB-assisted project have the option of submitting complaints to the CRO through a representative (or representatives) from an NGO or CSO. Such project-affected persons may approach people from NGOs or CSOs to represent their interests and/or facilitate the filing of a complaint with ADB's Accountability Mechanism, or to assist in such a process through an advisory capacity in which the complainants remain the active front for their interests.<sup>28</sup>

The affected people also have the option to organize themselves as a local NGO or CSO to act on their interests, from which they may elect a representative to participate in the compliance review process. Affected persons who belong to an NGO or CSO may choose a representative from their organization (who may or may not necessarily be an affected person himself or herself) to represent their interests, or at the minimum, assist in the filing of their complaint. Such representatives are authorized in writing by the affected persons to advocate for their interests or assist in the filing of their complaint, or act in both capacities, in their effort to seek remedy through ADB's Accountability Mechanism. The extent of an NGO or CSO representative's authority and involvement in advocating for the complainants' interests should be stated in the authorization document provided by the complainants upon filing with the CRO. (See Boxes 2.9 and 2.10 for case examples.)

For ease of coordination and collaboration, and for facilitating organized participation in ADB's Accountability Mechanism, the complainants are highly encouraged to authorize at least one representative to lead or act on their behalf. This is without prejudice to the option for complainants to represent themselves individually (provided that at least two complainants are filing, for a complaint to proceed), or for particular complainants to retain a particular representative apart from the representative of other complainants filing the same complaint.

Depending on the agreement between the complainants and their representative, their partnership may involve full agency as representative of the complainants' interest. Affected persons may approach NGOs either to (i) seek representation from one or two staff members of such NGO; (ii) seek simple assistance such as in identifying who to send the complaint to;

<sup>27</sup> ADB. 2009. *Civil Society Organization Sourcebook: A Staff Guide to Cooperation with Civil Society Organizations*. Manila. page 1.

<sup>28</sup> Paras 107, 124, and 138 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 21–24 and 28.

(iii) obtain advice on the appropriate function to lodge the complaint; or (iv) receive assistance in drafting and filing the complaint to the CRP. When affected persons partner with or get their authorized representative(s) from an NGO, they usually get the advantage of receiving advice; receiving assistance in the facilitation of communication with the CRP or other stakeholders; and obtaining technical or legal support in the preparation of the required documents, such as in surveying the extent of harm directly experienced by affected people or preparing preliminary evidence in support of allegations of harm and noncompliance. When complainants do not want to have their identities disclosed, typically, they work with a representative(s) from an NGO. It should be noted that the identities of the representatives are always disclosed.

This written authorization by the complainants is specific to the person identified as their representative. A simple written authorization signed by the complainants would suffice, by which a single representative elected from among the complainants may represent their interests in the compliance review process, even without partnership with an NGO or CSO. This document must be confirmed by the CRO and the CRP to take effect.

Even if the affected people request a change in representation at any point in the process, or their representative withdraws from further participation, the compliance review continues with just a change in representation. The earlier authorization should be revoked in writing, and a change in representation executed with the issuance of a revised authorization document in favor of the new representative, for confirmation. Any change in representation should be communicated in writing to the CRP.

To be effective, NGOs or CSOs whose staff or member(s) have been authorized by the complainants to be their representative are preferably based in the locality of the project, or in the province or greater governing region of the community surrounding the project site, or in broader confines within the country where the project is located. Where local representation cannot be found, a nonlocal representative of affected people can be allowed in exceptional cases, with the concurrence of the CRP. Examples of such exceptional circumstances include the involvement of adjoining regions of two member countries, or a lack of local representation due to the political climate of a country, or a situation where specialized competencies from the representing NGOs or CSOs may be in demand.

Except for the preference for local NGOs or CSOs, there is no specific qualification for representation set by ADB or the CRP. Qualification for competency in representation is left to the discretion of the affected people.

### Box 2.9: Case Studies on Complainants' Representation

**Filed directly by affected people as the complainants, with or without the assistance of a nongovernment or civil society organization.** The first two complaints over Georgia's Sustainable Urban Transport Investment Program—Tranche 3 were filed directly by the complainants, with the assistance of a Georgian nongovernment organization (NGO), Green Alternative, which helped in preparing the documentation and submitting the complaint by e-mail to the complaint receiving officer. An initial 81 signatories, followed by 72 other complainants, residing in two different buildings, represented their own interests in the complaint, even with the identification of a staff of Green Alternative as having prepared the filing of the complaint. On these two complaints, none of the complainants requested that their identities be kept confidential throughout any of the Accountability Mechanism's processes.<sup>1</sup> During the compliance review processes, Green Alternative facilitated communication with the complainants and assisted in organizing meetings between the complainants and the Compliance Review Panel (CRP).

The third complaint was filed directly by 30 affected people from a different residential building, who requested that their identities be kept confidential. As with the first two complaints, no individual was authorized as single representative for the complainants' interests in the compliance review processes.<sup>2</sup>

**Filed directly by the affected people, with subsequent authorization of representation by an NGO or civil society organization.** The complaint over Georgia's Nenskra Hydropower Project was filed by 10 affected people who requested that their identities remain confidential. It was for this purpose that they authorized two staff of Green Alternative, a local NGO, to represent their interests in their complaint filed with the CRP.<sup>3</sup>

**Filed by an NGO/civil society organization authorized to represent the interests of the complainants.** In Cambodia's Greater Mekong Subregion: Rehabilitation of the Railway Project, the interests of 22 complainants were represented by David Pred of Inclusive Development International and Ieng Vuthy of Equitable Cambodia. All 22 complainants requested confidentiality of their identities.<sup>4</sup>

### 2.5.3 Borrowers/Project Owners: Government and Private Sector

In this sourcebook, the term “borrowers” is synonymous with “project owners,” and refers to either government (for sovereign operations) or private sector borrowers (for nonsovereign operations).

As owners of ADB-assisted projects, government and private sector borrowers are valuable partners in preventing and solving problems related to ADB-assisted projects.<sup>29</sup> Just as ADB exists to provide necessary financial services to its developing member countries (DMC) and private sector borrowers, the borrower's commitment to ensure compliance with ADB's operational policies and procedures provides for the continued advancement of inclusive and sustainable development in the region. Such responsible and active involvement in compliance with ADB's

<sup>29</sup> Paras. 211–212 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 40.

**Box 2.9. continued**

**Filed by a representative of affected persons, along with two other affected people.** The complaint over India's Mundra Ultra Mega Power Project was filed by Bharat Patel, who identified himself as the general secretary of Machimar Adhikar Sangarsh Sangathan (MASS, the Association for the Struggle for Fishworkers' Rights), alongside two affected persons, a farmer and a fish trader. None of the three requested anonymity. MASS is an NGO organized to represent the interests of fishworkers or those with a stake in the fishing industry across the region.<sup>5</sup>

<sup>1</sup> Paras. 2 and 7 in ADB. 2017. *Report on Eligibility on Compliance Review Panel Request No. 2016/3 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). pages 1–3. <http://compliance.adb.org/diroo35p.nsf/alldocs/JABM-AFR657?OpenDocument>

<sup>2</sup> Complaint of the residents of 12–33 Block, Rustavi Highway, Tbilisi, Georgia, 29 January 2016; Complaint of the residents of Building No. 16 a/b, Rustavi Highway, Tbilisi, Georgia, 17 August 2016. Paras. 9–10 in ADB. 2017. *Final Report on Compliance Review Panel Request No. 2016/3 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). pages 3–4; <http://compliance.adb.org/diroo35p.nsf/alldocs/JABM-AFR657?OpenDocument>

<sup>3</sup> Complaint of 57 residents, initially submitted to the SPF on 22 June 2017, and forwarded to the CRP in August 2017.

<sup>4</sup> First Request for Compliance Review 2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia, submitted by David Pred of Inclusive Development International, 28 August 2012. Para. 5 in ADB. 2012. *Report on Eligibility on Compliance Review Panel Request No. 2012/2 on the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*. Manila (Loan 2288 and Loan 2602/ Grant 0187 [Supplementary]). page 6. <http://compliance.adb.org/diroo35p.nsf/alldocs/RDIA-8XT5DA?OpenDocument>

<sup>5</sup> Para. 5 in ADB. 2013. *Report on Eligibility on Compliance Review Panel Request No. 2013/1 on the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). pages 1–2; Executive Summary and para. 12 in ADB. 2015. *Final Report on Compliance Review Panel Request No. 2013/1 on the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). page 7; Para. 8 and footnote 8 in ADB. 2016. *First Annual Monitoring Report on the Implementation of Remedial Actions on the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). page 3. <http://compliance.adb.org/diroo35p.nsf/alldocs/RDIA-9CQ3SS?OpenDocument>

Source: Asian Development Bank

operational policies and procedures encompasses all stages of the project, from planning to implementation, and through the implementation of remedial actions, should the need for it arise.

As its partners in addressing legitimate complaints, ADB asks for the full cooperation of both government and private sector borrowers, and their proactive involvement during the CRP's fact-finding process.<sup>30</sup> This includes granting access to project sites<sup>31</sup> and documentation,<sup>32</sup> and facilitating consultations with all parties concerned.<sup>33</sup> Most importantly, they are asked to proactively participate in finding appropriate remedies, to allocate resources, and to actively implement ADB Board-approved remedial actions.<sup>34</sup>

<sup>30</sup> Paras. 86, 131, 181, 184–185, and 188 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 17–36.

<sup>31</sup> Paras. 76–82 and 198–201 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 16–38.

<sup>32</sup> Para. 178 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 35.

<sup>33</sup> Paras. 184–185 and 188–189 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 35–36.

<sup>34</sup> Paras. 85, 137, and 190–194 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 17–37.

**Box 2.10: Nongovernment Organization and Civil Society Organization Representatives:  
Advocates of Affected People's Interests**

The involvement of nongovernment organizations (NGOs) or civil society organizations (CSOs) in the processes of the Accountability Mechanism may be defined or limited according to their authorized tasks in their agreement with the complainants. Complainants' authorized representatives from NGOs may be fully engaged as advocates of the affected people's interests, with a duty to negotiate with other stakeholders on behalf of their interests that includes providing informed comment on the findings of the Compliance Review Panel (CRP) and Asian Development Bank Management's proposed remedial actions.

On the other hand, NGO engagement may be limited to assistance in the filing of the complaint, done by the affected people themselves, which may or may not include communication duties or assistance in obtaining documentary or material evidence. In this sourcebook, an engagement limited to assistance during filing may be referred to as a simple partnership, while representation of the complainants' interests entails complete involvement in the processes of a compliance review.

In facilitating the filing of a complaint, the duties of the NGO or CSO partner may include the following:

- (i) ensure that all documentary requirements for the filing of a complaint on behalf of complainants are complete, including documentary evidence of prior good faith effort made at problem solving and compliance with the ADB operations department concerned, with the option to provide preliminary evidence to support the allegation of harm and noncompliance (as would be recommended);
- (ii) provide written authorization from the complainants, if the option to represent the complainants' interests is taken;
- (iii) keep the complainants informed of the developments in the compliance review process;
- (iv) provide acknowledgment to other parties in the compliance review that the complainants have received the communication or necessary information;
- (v) communicate on behalf of the complainants, or advise on communication, especially if a request for confidentiality is made;
- (vi) provide or advise on security measures for the complainants' safety; and
- (vii) elicit the complainants' or affected people's active participation in the compliance review processes, in accordance with their authorized involvement.

It is important to note that these duties are limited by the terms of engagement specified in agreements between the complainants and their NGO or CSO partner, under which certain responsibilities as described may not be covered.

Source: Asian Development Bank

Project ownership, on either sovereign or nonsovereign projects, entails a responsibility and a commitment to improving the lives of local communities. In exchange for the overall benefits of a project to a country or region, or to the stockholders of a corporation, borrowers have a responsibility to maintain environmental sustainability, and a commitment to improve the welfare of local citizens and communities, to serve the aims of a project which they jointly implement with ADB. ADB and the project owner share a commitment to ensure that ADB-assisted projects improve a region and do no harm to people and the environment. Both have a stake in ensuring that ADB projects comply with ADB's operational policies and procedures.<sup>35</sup>

In line with the best practices provided by ADB's operational policies and procedures, borrowers are also urged to provide the space that allows grievances to be heard, and to facilitate remedies that will bring the project back into compliance. Such goodwill in fostering the aims of sustainable and inclusive development ensures continued and fruitful engagement between ADB and its partners in development.

ADB's Safeguard Policy Statement (2009) calls for grievance redress mechanisms (GRMs) to be set up by project owners in all ADB-assisted projects, and for project proponents or government staff to organize awareness seminars on GRMs, in coordination with ADB resident missions, project teams, local government units, and executing and implementing agencies. Early in the project cycle, the borrower should also work with ADB staff to disseminate information about the Accountability Mechanism to project-affected persons.<sup>36</sup>

#### 2.5.4 Governments of Developing Member Countries

On a government-owned ADB-assisted project, "government" is defined by its capacity in three fundamental roles: as borrower, executing agency, and implementing agency. The borrower is the authorized agency within government that acts as signatory to loan and project agreements. It delegates the executory and implementing functions to agencies under its directive.

In this sourcebook, the term "government" encompasses all of its functional roles, as the executing agency and implementing agency behind a project, with overall responsibility residing with the borrower.

<sup>35</sup> Paras. 59–62 and 190 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 12–37.

<sup>36</sup> Para. 211 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 40.

Between the borrower, the executing agency, and the implementing agency, the specific delineation of duties within the compliance review is left to the discretion of sovereign authorities, as assignments differ in the context of each DMC's systems.

Governments have the duty in both government-owned and private sector ADB-assisted projects to safeguard the rights of their citizens, improve their welfare, and preserve the integrity or oversee the utility of natural resources for the collective benefit.

They have the authority to grant permission for the entry of an official mission of ADB and the CRP into a country. Such permissions are sought even for on-site visits to private sector projects.<sup>37</sup> Governments are expected to grant such permission to allow investigation, consultation, and monitoring of compliance efforts.<sup>38</sup>

As each ADB DMC is a shareholder of ADB and is duly represented in ADB's Board membership, governments are part of ADB, and take active roles in the policy and decision-making processes of the institution, including those of the Accountability Mechanism.<sup>39</sup> Through a Board representative for each country, the interests of a country and its citizens are well represented.

When NGOs and CSOs raise awareness, with the government of an ADB member country, of the adverse conditions in a complaint, they are essentially lobbying government to act on the rights of affected people. Petitioning government to advocate Board action through their representative would compel ADB and the project owner to address the cause of harm and remedy the adverse conditions in accordance with ADB policies. Though conflicts of interest may perceivably be inherent, the government has an overarching responsibility to look after the welfare of its citizens. As an ADB partner in development, it must stand by the aims of ADB in advancing inclusive and sustainable development in the region.

Similarly, government has a responsibility to protect its citizens' rights on an ADB-assisted private sector project. Though government is generally not a party to the project, it may wield influence through policy-making tools and the country's safeguards and legal systems, to rectify the situation or prevent similar instances from recurring in the future.

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<sup>37</sup> Paras. 76–82 and 198–201 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 16–38.

<sup>38</sup> Para. 198 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 38.

<sup>39</sup> Paras. 190 and 211–212 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 36–40.

### 2.5.5 Private Sector Borrowers

In this sourcebook, the term “private sector borrowers” refers to recipients of financing for nonsovereign projects.

The private sector<sup>40</sup> plays a vital role in bringing inclusive economic growth and prosperity to Asia and the Pacific by providing employment in developing countries. As economic growth and job creation reduce poverty, ADB encourages the development of the private sector, especially in countries where the need for private sector-driven growth is greatest.

ADB’s private sector financing, also known as nonsovereign financing,<sup>41</sup> supports projects that have a clear development impact or a demonstrable social impact beyond a beneficial financial rate of return. This creates conditions that generate business opportunities and catalyzes private investment. ADB’s partnership with the private sector invests considerable resources toward encouraging inclusive economic growth, sustainable management of the environment, and regional integration in Asia and the Pacific.

All financing provided to private sector entities must align with the objectives and priorities of ADB and the DMCs in which the projects are located. Complying with ADB’s operational policies and procedures during project planning and implementation protects the interests of both borrowers and affected people. If complaints arise, immediate mitigation through project-level GRMs and operations departments’ problem solving and compliance efforts prevent a compounding of effects and escalation of the complaint.

When complainants resort to the compliance review function, the private sector borrower is urged to lend support to ADB Management and the CRP in facilitating fact finding and in allocating resources to remedial actions as an investment in the project.<sup>42</sup> The borrower’s active involvement in the process best serves the shared goal of advancing sustainable and inclusive development.

As any ADB-assisted project must abide by a country’s laws and ADB’s safeguard policies, its owner has rights and obligations under those laws and policies. On those rights and obligations, a government has oversight powers, which include the granting or denial of mission clearances.

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<sup>40</sup> ADB undertakes nonsovereign operations to provide financing to eligible recipients in developing member countries. Nonsovereign operations comprise the provision of any loan, guarantee, equity investment, or other financing arrangement to privately held, state-owned, or subsovereign entities, in each case, (i) without a government guarantee, or (ii) with a government guarantee, under terms that do not allow ADB, upon default by the guarantor, to accelerate, suspend, or cancel any other loan or guarantee between ADB and the related sovereign. (Para 1 in ADB. 2018. *Nonsovereign Operations. ADB Operations Manual. OM D10. Manila.*)

<sup>41</sup> ADB. *Private Sector (Nonsovereign) Financing*. Manila. <https://www.adb.org/site/private-sector-financing/main>; and ADB. *Asian Development Bank Private Sector Operations*. <https://www.adb.org/publications/adb-private-sector-operations>.

<sup>42</sup> Paras. 178–181, 184–185, 188–194, and 211–212 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 34–40.

### 2.5.6 Benefits of a Compliance Review to External Project Partners/Stakeholders

Despite the tediousness and sometimes adversarial notion of the compliance review processes both for ADB Management, the borrower, and the complainants, there are immediate and long term benefits that these stakeholders gain from going through a compliance review. (See Boxes 2.11 and 2.12 for case examples.)

For complainants and affected people, the remedial action benefits all affected people, regardless of whether they were a party to the complaint or not.

In addition to this, the implementation of remedial actions and the lessons that these bring may also be beneficial to the capacity building of project staff (both of government borrowers as well as private sector clients) and may be instrumental to improving project design and quality of implementation of other projects that are funded or to be funded by IFIs.

In ADB, the increasing attention to environmental and social safeguards and strengthening of safeguards teams in operations departments may be partly attributable to the institutional experience on compliance review cases.

#### Box 2.12: Benefits of Compliance Review to Government and Private Sector Borrowers

For governments, Asian Development Bank (ADB) technical assistance improved both the environmental and social safeguards capacity of government project implementers through trainings on resettlement implementation and monitoring; and better scoping of environmental impacts and monitoring as can be seen in the Georgia Sustainable Urban Transport Investment Program.<sup>1</sup>

For the Southern Transport Development Project in Sri Lanka, “The compliance review and monitoring conducted by CRP was instrumental in the creation of new legislation and procedures on land acquisition and compensation, and on instituting local grievance and conflict resolution mechanisms.”<sup>2</sup>

<sup>1</sup> ADB. 2018. *First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). Manila. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>.

<sup>2</sup> Para. 36 in ADB. 2011. *Annual Monitoring Report to the Board of Directors from 15 May 2010 to 22 March 2011 on the Implementation of Remedial Actions for the Southern Transport Development Project in Sri Lanka*. Manila. <http://compliance.adb.org/diro035p.nsf/alldocs/BDAO-7XVBSH?OpenDocument>.

### Box 2.11: Benefits of Compliance Review to Affected People

ADB Management and project owners become more keen on conducting information dissemination, consultation, and awareness raising on project activities post compliance review as seen in the Visayas Base-Load Project.<sup>1</sup>

Tangibly, affected persons in the Cambodia Railway Rehabilitation Project received additional compensation; improved living conditions in the resettlement sites; trainings on the management of facilities at the resettlement sites that were turned over by the government; livelihood and employment related trainings; and more sustainable running of their self-help groups.<sup>2</sup>

In the Visayas Base-Load Project, the private sector client (i.e., KSPC) gained continuous and harmonious cooperation from the communities bordering its coal plant. Neighboring residents provide KSPC immediate feedback on the environmental performance of their coal plant by texting or calling the plant operators. The affected barangays, on the other hand benefit from KSPC medical missions.<sup>3</sup>

Similarly, in the India Mundra Ultra Mega Project, the transient fisherfolk at Tragadi *bander*<sup>4</sup> gain from access road maintenance, livelihood trainings and provision of community-related services as part of the company's corporate social responsibility program after the compliance review.<sup>5</sup>

<sup>1</sup> Paras. 38–40 in ADB. 2017. *Fifth Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila (Loan 2612-PHI). Manila. [https://lnadbg4.adb.org/diro035p.nsf/attachments/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf/\\$FILE/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf/$FILE/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf)

<sup>2</sup> ADB. 2017. *Fourth Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Greater Mekong Subregion: Rehabilitation of the Railway Project in the Kingdom of Cambodia*. Manila (Loan 2288 and Loan 2602/Grant 0187 [Supplementary]). Manila. [https://lnadbg4.adb.org/diro035p.nsf/attachments/CAM-4thMonitoringReport-BoardDoc-ForDisclosure.pdf/\\$FILE/CAM-4thMonitoringReport-BoardDoc-ForDisclosure.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/CAM-4thMonitoringReport-BoardDoc-ForDisclosure.pdf/$FILE/CAM-4thMonitoringReport-BoardDoc-ForDisclosure.pdf)

<sup>3</sup> Paras. 26–28 in ADB. 2017. *Fifth Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila (Loan 2612-PHI). Manila. [https://lnadbg4.adb.org/diro035p.nsf/attachments/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf/\\$FILE/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf/$FILE/5th%20CRP%20Monitoring%20Rpt-Visayas-13Nov2017-ForWeb.pdf)

<sup>4</sup> The term *bander* is used locally to identify a port or haven along the seashore where fisherfolk establish temporary or permanent communities for the purpose of carrying on their occupation. (Footnote 13 in ADB. 2018. *Third Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). page 4).

<sup>5</sup> ADB. 2018. *Third Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Mundra Ultra Mega Power Project in India*. Manila (Loan 2419). [https://lnadbg4.adb.org/diro035p.nsf/attachments/Mundra%203rd%20Monitoring%20Report-For%20Web.pdf/\\$FILE/Mundra%203rd%20Monitoring%20Report-For%20Web.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/Mundra%203rd%20Monitoring%20Report-For%20Web.pdf/$FILE/Mundra%203rd%20Monitoring%20Report-For%20Web.pdf)

Source: Asian Development Bank

### 2.5.7 Operations Departments: ADB Management and Staff

In this sourcebook, the term “operations department” refers to the five regional departments (Central and West Asia, East Asia, South Asia, Southeast Asia, and Pacific departments), including their respective resident missions, regional representative offices, and extended missions, as well as the Private Sector Operations Department and the Office of Public–Private Partnership. Actions, tasks, or roles described in this sourcebook as the responsibility of ADB Management and staff, would be the duty of the operations departments concerned. The term “ADB Management and staff” refers collectively to the operations departments, from ADB headquarters and resident missions staff up to the vice-president to whom the operations department reports.

ADB's operations departments ensure that ADB's operational policies and procedures are followed to protect the people most at risk when planning and implementing development projects. Measures are already in place at the operations departments to identify potential problems and mitigate them promptly as they arise. Additionally, ADB's Safeguard Policy Statement (2009) calls for GRMs to be set up by project owners in all ADB-assisted projects. Project proponents or government staff are tasked to organize seminars to raise awareness of the GRM, in coordination with ADB resident missions, project teams, local government units, and executing and implementing agencies. Operations departments are urged to cooperate with such efforts, and help promote their accessibility to host communities in the vicinity of an ADB-assisted project.

As part of operations departments, resident missions stationed in ADB's DMCs may be requested to provide assistance in the problem solving or compliance review processes.<sup>43</sup> ADB's operations departments have the primary responsibility of disseminating information about the Accountability Mechanism at the project level.<sup>44</sup> In addition, each resident mission has a staff member designated as the focal person for handling grievances caused by ADB-assisted projects.<sup>45</sup>

### 2.5.8 Compliance Review Panel

The CRP is a three-member, independent fact-finding body of the ADB Board of Directors (the Board) that processes complaints requesting compliance review.<sup>46</sup> The CRP is specifically

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<sup>43</sup> Paras. 77, 116, 137, 184, 194, 195 and 199 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 16–38.

<sup>44</sup> Para. 211 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 40.

<sup>45</sup> Paras. 210 and 214 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 39–41.

<sup>46</sup> Paras. 83–84 and 114 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 10–23.

mandated to conduct compliance review and monitor the implementation of remedial actions should there be a finding of noncompliance.<sup>47</sup>

The CRP is headed by a chairperson,<sup>48</sup> who is stationed at the ADB headquarters and serves alongside two part-time members, each serving a term of 5 years. Two of the members are from an ADB regional member country (at least one of them is from a DMC), and the third is from a nonregional member country. The CRP is appointed by the Board, upon the recommendation of the Board Compliance Review Committee (BCRC) in consultation with the President.<sup>49</sup>

The CRP members are selected based on the following criteria: (i) ability to deal thoroughly and fairly with complaints; (ii) integrity and independence from Management; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge of, and experience with, the operations of ADB or comparable institutions, or private sector experience.

The CRP reports to the Board through the BCRC and is supported by the OCRP. Even as its members adhere to the Code of Conduct for ADB staff, the CRP members are not ADB staff, and their duty is solely to ADB.

The CRP consults with project owners (government or private sector), governments, and affected people and their NGO or CSO representatives, during the conduct of a compliance review and in the monitoring of remedial actions. Working closely with the project owner, ADB Management, and affected people, the CRP provides comments on ADB Management's proposed remedial measures<sup>50</sup> before they are submitted to the Board.

Except for its communication with complainants and their representatives, the CRP routes all requests for information and coordination with government and project owners through ADB Management.<sup>51</sup>

### 2.5.9 Office of the Compliance Review Panel

Headed by the CRP chair, the OCRP operationally and administratively supports the work of the CRP.<sup>52</sup> Internally, OCRP facilitates the CRP chair's communication and coordination with the Board, Management, staff, and the SPF. It also conducts outreach programs on

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<sup>47</sup> Paras. 19 and 192–194 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 5–37.

<sup>48</sup> Para. 132 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 26–27.

<sup>49</sup> Paras. 111–112 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 22.

<sup>50</sup> Para. 190 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 36.

<sup>51</sup> Paras. 77, 199–200 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 16–38.

<sup>52</sup> Paras. 117–119 and 133 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 23–27.

compliance review for various project stakeholders.<sup>53</sup> It is tasked as well to collaborate and prepare periodic joint learning reports with the OSPF, the Independent Evaluation Department (IED), and the Sustainable Development and Climate Change Department (SDCC) that distill ADB's experience, insights, and lessons from an analysis of the Accountability Mechanism's development impact, benefits, and costs.

OCRCP staff are recruited much like other staff in ADB and are subject to the same terms and conditions of employment as provided under ADB staff regulations and administrative orders. They may be transferred to and from other parts of ADB, to safeguard against the potential isolation of OCRCP, and to enrich both compliance review and operations through the exchange of knowledge and experience.<sup>54</sup>

To achieve a more proactive culture, by which ADB and its partners in development may benefit from the Accountability Mechanism, OCRCP undertakes three kinds of outreach activities, in partnership with other stakeholders:

- (i) Internal outreach, to improve awareness and disseminate lessons to ADB staff through workshops, training courses, orientation sessions, and regular staff training. The Accountability Mechanism is to be seen as an instrument for learning, to ensure project quality and improve ADB's development effectiveness. As ADB Management and staff become more familiar with the Accountability Mechanism through OCRCP's efforts, a change in culture is expected to eliminate any remaining perception that the compliance review is adversarial in approach.
- (ii) National outreach, with OCRCP holding regular dissemination activities in DMCs, to distribute simple, pictorial-based, and user-friendly descriptions of the mechanism. The participation of resident missions may aid this purpose, with a staff member designated as focal person to help disseminate information about the Accountability Mechanism, and to handle grievances arising from ADB-financed projects. Some resident missions have already assigned such focal persons; this practice should be extended to all resident missions.
- (iii) Project-level outreach, to improve awareness of the Accountability Mechanism, which requires that ADB staff work as conduits for disseminating information. Early in the project cycle, staff, working with the borrower, will disseminate information about the Accountability Mechanism and its availability as a recourse, in case other mechanisms for dealing with harmful project effects are not successful.

<sup>53</sup> Paras. 208–210 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 39–40.

<sup>54</sup> Paras. 118 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 23.

Pamphlets in national or official languages, community notice boards, audiovisual materials, or other appropriate and effective means will be used to inform people. ADB can explore the possibility of outsourcing outreach activities to credible NGOs or CSOs.

### 2.5.10 Complaint Receiving Officer

Stationed at ADB headquarters, the CRO ensures easy accessibility as the single entry point for complaints from people affected by ADB-assisted projects, and is the point of first contact for the Accountability Mechanism.<sup>55</sup> The CRO is an independent officer (not an ADB staff) dedicated solely to receiving complaints from project-affected people or their representatives, and tasked to forward these for either problem solving or compliance review, or forward complaints that are not within the scope of the Accountability Mechanism to other relevant departments and offices.<sup>56</sup> The CRO is recruited from outside ADB, and is engaged on a full-time basis to enable prompt response to complainants.<sup>57</sup>

The CRO is engaged by both the OSPF and the OCRP, and reports to both the SPF and the CRP chair.<sup>58</sup> The CRO is expected to be efficient, impartial,<sup>59</sup> and capable of dealing with the complainants' confidentiality requirements (See Box 2.13 for more information).

### 2.5.11 Board of Directors

The Board of Directors (the Board) is tasked with directing the general operations of ADB.<sup>60</sup> With respect to the Accountability Mechanism,<sup>61</sup> the Board is responsible for the following:

- (i) authorizing a compliance review;<sup>62</sup>
- (ii) deciding if a particular operational policy is subject to compliance review;<sup>63</sup>
- (iii) overseeing the CRP's work through the BCRC;<sup>64</sup>
- (iv) considering the CRP's compliance review reports;<sup>65</sup>
- (v) considering and deciding on ADB Management's proposed remedial actions in response to the CRP's findings;<sup>66</sup>

<sup>55</sup> Paras. 74–75, 107, and 150 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 15–30.

<sup>56</sup> Paras. 75 and 124 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 15–24.

<sup>57</sup> Para. 121 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 23.

<sup>58</sup> Para. 121 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 23.

<sup>59</sup> Paras. 75 and 125 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 15–24.

<sup>60</sup> ADB. Board of Directors. <https://www.adb.org/about/board-directors..>

<sup>61</sup> Para. 136 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 27–28.

<sup>62</sup> Para. 177 and 182 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 34–35..

<sup>63</sup> Para. 146 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 29–30.

<sup>64</sup> Paras. 135 and 182–188 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 27–36.

<sup>65</sup> Para. 189 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 36.

<sup>66</sup> Para. 191 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 37.

- (vi) overseeing appointments in the CRP;<sup>67</sup> and
- (vii) approving annual work plans and budgets of the CRP and OCRP.<sup>68</sup>

The 12 directors of the Board are elected by the Board of Governors. Of the 12, eight are elected from within Asia and the Pacific, and four others from outside the region. The interests of each DMC and regional sector are represented by a particular Board member among the 12 directors.

### 2.5.12 Board Compliance Review Committee

The BCRC is a committee of the Board that directly oversees the CRP's work.<sup>69</sup> It is responsible for the following:

- (i) clearing the CRP's terms of reference for a compliance review;<sup>70</sup>
- (ii) reviewing the CRP's draft reports to ensure that the CRP operates within the scope of the compliance review;<sup>71</sup>
- (iii) deciding on monitoring time frames, including any adjustments;<sup>72</sup>
- (iv) reviewing and endorsing the work plan and budget of the CRP and the OCRP;<sup>73</sup>
- (v) overseeing the selection and appointment of CRP members, in consultation with the ADB President;<sup>74</sup>
- (vi) following a member country's refusal of site visits for the CRP, engaging in dialogue with ADB Management on the reasons behind such refusal;<sup>75</sup> and
- (vii) serving as the focal point for the CRP's communication and dialogue with the Board on the Accountability Mechanism.<sup>76</sup>

Often, it will be mentioned in this document that "the CRP is tasked to submit its report to the Board, through the BCRC." The BCRC's role is not simply to relay reports to the Board but rather to supervise certain procedures of the compliance review process on behalf of the Board.

These include reviewing reports prepared for the Board by the CRP, to ensure that such reports comply with the Accountability Mechanism Policy and meet the standards or requirements that will enable the Board to make a determination based on the report. In being tasked to evaluate

<sup>67</sup> Paras. 83 and 111 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 17–22.

<sup>68</sup> Paras. 83 and 119 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 17–23.

<sup>69</sup> Paras. 132 and 134–135 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 26–27.

<sup>70</sup> Paras. 182–184 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 35.

<sup>71</sup> Paras. 135 and 185–188 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 27–36.

<sup>72</sup> Para. 193 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 37.

<sup>73</sup> Para. 119 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 23.

<sup>74</sup> Paras. 52, 83, and 111 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 10–22.

<sup>75</sup> Paras. 81, 134, and 200 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 16–38.

<sup>76</sup> Paras. 84, 134–136, 182–188, and 194 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 17–37.

and confirm the sufficiency of such reports (such as the CRP's eligibility report or the final compliance review report on the project), or in its other functions in the compliance review process (such as clearing the TOR and ensuring the CRP acted within its bounds, in the BCRC's evaluation of its reports; or in being allowed to make recommendations in certain circumstances), the BCRC then performs a gateway function for the Board that allows the Board to function more efficiently in the exercise of its responsibilities in the process of a compliance review.

ADB's website (<https://www.adb.org/about/board-compliance-review-committee>) provides further details on the BCRC.

### 2.5.13 Office of the General Counsel

The Office of the General Counsel (OGC) handles all legal aspects of ADB operations and activities, including providing legal advice.<sup>77</sup> It advises (i) the SPF and the OSPF; (ii) the CRP and OCRP; (iii) the BCRC; (iv) the Board of Directors; (v) ADB Management; and (vi) ADB staff on matters relating to ADB's legal status, rights and obligations, based on its charter and any agreement to which ADB is a party, and on any other matters relating to ADB's rights and obligations with respect to any complaint pertaining to the Accountability Mechanism.

In addition to assigning a counsel to ADB Management's project team to assist in drafting Management's response or to attend to other legal matters, the OGC also assigns separate counsel to advise the SPF, the CRP, and the Board. With this, OGC ensures the independence of advice provided to Accountability Mechanism bodies, and the avoidance of actual or apparent conflicts of interests among OGC personnel in connection with the performance of their duties during the compliance review.

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<sup>77</sup> Paras. 122-123 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 24.

**Box 2.13: Avoidance of Retaliation against Complainants and Project-Affected People**

At all times, complainants will be treated with utmost care and respect, especially as they may have legitimate cause for expressing their grievances through the “last resort” offered by a compliance review under the Accountability Mechanism of the Asian Development Bank (ADB).

Project owners and ADB Management and staff are enjoined to keep in mind that filing a complaint may entail risks for complainants. To ensure their personal security, complainants have the right to request that their identities be kept confidential. This right must be respected by all stakeholders. Affected people are also advised that filing a complaint may entail risks on their person or reputation, as they may come in conflict with project owners or other potentially hostile stakeholders, such as aggressive state or private security forces, or members of the community with opposing interests.

To minimize such risks, the Compliance Review Panel (CRP) and ADB uphold a complainant's right to confidentiality, with the enforcement of confidentiality guidelines throughout the process. This begins with invoking of such right as an option upon filing of the complaint with the complaint receiving officer (CRO), which is enforced throughout the compliance review process. There may be advantages to either keeping identities confidential or making them known, depending on the circumstances of a complaint. Complainants and any nongovernment organization (NGO) or civil society organization (CSO) partner or representative are encouraged to consider consequences in determining their choice in the matter of confidentiality.

To ascertain the veracity of the grievance, however, anonymous complaints will not be accepted. The identities of any representatives will not be kept confidential, but will be disclosed to ensure transparency.

Upon filing, all complaints are treated as confidential by the CRO, who withholds any identifiable information, unless permission is granted otherwise by the complainant. The identities of the complainants will be known only to the CRO and the CRP (or the special project facilitator, if the complaint is filed for problem solving) throughout the process, unless the complainants give permission for their identities to be revealed.

Upon request by the CRP, however, the complainants, through their representative or their NGO or CSO partner, may need to provide further information relating to their identities, and provide documentary or material evidence on the complaint. This may be done in consultation with the CRP mission, during its site visit to determine eligibility.

The complainants or their representative or NGO or CSO partner may identify and report to the CRP any existing or likely threat to their security, when filing the complaint or requesting a compliance review, or at any point during the compliance review process. Accordingly, the CRP, together with ADB Management, can prepare an appropriate mitigation plan to address security risks.

If, lacking prior good faith effort, a complaint is forwarded by the CRO, CRP, or Special Project Facilitator (SPF) to the operations department to be addressed with problem solving and compliance efforts, and confidentiality is requested by the complainants, the complainants' identities are still kept confidential by the CRP with request to the complainants that they get in touch with the responsible staff (name and contact details provided by the CRP) in the operations department.<sup>1</sup>

**Box 2.13. continued**

In processing documents for complaints under a compliance review, operations departments should ascertain if confidentiality was requested by the complainants, and take necessary actions similar to those taken by the CRO, the CRP, and the Office of the Compliance Review Panel (OCRCP) to ensure such confidentiality. It must be noted that ADB's compliance review is an independent function, and as such, it allows ADB Management and staff to interact with affected people during a compliance review. In fact, interaction that results in the resolution of a complaint before the conclusion of the compliance review is encouraged.

To keep the identities of the complainants confidential, the CRP, and the OCRCP observe the following good practices:<sup>2</sup>

- (i) Redacting names, signatures, and any contextual information relating to the identities of the complainants, particularly in documents for publication.
- (ii) Concealing details that might reveal the complainants' identities in all reports and communications with the borrower and ADB Management.
- (iii) Working with complainants through the NGO or CSO representatives and relying on these relationships as conduits of information between complainants, the CRP, and other stakeholders.
- (iv) If necessary, and only as permitted by the NGO or CSO representatives, considering potential sources of threat (such as police, government, or private borrowers' presence) that might risk the safety and obstruct free communication for complainants, when scheduling meetings with complainants. Avoiding the direct participation of affected people in meetings that may entail security risks, such as being identified for intimidation and possible retaliatory measures, is recommended.
- (v) When OCRCP uses interpreters, informing them about the nature of the compliance review process and the importance of maintaining the confidentiality of the (a) complainants' identities, (b) the contents of documents that may be provided to the interpreter in the course of their engagement with the OCRCP, and (c) the information and substance of discussions during meetings. The interpreters engaged by OCRCP must sign a nondisclosure and confidentiality agreement with the the OCRCP.

If a request for confidentiality has been made, the CRP exercises confidentiality and discretion throughout the process in securing information about the identities of complainants by maintaining a low profile during site visits, and by being bound by the public communication requirements of the Accountability Mechanism in any disclosure of information to the public. At the same time, the CRP exercises transparency and information disclosure consistent with the Access to Information Policy.<sup>3</sup>

The representatives of complainants, such as their NGO or CSO partners, may coordinate directly with the CRP or OCRCP during mission planning, particularly if direct contact with the complainants is to be avoided to ensure their security. The complainants' representatives are tasked to relay any preferential options that the complainants may have in meeting with the CRP, particularly regarding scheduling and venue selection.

**Box 2.13. continued**

If there is any immediate threat during the site visit, schedules and locations may be changed, with the complainants' representatives and the CRP coordinating their efforts, until a secure location is ensured.

Despite the enforcement of confidentiality guidelines and anti-reprisal measures that the offices of the Accountability Mechanism instituted, complainants are still advised to take security measures to avoid harassment or disclosure of their identities. For the complainants' safety, situational awareness and circumspection in personal movement is foremost, especially when traveling to consultations with the CRP, even if this is supervised by their NGO and CSO representatives. The designated representatives are urged to apply preventive measures, especially in executing the tasks involved in representation. These include securing channels of communication between the representative and the CRP, and overseeing security in consultations and inspections, for the complainants and the CRP, and similar tasks.

If there is evidence of retaliation or reprisal, the OSPF or the OCRP will agree on an appropriate course of action to be taken with the consent of the endangered party. If required or desired by the persons threatened with retaliation, the OSPF or the OCRP will bring the evidence of retaliation to the notice of the operations department and senior ADB management, to initiate appropriate action, and with the BCRC, to obtain the committee's guidance.

Despite such risks, the compliance review presents a viable mechanism of redress for project-affected people, and may, in fact, prevent similar instances of noncompliance and harm from being repeated in other projects.

Although ADB's Accountability Mechanism ensures that the confidentiality requirements of complainants are met, its processes maintain a high degree of transparency in information disclosure. In pursuit of the goals of the Accountability Mechanism, complaints are to be viewed as a mechanism for constructive feedback, and an opportunity for learning and correction. Complaints are seen as contributory to the improvement of performance in projects.

*Note: The Guidelines for the Protection of Key Stakeholders During the Accountability Mechanism Processes had been prepared and is available at [https://lnadbg4.adb.org/diro035p.nsf/attachments/AM%20Guidelines%20on%20Protection%20of%20Stakeholders%20%20-%20Final%20-%209%20May%202018.pdf/\\$FILE/AM%20Guidelines%20on%20Protection%20of%20Stakeholders%20%20-%20Final%20-%209%20May%202018.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/AM%20Guidelines%20on%20Protection%20of%20Stakeholders%20%20-%20Final%20-%209%20May%202018.pdf/$FILE/AM%20Guidelines%20on%20Protection%20of%20Stakeholders%20%20-%20Final%20-%209%20May%202018.pdf).*

<sup>1</sup> Paras. 137, 142, 144, 151, 180, 195, 197, and 211 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 28–40.

<sup>2</sup> Paras. 150, 155, and 204–206 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 30–39.

<sup>3</sup> Paras. 178 and 202–206 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 34–39.

# 3

## The Compliance Review Process

**Clean and safe.** Residents in Kampong Chhnang Province in Cambodia now have access to clean water supply and hygienic latrines in line with ADB's aim of improving community health.



# 3.

## The Compliance Review Process

The 10-step compliance review process is initiated by a complaint with the CRO, with a request for a compliance review. As the CRO forwards the complaint to the CRP chair, the 10-step process begins.

Specific activities at each step of the compliance review process are described in this section, along with the roles of each of the stakeholders (including the CRP, OCRP, BCRC, and the Board) and the expectations imposed on them, at every step of the process. Factual references are provided to clarify what the Accountability Mechanism (AM) Policy means in practice, and examples are cited from recent complaints filed with the CRP.

### 3.1 DETERMINING THE ELIGIBILITY OF THE COMPLAINT (STEPS 1-3 OF THE COMPLIANCE REVIEW PROCESS)

Information about each step of the 10 step compliance review process and the stakeholders role in it can be found in Appendix 1.

#### 3.1.1 Requesting ADB Management to Respond to a Complaint (Step 1 of the Compliance Review Process)

The CRP assesses the complaint to confirm if it falls within the mandate of the compliance review function, through a 5-working-day desk review of existing documents and other sources of information. During this period, the CRP reviews whether the complaint does not qualify for any of the exclusions identified under paragraphs 142 and 148 of the AMP. The following requirements need to be met at this initial stage:

- (i) The complaint must be about an ADB-assisted project.
- (ii) No more than 2 years must have elapsed since the closing date of the project.
- (iii) At least two individuals directly and materially harmed or likely to be harmed by the project are filing the complaint.
- (iv) None of the exclusions identified under paragraphs 142 and 148 of the AMP apply.

- (v) Alleged harm may be caused by noncompliance with ADB's operational policies and procedures.
- (vi) Prior good faith effort to address the problem was made with the operations department concerned.

Before the complaint can proceed further, the first four conditions above must be met and the complaint must have indications pointing to the presence of the last two conditions above. (See Boxes 3.1, 3.2, and 3.3 for case examples.)

While complainants can claim that they have made prior good faith effort to have their complaint addressed by the operations department, the CRP bases its assessment on supporting documents provided by the complainant (cross-checked with the operations department) for confirmation. It will typically look for correspondence addressed to either the resident mission or the operations

### Box 3.1: Case Studies on Initial Assessments

#### **Insufficient qualification leads to exclusion or other actions, after initial assessment.**

In India's Rajasthan Renewable Energy Transmission Investment Program, it was claimed that the proposed construction of an electrical substation in the village of Korna, along with electrical transmission lines and optical ground wires to connect substations, would disturb the catchment area of water bodies and the village pastureland and pose a hazard to migratory bird wildlife, village cattle, and other domestic animals that depend on these water resources. While the complainants' allegation may have merit upon inspection, lack of good faith efforts made to resolve the issue with the Management of the Asian Development Bank (ADB) prior to filing a complaint with the Accountability Mechanism qualified their complaint for exclusion, upon initial assessment by the CRP, from the mandate of a compliance review (see section 2.4.1. Eligibility Requirements for Consideration of a Complaint). The complaint was then forwarded to ADB's South Asia Department, to be addressed with their problem solving and compliance efforts.<sup>1</sup>

#### **All complaints undergo initial assessment, including subsequent complaints on the same project or complaints that were previously submitted to the special project facilitator (SPF).**

All complaints filed are initially assessed by the CRP, even subsequent complaints filed where issues raised are of a similar nature as previous complaints on the same project. Such was the case in Georgia's Sustainable Urban Transport Investment Program—Tranche 3, when initial assessment on the third complaint filed on the project yielded a determination that the complaint is not among the exclusions identified under paras. 142 and 148 of the Accountability Mechanism Policy, and is therefore within the mandate of the compliance review function. It then proceeded to eligibility determination by the CRP.

Initially filed for problem solving, this third complaint was deemed ineligible by the SPF, being a matter already under consideration by the CRP<sup>2</sup> in its concurrent compliance review initiated by the two earlier complaints on the project. Declaration of ineligibility by SPF does not necessarily mean noninclusion or ineligibility of a complaint under a compliance review.

department at ADB headquarters, and consider the response of the operations department, if such proof of correspondence is available to the public or would be provided by the complainant.

If at this stage, it is clear that prior good faith effort was not made to resolve the complaint, then the complaint is rerouted to the ADB operations department concerned, for it to be addressed.

Within this 5-day initial assessment period, a letter is sent to the complainants (or their representative(s), if any) by the CRP chair, to (i) acknowledge the receipt of complaint, (ii) confirm request for confidentiality of complainants (if it is indicated in the complaint letter), and (iii) ask consent for the web posting of the complaint. Should the CRP find the complaint as not within the mandate of compliance review, the letter will also provide the reason for declining the request for compliance review.

### Box 3.1. continued

In the CRP's initial assessment, it was established that the complainants may have a valid claim to new evidence of noncompliance on issues not yet addressed in the ongoing compliance review, and in the resulting remedial action plan. Alleging inadequate disclosure of risk on the project from information made available to the public, and claiming geological and structural features unique to their building and location that puts their domicile at greater risk relative to the two previous complaints, the complainants allege that the project is inadequate in its impact assessment and design. The 30 complainants claim their building might collapse during road construction and operation, being worse off in its current state and foundation than those of previous complainants, and that their health might be adversely affected by the road operation, if ADB will not conduct a more thorough assessment of the impact of these activities to their building.<sup>3</sup>

Initially assessed by the CRP as within the mandate of compliance review, and later found eligible from the new evidence presented, the complaint was eventually subsumed under the compliance review already undertaken, after the evidence was considered by the CRP as not being significant enough for the complaint to merit a new compliance review. (A related discussion is found in the Case Studies on Similar Concerns Across Multiple Complaints on the Same Project.)

<sup>1</sup> *India Rajasthan Complaint Form with Attachment (and Transmittal Email)*. Redacted copy, filed with the Complaint Receiving Officer by anonymous complainants from the village of Korna. [https://compliance.adb.org/diroo35p.nsf/attachments/IND-Rajasthan-Complaint%20form%20with%20attachment%20\(and%20transmittal%20email\)%20-%20redacted%20copy.pdf/\\$FILE/IND-Rajasthan-Complaint%20form%20with%20attachment%20\(and%20transmittal%20email\)%20-%20redacted%20copy.pdf](https://compliance.adb.org/diroo35p.nsf/attachments/IND-Rajasthan-Complaint%20form%20with%20attachment%20(and%20transmittal%20email)%20-%20redacted%20copy.pdf/$FILE/IND-Rajasthan-Complaint%20form%20with%20attachment%20(and%20transmittal%20email)%20-%20redacted%20copy.pdf)

<sup>2</sup> Para. 143 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. page 29.

<sup>3</sup> Complaint of the residents of building 28a Rustavi Highway, Tbilisi, Georgia, 2018; Complaint of 30 residents of Building No 16 a/b, Rustavi Highway, Tbilisi, Georgia, 2016, filed by Laura Shikhashvili and Nana Bezhashvili on July 2017. Paras. 7–9 in ADB. 2017. *Report on Eligibility on Compliance Review Panel Request No. 2018/1 on the Sustainable Urban Transport Investment Program (Tranche 3) in Georgia*. Manila. (Loan 3063).; <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-AZY5CQ?OpenDocument>

Within the same time frame, a letter will also be sent by the CRP chair to borrower, simultaneous with sending of a memo to the Board member representing the DMC concerned, about the CRP's receipt of the complaint and conclusion of the CRP's initial assessment.

If after this initial assessment the CRP considers the complaint to be within the mandate of the compliance review function, the CRP will send a memo requesting ADB Management for its response to the allegations of noncompliance on the project. In consultation with the BCRC chair, the CRP chair then assigns a CRP member to lead the eligibility determination of the complaint.

Should the CRP consider the complaint within the mandate of the compliance review, the CRP chair will request ADB Management to provide a response to the complaint that was submitted to the CRP. The response must be provided within 21 working days from receipt of the CRP's memo.

In its response to claims made on the complaint, ADB Management provides evidence of the project's compliance with the relevant operational policies and procedures of ADB. If there are, serious failures attributable exclusively to ADB's actions or omissions are conveyed, but the intent to take action to ensure compliance, as appropriate, is noted. There is no prescribed number of pages and attachments to a Management's response. Its length is left to what ADB Management considers adequate for the CRP to make its judgment during the eligibility determination stage.

Upon confirming through its initial assessment that a complaint is within the compliance review mandate, the CRP starts its formal eligibility determination (step 2).

### Box 3.2: Sample of an Online Management Response

A sample of Management's Response can be found in pages. 22-27 and 37-67 in ADB. *Extraction of Management's response from GEO SUTIP T3 complaint 3.*

[https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf/\\$FILE/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf](https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf/$FILE/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf)

Source: Asian Development Bank

### Box 3.3 Sample Matrix Used by the Compliance Review Panel

Below is a sample of matrix that the Compliance Review Panel (CRP) uses to guide its deliberation in ascertaining whether a complaint is within the mandate of the compliance review function.

Requirement	CRP's Initial Assessment
<b>Who Can File Complaints</b>	
<p><b>1</b> Para.138            "...complaints may be filed by:</p> <ul style="list-style-type: none"> <li>(i) any group of two or more people in a borrowing country where the ADB-assisted project is located or in a member country adjacent to the borrowing country who are directly, materially, and adversely affected;</li> <li>(ii) a local representative of such affected persons; or</li> <li>(iii) a nonlocal representative of such affected persons, in exceptional cases where local representation cannot be found and the SPF or CRP agrees. If a complaint is made through a representative, it must clearly identify the project-affected people on whose behalf the complaint is made and provide evidence of the authority to represent such people." </li></ul>	<p>There are two complainants, who based on their stated address in the complaint form, presumably live in the proposed project area.</p>
<p><b>2</b> Para. 139            "...These alleged violations must have, or are likely to have, a direct, material, and adverse effect on a community or other grouping of individuals residing in the country where the project is being implemented or residing in a member country adjacent to the borrowing country."</p>	<p>At this point, alleged violation is uncertain. Complainants state that the project is going to affect the ecology of their place, destroy major drinking water ponds in the desert and the wildlife of the area. They attached the decision of a local court which was in favor of the villagers who complained.</p>
<p><b>3</b> Para. 140            "Compliance reviews cover only ADB-assisted projects."<sup>1</sup></p>	<p>The complaint relates to ADB Project No. 500326-002.</p>

## Box 3.3 continued

Requirement	CRP's Initial Assessment
<b>Scope and Exclusions</b>	
<b>4</b> Para. 142 "Complaints will be excluded if they are	
(i) about actions that are not related to ADB's action or omission in the course of formulating, processing, or implementing ADB-assisted projects;	No. Actions described in the complaint may be related to ADB.
(ii) about matters that complainants have not made good faith efforts to address with the operations department concerned;	Yes. Part E of the complaint form has "No" as the complainants' response. <sup>2</sup>
(iii) about matters already considered by the SPF, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint;	Not applicable.
(iv) about an ADB-assisted project for which 2 or more years have passed since the loan or grant closing date;	No. The project was approved by ADB on 1 December 2015.
(v) frivolous, malicious, trivial, or generated to gain competitive advantage;	No.
(vi) about decisions made by ADB, the borrower or executing agency, or the private sector	No.
(vii) about allegations of fraud or corruption in ADB-assisted projects or by ADB staff; client on the procurement of goods and services, including consulting services	No.
(viii) about the adequacy or suitability of ADB's existing policies and procedures;	No.
(ix) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal, or relate to ADB personnel matters; and/or	No.
(x) about ADB's non-operational housekeeping matters, such as finance and administration."	No.

## Box 3.3 continued

	Requirement	CRP's Initial Assessment
<b>Scope and Exclusions</b>		
<b>5</b>	<p>Para. 148 “In addition, for the purpose of compliance review, the following will also be excluded:</p> <p>(i) complaints relating to actions that are the responsibility of other parties, such as a borrower, executing agency, or potential borrower, unless the conduct of these other parties is directly relevant to an assessment of ADB's compliance with its operational policies and procedures;</p> <p>(ii) complaints that do not involve ADB's noncompliance with its operational policies and procedures;</p> <p>(iii) complaints being dealt with by the SPF up to the completion of step 3 under the problem solving function (paras. 164–173);</p> <p>(iv) complaints relating to the laws, policies, and regulations of the DMC government concerned unless they directly relate to ADB's compliance with its operational policies and procedures; and/or</p> <p>(v) complaints about matters already considered by the CRP, unless the complainants have new evidence previously not available to them and unless the subsequent complaint can be readily consolidated with the earlier complaint.”</p>	<p>Not fully known at this point.</p> <p>Unknown at this point.</p> <p>No.</p> <p>No.</p> <p>No.</p>

ADB = Asian Development Bank, CRP = Compliance Review Panel. SPF = special project facilitator

<sup>1</sup> The term “ADB-assisted project” refers to a project financed or to be financed, or administered or to be administered, by ADB; and covers both sovereign and nonsovereign operations.

<sup>2</sup> Question for Part E. is “Have the complainants made prior efforts to solve the problem(s) and issue(s) with the ADB operations department, including Resident mission concerned?”

### 3.1.2 Eligibility Determination by the Compliance Review Panel (Step 2 of the Compliance Review Process)

Even before receiving ADB Management's response, the CRP reviews the complaint (including documents attached to it or additional documents submitted by the complainants) and all immediately available documents on the project that are relevant to the eligibility determination. In its eligibility determination, the CRP focuses on identifying and examining the harm the project may have caused or will likely cause, and determines whether such harm directly resulted from or was caused by ADB's noncompliance with its operational policies and procedures. (See Box 3.4 for case examples.)

Upon receipt of ADB Management's response, the CRP considers the response and examines its assertions in continuing with its determination of the eligibility of the complaint. It may conduct a mission to the country where the project is, to verify the facts of the complaint against any claims of ADB Management regarding compliance, examining the circumstances of a project for facts that can be supported by immediately available project documentation. In this step, the CRP is focused on establishing indications of noncompliance and its link to the direct and material harm or the probability of harm being caused by an ongoing or planned project. Conducted within 21 working days from receipt of ADB Management's response to the complaint, eligibility determination will conclude with the CRP affirming or denying the eligibility of a complaint, and explaining its qualification in a report on eligibility submitted to the Board, through the BCRC.

In the conduct of a mission to the country where the project is located, the CRP intends to verify the circumstances of the complaint and probe for the facts on claims made in ADB Management's response or as described in project documentation. This mission to determine eligibility will necessarily include meetings with the complainants at the project site, for the CRP to ascertain whether those complainants were indeed harmed or would in all probability be harmed by the ADB-assisted project. The CRP probes for any indication that such harm relates to the project's noncompliance with ADB's operational policies and procedures.

Typically, the CRP embarks on its eligibility mission after being provided mission clearance by the government shortly before or just after the receipt of Management's response. The CRP also meets with ADB Management before or after receiving its response and just prior to its eligibility mission, or during the mission itself, when it also confers with ADB project staff.

ADB Management provides the necessary assistance to the CRP and OCRP in coordinating with other stakeholders, such as the government or the borrower, for a site visit to the project. As the CRP or OCRP is in direct communication with the complainants or may communicate through

their representative(s), it may coordinate directly with them to set meetings, interviews, or visit the project site or communities of affected persons. (See Box 3.5 for case examples.)

The CRP personally verifies the identities of complainants, sometimes seeking help from the complainants' representative(s) (if there are such) to facilitate this meeting and operate in an unobtrusive and least invasive manner. The CRP strives to preserve the confidentiality of the complainants' identities, declining any request to reveal the identities, if this was so requested. It will not, however, entertain complaints from people whose identities have not been verified and confirmed as being among the persons legitimately affected by the project.

For the CRP to consider a complaint eligible for compliance review, it must be satisfied that there is evidence of noncompliance, and that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people. As authorization of a compliance review is a major decision that can be made only by the Board, the CRP's findings of noncompliance must be substantial enough to warrant a compliance review.

The determination of eligibility is based on the professional judgment and experience of the CRP members. Their conclusions will rely on their verification of facts regarding the circumstances of the project, along with their consideration of readily available information about the project and the claims made in ADB Management's response and the complaint, at this preliminary fact-finding stage.

With the time constraint of 21 working days, the CRP is not expected to conduct an in depth investigation and analysis of facts or studies relating to the project at this stage. It is only focused on establishing tenable noncompliance with available evidence and indications for causality between the noncompliance and the direct and material harm, or probability of such harm, inflicted on the complainants.

Following its eligibility mission and review of facts, the CRP prepares a concise yet comprehensive report to the Board, explaining how it performed its eligibility determination, and its findings on harm or risk of harm, and if such can be proven to be caused by the project's noncompliance with ADB's operational policies and procedures. The CRP concludes its report on eligibility by stating whether the complaint is deemed eligible or not. If it is found eligible, the CRP will recommend that the Board authorize a compliance review of the project.

To sum up, in step 2 of the 10-step process, the CRP

- (i) checks the identities of the complainants and establishes whether or not project affected people are indeed directly and materially harmed, or will likely be harmed by the ADB-assisted project;

- (ii) checks that there is evidence of noncompliance by ADB with its operational policies and procedures; and
- (iii) assesses if there is a possible direct link between the harm caused or likely to be caused by an ADB-assisted project, and the noncompliance by ADB with its operational policies and procedures;
- (iv) determines whether the complainants made prior good faith efforts to resolve issues with the operations department concerned; and
- (v) determines that the noncompliance is serious enough to warrant a compliance review.

At the conclusion of this step, the CRP prepares a report on its determination of the complaint's eligibility for a compliance review, which it submits to the Board, through the BCRC.

### 3.1.2.1 Objectives of a Site Visit to Determine Eligibility

The CRP makes a site visit during the 21-working-day eligibility determination phase to conduct a preliminary fact-finding mission that could obtain evidence of noncompliance. This site visit, together with information from the complaint filing, may likely present evidence of harm and a tenable causal link to noncompliance, alongside the response of ADB Management to the allegations of noncompliance supported by documentation from the project. (See Box 3.6 for more information).

The CRP's specific objectives in an eligibility mission would be to

- (i) confirm the identity of the complainants;
- (ii) gather evidence on:
  - (a) the direct and material harm or the probability of harm caused by the ADB-assisted project to the complainants and/or other affected people;
  - (b) any grounds for ineligibility, based on requisites for accepting a complaint described in section 2.4;
  - (c) the assertions made in ADB Management's response and project documentation;
  - (d) the ADB's operational policies and procedures which may not have been complied with by the project; and
  - (e) links between harm and ADB's noncompliance; and
- (iii) ascertain the technical expertise needed to continue with an extensive investigation, if warranted.

The findings from these actions would inform a recommendation for eligibility, if affirmed by the facts, from which the terms of reference (TOR) for a compliance review may be established.

The objectives of this mission are accomplished through a review of documents; visit and observation of the project site and the communities or environment of the affected people; and

consultations with the complainants or any directly affected people, ADB project and resident mission staff, including contractors or consultants hired by ADB on the project, and staff of the government and the project owner, if consultations with these may be accommodated.

### Box 3.4: Case Study on Eligibility Determination

After collating the information from its desk review of documents in Georgia's Nenskra Hydropower Project with the claims made in the Asian Development Bank (ADB) Management's response, along with information gathered through telephone conference calls with ADB's Private Sector Operations Department and staff of the lead funder, the European Bank for Reconstruction and Development, the Compliance Review Panel (CRP) continued with a more definitive determination of the eligibility of the complaint.

On a site visit, the complainants' identities were confirmed and interviews conducted. Consultations were also held with government agencies, the borrower, and the consultants who contributed to the environmental and social impact assessment.

The information gathered from all these sources established the facts of the case for the CRP, which then subjected these to the eligibility criteria listed in this section to make a determination against any exclusions. As there were no indications of ineligibility, the CRP proceeded to examine all the information that could point toward a recommendation for a compliance review, if the facts supported the eligibility of the complaint.

The CRP found strong evidence of noncompliance in certain matters, particularly with provisions of the Safeguard Policy Statement (SPS) regarding likely harm that could result from the following:

- (i) insufficient assessment of project alternatives;
- (ii) lack of assessment of the environmental impact of associated facilities;
- (iii) insufficient assessment of noise and vibration impact during construction and operations and insufficient assessment of health and security risks to the local population;
- (iv) incomplete status of environmental and social management plan and delegation of impact assessments and design of mitigation measures to engineering–procurement–construction contractors; and
- (v) incomplete mitigation measures for involuntary relocation of pasture areas.<sup>1</sup>

<sup>1</sup> Paras. 1–73 in ADB. 2018. *Report on Eligibility To the Board of Directors on Compliance Review Panel Request No. 2017/4 on the Georgia: Nenskra Hydropower Project*. (Project Number: 49223-001) Manila. pages 1–28. <https://lnadbg4.adb.org/diroo35p.nsf/alldocs/JABM-ATX46V?OpenDocument>

### Box 3.5: Procedures for Site Visits and Communications

For both sovereign and nonsovereign projects, Compliance Review Panel (CRP) missions need the consent of the government of the developing member country in which the project assisted by the Asian Development Bank (ADB) is located. In a nonsovereign operation, the private sector borrower must also consent to a site visit. While governments of member countries may have different policies and priorities in granting mission clearances, the CRP has the primary objective of investigating through first-hand observation to confirm facts of a compliance review case. The facts investigated pertain to allegations of noncompliance by ADB with its operational policies and procedures and any adverse effects caused, especially harm directly experienced by complainants.

ADB Management must help ensure that the CRP is able to make the necessary site visits. Collaboration built on trust and shared purpose between ADB, the governments of borrowing countries, and project owners is necessary in furthering the objectives of ADB's Accountability Mechanism and their partnership in development. The granting of mission clearances supports these objectives, as would ensuring the independence of the CRP's conduct of its investigation on site visits to facilitate results from a compliance review.

All requests by the CRP for mission clearances and site-visit permissions are made through ADB's operations departments, which are also tasked with facilitating all communication between the CRP and the borrower or government. The operations departments coordinate with the project owner and the government for any appropriate assistance. As the Accountability Mechanism relies on the ability of the CRP to make independent judgment, the use of ADB's institutional mechanisms is limited to assisting the CRP in obtaining consent and clearance for site visits from the host country's government and the borrower. It is not intended to influence the outcome of a compliance review.<sup>1</sup>

The principal purpose of the Accountability Mechanism is to address the concerns of affected people. It is therefore critical for the CRP to have access to complainants for meetings or consultations. In the event of a refusal of mission clearance, the CRP will exhaust all other means to obtain the necessary access, such as through teleconferencing or videoconferencing, to aid its assessment.<sup>2</sup>

In the event of a refusal or circumstantial delays in the granting of mission clearance and permissions, ADB Management will consult with the borrower and the government of the host country, and explain to the BCRC and the CRP the reasons behind such delay or refusal. This is to inform ADB Management's preparation and submission of an information paper to the Board, on the circumstances of the delay or refusal. Based on the access given, the CRP will complete its investigation, considering all available information from which conclusions or appropriate inferences may be drawn. In the absence of a site visit, the CRP may give added weight to the complainants' views.

Site visits may be postponed with justifiable reason by the government or the private sector borrower. Justifiable reasons include the threat of inclement weather conditions during the time of the proposed site visit, or security concerns in a project location that need to be mitigated

**Box 3.5 continued**

before the CRP mission can be allowed entry. Such reasonable deferment should still result in the granting of a mission clearance and permission for a site visit, to be scheduled when conditions are favorable. Any reasonable deferment of issuance of mission clearance would not be taken against government or the private sector borrower.

Other key subjects of on-site consultations would be ADB Management and staff, and ADB-hired consultants. A request may be made for consultations with the borrower's personnel, including the staff of the executing and implementing agencies, and the consultants or contractors hired, who may provide significant insights into the circumstances of ADB's noncompliance on the project. The CRP meets with each of these parties on separate occasions, and at no point shall ADB Management or the borrower's representatives accompany the CRP in meetings with other stakeholders, particularly the affected people or their representative(s), or in individual interviews with staff, consultants, or contractors.

The number of site visits would vary according to the particular needs of a compliance review (whether eligibility mission, investigation or fact-finding mission, or monitoring mission), along with any circumstantial factors that may affect scheduling, such as the timely recruitment and engagement of technical experts needed by the CRP.

At the end of each mission, a debriefing may be requested of the CRP by the borrower, ADB Management, and the complainants or their representative (or the CRP with each of these stakeholders), to discuss initial findings or preliminary conclusions reached by the CRP on each of its missions. Besides fostering transparency by this means, this would help the stakeholders reach an understanding on the preliminary findings to aid their actions in succeeding steps.

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<sup>1</sup> Para. 80 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, page 16.

<sup>2</sup> Paras. 76–82 and 198–201 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila, pages 16–38.

### Box 3.6: Expectations on the Number of Site-Visit Missions Needed

At different steps in the compliance review process, a different number of site visits may be needed, owing to the different objectives of each mission at each particular stage.

In step 2, typically only one site visit is needed to determine eligibility. Depending on the nature and history of the complaint, there may be circumstances when the CRP does not even embark on an eligibility mission. This action is mostly to confirm facts on the case with regard to claims made in the complaint and the response of Management of the Asian Development Bank (ADB), with a view to finding evidence that may point toward a recommendation for the Board to authorize a compliance review.

In step 4, at least one visit is needed, with the possibility of additional missions that may be requested for further technical surveys. An earlier mission would have focused on confirming facts through interviews with affected people, the borrower, and ADB staff, while also determining particular needs for certain expertise or measurements to be applied that would have a bearing on facts being established in a case.

Such was the case with the two missions performed during the compliance review investigation for Georgia's Sustainable Urban Transport Program. The first visit was focused on interviews and investigation by the CRP, supported by an officer from the Office of the Compliance Review Panel. This was followed by a second technical mission with a team comprising the CRP lead reviewer, a structural engineer, and an environment expert, who have conducted noise and vibration impact measurements and assessments on the buildings in question and reviewed other environmental impact in a section of the project site.<sup>1</sup>

In step 10, only one site visit each year is typically needed, for every year that the CRP is tasked with monitoring. This visit is made to confirm the contents of ADB Management's periodic monitoring reports and independently assess the progress of remedial actions.

Site visits are particularly critical in obtaining the views of the complainants and other affected people, determining harm and causality from noncompliance, or confirming the effectiveness of remedial measures that are being implemented. The quality of access given can only aid in establishing the CRP's conclusions in this regard, as inferences may also be drawn from the transparency of the exercise as much as from the quality of information best gathered from direct observation.<sup>2</sup>

<sup>1</sup> Paras. 19–21 in ADB. 2017. *Final Report on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila (Loan 3063). page 7. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>

<sup>2</sup> Paras. 76–82 and 198–201 in ADB. *Accountability Mechanism Policy 2012*. Manila. pages 16–38.

### 3.1.3 Board Consideration of Eligibility for a Compliance Review and Authorization of the Compliance Review (Step 3 of the Compliance Review Process)

The CRP submits a report to the Board, through the BCRC, regarding the eligibility of the complaint for a compliance review. Evaluating the CRP's recommendation on the complaint's eligibility, the Board makes a decision to authorize a compliance review, or to deny the continuation of the proceedings, or to require other actions to bring an expedient resolution to the complaint. (See Boxes 3.7 and 3.8 for more information).

In exceptional circumstances, the BCRC may also recommend to the Board not to authorize a compliance review even when the CRP deemed the complaint eligible. (See Box 3.9 for case examples.)

If the CRP considers a complaint ineligible, the CRP's eligibility report is sent to the Board through the BCRC as an information paper, which is immediately posted on the CRP website. No Board decision is needed and no further actions will be taken on the complaint by the CRP. However, ADB Management and staff need to observe or address (if necessary) those complaints that were

- (i) deemed ineligible by the CRP, particularly because of the complainants' lack of prior good faith efforts to solve the problems and issues with the operations departments; or
- (ii) were forwarded by the CRP to the operations departments for reasons related to the complaint being outside the scope of the compliance review mandate (e.g., withdrawal by one of the complainants; identity or location of complainant cannot be established); or those
- (iii) deemed eligible by the CRP but for which the Board did not authorize a compliance review. For these cases, concerned operations departments are expected to look at the complaints, address it as needed and document its actions toward complaint resolution. To close a complaint that was forwarded to the operations department, a report has to be prepared by the concerned operations department summarizing the complaint, issues, actions taken to address the problems or issues, decisions or agreements by parties concerned, results, and lessons.<sup>78</sup> Unless there are statements, in the Board decision or CRP's eligibility report, on the frequency of updating the CRP or the Board, through the BCRC, on actions expected from ADB Management, concerned operations department has to submit the report at the end of the process of addressing the complaint.

Whether eligible or not, the CRP will inform the complainants, the borrower, the Board member representing the borrowing country, Management, and the operations department of this outcome at the end of the eligibility determination stage.

<sup>78</sup> Paras. 137(vi) and 19 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

### Box 3.7: Sample Compliance Review Panel Report on Eligibility

An example of a Report on Eligibility by the Asian Development Bank Compliance Review Panel can be found in ADB. 2018. *Georgia Sustainable Urban Transport Investment Program—Tranche 3*.

[https://lnadbg4.adb.org/diro035p.nsf/attachments/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf/\\$FILE/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf/$FILE/GEO-SUTIP%20T3-3rdComplaint-21August2018-FOR%20WEB.pdf)

Source: Asian Development Bank

### Box 3.8: Sample Board Decision

An example of a Board Decision on authorizing a compliance review can be found in ADB. 2016. *Georgia Sustainable Urban Transport Investment Program—Tranche 3*.

[https://lnadbg4.adb.org/diro035p.nsf/attachments/GEO-BoardDecision21June2016.pdf/\\$FILE/GEO-BoardDecision21June2016.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/GEO-BoardDecision21June2016.pdf/$FILE/GEO-BoardDecision21June2016.pdf)

Source: Asian Development Bank

If the CRP recommends a compliance review, the Board will take 21 calendar days to consider authorizing a compliance review or any other options it may exercise. While the Accountability Mechanism Policy foresees Board authorization of a compliance review on a no-objection basis, following the determination of eligibility of a complaint, recent cases have shown that the Board, as the highest policy-making body in ADB, exercises certain prerogatives or takes other weighted considerations into account in its decision making.

If the Board does not authorize a compliance review, it is important to note that the complaint will not be ignored. From experience in previous cases, the Board has in some circumstances recommended further collaboration between ADB's operations department and the borrower in acting to address the issues and concerns raised in the CRP's report on eligibility determination, in the interest of reaching a more immediate and cost-effective solution. Complainants can wait for efforts by ADB Management to work with the project owner toward a resolution, which may be expedited by further requests for updates by the CRP.

### Box 3.9: Case Studies on Step 3 Actions

**The Compliance Review Panel (CRP) recommends a compliance review, which the Board authorizes.**

In the report on the eligibility determination of the CRP on the first complaint over Georgia's Sustainable Urban Transport Project, the CRP recommended that the Board authorize a compliance review.<sup>1</sup> After considering the CRP's eligibility report, the Board approved the CRP's recommendation.

**The CRP recommends a compliance review, but the Board denies the recommendation or presents an alternative.** The CRP initially assessed the complaint made over Georgia's Nenskra Hydropower Project, and finding no qualification for exclusions, decided that it was within the mandate of the compliance review function.<sup>2</sup> It proceeded to an assessment of whether the project should be considered eligible for a compliance review. Finding evidence of noncompliance in certain matters and meeting all eligibility criteria, the CRP deemed the complaint eligible and recommended a compliance review be authorized by the Board.<sup>3</sup>

Noting the CRP's well-considered qualification of its recommendation, the stage of project processing (i.e., the project has not reached Board consideration stage yet) and the length of time a compliance review could take, during which the project might have proceeded amid uncertainty regarding noncompliant activities, with or without ADB's participation, the BCRC recommended against authorizing a compliance review. Instead it recommended that ADB Management regard the CRP's findings in its eligibility report, incorporating those views in revisions of the current project design. This would be a more immediate means of establishing remedial measures that would effectively address the affected people's concerns in a timely and cost-effective manner—the material objective of a compliance review.

The Board adopted the BCRC's recommendation, resolving that ADB Management consider the CRP's findings and prepare a compliance report and action plan that included remedial or ameliorative measures.<sup>4</sup>

<sup>1</sup> ADB. 2016. *Report on Eligibility on Compliance Review Panel Request No. 2016/1 on the Sustainable Urban Transport Investment Program—Tranche 3 in Georgia*. Manila. (Loan 3063). <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-A848U5?OpenDocument>

<sup>2</sup> ADB. 2018. *Compliance Review Panel Request No. 2017/4 on the Georgia: Nenskra Hydropower Project (Project Number: 49223-001)*. Manila. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-ATX46V?OpenDocument>

<sup>3</sup> Para. 73 in ADB. 2018. *Request for Compliance Review. Compliance Review Panel Request No. 2017/4 on the Georgia: Nenskra Hydropower Project*. Manila. (Project Number: 49223-001). <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-ATX46V?OpenDocument>

<sup>4</sup> ADB. *Report of the Board Compliance Review Committee and Compliance Review Panel's Report on Eligibility of the Compliance Review Request for Project Number 49223-001 Nenskra Hydropower Project (Georgia)*. Manila. <https://lnadbg4.adb.org/diro035p.nsf/alldocs/JABM-ATX46V?OpenDocument>

Although complainants are not allowed to revert to the problem solving function once a complaint has been deemed eligible for compliance review by the CRP, the issues raised in the CRP's report on eligibility determination can still be addressed through problem solving initiated by ADB's operations departments. The CRP can request updates from ADB Management on efforts to respond to the complaints.

Whether the Board authorized a compliance review or not, the complainants, the borrower and ADB Management will be informed separately, in writing, by the CRP of the Board's decision within 7 working days of receiving the decision. If the complaint is considered eligible by the CRP, the Board's decision and the CRP's report on eligibility determination will be made public through the CRP website within 7 working days from the date of the Board decision. The decision and the report may be viewed on the project webpage in the CRP's Registry of Complaints, found on its website ([www.compliance.adb.org](http://www.compliance.adb.org)).

### 3.2 CONDUCT OF THE COMPLIANCE REVIEW (STEPS 4-5 OF THE COMPLIANCE REVIEW PROCESS)

This is the stage in which an investigation on a project ensues to determine compliance with ADB's operational policies and procedures. At the end of the investigation, the CRP, through the BCRC, submits a report on its findings to the Board.

#### 3.2.1 Terms of Reference for the Compliance Review (Step 4 of the Compliance Review Process)

The terms of reference define the scope of a compliance review, stating the ADB operational policies and procedures on which the compliance review will be based. The TOR defines the methods of investigation, including the estimated review time frame, budget and other resources needed; identifies the assigned CRP lead reviewer; and specifies other necessary information pertinent to the review.<sup>79</sup> The TOR is essentially the CRP's plan for project fact-finding or investigation. (See Box 3.10 for more information).

After the Board has authorized a compliance review, the CRP prepares the TOR based on the following:

- (i) facts gathered from its project site visit during eligibility determination;
- (ii) the CRP's assessment of the information, documentation, and evidence provided by the complainants;

<sup>79</sup> Paras. 183-184 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 35-36.

### Box 3.10: Sample Terms of Reference for a Compliance Review

An example of the Terms of Reference for a compliance review can be found in ADB. 2016. *Georgia Sustainable Urban Transport Investment Program—Tranche 3.*:

[https://lnadbg4.adb.org/diro035p.nsf/attachments/GEO-SUTIP-T3-ComplianceReviewTOR\\_28June2016.pdf/\\$FILE/GEO-SUTIP-T3-ComplianceReviewTOR\\_28June2016.pdf](https://lnadbg4.adb.org/diro035p.nsf/attachments/GEO-SUTIP-T3-ComplianceReviewTOR_28June2016.pdf/$FILE/GEO-SUTIP-T3-ComplianceReviewTOR_28June2016.pdf)

Source: Asian Development Bank

- (iii) its assessment of ADB Management’s response and the supporting documents;
- (iv) its assessment of the supporting documentation or information provided by the borrower or project owner, if such is available or provided; and
- (v) its analysis and understanding of ADB’s operational policies and procedures, and how it foresees the investigation of compliance should proceed.

The CRP submits the TOR to the BCRC for review and clearance. Once cleared, the TOR is submitted to the Board for its information, and a copy is sent to ADB Management.

The CRP must prepare the draft TOR and receive the BCRC’s clearance within 10 working days from Board authorization of a compliance review.

Further, it is important to note that the CRP can begin the compliance review only after the TOR for a compliance review has been cleared by the BCRC, and the Board has been informed of the TOR.

As a rule, a compliance review is limited to the issues presented in the complaint and the scope of investigation defined in the TOR, as approved by the BCRC. It is not a problem-seeking exercise or a solicitation for complaints or complainants.

However, in circumstances in which the CRP determines further instances of potential noncompliance by ADB that can be established from clear indications, despite potentially affected people not complaining on such issues or being unaware of such noncompliance or the harm that it may cause or have caused, the CRP may, at its discretion, seek amendments to the terms of its review by consulting with the BCRC, or it may describe additional impact or identify more affected people in its compliance review report.

When the compliance review is in progress and evidence shows an unforeseen aspect of harm that warrants further investigation, requiring more extensive expertise or investigative methods, or demonstrates a wider extent of noncompliance with ADB's operational policies and procedures that is relevant to the effects of harm on the project, the TOR may be adjusted with a recommendation by the CRP to the BCRC, for consideration and clearance. This is in the interest of pursuing an objective investigation into noncompliance, and providing remedies that correct the project's adverse effects, to facilitate operational learning for succeeding project design and implementation.

In determining the manner and extent of any additional review, the CRP is advised to consult with the concerned operations department and its project team. In seeking amendments to the TOR to include further investigation, it must establish that any additional impact are significant in magnitude under the relevant operational policies of ADB as to merit an increased allotment of time or resources for an expanded investigation. Such amendments to the TOR may only be approved by the BCRC.

### 3.2.2 Conducting the Compliance Review (Step 4 of the Compliance Review Process)

The methods used in conducting a compliance review may be as follows:

- (i) desk reviews of project documents;
- (ii) scheduled project site visits that may entail fact-finding, verification, and measurements made on the project's premises or in the surrounding community or environment;
- (iii) a probative investigation to discern causal links between harm and noncompliance, or any other social or environmental factors;
- (iv) individual interview(s) with ADB Management and staff who are or were involved in the project, including consultants employed by ADB;
- (v) meetings with other stakeholders, such as the complainants and other affected people, their representatives or NGO or CSO partners, the government or private sector borrowers, their executing and implementing agencies, and their concerned staff and project consultants and/or local experts, as needed;
- (vi) meetings with other relevant parties, such as government regulatory agencies, NGOs or CSOs not representing the complainants, and, with access granted, the consultants or contractors employed by the borrower for the project; and
- (vii) engagement of technical experts to provide assistance and support to the CRP in its work on establishing harm, noncompliance, and causality.

As the ultimate aim of a compliance review is to bring the project into compliance with ADB policies and address related findings of harm, the CRP expects the full cooperation of all

stakeholders involved in a compliance review to aid the objective determination of any cause of harm.

Because of the variability of factors such as the nature, scope, and complexity of the project and the alleged noncompliance; translation requirements; site security; weather or peculiar physical environmental conditions; or circumstances such as national holidays; election periods; or political unrest; no time limit applies to the fact-finding stage (step 4); although an approximate time frame for such is indicated in the TOR.

A CRP review is not a fishing expedition nor a problem-seeking exercise in which reviewers search for problems or solicit people to complain. As a rule, it is limited to the issues raised in the complaint (during eligibility phase); and should be within the scope defined in the TOR as approved by the BCRC (during the compliance review phase). However, there might be compliance review cases where the CRP cannot turn a blind eye toward clear indications of potential ADB noncompliance of its operational policies and procedures affecting people, even where such affected people are unaware of such affects and/or have not complained. In determining the manner and extent of any such additional review, the CRP is advised to consult with the relevant ADB project team/operations department, and determine whether, in the CRP's discretion:

- (i) to add to its eligibility review and/or final compliance review reports a description of the “additional impacts” and “additional affected people”, together with findings of noncompliance and direct and material harm; or
- (ii) to consult with the BCRC and seek an amendment to the TOR to include further investigation in cases where the “additional impacts” are sufficiently serious or of enough magnitude under relevant operational policies of ADB and/or where further significant investigation, time or resources are required.

### 3.2.3 Objectives of Site Visits in the Conduct of the Compliance Review

A site visit is made in the course of a compliance review to

- (i) verify the extent of harm to project-affected persons from the ADB-assisted project, through technical studies and measurements to qualify or quantify the harm or probability of harm;
- (ii) confirm noncompliance with the ADB operational policies and procedures, and its extent and circumstances;
- (iii) confirm the link between harm and noncompliance, and establish how this occurred or will occur; and
- (iv) investigate in greater detail the extent of harm to project-affected persons due to the noncompliance.

The objectives of a site visit are accomplished through the following methods:

- (i) a review of documents;
- (ii) a thorough technical inspection (if needed) and study of the project site and the communities or environment of the affected people, conducted by a team of experts supporting the CRP;
- (iii) a probative investigation into the harm or risk of harm, and its link to noncompliance; and
- (iv) consultations with the complainants or any directly affected people, ADB Management and resident mission staff including contractors or consultants hired by ADB, and the government's and project owner's staff including contractors or consultants involved in the project, at the CRP's request.

#### 3.2.4 Compliance Review Panel Objectives in Meeting with Stakeholders

During the fact-finding investigation missions, the CRP meets separately with the complainants (with or without representative(s)), ADB Management and staff, and representatives of the borrower, at the start of each mission and at its conclusion. On these occasions, the CRP would explain each mission's objective, clarify expectations relating to the compliance review process, apprise each identified stakeholder of the CRP's initial findings, and explain the succeeding steps in the compliance review process.

The participation of affected people, particularly the complainants, in these consultations is critical in establishing the circumstances or verifying facts in a complaint. Information from the interview would support the documentary or material evidence that they may provide, to assist in establishing or confirming facts for the CRP, particularly relating to whether meaningful consultation was made, information dissemination efforts were sufficient, or sufficient good faith efforts were made to seek redress, or to determine the extent of the harm directly experienced, or the views of the affected people about the factors that bring about noncompliance.

Focusing on ADB's capacity to advise the borrower toward following ADB's operational policies and procedures, a compliance review does not inquire directly about the conduct of government borrower or the private sector client, unless this information is relevant to an assessment of ADB's compliance with its operational policies and procedures. In its meetings, the CRP seeks to understand how ADB conducted itself with government or private sector project partners, including contractors or consultants involved in the project, in explaining ADB's requirements and ensuring compliance with ADB's operational policies and procedures in all stages of the project.

Consultations with ADB Management and staff are critical in establishing the circumstances or verifying facts regarding alleged issues of noncompliance on a project. Information from the interviews would support the documentary or material evidence provided by ADB Management's response or disclosed by the investigation. This would assist in establishing or confirming facts, particularly those pertaining to ADB Management's monitoring efforts to ensure appropriate public consultation and sufficient information dissemination was made. Consultations may also determine if audit, supervision, quality control, and evaluation mechanisms may have been breached, and establish which operational decisions may have resulted in noncompliance, as the evidence may reveal.

### **3.2.5 Stakeholder Review and Comments on the Draft Compliance Review Report (Step 5 of the Compliance Review Process)**

At the end of its fact-finding mission, the CRP begins internal discussions on its findings, in preparation for the drafting of its report to be submitted to the Board. The CRP's findings will be reached through consensus among the CRP members. In the absence of a consensus, the majority and minority views will be stated in the CRP's final report.

The CRP's final report presents its detailed findings regarding issues of noncompliance with ADB's operational policies and procedures on the project that have led to or may lead to harm to affected people. This is the CRP's concluding document, after it has undertaken the investigation stage of a compliance review in step 4 of the 10-step process.

There are two stages to the CRP's report: the draft stage and the final stage. In the draft stage (step 5 of the 10-step process), the CRP issues its draft report to ADB Management, the project owner, and the complainants, directly or through their NGO, CSO, or other local representative where this applies. Through the report, the CRP intends to gather comments from these parties on the CRP's findings on the project, as stated in its draft report. The CRP expects to receive these comments within 45 working days from the issue of the draft report. It will then consider the comments of these stakeholders and reflect those in the CRP's final report as the CRP deems appropriate. The draft report is also forwarded to the BCRC for review.

The borrower and ADB Management thus have an opportunity to qualify decisions made or explanations given on the circumstances described in the CRP's draft report as contributing to the noncompliance. These qualified statements could aid the CRP in its analysis or cause a reevaluation from another perspective. The process also enables the affected people or their representative(s) to reinforce or correct certain claims or assertions regarding harm or the factors contributing to harm or the noncompliance that causes harm. Comments from any of

these parties may likewise affirm the accuracy of the methodological assumptions behind the CRP's conclusions, or contribute to refining the method or improving the results.

Comments may express disagreement with certain sections of the report. There may be concerns about the accuracy of data, or questions regarding the methodology or assumptions that led to the conclusions, or arguments presented to refute the evidence in aspects of the project where other factors may be at work. Dissenting views are best substantiated by additional evidence, which must be assessed by the CRP for validity. (See Box 3.11 for more information).

If necessary, ADB Management may consult with the borrower or with other relevant ADB departments, such as the OGC or the Sustainable Development and Climate Change Department (SDCC), to strengthen its comments on the CRP draft report. Similarly, the borrower or the complainants, or their representative(s), may consult technical experts in framing their comments.

### **Box 3.11: What if Contradictory Comments are Received from Stakeholders?**

In its investigation, the Compliance Review Panel (CRP) maintains an approach based on its fact-finding and evidence that it gathered. It does not adopt or present views in the final report that are not substantiated. Affected people or the complainants are often confronted with this challenge, given the difficulty of collecting scientific data, and may rely solely on what they are feeling rather than what they can prove. All stakeholders are urged to support their assertions or perspectives with validated information, using material evidence or confirmed data or, at the very least, valid reasoning grounded in correct assumptions or verifiable facts.

The CRP exerts all efforts to ensure the reliability of its methods and data, and may even take into account the concerns presented by stakeholders during consultations. For example, in Georgia's Sustainable Urban Transport Investment Program—Tranche 3, two missions were undertaken, the first only by the CRP, and the second by the lead reviewer supported by technical advisers tasked to survey the impact of the project on the local residential environment. The process enabled a thorough study to verify the facts presented in the complaint against claims made in Asian Development Bank (ADB) Management's response or in the borrower's studies. This verification process ensures an objective determination by the CRP and a better understanding of the issues raised by both complainants and ADB Management in their claims.

Source: Asian Development Bank

### 3.2.6 Finalization of the Compliance Review Panel Report (Step 6 of the Compliance Review Process)

The finalization of the CRP report for submission to the Board is the second stage in the preparation of the report.

The CRP details in this concluding document its findings of noncompliance on a project. On the basis of these findings, and after the Board's consideration of the final report for release (step 7), ADB Management will design remedial actions (step 8).

In the report finalization stage, the CRP considers the comments received from each stakeholder for inclusion in its final report, depending on their validity in relation to the CRP's findings. Relying on its professional judgment and insights gained from the investigation, the CRP may affirm or reject the comments on the basis of the substance of each assertion. It provides a response to each comment, and summarizes all these, with the CRP's response to each, in a matrix attached to the final report that is submitted to the Board. The CRP sifts through the comments, with the goal of establishing an objective assessment of the harm and noncompliance and all relevant issues that need to be addressed, based on the facts and the fair qualification of its findings. It may also make changes in its report as it deems necessary, before it submits the final report to the Board.

The CRP submits its final report to the Board through the BCRC, within 14 working days from receiving comments from the complainants or their representative(s), the borrower, and ADB Management.

The term "through BCRC" does not imply a simple "post office" function from BCRC but rather describes the "gateway". BCRC's role under the AM Policy is to oversee the various components of the compliance review process on behalf of the Board, including review of different reports prepared by the CRP for the Board to ensuring that the reports prepared by the CRP comply with the AM Policy. BCRC assesses and confirms that any report, before it is presented to the Board, meets the standards necessary to enable the Board to make a determination on the said report.

ADB Management's comments and the CRP's summarized response to each of the comments from the (i) ADB Management; (ii) borrower; and (iii) complainants, in matrix form will be attached to the CRP's final report. Upon getting the consent of the (i) borrower and (ii) the complainants, separately, the CRP's final report will also have as attachment comments from each of these important stakeholders. By default, the comments from ADB Management are included in the publicly disclosed version of the CRP's Final Report.

### Box 3.12: Sample Documentation on the Board's Consideration

A sample documentation of a Board's Consideration: ADB. 2017. *Board's Consideration of the CRP's Final Report from the Georgia Sustainable Urban Transport Investment Program —Tranche 3*. Manila.

[https://lnadb4.adb.org/diro035p.nsf/attachments/GEO-Board%20Consideration-6March2017.pdf/\\$FILE/GEO-Board%20Consideration-6March2017.pdf](https://lnadb4.adb.org/diro035p.nsf/attachments/GEO-Board%20Consideration-6March2017.pdf/$FILE/GEO-Board%20Consideration-6March2017.pdf)

Source: Asian Development Bank

### Box 3.13: Sample Final Report of the Compliance Review Panel

A sample documentation of a Final Report prepared by the Compliance Review Panel: ADB. CRP's *Final Report under the Georgia Sustainable Urban Transport Investment Program—Tranche 3*. Manila.

[https://lnadb4.adb.org/diro035p.nsf/attachments/GEO-CRP-Final%20Report-6March-Board.pdf/\\$FILE/GEO-CRP-Final%20Report-6March-Board.pdf](https://lnadb4.adb.org/diro035p.nsf/attachments/GEO-CRP-Final%20Report-6March-Board.pdf/$FILE/GEO-CRP-Final%20Report-6March-Board.pdf)

Source: Asian Development Bank

## 3.2.7 Board Consideration of the Compliance Review Panel's Report (Step 7 of the Compliance Review Process)

Within 21 calendar days of receiving the final report from the CRP, the Board considers the CRP's report. (See Box 3.12 for more information).

The Board members may call on the CRP to clarify certain matters. It may also seek clarification from ADB Management and staff.

After the Board has considered the CRP's final report, the CRP chair releases it to the complainants or their representative(s), the borrower, and ADB Management, and the general public within 7 working days from the Board's meeting on that matter. (See Box 3.13 for more information).

If necessary, the CRP translates the final report into the local language of the complainant or host country and uploads a copy to the CRP website at [www.compliance.adb.org](http://www.compliance.adb.org). ADB Management may consider providing a link to the report on the ADB project website as well.

### 3.2.8 Role of Nongovernment Organization and Civil Society Organization in the Process.

Such organizations and representative(s) can assist in ensuring that the complaint is progressing smoothly. (See Box 3.14 for more information).

#### **Box 3.14: Nongovernment Organization and Civil Society Organization Representatives: Advocates for Affected People's Interests**

At this stage, duties of the nongovernment organization (NGO) or civil society organization (CSO) or other representative(s) may include:

- (i) keeping the complainants informed of the developments in the process of a compliance review;
- (ii) providing acknowledgment that the complainants have received the communication or necessary information;
- (iii) eliciting the complainants' or affected people's active participation in the processes of the compliance review, pursuant to their authorized involvement;
- (iv) providing sufficient technical information from which complainants or affected people may express an opinion on the harm caused and the factors relating to noncompliance;
- (v) communicating complainants' comments on the Compliance Review Panel's (CRP) draft report, if complainants cannot do it by themselves;
- (vi) advising on security measures for the complainants' safety;
- (vii) facilitating the CRP's consultation with the complainants and other affected people, ensuring the security of all parties as necessary;
- (viii) discussing with the complainants or the affected people any matters pertaining to the processes of the compliance review;
- (ix) communicating on behalf of the complainants, or advising on communication, especially if a request for confidentiality is made; and
- (x) communicating with other parties engaged in the compliance review, regarding consultation, negotiation, and expression of opinions and comment on the CRP's findings, consistent with that of the complainants' and affected people's interests and their views.

As representatives of the affected people, the NGO, CSO, or other representative's views are well considered, with opinion sought for comment on the CRP's findings. Their opinion and comments on the findings are considered when the CRP drafts their report. Consultation with their party may also be sought by ADB Management during the design of remedial actions that may result from a compliance review.

Source: Asian Development Bank

### 3.3 PREPARATION, IMPLEMENTATION AND MONITORING OF REMEDIAL ACTION (STEPS 8–10 OF THE COMPLIANCE REVIEW PROCESS)

In this stage, the findings of the CRP's final report are turned into a proposal for remedial actions, following step 8: Management's Remedial Actions. ADB Management makes a careful study of the CRP's findings of noncompliance on the project and with the correct understanding (for which it is encouraged to seek further clarification through consultation with the CRP), proceed with the design of the appropriate remedial actions to achieve compliance on the project and the mitigation of harm. Management must obtain in writing the agreement of the borrower on the remedial actions. As a best practice, meaningful consultation should also be sought with the affected people. The CRP provides comments to the proposed remedial action plan prior to submission to the Board. In step 9: Board's Decision, the proposed remedial action plan is considered by the Board for approval. Once the remedial action plan has been approved, the remedial actions are implemented by ADB and the concerned borrower. This is monitored in step 10: Monitoring and Conclusion by the CRP to ensure that the project is brought back into compliance with ADB's operational policies and procedures.

#### 3.3.1 Preparation of Remedial Actions (Steps 8 and 9 of the Compliance Review Process)

In the context of a compliance review, remedial actions correct noncompliance and bring a project back into compliance with ADB's operational policies and procedures. Remedial actions benefit all affected people, whether they complained to the CRP or not.

Following findings of noncompliance in the CRP's Final Report, ADB Management formulates remedial actions in collaboration with the project owner. The remedial action plan is intended to address issues of noncompliance that would also remove the cause or risk of harm. (See Boxes 3.15 and 3.16 for case examples.)

As it is primarily the project owner who will implement the remedial actions, ADB Management necessarily consults with and obtains the written agreement of the borrower on its design and implementation, including the timeline, the division of responsibility between the borrower and ADB, and costs, among others. It is also recommended for ADB Management to seek meaningful consultation with the affected people, and it may also consult with the CRP, to gain insight from both parties on the design or adequacy of such actions to meet compliance and mitigate or eliminate harm.

Before the proposed remedial action plan is submitted to the Board, ADB Management must forward the draft of its proposed remedial action plan to the CRP for a 5-day comment

### Box 3.15: Sample Board Decision and Remedial Action Plan

Examples of documentation from the Board's Decision and the proposal of Remedial Actions by ADB Management can be found in the links below:

1. ADB. 2017. Board's Decision. [https://lnadbg4.adb.org/diroo35p.nsf/attachments/Board%20Consideration%20of%20the%20GEO-RAP-Minutes-30June2017.pdf/\\$FILE/Board%20Consideration%20of%20the%20GEO-RAP-Minutes-30June2017.pdf](https://lnadbg4.adb.org/diroo35p.nsf/attachments/Board%20Consideration%20of%20the%20GEO-RAP-Minutes-30June2017.pdf/$FILE/Board%20Consideration%20of%20the%20GEO-RAP-Minutes-30June2017.pdf)
2. ADB. 2017. Remedial Actions Approved by the Board. [https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf/\\$FILE/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf](https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf/$FILE/GEO-Board%20Approved-RAP-30June2017-ForWeb.pdf)
3. ADB. Remedial Actions Proposed Final Solution. [https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO%20SUTIP-CRP%20Case%20-%20Final%20Action%20Plan-15Dec2017.pdf/\\$FILE/GEO%20SUTIP-CRP%20Case%20-%20Final%20Action%20Plan-15Dec2017.pdf](https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO%20SUTIP-CRP%20Case%20-%20Final%20Action%20Plan-15Dec2017.pdf/$FILE/GEO%20SUTIP-CRP%20Case%20-%20Final%20Action%20Plan-15Dec2017.pdf)
4. ADB. ADB Management's Response to the CRP's Comments on the Remedial Action Plan Proposed Final Solution. [https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO%20SUTIP3-ADB%20Management%20and%20CRP's%20Comments-Proposed%20Final%20Solution-For%20Web.pdf/\\$FILE/GEO%20SUTIP3-ADB%20Management%20and%20CRP's%20Comments-Proposed%20Final%20Solution-For%20Web.pdf](https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO%20SUTIP3-ADB%20Management%20and%20CRP's%20Comments-Proposed%20Final%20Solution-For%20Web.pdf/$FILE/GEO%20SUTIP3-ADB%20Management%20and%20CRP's%20Comments-Proposed%20Final%20Solution-For%20Web.pdf)
5. ADB. 2018. Remedial Action Plan Final Solution. [https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO-SUTIP3-RAP-Final%20Solutions%20\(Post%20CRP%20and%20BCRC%20Review\)\\_3May2018.pdf/\\$FILE/GEO-SUTIP3-RAP-Final%20Solutions%20\(Post%20CRP%20and%20BCRC%20Review\)\\_3May2018.pdf](https://lnadbg4.adb.org/diroo35p.nsf/attachments/GEO-SUTIP3-RAP-Final%20Solutions%20(Post%20CRP%20and%20BCRC%20Review)_3May2018.pdf/$FILE/GEO-SUTIP3-RAP-Final%20Solutions%20(Post%20CRP%20and%20BCRC%20Review)_3May2018.pdf)

Source: Asian Development Bank

period. This proposed remedial action plan is submitted to the Board, with the CRP's comments as attachment, for the Board's consideration and approval within 21 calendar days of receipt.

As a good practice, ADB Management may meet with the CRP within the 60-day window to prepare the remedial action plan to clarify expectations and seek guidance (if needed) on how to address the CRP's findings in its report. The Board may consider the CRP's comments to aid their decision toward approving the ADB Management's proposed remedial action plan. Within 7 days after the Board's decision, Management's remedial action plan, and the CRP's comments will be released to the complainants and the borrower. ADB Management's proposed remedial actions, CRP comments on the remedial actions, and the Board's decision will also be posted on the ADB project website and linked to the CRP's website within 7 days of the Board's decision.

In considering ADB Management's proposal during step 9: Board's decision, the Board may require the fulfillment of certain conditions to find the remedial action plan to be satisfactory in producing a reversal of noncompliance that may result in the mitigation of harm. Pending approval by the Board, ADB Management may be tasked to revise its proposal and seek consultation with the necessary parties until a viable plan is finalized.

If approved, the remedial action plan will be implemented by the project owner, and would be monitored by ADB Management for compliance and by the CRP for progress on its implementation and its effectivity toward compliance, for up to 3 years (plus any possible Board-approved extension). ADB Management may also implement certain remedial actions, such as monitoring on certain environmental parameters, or funding and implementation of technical assistance on studies, the significance of which may not have been anticipated during project preparation.

With these remedial actions in place, ADB Management ensures compliance with ADB's operational policies and procedures ensues on the project.

The remedial action plan identifies the actions to be done to achieve compliance in a project; the time frame for such actions; details on parties responsible for implementation; estimates of costs for remedial actions; and parties to shoulder the costs. ADB Management provides such details in its proposal, after these have been resolved with the borrower.

Remedy may entail the cost of additional compensation appropriate for relief; resettlement or investments on infrastructure relating to resettlement; the construction of protective or rehabilitative structures; environment-related mitigation measures; facilitation of retraining for alternative livelihoods or such other interventions; technical assistance in many forms (such as in monitoring environmental conditions, or the conduct of technical studies or capacity building activities), or any such similar measures.

Studies may be warranted prior to implementation. ADB can facilitate grants and extend technical assistance for such studies or measures to capacitate government agencies in resettlement or rehabilitation, or aid other agencies in facilitating livelihood training or similar interventions, or provide the means for monitoring the effectiveness of the remedial measures, in support of any similar technical efforts needed.

### Box 3.16: Case Study on Remedial Actions to Address Noncompliance

The Compliance Review Panel (CRP) found in its compliance review on the Philippines' Visayas Base-Load Power Development Project that the project did not comply with certain provisions of the Environment Policy (2002), Public Communications Policy (2008), and Energy Policy (2009) of the Asian Development Bank (ADB). (Details of these particular instances of noncompliance are discussed on the Case Study on Noncompliance and Causality of Harm [2].)

The CRP made four recommendations to bring the project into compliance, each of which ADB Management intended to address with a remedial action plan, as described:<sup>1</sup>

**CRP recommendation 1.** Undertake a comprehensive air dispersion modeling study that includes key pollution sources in the area of influence, and validate predictions with actual air emissions and ambient air quality monitoring data. An action plan based on this modeling study should be developed that emphasizes continuous monitoring of air emissions and ambient air quality.<sup>2</sup>

**Management remedial action plan.** A technical assistance (TA) project will be undertaken, with ADB as the executing agency and the Department of Environment and Natural Resources (DENR) Cebu office as the implementing agency. Findings from the air dispersion modeling study during TA implementation will be discussed with KSPC, the local DENR office, and the Naga City government, from which an appropriate action plan will be developed.

**CRP recommendation 2.** Undertake a comprehensive study on ash utilization at cement and ready-to-mix concrete plants, to find a market for ash by-products. In addition, prepare and implement Environment Management Plans (EMPs) for the existing ash ponds and historical ash disposal sites.<sup>3</sup>

**Management remedial action plan.** KSPC produces 135 tons of ash daily, temporarily disposing of this at the Naga Power Plant's ash pond and KSPC's onsite emergency Ash Pond B. As a long-term solution, KSPC, with ADB's guidance, should develop a new ash management plan that (i) recycles ash at a cement and ready-mixed concrete batching plant; (ii) landfills unrecycled ash at secured ash ponds within KSPC's plant site; and, (iii) landfills at a secured municipal waste management facility, only as a backup measure.

**CRP recommendation 3.** Ensure representation of all directly affected communities and concerned nongovernment organizations (NGO) in an expansion of the multipartite monitoring team (MMT). This aids transparent and inclusive communication, and a redress of grievances.<sup>4</sup>

**Management remedial action plan.** Just as its project team will be included in the MMT quarterly meetings, ADB requests the MMT to include representatives of concerned NGOs in the MMT, or otherwise extend invitations to attend MMT quarterly meetings. In the event MMT declines either of these requests, ADB will request KSPC to hold complementary meetings with NGOs on a quarterly basis, to apprise them on project developments and the minutes of MMT quarterly meetings.

**Box 3.16 continued**

**CRP recommendation 4.** Implement a community outreach program focused on preventing the negative impact of air, water, and noise pollution on health, and explaining potential risks to health with exposure to unprotected coal ash deposits.<sup>5</sup>

**Management remedial action plan.** Upon public consultation, KSPC agreed to enhance information outreach activities, not only to inform (potentially) affected people on health risks, but also to discuss its ash management plan and precautionary measures to avoid any potentially negative impact from air, water, and noise pollution, and exposure to coal ash deposits. With the objective of monitoring the leading causes of morbidity in the project area and collecting information to provide input to KSPC's medical mission, ADB would hold consultations with Naga City public health officials, including quarterly meetings with rural health units for a period of one year.

<sup>1</sup> Para. 44 in ADB. 2013. *First Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila. (Loan 2612-PHI). page 13. <http://compliance.adb.org/diro035p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

<sup>2</sup> Para. 31 in ADB. 2014. *Second Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila. (Loan 2612-PHI). page 10. <http://compliance.adb.org/diro035p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

<sup>3</sup> Paras. 42-43 in ADB. 2015. *Third Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila. (Loan 2612-PHI). page 13. <http://compliance.adb.org/diro035p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

<sup>4</sup> Paras. 36-37 in ADB. 2013. *Fourth Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila. (Loan 2612-PHI). page 9. <http://compliance.adb.org/diro035p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

<sup>5</sup> Paras. 31-33 in ADB. 2017. *Fifth Annual Monitoring Report to the Board of Directors on the Implementation of Remedial Actions for the Visayas Base-Load Power Development Project in the Republic of the Philippines*. Manila. (Loan 2612-PHI). page 10. <http://compliance.adb.org/diro035p.nsf/alldocs/RDIA-8HF6GG?OpenDocument>

Source: Asian Development Bank

### 3.3.2 Engaging Stakeholders in Preparation of Remedial Action Plan (Step 8 of the Compliance Review Process)

ADB Management builds on the trust and earnest intentions of all other stakeholders to work in partnership toward a resolution that should achieve the project's compliance with ADB's operational policies and procedures. Both ADB and the project owner share the commitment to ensure that ADB-assisted projects improve a region and do no harm to people and the environment. As such, both have a stake in ensuring that ADB projects are brought back into compliance with ADB's operational policies and procedures.<sup>80</sup>

<sup>80</sup> Paras. 59-62 and 190 in ADB. 2012. *Accountability Mechanism Policy 2012*. Manila. pages 12-37.

In developing the remedial action plan, ADB Management is recommended to seek meaningful consultation with the complainants or the affected people. It may also consult with the CRP for insight into their proposal, to make the most use of their expertise gained from the investigation. ADB Management will be in dialogue with the borrower, whose written consent is needed for any proposed plan's implementation. While ADB instigates any remedial action, legal ownership of the project resides with the borrower, who has the principal responsibility of implementing remedial actions that will bring the project back into compliance with ADB's operational policies and procedures.

The project owner's cooperation is critical to the implementation of any remedial action that may result from a compliance review, which typically requires the allocation of resources to adequately meet the need for remedy. While remedies for the adverse effects of an ADB-assisted project vary according to the circumstances of the project and the noncompliance, such remedies may only be provided as justified by the facts established by the CRP in its final report on the compliance review.

### **3.3.3 Monitoring the Implementation of Remedial Actions and Progress on Compliance in Monitoring Reports (Step 10 of the Compliance Review Process)**

Complaints lodged through the ADB's compliance review are varied, necessitating a diversity of remedial actions. The monitoring methods and reporting requirements are prescribed in the remedial action plan, as would be appropriate to the remedy involved to attain compliance in a project.

Through compliance efforts on the project owner's implementation, ADB Management ensures that remedial actions result in compliance with ADB's operational policies and procedures, to effectively address the adverse effects of a project and remove the cause of harm or likely harm. ADB Management reports on its efforts quarterly or biannually, submitting these reports to BCRC and the CRP, as indicated in the remedial action plan.

Aside from these regular reports on the progress of remedial actions, ADB Management may be required to undertake studies and submit reports based on particular indicators, as would be appropriate to the remedial action plan, such as on health conditions, livelihood studies, or environmental noise impact assessment.

In consultation with the borrower and the affected people (including the complainants or their representative), ADB Management prepares its quarterly or biannual progress reports on the implementation of Board-approved remedial actions. ADB Management submits these reports to the CRP, for their information, prior to uploading of the same at the ADB project website.

The CRP also reports quarterly to the BCRC on the progress of the implementation of Board-approved remedial actions. The CRP monitors ADB Management's compliance efforts through Management's periodic progress reports, basing its quarterly report on these and on information received from other stakeholders.

The CRP typically conducts an annual monitoring mission to the project site for 3 years after the Board's approval of the remedial action plan. This mission seeks to confirm facts on ADB Management's reports; assess the progress of implementation of the Board-approved remedial action plan, independently of ADB Management's compliance monitoring efforts; observe changes and gather impressions from the project site and ascertain improvement in the situation of affected persons; get the views of the borrower and affected persons on the implementation of the remedial actions; identify shortfalls in implementing the remedial actions, if any.

The CRP also prepares annual monitoring reports (or of other periodic intervals, as specified by the Board decision) to be submitted to the Board, coursed through the BCRC, for their information. The CRP's annual monitoring reports are based on the following:

- (i) its review of ADB Management's periodic progress reports (submitted quarterly or semi-annually, or annually at a minimum) on the implementation of remedial actions;
- (ii) its assessment of the progress of implementation of remedial actions, and the degree of compliance or remaining noncompliance found in the project as a result of the remedial actions;
- (iii) consultations with ADB Management, the borrower, the affected people (including the complainants and their representative(s), if any), and the NGOs or CSOs concerned; and
- (iv) the conclusions of a site visit, if such a mission is found necessary.

In its monitoring reports, the CRP provides feedback on the progress of implementation and the effectivity of remedial actions toward achieving compliance on a project. It may also provide specific recommendations on actions that ADB Management may need to take, in partnership with the project owner, to ensure compliance with ADB's operational policies and procedures. Slow progress is identified early and reported to the Board, through BCRC, for corrective actions to be taken before the end of the 3-year monitoring period.

Monitoring generally does not exceed 3 years from Board approval of remedial actions, unless the Board grants an extension on implementation and further monitoring. This extension may only come from a recommendation by the BCRC, based on the CRP's findings in its annual monitoring report. As the remedial action plan is a Board-approved document, any adjustments

to the remedial action plan would also require Board-approval, unless such adjustments are delegated by the Board to the BCRC.

As good practice, the CRP shares its draft annual monitoring report informally with ADB Management for fact-checking only, prior to the CRP's submission of this report to the BCRC, for review.

The CRP's final annual monitoring reports are made available to the complainants and their representative(s) (if any), the project owner, the Board, ADB Management and staff, and to the public, on the CRP's website at [www.compliance.adb.org](http://www.compliance.adb.org). If necessary, the CRP translates the annual monitoring report(s) into the local language, and uploads a copy online.

At any point during the CRP's monitoring, the affected people, particularly the complainants or their NGO, CSO, or other representative, may provide feedback on the implementation of remedial actions. They may prepare and provide the requisite information and documentation to support an assertion or suggestion, for the CRP's consideration. They may also express their views directly to the CRP in a consultation and/or meeting during a monitoring mission, or in communication to the Board members, particularly through their country or regional representative. (See Box 3.17 for more information).

### 3.3.3.1 Objectives of Site Visits for Monitoring

The CRP is tasked to monitor the implementation of remedial actions for up to 3 years, in which an annual site visit may be conducted. (See Box 3.18 for case examples.)

It has these objectives in its monitoring:

- (i) tracking the performance of the implementation of Board-approved remedial actions, to confirm claims on compliance made on ADB Management's quarterly or biannual reports;
- (ii) certifying that remedial actions do address the issues of noncompliance, resulting in a reversal of noncompliance with ADB's operational policies and procedures and the mitigation of harm or the risk of harm.
- (iii) determining the degree of compliance, to ascertain if any measure of noncompliance persists, which must be addressed.

### Box 3.17: What if the Complainant or Any Other Stakeholder is Unhappy with the Remedial Actions?

Full satisfaction with the remedial actions by all stakeholders is certainly unrealistic. The expectations of affected people with regard to remedy may be different, and may remain unmet in certain aspects, though the conditions that may have caused harm would have been substantially addressed by the processes of the Asian Development Bank's (ADB) Accountability Mechanism. While remedies for the adverse effects of an ADB-assisted project vary depending on the circumstances of noncompliance, such remedies may only be provided as may be justified by the facts of noncompliance established by the CRP in its final report. Any remedial action plan that ADB Management may propose and that the borrower may find agreeable may only be appropriate to the remedy involved to attain compliance in a project.

The Compliance Review Panel (CRP) and ADB, through its Accountability Mechanism, stand by the fairness and impartiality of their methods in ascertaining the legitimacy of a complaint, and on any determination of causality between harm and noncompliance that merits an appropriate response for a responsibility that may be due under the terms of ADB's operational policies, procedures, and agreements, including judgment by the Board on the CRP's findings. A reasonable amount of compensation or remedy may be provided at the conclusion of a compliance review, to address legitimate concerns, as may be considered by the Board, which would and should meet the interests of all.

As an investment on inclusive and sustainable development, the benefits of efforts at improving compliance are most felt in the long term. This is illustrated in the government's experience with the compliance review conducted on the Sri Lanka Southern Transport Development Project, which led to incremental improvements in the project as well as revisions on policies and guidelines on the social and environmental impact of development projects. The framework of safeguard mechanisms resulting from their experience in a compliance review brought about improvements and efficiencies that lower costs and minimize adverse effects in the long run, through implementation of preventive measures. By augmenting road and transport engineering with safeguards supervision and auditing, and combining various sectors in integrated functions or offices for project management on succeeding projects, issues like involuntary resettlement were best minimized or avoided—a benefit of the foresight accruing from their previous experience drawn from the Accountability Mechanism. This framework of thinking leads governments and private sector clients to approach safeguards policy and accountability to their citizens and host communities in a systemic, strategic, and proactive manner that best prevents and minimizes risk of adverse effects that may result from development projects.

Source: Asian Development Bank

### Box 3.18: Case Studies on Monitoring Reports: Progress Tracking and Presentation Formats

The Accountability Mechanism Policy does not prescribe a format for the monitoring reports of the Management of the Asian Development Bank (ADB). Monitoring reports of ADB Management can be presented in any format that best suits the information to be presented. Usually, ADB Management's monitoring reports provides a narrative on the background of the report and a summary of achievements during the monitoring period which is then followed by a matrix showing the Board-approved remedial action plan with corresponding results and pending actions. Any convenient way that presents information at a glance may be used, as long as the pertinent information is presented in a clear and concise manner to ease the tracking of progress on compliance for all stakeholders. Sometimes, attachments or appendixes, such as maps, pictures, results of monitoring of environmental parameters are included to provide the Compliance Review Panel and the general public a better idea on the progress of the implementation of the remedial actions.

The links below provide samples of ADB Management's periodic monitoring reports.

- (i) Tabular presentation of progress of actions with brief introductory paragraph: ADB. 2018. *Loan Number 2419: India—Mundra Ultra Mega Power Project Implementation of Remedial Action Plan Thirteenth Quarterly Progress Report*. [https://www.adb.org/sites/default/files/project-documents/41946/41946-014-pr-en\\_4.pdf](https://www.adb.org/sites/default/files/project-documents/41946/41946-014-pr-en_4.pdf).
- (ii) Detailed narrative of progress of actions responding to the CRP's recommendations with tabular data to support the explanation: ADB. *Twelfth Quarterly Progress Report ADB Management's Action Plan to Implement the Board Decision on the Recommendation of the Railway in Cambodia Project*. <https://www.adb.org/sites/default/files/project-documents/37269/37269-013-pr-en.pdf>.

Source: Asian Development Bank

# 4

## Transparency and Information Disclosure

**Abundant.** A farmer in Bhutan displays her bountiful harvest forming part of ADB's progress in achieving food security in the region.



# 4 Transparency and Information Disclosure

## 4.1 METHODOLOGY FOR TRANSPARENCY AND THE DISCLOSURE OF DOCUMENTS AND INFORMATION

As transparency is also a measure of accountability, the CRP encourages the good practice of sharing all relevant reports on compliance review processes, providing access to the public on this information, and the means for the public to understand such information.

Access to information can be facilitated by the CRP, ADB Management, and the project owner uploading appropriate information on the details of the complaint, and the remedial actions taken, alongside any reports or documents required by the Accountability Mechanism, to their respective websites, such as on the CRP's website at [compliance.adb.org](http://compliance.adb.org), on ADB's project website and on the website maintained by the project owner specifically to feature the project, if there is.

In the interest of transparency and good governance, other documents relating to compliance review, particularly in the formulation, implementation and monitoring of remedial actions recommended for public disclosure may include

- (i) documents on project proposals,
- (ii) additional technical studies made on the project,
- (iii) final design plans prior to implementation, or a summary of such types of documents in a form which can be easily understood by the general public, particularly the project affected people. These documents may have been prepared at the early stages of project design and implementation and continues through the implementation of remedial actions post compliance review.

On certain documents resulting from the processes of a compliance review, such as the CRP's

- (i) report on eligibility,
- (ii) final report from a compliance review, and
- (iii) annual monitoring reports,

the CRP provides an English-language document and has the same document translated in the official language of the host country or local language of the complainants or affected people. Project owners are recommended to follow such measures to achieve wider dissemination of their project documentation for local audiences.

## 4.2 REQUIRED DISCLOSURE OF INFORMATION AND DOCUMENTS ON THE COMPLIANCE REVIEW

### 4.2.1 Compliance Review Panel's Disclosure of Information and Documents

The CRP will upload the following information and documents on its website at the times specified below:

- (i) the complaint letter (or the request for compliance review), upon the CRP's receipt of the complaint letter and subject to the agreement of the complainants, within 7 days of receipt of the complaint;
- (ii) a general description of the complaint, within 7 days from the CRP's receipt of the complaint letter if the complainants have not consented to disclosure of the complaint letter;
- (iii) the CRP report determining that the complaint is eligible and the Board decision on authorization of compliance review, together with ADB Management's response, within 7 days of the Board decision;
- (iv) the CRP report determining that the complaint is ineligible, together with ADB Management's response, within 7 days of circulation of the report to the Board;
- (v) the terms of reference for the compliance review within 10 days of the Board's authorization to conduct it;
- (vi) the CRP's final compliance review report, attaching comments to the draft report from ADB Management and, subject to the consent of the complainants and the borrower, within 7 days of the Board's consideration of the final report;
- (vii) ADB Management's proposed remedial actions, the CRP's comments on the remedial actions, and the Board's decision, within 7 days of the Board's decision; and
- (viii) monitoring reports on implementation of remedial actions approved by the Board, upon circulation to the Board and other stakeholders.

#### 4.2.2 ADB Management's Disclosure of Information and Documents

As good practice, ADB Management will publish, at the minimum, the following reports on the ADB or project website:

- (i) quarterly or semiannual progress reports by the operations department on the implementation of remedial actions; and
- (ii) subject to confidentiality requirements, all additional reports that are part of the remedial actions.

#### 4.2.3 Project Owner's Disclosure of Information and Documents

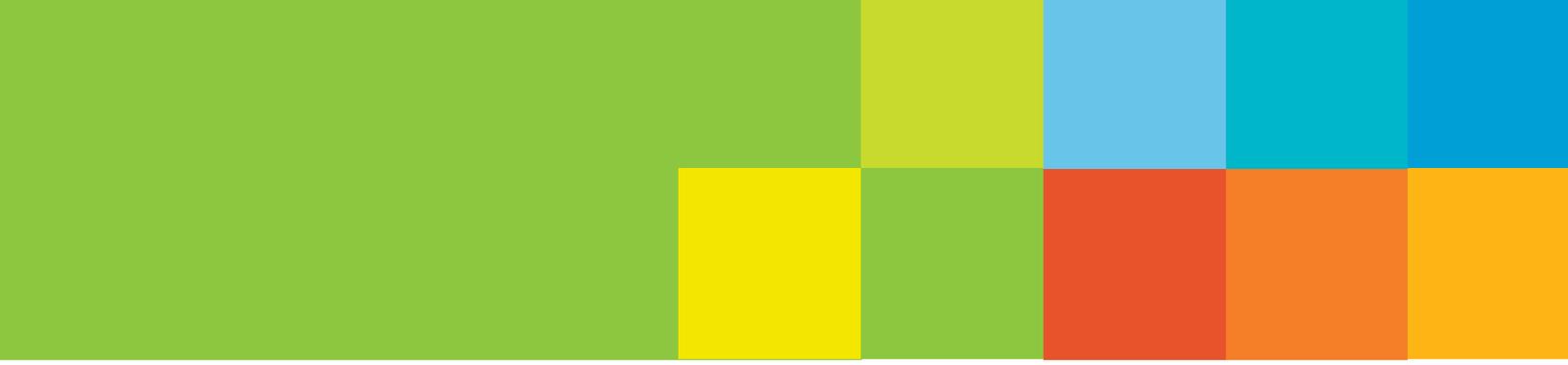
It is encouraged that the project owner (either government or a private sector borrower) upload the following reports to its project website, or provide links to such information:

- (i) the compliance review report of the CRP;
- (ii) quarterly or semi-annual progress reports by the ADB operations department on the implementation of remedial actions;
- (iii) monitoring report by the CRP on the implementation of remedial actions; and,
- (iv) subject to confidentiality requirements, all additional public reports that are part of the remedial actions.

# Appendices

**White giants.** ADB supports renewable energy projects such as the Burgos Wind Farm Project in Ilocos Norte, Philippines, where wind turbines transform wind energy into clean electricity.





## Appendices

### APPENDIX 1: ADB'S 10-STEP COMPLIANCE REVIEW FUNCTION AND STAKEHOLDERS' ROLES

ADB's 10-step compliance review process begins when the complaint receiving officer (CRO) forwards the complaint to the compliance review panel (CRP) chair. Under each of these 10 steps are several tasks that the CRP and the various stakeholders perform during a compliance review.

Listed beside each task of the CRP is the corresponding action of ADB Management and staff, Board of Directors, Board Compliance Review Committee (BCRC), government, private sector borrower, affected people, nongovernment organizations (NGOs) and civil society organizations (CSOs). These actions are recommended to encourage stakeholders to participate actively in the 10-step compliance review process.

Compliance Review Step 1: Requesting Management Response

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 5 working days from the CRP's receipt of the complaint</b></p> <p>The CRP chair sends a letter or memo to inform ADB Management, the complainants (and their representative, if any), the borrower, and the Board member representing the member country concerned, regarding the CRP's receipt of the complaint.</p> <p>The CRP chair appoints a lead CRP reviewer, in concurrence with the BCRC chair.</p> <p>The CRP makes an initial assessment of the complaint to confirm whether the complaint falls within the mandate of the compliance review function.</p> <p>The CRP lead reviewer, with the support of the OCRP, prepares an assessment report substantiating this initial assessment with the rationale and the basis for the CRP's discussion and decision.</p> <p>The CRP lead reviewer, with the support of the OCRP, prepares an assessment report substantiating this initial assessment with the rationale and the basis for the CRP's discussion and decision.</p> <p>After completing the initial assessment, if the CRP finds that the complaint falls within the mandate of the compliance review function, the CRP sends a memo to ADB Management to</p> <ul style="list-style-type: none"> <li>(i) inform them of the receipt of the complaint, and</li> <li>(ii) request submission of a response to the CRP within 21 working days from receipt of the memo.</li> </ul> <p>If in the initial assessment the CRP finds that the complaint does not fall within the mandate of the compliance review function, the compliance review process stops.</p> <p>If the complainants or the affected people identify and report a security risk due to the complaint, the CRP and ADB Management shall prepare an appropriate mitigation plan to address the security risk.</p>	<p>Upon receipt of the memo from the CRP chair regarding the complaint filed with the Accountability Mechanism, the operations department may already</p> <ul style="list-style-type: none"> <li>(i) assemble a team to prepare the response to the CRP;</li> <li>(ii) gather facts about the complaint and the project; and</li> <li>(iii) consult with project counsel, as needed, to respond systematically and comprehensively to the CRP, in a timely manner.</li> </ul> <p>Should affected people, particularly the complainants, or their NGO or CSO representative identify any threat to their security, or likelihood of threat to their security, due to the complaint, the CRP and ADB Management shall prepare an appropriate mitigation plan to address the security risk.</p> <p>ADB Management can encourage the borrower to immediately address the complaint, in tandem with the concerned operations department. This internal collaboration serves to deter further considerable harm as well as additional costs in time and resources.</p>	<p>The Board member representing the developing member country in which the project is located is informed of the CRP's receipt of a complaint requesting for a compliance review.</p>	<p>The BCRC Chair may affirm the CRP Chair's appointment of a lead CRP reviewer on the onset of a request for a compliance review.</p>	<p>The government borrower may consider collecting and preparing the necessary information and documentary material requested by ADB Management.</p> <p>Government may consider providing the necessary information to its representative on the Board.</p>	<p>The private sector borrower may consider collecting and preparing the necessary information and documentary material requested by ADB Management.</p> <p>The private sector borrower may consider providing the necessary information to the Board member representing the country where the project is located.</p>	<p>Affected people, particularly the complainants or their representative(s), may start gathering evidence and preparing documentation relating to the complaint.</p> <p>The complainants and/ or affected people, representative(s) or NGO or CSO partner/ advocate should identify and report to the CRP any current or likely threat to their security due to the complaint. The CRP and ADB Management shall then prepare an appropriate mitigation plan to address the security risk.</p>

## Compliance Review Step 1: Requesting Management Response (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 21 working days from receipt of the CRP's request for ADB Management's response to the complaint</b></p>	<p>ADB Management's response is prepared by the operations department concerned, with the assistance of specialists in relevant departments (such as the Sustainable Development and Climate Change Department or SDC) and legal support from the Office of the General Counsel (OGC), the concerned ADB staff need to prepare ADB Management's response, and provide this response to the CRP through a memo duly signed by the Vice President concerned.</p> <p>A suggested template of Management's response is contained in the compliance review sourcebook.</p>	<p>(No particular action is needed from the Board at this point.)</p>	<p>(No particular action is needed from the BCRC at this point.)</p>	<p>At the request of ADB Management, government may collect the necessary documentary material and provide relevant information to ADB Management, in preparation for ADB Management's response.</p> <p>ADB Management responds to the CRP memo within 21 working days from receipt of the memo.</p> <p>It is suggested that government ensure that representative NGOs or CSOs are copied on all communications with affected people, particularly the complainants, regarding the compliance review. Included here are letters, e-mail, and notices of consultations to ensure that the affected people they are representing are informed.</p>	<p>At the request of ADB Management, the private sector borrower may collect the necessary documentary material and provide relevant information to ADB Management, in preparation for ADB Management's response.</p> <p>ADB Management responds to the CRP memo within 21 working days from receipt of the memo.</p> <p>It is suggested that the private sector borrower ensure that representative NGOs or CSOs are copied on all communications with affected people, particularly the complainants, regarding the compliance review. Included here are letters, e-mail, and notices of consultations to ensure that the affected people they are representing are informed.</p>	<p>The complainants should make sure that they receive an acknowledgment letter from the CRP.</p> <p>The NGOs or CSO representative should also ensure that they get a copy of all CRP communications with affected people, particularly the complainants, regarding the compliance review. Included here are letters, e-mail, and notices of consultations.</p>

ADB = Asian Development Bank, BCRC = Board Review Compliance Committee, CRP = Compliance Review Panel, CSO = Civil Society Organization, OGC = Office of the General Counsel, ADB, OCRP = Office of the Compliance Review Panel, NGO = Nongovernment Organization, TOR = Terms of Reference

Source: ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

Compliance Review Step 2: Determining Eligibility

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 21 working days from receipt of ADB Management’s response to the complaint</b></p> <p>The CRP reviews the complaint, ADB Management’s response, and all immediately available documents relevant to the project. The CRP typically conducts a mission to the country where the project is located, to verify the facts of the complaint and ADB Management’s response, and to determine the eligibility of the complaint.</p> <p>At this stage, the CRP will</p> <ul style="list-style-type: none"> <li>(i) check the identity of the complainants and establish whether or not they have been directly harmed or are likely to be directly harmed by the ADB-assisted project;</li> <li>(ii) check for concrete evidence of probable noncompliance with ADB’s operational policies and procedures; and</li> <li>(iii) make an initial assessment of whether there is a strong likely link between the harm caused or likely to be caused to the affected persons by the ADB-assisted project and the alleged noncompliance with ADB’s operational policies and procedures.</li> </ul>	<p>Upon request by the CRP, ADB Management may discuss with the CRP to clarify its response, or discuss other relevant issues.</p> <p>Upon request by the CRP, ADB Management needs to provide project-related documents and information to the CRP.</p> <p>ADB Management will provide the necessary assistance to the CRP or OCRP in arranging for the CRP’s site visit to the project, including meeting with the borrower and other government agencies concerned, as needed.</p>	<p>No particular action is needed from the Board at this point</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>ADB Management may request government project documents needed by the CRP, to be forwarded to the CRP for review, if needed.</p> <p>It is recommended that the government provide ADB Management with the necessary support in clarifying issues and concerns about the project, as needed by the CRP.</p> <p>At ADB Management’s request, government grants visitation permission and provides the necessary assistance to the CRP, as it makes arrangements for a site visit to the project.</p> <p>Government may also be requested to arrange for the CRP to meet the concerned personnel of relevant agencies, including contracting entities, and similar parties involved in the project, as needed.</p> <p>Borrower meets with the CRP during the latter’s site visit.</p>	<p>ADB Management may request the private sector borrower for project documents needed by the CRP, to be forwarded to the CRP for review.</p> <p>It is recommended that the private sector borrower provide ADB Management with the necessary support in clarifying issues and concerns about the project, as needed by the CRP.</p> <p>At ADB Management’s request, the private sector borrower grants visitation permission and provides the necessary assistance to the CRP, as it makes arrangements for a site visit to the project.</p> <p>The private sector borrower may also be requested to arrange for the CRP to meet the concerned personnel of relevant agencies, including contracting entities, and similar parties involved in the project, as needed.</p> <p>Borrower meets with the CRP during the latter’s site visit.</p>	<p>At the CRP’s request, the affected people, particularly the complainants or their NGO or CSO representative, may need to provide further information relating to the complainants’ identities, and documentary and other evidence regarding the complaint. This may be done in consultation with the CRP mission, before or during its site visit to the project.</p> <p>Complainants (with their representative, if any) meets with the CRP during the latter’s site visit.</p>

## Compliance Review Step 2: Determining Eligibility (continued)

<p><b>COMPLIANCE REVIEW PANEL</b></p>	<p><b>ADB MANAGEMENT AND STAFF</b></p>	<p><b>BOARD OF DIRECTORS</b></p>	<p><b>BOARD COMPLIANCE REVIEW COMMITTEE</b></p>	<p><b>GOVERNMENT OF DEVELOPING MEMBER COUNTRY</b></p>	<p><b>PRIVATE SECTOR BORROWER</b></p>	<p><b>AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS</b></p>
<p>In writing, the CRP informs the complainants, the borrower, the Board member representing the country concerned, and ADB Management of the CRP's determination concerning eligibility. If the CRP deems the complaint ineligible, it sends the report to the Board for information and subsequently posts it on the CRP website (<a href="http://www.compliance.adb.org">www.compliance.adb.org</a>).</p> <p>The CRP submits its eligibility report to the Board through the BCRC.</p> <p>If the CRP finds the complaint eligible, it recommends, through the BCRC, that the Board authorize a compliance review.</p>	<p>If the complaint is found eligible, the operations department concerned may hold an informal meeting with the CRP or OCRP, to better understand how to proceed with the compliance review, in accordance with the requirements of the Accountability Mechanism policy.</p>	<p>No particular action is needed from the Board at this point.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>There are no prescribed actions for government at this stage.</p>	<p>There are no prescribed actions for private sector borrowers at this stage.</p>	<p>If the complainants cannot be informed directly, their representative (who may be from an NGO or CSO) informs the affected people, particularly the complainants, of the CRP's determination concerning the eligibility of the complaint. The complainants should acknowledge receipt of this information, and their representative(s), NGO, or CSO should relay this acknowledgment to the CRP.</p>

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Source: ADB. 2012. *Accountability Mechanism Policy*. Manila.

### Compliance Review Step 3: Board Authorization of Compliance Review

<p><b>COMPLIANCE REVIEW PANEL</b></p> <p><b>LEAD TIME: Within 21 calendar days from the CRP's submission of its report to the Board</b></p> <p><b>The Board decides whether or not to authorize a compliance review.</b></p>	<p>Upon request by the BCRC or a Board member, ADB Management may be requested to provide clarification regarding its response, within the 21 days taken by the Board for consideration of the CRP's eligibility report.</p>	<p><b>BOARD OF DIRECTORS</b></p>	<p><b>BOARD COMPLIANCE REVIEW COMMITTEE</b></p>	<p><b>GOVERNMENT OF DEVELOPING MEMBER COUNTRY</b></p>	<p><b>PRIVATE SECTOR BORROWER</b></p>	<p><b>AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS</b></p>
		<p>The Board considers the CRP's eligibility report, and the BCRC's recommendation (if there is) in this regard, to authorize a compliance review or decline its authorization.</p>	<p>The BCRC may give a recommendation to the Board on whether or not to authorize a compliance review, based on the CRP's eligibility report.</p>	<p>There are no prescribed actions for government at this stage.</p>	<p>There are no prescribed actions for private sector borrowers at this stage.</p>	<p>There are no prescribed actions for affected people, in particular the complainants or their NGO or CSO representative, at this stage.</p>

## Compliance Review Step 3: Board Authorization of Compliance Review (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 7 working days from Board decision</b></p> <p>The CRP informs the complainants, ADB Management, and the borrower of the Board's decision.</p> <p>The CRP uploads its eligibility report on its website (<a href="http://www.compliance.adb.org">www.compliance.adb.org</a>).</p> <p>If necessary, the CRP has the eligibility determination report translated into local language, and uploads a copy to the CRP website.</p>	<p>ADB Management may request a meeting with the CRP or OCRP, for the purpose of improving engagement in the next steps of the compliance review.</p> <p>ADB Management may consider providing a link to the report on the ADB project website.</p>	<p>After reaching a decision, the Board informs the CRP by forwarding its resolution on the matter.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>No particular action is needed from the government at this point.</p>	<p>No particular action is needed from the private sector client at this point.</p>	<p>In all phases of the compliance review process, the affected people, particularly the complainants or their authorized NGO or CSO representative, can request the CRP to clarify further its expectations regarding the next steps in the process, so that they or their representatives can be engaged more fully in the compliance review process.</p>

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Source: ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

## Compliance Review Step 4: Conducting Compliance Review

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 10 working days from Board authorization of a compliance review</b></p> <p>After the Board authorizes a compliance review, the CRP submits the terms of reference (TOR) for this compliance review to the BCRC, for clearance. Once the TOR is cleared, the CRP submits it to the Board for information and sends a copy to ADB Management.</p>	<p>Upon the request of the CRP, ADB Management provides needed information for the CRP's consideration, in preparing the TOR for a compliance review.</p>	<p>The Board is informed of the TOR, once this is cleared by the BCRC.</p> <p>Should amendments to the TOR be made, the Board is informed of the revised TOR once the BCRC clears its revised terms.</p> <p>In the event of a government's refusal to clear missions for site visits, the Board is informed of the particulars regarding the decision reached through an information paper submitted by ADB Management.</p>	<p>The BCRC considers the CRP's terms of reference (TOR) for a compliance review for clearance, or makes recommendations for revisions.</p> <p>Once satisfied with the scope, methodology, estimated timeframes, and other particulars of the investigation, the BCRC may give its clearance to the TOR, for the CRP to proceed with its compliance review investigation.</p> <p>In the course of an investigation, should the CRP make recommendations toward amending the TOR, the BCRC will consider such recommendations for clearance.</p>	<p>There are no prescribed actions for government at this point.</p>	<p>There are no prescribed actions for the private sector client at this point.</p>	<p>There are no prescribed actions for affected people, in particular the complainants or their NGO or CSO representative, at this stage.</p>

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Source: ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

## Compliance Review Step 4: Conducting Compliance Review (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Indefinite, because of variable factors such as project complexity, translation requirements, and scheduling of site visits. No time limits apply to this investigative stage</b></p> <p>The CRP begins the compliance review once the TOR has been cleared by the BCRC.</p> <p>The CRP consults with all stakeholders—ADB Management and staff; government; private sector borrowers; and affected people (including complainants, if possible)—and other relevant parties, such as consultants or experts.</p> <p>The compliance review may include desk reviews of project documents and communications, meetings, discussions, and site visits.</p> <p>The CRP may engage technical experts to assist in fact finding.</p>	<p>ADB operations departments:</p> <ul style="list-style-type: none"> <li>(i) provide documents required by the CRP.</li> <li>(ii) respond to interviews and fact-finding queries by the CRP.</li> <li>(iii) assist the CRP in arranging site visits to the project, including meetings with the borrower and relevant government agencies as needed.</li> <li>(iv) in the adverse event of a refusal of a site visit, prepare an information paper on the reasons behind the borrowing country's and private sector borrower's refusal of site visits.</li> </ul>	<p>(No particular action is needed from the Board at this point.)</p>	<p>In the event of a government's refusal to clear missions for site visits, the BCRC engages in dialogue with ADB Management, to discuss the reasons behind such refusal in preparation for ADB Management's information paper to be submitted to the Board.</p>	<p>Through ADB Management, the government may be requested to</p> <ul style="list-style-type: none"> <li>(i) help the CRP in organizing a compliance review mission;</li> <li>(ii) provide the necessary documents or information required by the CRP;</li> <li>(iii) respond to interviews and fact-finding queries posed by the CRP during its site visit, or through e-mail, video, or audio facilities;</li> <li>(iv) customarily grant full permission to, and assist, the CRP in arranging visits to the project facilities and related sites;</li> <li>(v) make the necessary arrangements for the CRP to meet the personnel of all agencies concerned, the contracting entities, and similar parties involved in the project, during the CRP's mission; and</li> <li>(vi) if site visits are refused, provide information to ADB Management about the reasons behind the refusal.</li> </ul> <p>After the CRP's site visit, the government may request a debriefing. It may also ask for the preliminary conclusions of the mission.</p>	<p>Through ADB Management, the private sector borrower may be requested to</p> <ul style="list-style-type: none"> <li>(i) help the CRP in organizing a compliance review mission;</li> <li>(ii) provide the necessary documents or information required by the CRP;</li> <li>(iii) respond to interviews and fact-finding queries posed by the CRP during its site visit, or through e-mail, video, or audio facilities;</li> <li>(iv) customarily grant full permission to, and assist, the CRP in arranging visits to the project facilities and related sites;</li> <li>(v) make the necessary arrangements for the CRP to meet the personnel of all agencies concerned, the contracting entities, and similar parties involved in the project, during the CRP's mission; and</li> <li>(vi) if site visits are refused, provide information to ADB Management about the reasons behind the refusal.</li> </ul> <p>After the CRP's site visit, the private sector borrower may request a debriefing. It may also ask for the preliminary conclusions of the mission.</p>	<p>Affected people, particularly the complainants, and their NGO or CSO representative (if any), are requested to cooperate in the CRP's fact-finding and monitoring. The complainants and their NGO or CSO representative should</p> <ul style="list-style-type: none"> <li>(i) help the CRP arrange a compliance review mission,</li> <li>(ii) provide documents or material evidence required by the CRP,</li> <li>(iii) respond to interviews and fact-finding queries by the CRP,</li> <li>(iv) assist the CRP in arranging site visits to the project and their communities, and</li> <li>(v) arrange for the CRP to meet all the complainants.</li> </ul>

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Source: ADB. 2012. *Accountability Mechanism Policy* 2012. Manila.

## Compliance Review Step 5: Compliance Review Panel's Draft Report

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Comments from the complainants, the borrower, and ADB Management are expected within 45 working days from the issuance of the draft CRP report</b></p> <p>The CRP issues a draft report on its compliance review to the complainants, the borrower, and ADB Management, and requests comments. The draft report is also forwarded to the BCRC for review.</p>	<p>ADB Management prepares its comments to the CRP's draft report. At this stage, if found necessary, ADB Management may consult with the borrower and relevant ADB departments, such as OGC or SDCC, in preparation for providing comment on the CRP's draft report</p>	<p>(No particular action is needed from the Board at this point.)</p>	<p>The BCRC reviews the CRP's draft report to assess whether the investigation was conducted with fidelity to the outlined methods in the TOR, and within bounds of the inquiry on specific operational policies and procedures of ADB as outlined in the TOR.</p> <p>If any concerns are raised, it may seek consultation with the CRP to clarify matters or decide on a course of action to address such concerns.</p>	<p>After receiving the CRP's draft report, the government (as borrower) reviews the report and sends its comments to the CRP.</p>	<p>After receiving the CRP's draft report, the private sector borrower reviews the report and sends its comments to the CRP.</p>	<p>The complainants and their NGO or CSO representative (if any) should review the CRP's draft report and conduct the necessary research and consultation with the affected people in their communities, in preparation for providing comments on the draft report.</p> <p>The reply should be drafted and submitted to the CRP by the complainants or their NGO or CSO representative within 45 working days.</p> <p>Note: This report is confidential and may not be shared with other parties by the complainants, or their NGO or CSO representative, to other parties.</p>

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Source: ADB. 2012. *Accountability Mechanism Policy* 2012. Manila.

## Compliance Review Step 6: Compliance Review Panel's Final Report

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 14 working days from the receipt of comments from the complainants, the borrower, and ADB Management</b></p> <p>The CRP finalizes the report. It considers the comments received from the various stakeholders, and may affirm or reject those comments on the basis of its own findings and its determination regarding the relevance of the comments to its report.</p> <p>The CRP issues a final report to the Board, through the BCRC, for its consideration. The final report includes a matrix summarizing the CRP's response to each of the comments made by the complainants, the borrower, and ADB Management.</p>	<p>If necessary, ADB Management may be requested by the CRP to clarify their comments on the CRP's draft report.</p>	<p>No particular action is needed from the Board at this point.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>At the CRP's request, as coursed through ADB Management, the government (as a borrower) may need to clarify its response and comments, or provide additional information, evidence, or documentary material to support its response and comments.</p> <p>The borrower needs to decide whether or not its response and comments should be part of the CRP's final report, for publication, and convey that decision directly to the CRP.</p>	<p>At the CRP's request, as coursed through ADB Management, the private sector borrower may need to clarify its response and comments, or provide additional information, evidence, or documentary material to support its response and comments.</p> <p>The private sector borrower needs to decide whether or not its response and comments should be made part of the CRP's final report, for publication, and convey that decision directly to the CRP.</p>	<p>Affected people, particularly the complainants or their NGO or CSO representative, must study the final CRP report carefully.</p>

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Source: ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

## Compliance Review Step 7: Board Consideration of the Compliance Review Panel's Report

<p><b>COMPLIANCE REVIEW PANEL</b></p> <p><b>LEAD TIME: Within 21 calendar days of receipt of the CRP's final report</b></p> <p>The Board considers the CRP's report. The Board members may ask the CRP to clarify certain matters in its report.</p>	<p><b>ADB MANAGEMENT AND STAFF</b></p> <p>Board members may request ADB Management and staff to clarify their comments on the CRP's report.</p>	<p><b>BOARD OF DIRECTORS</b></p> <p>The Board considers the CRP's findings on noncompliance, including all stakeholders' comments detailed in the CRP's final report.</p> <p>The Board members may call for a consultation with the CRP to clarify certain matters in the CRP's report.</p>	<p><b>BOARD COMPLIANCE REVIEW COMMITTEE</b></p> <p>No particular action is needed from the BCRC at this point.</p>	<p><b>GOVERNMENT OF DEVELOPING MEMBER COUNTRY</b></p> <p>There are no prescribed actions for government at this stage.</p>	<p><b>PRIVATE SECTOR BORROWER</b></p> <p>There are no prescribed actions for private sector borrowers at this stage.</p>	<p><b>AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS</b></p> <p>There are no prescribed actions for affected people, in particular the complainants or their NGO or CSO representative, at this stage.</p>
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## Compliance Review Step 7: Board Consideration of the Compliance Review Panel's Report (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 7 working days from the Board's decision</b></p> <p>The CRP chair releases the CRP's report to the complainants, ADB Management, and the borrower, and uploads this to the CRP website (<a href="http://www.compliance.adb.org">www.compliance.adb.org</a>).</p> <p>If necessary, the CRP has the final report translated into the local language and uploads a copy to the CRP website.</p>	<p>ADB Management may consider providing a link to the report on the ADB project website.</p>	<p>No particular action is needed from the Board at this point.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>The government (as a borrower) should study the CRP's report, which will be provided by the CRP or made available for downloading on the CRP website at <a href="http://www.compliance.adb.org">www.compliance.adb.org</a>. The government (as borrower) may consider providing a link to the report on the government project website.</p>	<p>The private sector borrower should study the CRP's report, which will be provided by the CRP or made available for downloading on the CRP website at <a href="http://www.compliance.adb.org">www.compliance.adb.org</a>. The private sector client may consider providing a link to the report on its project website.</p>	<p>The affected people, in particular the complainants, and their NGO or CSO representative (if any), should carefully review the final CRP report uploaded to the CRP website.</p> <p>The NGO or CSO concerned should inform the complainants and other affected people about the contents of the report.</p>

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Source: ADB. 2012. *Accountability Mechanism Policy 2012*. Manila.

## Compliance Review Step 8: Management's Remedial Actions

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME:</b>  <b>Within 60 working days of the Board's decision on the CRP's final report</b></p> <p>If the CRP's report concludes that noncompliance with ADB's operational policies and procedures resulted in, or is likely to result in, direct and material harm, ADB Management needs to propose remedial actions.</p>	<p>In consultation with the borrower, ADB Management prepares its proposed remedial actions, in response to the findings of the CRP's report. It is also recommended that ADB Management consults with project-affected people (including the complainants, if possible).</p> <p>The remedial actions should ensure that the project will be brought back into compliance with ADB's operational policies and procedures. ADB Management must obtain the borrower's (government or private sector) agreement on the proposed remedial actions.</p> <p>ADB Management may consult the affected people, particularly the complainants or their NGO or CSO representative, while preparing the remedial action plan. The remedial actions proposed in the plan are meant to address the findings of the CRP report.</p> <p>Before submission of the proposed remedial action plan to the Board its for approval, ADB Management should seek</p> <ol style="list-style-type: none"> <li>the CRP's comments and</li> <li>the written consent of the borrower on the proposed plan.</li> </ol>	<p>No particular action is needed from the Board at this point.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>The borrower's cooperation is critical in reaching a consensus on a design for remedial actions intended to address all issues of noncompliance on a project. A remedial action plan that is viable for implementation by the project owner can only be achieved through collaborative effort and a careful consideration of shared interests.</p> <p>ADB Management must work with the borrower in formulating or designing the remedial action plan and in preparing remedial actions that will bring the project back into compliance with ADB's operational policies and procedures.</p> <p>To prepare for the remedial actions, the borrower assists and facilitates consultations between ADB Management and stakeholders, including project-affected people. This is done to ensure that ADB Management's proposal for remedial actions addresses the findings of the CRP report.</p> <p>Before finalization of the proposed remedial action plan, the government borrower thoroughly reviews the proposed plan particularly focusing on its responsibilities in plan implementation.</p>	<p>The borrower's cooperation is critical in reaching a consensus on a design for remedial actions intended to address all issues of noncompliance on a project. A remedial action plan that is viable for implementation by the project owner can only be achieved through collaborative effort and a careful consideration of shared interests.</p> <p>ADB Management must work with the private sector borrower in formulating or designing the remedial action plan and in preparing remedial actions that will bring the project back into compliance with ADB's operational policies and procedures.</p> <p>To prepare for the remedial actions, the private sector borrower assists and facilitates consultations between ADB Management and stakeholders, including project-affected people. This is done to ensure that ADB Management's proposal for remedial actions addresses the findings of the CRP report.</p> <p>Before finalization of the proposed remedial action plan, the private sector client thoroughly reviews the proposed plan particularly focusing on its responsibilities in plan implementation.</p>	<p>The affected people are advised to consult with ADB Management and offer opinions on the remedial actions proposed by ADB Management to bring the project back into compliance.</p> <p>The affected people may request a meeting with the CRP and ADB Management to offer their opinions on ADB Management's proposed remedial actions.</p>

## Compliance Review Step 8: Management's Remedial Actions (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 5 working days from receipt of proposal</b></p> <p>The CRP reviews and comments on the proposed remedial actions.</p>	<p>The draft of the proposed remedial action plan will be provided to the CRP, for review and comment, before finalization.</p> <p>If necessary, the proposed remedial action plan may be revised based on comments of the CRP, or a matrix of responses to the CRP's comments may be prepared, prior to submission to the Board.</p> <p>ADB Management submits its proposed remedial action plan to the Board for consideration, with the CRP's comments attached.</p> <p>Upon request by any Board member, a pre-Board meeting may be arranged with ADB Management, to clarify any concerns on the proposed remedial actions.</p> <p>ADB Management may need to revise its proposed remedial action plan, in accordance with the discussion and any decisions reached in the pre-Board meeting.</p>	<p>No particular action is needed from the Board at this point.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>There are no prescribed actions for government at this stage.</p>	<p>There are no prescribed actions for private sector borrowers at this stage.</p>	<p>There are no prescribed actions for the affected people, in particular the complainants or their NGO or CSO representative, at this stage.</p>

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Source: ADB, 2012. *Accountability Mechanism Policy 2012*. Manila.

Compliance Review Step 9: Board’s Decision

<p><b>COMPLIANCE REVIEW PANEL</b></p> <p><b>LEAD TIME: Within 21 calendar days of receipt of the proposed remedial action plan</b></p> <p>After receiving the proposed remedial action plan, the Board reviews and decides whether to approve the proposed plan or not.</p> <p>If clarification on its comments to ADB Management’s proposal may be needed by the Board, a consultation may be scheduled between the CRP and the Board.</p>	<p><b>ADB MANAGEMENT AND STAFF</b></p> <p>To expedite remedies that may prevent the incurring of higher costs, the concerned operations department may proactively undertake activities toward the implementation of the remedial actions.</p>	<p><b>BOARD OF DIRECTORS</b></p> <p>The Board reviews the ADB Management’s proposed remedial actions. The Board shall only approve of the proposal if it addresses the issue of noncompliance, removes the cause for harm or probable harm, and is viable for implementation.</p> <p>Prior to the Board meeting on the proposed remedial action plan, Board members may call on ADB Management to clarify any concerns on the proposed plan.</p> <p>In considering ADB Management’s proposal, the Board may demand or direct revisions to the proposal, until they find the remedial action plan to be viable and satisfactory in producing a reversal of noncompliance on the project, which may result in the mitigation of harm.</p>	<p><b>BOARD COMPLIANCE REVIEW COMMITTEE</b></p> <p>No particular action is needed from the BCRC at this point.</p>	<p><b>GOVERNMENT OF DEVELOPING MEMBER COUNTRY</b></p> <p>There are no prescribed actions for government at this stage.</p>	<p><b>PRIVATE SECTOR BORROWER</b></p> <p>There are no prescribed actions for private sector borrowers at this stage.</p>	<p><b>AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS</b></p> <p>There are no prescribed actions for the affected people, in particular the complainants or their NGO or CSO representative, at this stage.</p>
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## Compliance Review Step 9: Board's Decision (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Within 7 days from the Board's decision</b></p> <p>The Board-approved remedial action plan, with the CRP's comments, is posted on the CRP website (<a href="http://www.compliance.adb.org">www.compliance.adb.org</a>) through a link from the ADB project website.</p> <p>If necessary, the CRP has the approved remedial action plan translated into the local language and uploads a copy to its website.</p>	<p>ADB staff may arrange for a meeting with the borrower to discuss the implementation of the remedial actions.</p> <p>It may also consider requesting an informal meeting with the CRP to discuss the implementation of the remedial actions.</p> <p>The proposed remedial action plan may be revised by ADB Management, upon the recommendation of the Board, and until the Board finds the plan satisfactory.</p> <p>Once Board-approved, the remedial action plan should be posted in the ADB project website and preferably, translated into the local language in a timely manner and uploaded at the local project website (if possible), so that affected people (including the complainants) are able to read it.</p>	<p>The Board decision is conveyed to the CRP and ADB Management by the Office of the Secretary.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>As requested by ADB Management or government (as a borrower), an informal meeting between the borrower and ADB Management may be scheduled to discuss the implementation of remedial actions.</p> <p>The Board-approved remedial action plan is implemented mainly by the borrower, which owns the project, together with ADB Management.</p>	<p>As requested by ADB Management or the private sector borrower, an informal meeting between the private sector borrower and ADB Management may be scheduled to discuss the implementation of remedial actions.</p> <p>The Board-approved remedial action plan is implemented mainly by the private sector borrower, which owns the project, together with ADB Management.</p>	<p>The complainants and their NGO or CSO representative (if any) should carefully study the remedial action plan, as well as the CRP's comments on the remedial actions as to how they may take part in implementing the plan.</p> <p>The complainants or their NGO or CSO representative should explain the remedial action plan to the other affected people to seek their views and to ascertain how they may be engaged in its implementation.</p> <p>The affected people, in particular the complainants or their NGO or CSO representative, may request a meeting with ADB Management to discuss the implementation of the remedial actions.</p> <p>The NGO or CSO concerned may provide legal or technical assistance to the affected people (including the complainants), in support of the implementation of the remedial actions.</p>

ADB = Asian Development Bank, BCRC = Board Review Compliance Committee, CRP = Compliance Review Panel, CSO = Civil Society Organization, OGC = Office of the General Counsel, ADB, OCRP = Office of the Compliance Review Panel, NGO = Nongovernment Organization, TOR = Terms of Reference

Source: ADB, 2012. *Accountability Mechanism Policy*, 2012, Manila.

Compliance Review Step 10: Monitoring and Conclusion

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: Generally up to 3 years from Board approval of the remedial action plan</b></p> <p>The CRP monitors the implementation of remedial actions for up to 3 years, and prepares annual monitoring reports submitted to the Board.</p> <p>The CRP reports quarterly to the BCRC on the progress of the implementation of remedial actions. These reports are based on information received by the CRP from ADB Management through quarterly or biannual progress reports, as well as on information received from other parties.</p>	<p>Alongside the borrower, ADB Management implements the Board-approved remedial actions.</p> <p>In consultation with the borrower and the affected people (including the complainants, if possible), ADB Management prepares progress reports (in quarterly or semiannual periods, at a minimum) on the implementation of Board-approved remedial actions. ADB Management submits these reports to the BCRC and the CRP, for their information, prior to uploading this report or providing a link on the ADB project website.</p> <p>Upon the CRP's request, ADB Management assists the CRP in arranging for site visits and meetings with the borrower or other government agencies concerned.</p>	<p>No particular action is needed from the Board at this point.</p>	<p>No particular action is needed from the BCRC at this point.</p>	<p>The government (as a borrower) may be requested to assist ADB Management in preparing ADB Management's progress reports on the implementation of the approved remedial actions. The progress reports are submitted to the CRP for information, and made available to the public through the ADB project website and the borrower's project website.</p> <p>If the CRP deems it necessary during monitoring, it requests the government (as a borrower) through ADB Management to assist in arranging the CRP's visits to project sites and facilities, including consultations with all agencies concerned.</p> <p>During the CRP's site visits, the borrower may be requested to provide an update on the progress of the remedial action plan's implementation. Necessary information or documentary material may also be requested from the borrower.</p> <p>At the government's request, a briefing with the CRP before the project site visit, or a debriefing at the end of the CRP's mission, will be arranged.</p>	<p>The private sector borrower may be requested to assist ADB Management in preparing ADB Management's progress reports on the implementation of the approved remedial actions. The progress reports are submitted to the CRP for information, and made available to the public through the ADB project website, and the borrower's project website.</p> <p>If the CRP deems it necessary during monitoring, it requests the private sector borrower through ADB Management to assist in arranging the CRP's visits to project sites and facilities, including consultations with company personnel and other stakeholders concerned.</p> <p>During the CRP's site visits, the private sector borrower may be requested to provide updates on the progress of the remedial action plan's implementation. Necessary information or documentary materials may also be requested from the private sector borrower.</p> <p>At the private sector borrower's request, a briefing with the CRP before the project site visit, or a debriefing at the end of the CRP's mission, will be arranged.</p>	<p>ADB Management may consult the affected people, including the complainants or their NGO or CSO representative, while preparing its quarterly progress report on the implementation of the approved remedial action plan.</p> <p>The NGO or CSO concerned may assist ADB Management or the CRP in arranging meetings with the affected people (including the complainants) during site visits to the project.</p>

## Compliance Review Step 10: Monitoring and Conclusion (continued)

<p><b>COMPLIANCE REVIEW PANEL</b></p>	<p><b>LEAD TIME: Annually or at such other times specified by the Board.</b></p> <p>The CRP prepares annual monitoring reports, based on the following:</p> <ul style="list-style-type: none"> <li>(i) its review of ADB Management's periodic progress reports (submitted at least quarterly or semiannually) on the implementation of remedial actions;</li> <li>(ii) its assessment of the progress of remedial actions, and the degree of compliance found in the project;</li> <li>(iii) consultations with ADB Management, the borrower, the affected people (including the complainants), and the NGOs or CSOs concerned; and</li> <li>(iv) the conclusions arrived at following a site visit, if such a mission is found necessary.</li> </ul>
<p><b>ADB MANAGEMENT AND STAFF</b></p>	<p>The CRP may opt to share the draft of the annual monitoring report with ADB Management for fact checking purposes only, prior to the CRP's submission of this report to the BCRC, for review.</p>
<p><b>BOARD OF DIRECTORS</b></p>	<p>No particular action is needed from the Board at this point.</p>
<p><b>BOARD COMPLIANCE REVIEW COMMITTEE</b></p>	<p>No particular action is needed from the BCRC at this point.</p>
<p><b>GOVERNMENT OF DEVELOPING MEMBER COUNTRY</b></p>	<p>At ADB Management's request, the borrower may assist in fact-checking the draft annual monitoring report of the CRP.</p>
<p><b>PRIVATE SECTOR BORROWER</b></p>	<p>At ADB Management's request, the private sector borrower may assist in fact checking the draft annual monitoring report of the CRP.</p>
<p><b>AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS</b></p>	<p>Affected people, particularly the complainants or their NGO or CSO representative, should prepare and provide the required information and documentation, as well as their suggestions for the CRP's consideration, in preparation for the CRP's site visits and annual monitoring report on the implementation of remedial actions.</p> <p>The affected people may express their views on the implementation of remedial actions directly to the Board members.</p>

Compliance Review Step 10: Monitoring and Conclusion (continued)

COMPLIANCE REVIEW PANEL	ADB MANAGEMENT AND STAFF	BOARD OF DIRECTORS	BOARD COMPLIANCE REVIEW COMMITTEE	GOVERNMENT OF DEVELOPING MEMBER COUNTRY	PRIVATE SECTOR BORROWER	AFFECTED PEOPLE, NONGOVERNMENT ORGANIZATIONS, and CIVIL SOCIETY ORGANIZATIONS
<p><b>LEAD TIME: As soon as the annual monitoring reports are available</b></p> <p>The CRP submits the annual monitoring report to the Board (through the BCRC) for information.</p> <p>The CRP makes the annual monitoring reports available to the complainants, the borrower, the Board, Management and staff, and the public on the CRP website (<a href="http://www.compliance.adb.org">www.compliance.adb.org</a>).</p> <p>If necessary, the CRP has the annual monitoring report(s) translated into the local language, and uploads a copy to its website.</p>	<p>ADB Management continuously implements the remedial action plan, until all actions are done, and results are achieved to indicate full project compliance.</p> <p>In its monitoring reports, the CRP provides feedback and specific recommendations on actions that need to be taken by ADB Management to bring a project back into compliance with ADB's operational policies and procedures.</p> <p>ADB Management may consider providing a link to the report on the ADB project website.</p>	<p>The Board reviews ADB Management's and the CRP's periodic reports, especially the CRP's annual monitoring reports, to be apprised of the progress of implementation and their effectivity in accomplishing compliance on a project and the mitigation of harm.</p>	<p>The BCRC forwards the periodic monitoring reports of ADB Management and the CRP to the Board. The BCRC reviews such reports, especially the CRP's annual monitoring reports, to assess the progress on the implementation of remedial actions, and their effectivity in reversing noncompliance and mitigation against harm.</p>	<p>After receiving the CRP's final annual monitoring report, the government and ADB Management may meet to discuss the CRP's observations and suggestions included in the report.</p> <p>If necessary, the borrower will assist ADB Management in updating its arrangements for the implementation of remedial actions, in response to the findings in the CRP's annual monitoring report. This is to bring the project back into compliance with ADB's operational policies and procedures.</p> <p>The borrower may consider uploading the CRP's annual monitoring report, possibly including the updated arrangements for the implementation of remedial actions (if those are to be made), to its project website. Alternatively, it may post a link to the report on the CRP website.</p>	<p>After receiving the CRP's final annual monitoring report, the private sector borrower and ADB Management may meet to discuss the CRP's observations and suggestions included in the report.</p> <p>If necessary, the private sector borrower will assist ADB Management in updating its arrangements for the implementation of remedial actions, in response to the findings in the CRP's annual monitoring report. This is to bring the project back into compliance with ADB's operational policies and procedures.</p> <p>The private sector borrower may consider uploading the CRP's annual monitoring report, possibly including the updated arrangements for the implementation of remedial actions (if those are to be made), to its project website. Alternatively, it may post a link to the report on the CRP website.</p>	<p>With legal and technical assistance from their NGO or CSO representative, the complainants and other affected people should carefully review the CRP's annual monitoring report. They may request a meeting with the CRP to clarify the findings detailed in the report.</p> <p>If necessary, further suggestions or information may be prepared for ADB Management's consideration, to update or modify remedial actions, in accordance with the Board-approved plan.</p>

ADB = Asian Development Bank, BCRC = Board Review Compliance Committee, CRP = Compliance Review Panel, CSO = Civil Society Organization, OGC = Office of the General Counsel, ADB, OCRP = Office of the Compliance Review Panel, NGO = Nongovernment Organization, TOR = Terms of Reference

Source: ADB. 2012. *Accountability Mechanism Policy*. Manila.

## APPENDIX 2: ADB'S OPERATIONAL POLICIES AND PROCEDURES COVERED BY COMPLIANCE REVIEW

Group	New OM No.	Subject	Old OM No.	Date Issued	Subject to Compliance Review
<b>A</b>	<b>Country Classification and Country Focus</b>				
	1	Classification and Graduation of Developing Member Countries	1	5-Jan-18	No
	2	Country Partnership Strategy	45	20-Sep-16	Yes
	3	Allocation of Concessional Resources	n. a.	8-Jan-18	No
<b>B</b>	<b>Regional and Subregional Cooperation</b>				
	1	Regional Cooperation and Integration	28	30-Jun-10	Yes
<b>C</b>	<b>Sector and Thematic Policies</b>				
	1	Poverty Reduction	48	14-Jul-04	No
	2	Gender and Development in ADB Operations	21	6-Dec-10	Yes
	3	Incorporation of Social Dimensions into ADB Operations	47	6-Dec-10	Yes
	4	Governance	54	23-Dec-10	Yes
	5	Anticorruption	55	4-Oct-10	Yes
	6	Enhancing ADB's role in Combating Money Laundering and the Financing of Terrorism	56	1-Jul-10	Yes

Group	New OM No.	Subject	Old OM No.	Date Issued	Subject to Compliance Review
<b>D</b>	<b>Business Products and Instruments</b>				
	1	Lending Policies for Sovereign and Sovereign-Guaranteed Borrowers (Ordinary Capital Resources)	3	24-Feb-14	Yes
	2	Lending and Grant Policies (Concessional Assistance)	4	21-Sep-17	No
	3	Sector Lending	5	29-Oct-03	Yes
	4	Policy-Based Lending	6	8-Aug-16	Yes
	5	Sector Development Programs	17	29-Oct-03	Yes
	6	Financial Intermediation Loans	6	15-Dec-03	Yes
	7	Disaster and Emergency Assistance	24, 25	15-Apr-15	Yes
	8	Guarantee and Security Arrangements for ADB Loans	19	15-Dec-03	Yes
	9	Credit Enhancement Operations	31	18-Dec-07	Yes
	10	Nonsovereign Operations	7	24-May-16	Yes
	11	Sovereign Operations	34	27-Feb-17	No
	12	Technical Assistance	18	13-Mar-17	No
	13	Exposure and Investment Limitations on Nonsovereign Operations (nondisclosable in accordance with the Public Communications Policy 2011, paragraph 97, [viii].)	n. a.	31-Jul-15	No
	14	Multitranches Financing Facility	n. a.	01-Jan-18	Yes
	15	Transaction Advisory Services	n. a.	20-Oct-17	Yes
	16	Project Readiness Financing	X	19-Oct-18	No

Group	New OM No.	Subject	Old OM No.	Date Issued	Subject to Compliance Review
<b>E</b>	<b>Partnerships</b>				
	1	Financing Partnerships	29	3-Oct-14	Yes
	2	Japan Fund for Poverty Reduction	n. a.	1-Mar-11	Yes
	3	Development Partnerships	26, 27	28-Aug-17	No
	4	Promotion of Cooperation with Nongovernment Organizations	23	29-Oct-03	Yes
<b>F</b>	<b>Safeguard Policies</b>				
	1	Safeguard Policy Statement	n. a.	1-Oct-13	Yes
<b>G</b>	<b>Analyses</b>				
	1	Economic Analysis of Projects	36	17-Mar-17	No
	2	Financial Management, Cost Estimates, Financial Analysis, and Financial Performance Indicators	35	12-Mar-14	Yes
	3	Poverty and Social Analysis	n. a.	Under preparation	No
<b>H</b>	<b>Financial</b>				
	1	Financing of Interest and Other Charges During Construction	9	18-Jul-06	Yes
	2	Financing Indirect Foreign Exchange Cost of Projects	10	22-Oct-08	Yes
	3	Cost Sharing and Eligibility of Expenditures for ADB Financing	11	12-Jan-17	No
	4	Retroactive Financing	12	12-Jan-17	No
	5	Additional Financing	13	24-Feb-11	Yes
	6	Use of Surplus Loan Proceeds	14	29-Oct-03	Yes
	7	Foreign Exchange Risk	15	19-Dec-08	Yes

Group	New OM No.	Subject	Old OM No.	Date Issued	Subject to Compliance Review
<b>J</b>	<b>Project Administration</b>				
	1	Project Performance Management System	22	28-Oct-11	Yes
	2	Consultants	39	06-Aug-13	No
	3	Procurement	38	06-Aug-13	No
	4	Loan Covenants	40	29-Oct-03	Yes
	5	Effectiveness of the Loan Agreement	41	29-Oct-03	Yes
	6	Disbursement	42	27-Feb-17	No
	7	Project Financial Reporting and Auditing	43	05-Aug-15	Yes
<b>K</b>	<b>Evaluation</b>				
	1	Independent Evaluation	44	01-Oct-13	No
<b>L</b>	<b>Other Policies and Operational Procedures</b>				
	1	Accountability Mechanism	49	24-May-12	Yes
	2	Internal Audit	51	15-Dec-03	No
	3	Access to Information Policy	52	28-Jan-19	Yes
	4	No-Objection Procedure	X	12-Jan-17	No

n. a. = not applicable, OM = Operations Manual, X = no OM exists or policy paper has yet to be written.

Source: Asian Development Bank.

# Resources for Further Review

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## **A Sourcebook on the Compliance Review Function of ADB's Accountability Mechanism**

This sourcebook explains the compliance review function of ADB's Accountability Mechanism, which is the grievance redress platform of last resort for people and communities who may be unduly, adversely, or potentially affected by ADB-assisted projects. The sourcebook explains the roles of and information expected from different stakeholders at every stage of the compliance review process.

With detailed information on the compliance review process, this document complements a series of four guides on ADB's Accountability Mechanism intended for (i) ADB Management and staff, (ii) governments, (iii) affected people and their representative or partner nongovernment organizations or civil society organizations, and (iv) private sector borrowers.

## **About the Asian Development Bank**

ADB is committed to achieving a prosperous, inclusive, resilient, and sustainable Asia and the Pacific, while sustaining its efforts to eradicate extreme poverty. Established in 1966, it is owned by 68 members —49 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

