

AMP Review Secretariat  
Rep. by Amiko Sudo  
28 April 2025

Sub: Written Recommendations on the Accountability Mechanism Policy (2012) (2012 AM Policy)

To the AMP Review Secretariat and the AMP Review Working Group,

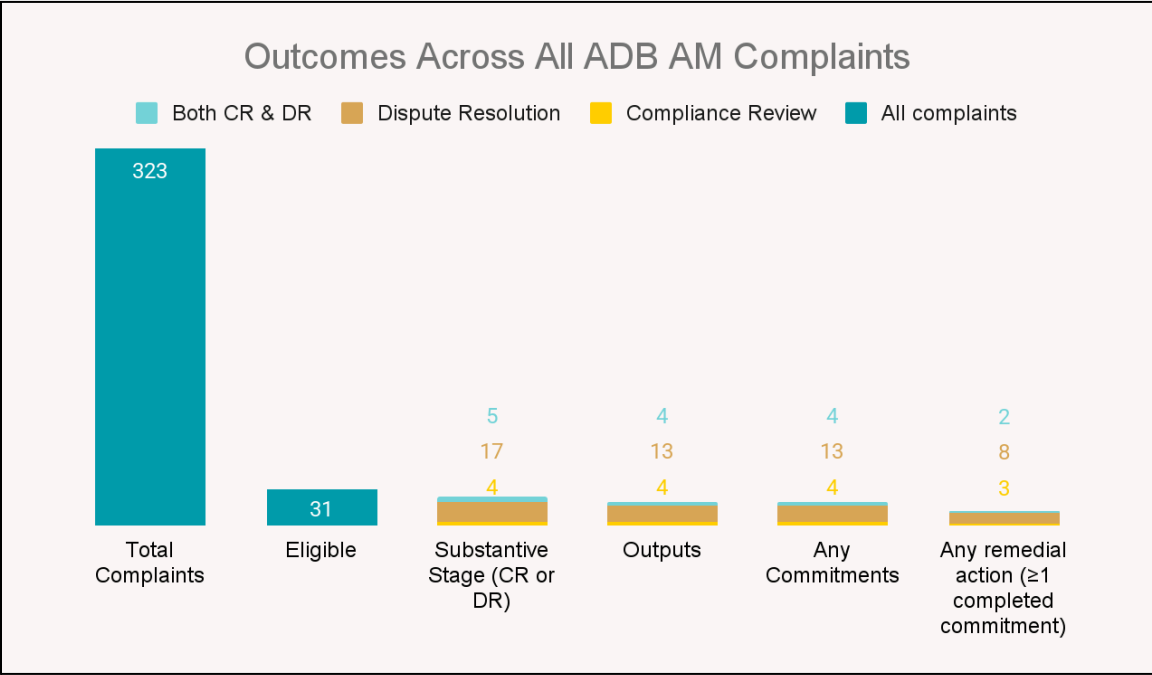
As civil society organizations (CSOs) that advise and support communities who are seeking remedy for harm caused by Asian Development Bank's (ADB) financing, we are pleased to share our detailed written comments based on the areas outlined in the [Consultation Paper](#) particularly addressing the issues of independence, accessibility, and effectiveness. These written comments build on the [comments](#) we shared on the External Review Report, Cost-Benefit Analysis Report, and Impact Assessment Report (together, Reports) on 28 November 2024 and we hope both these comments will inform the first draft of the new AM Policy. To support our recommendations, we have included case studies, references to good policy at other Independent Accountability Mechanisms (IAMs), and empirical evidence that we believe provides crucial insight into the working of the AM for the past 12 years. We have also engaged with the perspectives of other stakeholders as contained in the Reports and based on our many conversations with ADB Board and staff over the years.

At the outset, there are three important points we want to raise. Firstly, the AM has historically been seen as the mechanism of last resort, which has created numerous barriers to accessibility. This has led to the ADB AM having one of the [lowest eligibility](#) and [compliance investigation rates](#) among IAMs. We believe that this "last resort" idea needs to be revisited. Improving management's capacity to resolve grievances should not depend on limiting access to the AM. The ADB AM is the most important tool the Board has for hearing from direct beneficiaries and exercising independent oversight over management's internal processes, particularly around its environmental and social management. In other words, if the Board wants to be confident on whether the Environmental and Social Framework (ESF) is being implemented, they need to be able to hear freely from communities affected by ADB-financed projects.

Secondly, the underlying goal of all the following recommendations is to ensure that complainants are able to effectively prevent harm to their land, livelihoods, health, and environment and/or receive remedy if they have already been harmed. Fig. [1] demonstrates the long road to remedy complainants face at the ADB, starting from eligibility, to the process of compliance review or problem solving, to an output in the

form of an agreement or a compliance review report, to actual commitments from the ADB and borrowers in the form of an action plan, and finally to the implementation of those commitments. Our aim is to reduce the roadblocks complainants face in this process, including everything from eligibility barriers, to undue delays, to power imbalances, to not being adequately consulted during the remediation process.

Fig. [1]



Finally, we strongly believe that the objective of the review should not be cost-cutting. The AM’s costs are a relatively small part of the ADB’s overall budget and do not necessitate a reduction. According to the [Reports](#), the AM’s budget has been stable for the period from 2012-2022, the AM’s annual administrative expenditure on average is 0.3% of the ADB’s overall internal administrative expenses. Even the budget of AM’s consultant expenditures, which can vary year-on-year reaching a high in 2018, should be viewed on the basis of the positive impacts of technical expertise on problem solving and compliance investigation processes. Overall, the Reports demonstrate that costs remain miniscule and should not be the justification to reduce independence or effectiveness. Our view is consistent with the approach under the New Operating Model, which asserts that [cost-cutting isn’t the objective](#).

We look forward to continuing our engagement in the review process. Please do not hesitate to contact us for any further questions or clarifications. All included data is

based on publicly available information and is generally updated for complaints through 2023 with some exceptions. Please contact us if you have any questions, concerns about the data itself.

Sincerely,

**Accountability Counsel**

**Alternative Law Collective**

**Asia Forum for Human Rights and Development (FORUM-ASIA)**

**Asia Indigenous People's Network on Extractive Industries and Energy (AIPNEE)**

**Bank Climate Advocates**

**Bank Information Center, USA**

**Bulisia Initiative for Rural Development Organization (BIRUDO)**

**CEE Bankwatch Network**

**Community Empowerment and Social Justice Network (CEMSOJ)**

**Centre for Financial Accountability**

**Fair Finance Asia (FFA)**

**Jamaa Resource Initiatives, Kenya**

**Japan Center for a Sustainable Environment and Society (JACSES)**

**Jubilee Australia Research Centre**

**Inclusive Development International**

**Indigenous Women Legal Awareness Group (INWOLAG)**

**International Accountability Project**

**Initiative for Right View**

**Lawyers' Association for Human Rights of Nepalese Indigenous Peoples (LAHURNIP)**

**Mekong Watch**

**NGO Forum on ADB**

**Oyu Tolgoi Watch**

**Peace Point Development Foundation (PPDF)**

**Reality of Aid-Asia Pacific**

**Recourse**

**Rivers without Boundaries Mongolia**

**Rural Reconstruction Nepal**

**Urgewald**

**Uzbek Forum for Human Rights**

## Table of Contents

<b>Table of Contents</b>	<b>4</b>
<b>A. Independence</b>	<b>7</b>
I. Strengthen the independence of the Office of the Special Project Facilitator (OSPF) and the Office of the Compliance Review Panel (OCRP).	7
II. Retain the dual structure of the AM.	9
III. Allow the AM to seek independent legal advice.	10
<b>B. Accessibility</b>	<b>13</b>
I. Eliminate the “good faith effort” eligibility requirement.	13
II. Simplify the admissibility requirements of filing a complaint.	17
III. Allow complainants to choose their CSO representatives without restriction.	17
IV. Accept complaints relating to harms against the environment, biodiversity, natural habitats, protected areas, and other global public goods.	21
V. Allow the CRP to self-initiate compliance reviews.	22
VI. Reduce undue discretion in the intake process.	23
VII. Strengthen Complainants’ Choice of Function	24
VIII. Increase transparency in financial intermediary cases.	25
IX. Develop a Retaliation Protocol.	27
<b>C. Effectiveness</b>	<b>32</b>
I. Introduce specific measures to address power imbalances.	32
a) Publish information and communicate with complainants in their local language.	33
b) Cover complainants’ costs of participating in the complaint process.	33
II. Strengthen the effectiveness of the CRP.	34
a) Strengthen the CRP’s ability to conduct compliance investigations.	35
1. Reform the compliance appraisal process.	37
2. Remove the requirement to obtain Board authorization to undertake compliance review.	38
3. Set clear time limits for compliance investigations.	39
b) Strengthen the CRP’s ability to provide Outcomes.	40
1. The AM (including the CRP) should have an explicit remedy mandate.	41
2. Affirm the CRP’s mandate to address likely harm.	43
3. Allow the CRP to make recommendations alongside findings.	44
III. Improve the quality of Remedial Action Plans arising from CRP.	47
a) Require management to consult with affected communities on Remedial Action Plans.	47
b) Require Remedial Action Plans to deliver remedy to complainants.	49
c) Require BCRC to review whether Remedial Action Plans prevent, mitigate and remediate harm.	49
d) Strengthen implementation of Remedial Action Plans.	49
1. Require monitoring mandates to continue until all instances of non-compliance	

and harm are remedied.	50
2. Publish and discuss monitoring reports with complainants.	51
3. Impose consequences on borrowers for failure to implement remedial action.	51
IV. Strengthen the effectiveness of the SPF	52
a) Establish an objective standard and clear timeline for the assessment phase.	52
b) Adopt ground rules for respecting community agency in problem solving.	53
c) Facilitate any capacity-building that may be necessary to enable parties to engage effectively.	54
d) Select neutral and professional mediators who are acceptable to both parties.	55
V. Allow the AM to recommend suspension of projects due to concerns of imminent harm.	55
VI. Create an advisory function for the AM	56
<b>D. Emerging Issues</b>	<b>57</b>
I. Ensure that the AM remains available to communities affected by ADB's Private Sector Operations	57

## Table of Content: Graphs

<a href="#">Fig. [1] Outcomes Across All ADB Complaints</a>
<a href="#">Fig. [2] Eligibility Rates Across IAMs</a>
<a href="#">Fig. [3] Top 5 Eligibility Rejection Reasons for ADB AM</a>
<a href="#">Fig. [4] CSO Support at ADB AM</a>
<a href="#">Fig. [5] Eligibility Rates by Type of CSO Support</a>
<a href="#">Fig. [6] CSO Support in All Complaints and Complaints with Commitments</a>
<a href="#">Fig. [7] How Much are Different DFIs Investing in Countries with Closed Civic Space</a>
<a href="#">Fig. [8] Eligible Complaints with Findings of Non-compliance [2012 onwards]</a>
<a href="#">Fig. [9] Eligible Complaints with Findings of Non-compliance</a>
<a href="#">Fig. [10] Top 10 Commitment Types of ADB Problem Solving</a>
<a href="#">Fig. [11] Top 10 Commitment Types for ADB Compliance Review</a>
<a href="#">Fig. [12] Commitment Status for ADB Compliance Review</a>

## **Table of Contents: Case Studies**

1. [Case Study: CRP rejects the OGC supported interpretation on reduction of its mandate in Georgia: North-South Corridor \(Kvesheti-Kobi\) Road Project; Panel member resigns](#)
2. [Case Study: Securing Redress for Communities Displaced by the Rehabilitation of the Railway in Cambodia Project - Loans 2288 and 2602](#)
3. [Case Study: Complainants Reject Management Action Plan in Mundra Ultra Mega Power Project - Loan 2419](#)
4. [Case Study: In Nepal: Tanahu Hydropower Project, Indigenous complainants demand that OSPF respect and uphold FPIC during complaint process.](#)

## A. Independence

- I. *Strengthen the independence of the Office of the Special Project Facilitator (OSPF) and the Office of the Compliance Review Panel (OCRP).*

The Special Project Facilitator (SPF) plays the crucial role of bringing multiple parties with competing interests to the table and creating the conditions needed to facilitate open communication, build trust, and balance power dynamics, necessitated by a no-blame approach to problem solving ([Para 141, 2012 AM Policy](#)). There are two essential aspects to this role, one, that the SPF is perceived to be independent and a legitimate intermediary by all parties involved, and two, that the SPF is able to act with integrity in the face of pressure and conflict.

There are several ways in which the 2012 AM Policy can be improved to enable these conditions ([Para 108-110, 2012 AM Policy](#)):

- a) The SPF should be appointed by the Board, they should report directly to the Board, and their performance should be evaluated by the Board.
- b) The SPF should be subject to a post-employment ban to prevent a situation where an [ex-SPF can join ADB management](#), thus raising concerns of a “revolving door” or questions about the impartiality of SPF personnel who operate with a view to secure future employment with ADB.
- c) The SPF should be responsible for preparing the combined annual work plan and budget of the OSPF, subject to Board approval.
- d) The hiring process for both the SPF and the Chair, Compliance Review Panel (CRP) should be made more transparent and participatory. In 2024, in response to [this letter](#) from CSOs, ADB’s Board Compliance Review Committee (BCRC) took the decision to include two CSOs as observers in the interview process of the candidates. The observers were able to ask questions and share their view on the strongest candidate with the hiring committee. While this still does not meet international good practice (as seen below), it was a very positive step forward that contributed to the legitimacy of the hiring process and outcome.

### *Examples of Good Policy*

Hiring Process
<u>The African Development Bank’s (AfDB) Independent Recourse Mechanism (IRM) Procedures, Para 84:</u>

The Director shall be selected by a panel composed of Chair of CODE, two (2) representatives of Senior Management and two (2) external advisors (at least one of whom should be a civil society representative). They shall be appointed by the President with the concurrence of the Boards of Directors, for a non-renewable six (6) year term. The Director shall not have worked for the Bank Group in any capacity whatsoever for a period of at least five (5) years prior to their appointment and shall not be entitled to work for the Bank Group in any capacity whatsoever following the expiry of his or her appointment. The Director may only be removed from their position through the same process that was followed for their appointment.

### **Reporting Lines**

European Bank of Reconstruction and Development (EBRD) Independent Project Accountability Mechanism (IPAM) Policy, Para 1.5:

IPAM operates independently, with a direct reporting line to the Board.

### **Firing for cause**

International Finance Corporation (IFC) Compliance Advisor/Ombudsman (CAO) Policy, Para 20:

The CAO DG may be removed from office only by a decision of the Boards, for cause, as determined by the Boards on the recommendation of CODE.

### **Independence in Decision Making around Budget and Hiring**

ADB AM Policy, Para 119:

The CRP chair will be responsible for preparing the combined annual work plan and budget of the CRP and OCRP. The annual work plan and budget will be endorsed by the BCRC in consultation with the President, and reviewed by the Board's Budget Review Committee. The work plan and budget proposal will then be presented to the Board for approval, separately from ADB's overall administrative budget. Necessary flexibility will be ensured in the work plan and budget to accommodate the demand-driven nature of the compliance review function.

### **Post Employment Ban**

IFC CAO Policy, Para 18:



Upon conclusion of the appointment, the CAO [Director General] is restricted for life from obtaining employment with the World Bank Group.

Currently, the SPF's reporting to the president is [justified](#) to allow for “an appropriate level of independence” while ensuring that OSPF is not “isolated from operations staff.” Improving working relationships between OSPF and operations staff can be a matter of regular and open communication, coordination, and trust building. It should not come at the cost of the SPF's ability to act independently and with impartiality.

This is not a merely theoretical concern.<sup>1</sup> The OSPF has, in the past, conducted its work in ways that led complainants to question its independence. In the [Rehabilitation of the Railway in Cambodia Project](#) the OSPF brought ADB management and Cambodian government officials to individual household “negotiation” meetings, while excluding the complainants' advisors and refusing requests for collective negotiations. From complainants' perspective, there was no difference between OSPF and ADB management, which ultimately caused the problem solving process to fail and the complainants to request compliance review. While the case was processed under the 2003 AM Policy and is an example of bad historical practice rather than the current operations of the OSPF, it highlights the need for the new AM Policy to prioritize the OSPF's independence.

## *II. Retain the dual structure of the AM.*

The AM's unique function of exercising independent oversight while still being an internal mechanism brings it under frequent pressure from other stakeholders at ADB, leading to bureaucratic politics. The structure of the AM plays an important role in its ability to withstand these pressures.

We recommend that the current structure of the AM is retained, with two separate functions with separate heads who are at the level of the Director General. Unlike at some other institutions, this structure has not run into governance issues at the ADB and in fact positively supported the independence of both functions and the AM as a whole. This better safeguards against the risk of management influence that exists when there is only one IAM head whose appointment is influenced by management.

---

<sup>1</sup> See also, Ishita Chakrabarty, [The ADB's Accountability Mechanism: An uphill battle for communities](#) (2024) “...in the Nepal Decentralised Rural Infrastructure and Livelihood Project complaint, while still finding it ineligible, the OSPF in its assessment went on to echo the Management, reiterating the benefits that the industrial road project posed for the nation as a whole. This implication that the project's potential benefits offset the negative impacts relied solely on the project completion reports and mission reports.”

Similarly, the OCRP's panel of experts should also be retained. In addition to having a variety of experts (technical, social, financial) that can better respond to the many issues that a compliance case raises, there is also the benefit of being able to withstand the eventual pushback from management around whether non-compliance exists, what remedial action is necessary, and whether remedial action was achieved. As mentioned [earlier](#), high costs have not been a concern and should not be the objective when evaluating the AMs structure.

### *III. Allow the AM to seek independent legal advice.*

The AM should have the ability and resources to get independent legal advice when it deems such advice necessary. It should also be able to present that independent legal advice to the Board, so that the Board may take informed decisions about the AM's mandate, findings of non-compliance with ADB's policy, and the ADB's ability to remediate harm.

The AM has an independent mandate, despite being internal to the ADB. Findings of non-compliance often implicate existing project staff and management teams, which can lead to a negative perception of the AM. It can also create conflicts about whether a finding of non-compliance is valid, whether the AM has the mandate to investigate certain actions in the first place, or whether management has a duty to remediate harm. In such conflicts, Bank management and the AM may have differing interests, and yet the Office of General Counsel (OGC) provides legal advice to both. Moreover, the Board, which has to balance different interests while ensuring that ADB is abiding to its policy commitments and overarching mandate, is also being advised by the OGC.

Access to independent legal advice will act as a check on the conflict, ensure the OGC itself is providing a balanced perspective, and allow both the AM and the BCRC to make more informed decisions on the AM's accountability mandate. Designating specific lawyers from OGC to "advise and serve" the AM isn't an effective solution because those lawyers would still be effectively employed by the OGC and not be independent.

*Case Study: CRP rejects the OGC supported interpretation on reduction of its mandate in Georgia: North-South Corridor (Kvesheti-Kobi) Road Project; Panel member resigns*

In 2023, while finding non-compliance in the road project, the CRP raised the question of whether under the 2012 AM Policy, management should be required to remediate

only currently existing direct and material harm or also likely future direct and material harm.

This question was the subject matter of a [February 2019 Interpretation Memo](#) of the 2012 AM Policy that was based on the advice provided by the OGC. Their advice introduced a “reasonable certainty” threshold to issues of likely harm that did not exist in the Policy:

*“While likely harm is not expressly contemplated by the AM Policy in the context of required remediation, the practical effect is that likely harms that are reasonably certain to occur will be identified by the CRP and will normally be required to be remediated by the Board.” (emphasis added)*

The CRP disagreed and noted:

*“The interpretation of ‘likely harm’ under the AMP that was provided by ADB’s Office of the General Counsel to the CRP in February 2019 is not well-aligned with prevention of adverse impacts because it requires the CRP at the time of writing its final report to establish with reasonable certainty whether harm that has not yet crystallized will occur in the future. When there has been ADB noncompliance, even a small likelihood of serious harm that is caused by that noncompliance should in the CRP’s view trigger remedial action under para. 190 of the AMP. A ‘reasonable certainty’ threshold for future harm potentially has the perverse effect of readily enabling ADB Management to avoid triggering para. 190 by taking initial remedial action with an unclear chance of success in the period between a CRP eligibility determination and its final report following compliance review.”*

Ultimately, OGC’s view prevailed and management, on OGC’s advice, devised the creation of two plans, a remedial action plan (RAP) and a mitigation action plan (MAP) to respectively cover harms that exist and harms that are at risk of materializing in the future. While the Board approved the RAP thus giving CRP the ability to monitor it, the MAP did not [technically](#) get approved and remained without a monitoring mandate. Even though, the Management withdrew their objection for CRP to monitor the MAP, it raised issues over how a reasonable certainty threshold was introduced outside of the 2012 AM Policy and who had the authority to determine CRP’s mandate, management or the BCRC?

As noted in the external review report, “in June 2023 a CRP member resigned prematurely from the CRP amid concerns over the erosion of the implementation of the CRP’s mandate and the independence of the AM’s compliance function.”

### *Examples of Good Policy*

#### AfDB IRM Procedures, Para. 97:

“The General Counsel shall, upon request, provide all legal information and advice needed in respect of the Bank Group's policies and procedures and the Bank Group's rights and obligations in respect of the Bank Group Financed Operations to which a Complaint relates, as well as such advisory opinions and interpretations on points of law as the President or the Boards of Directors shall determine. The Director may also seek external legal advice on a Complaint, grievance or complaint-related matter or with regard to any matters concerning the IRM. The Boards of Directors will have the authority to interpret these rules and procedures.

#### Green Climate Funds (GCF) Independent Redress Mechanism (IReM) Procedures, Para 100:

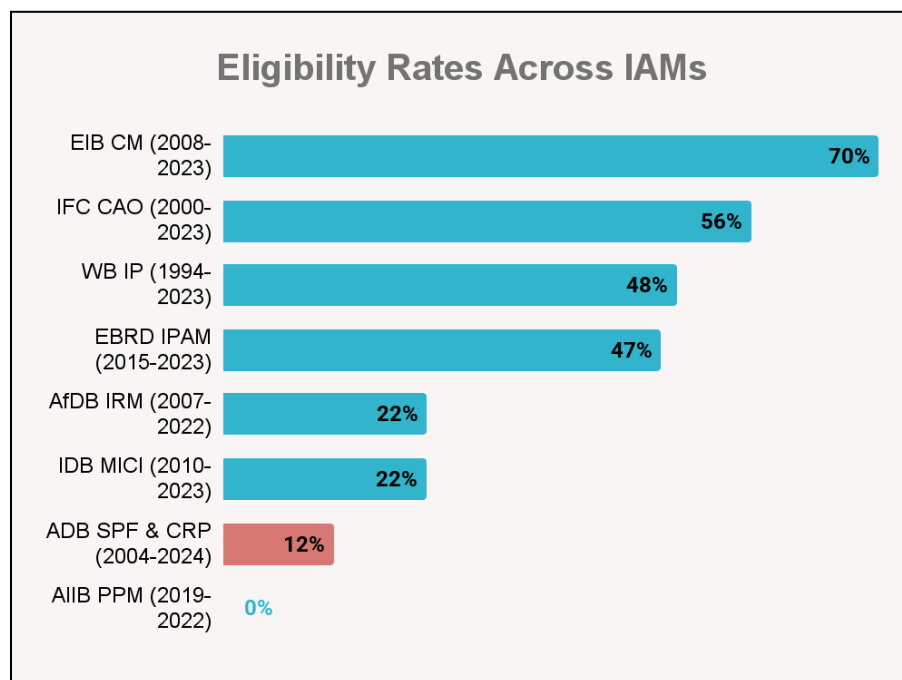
If requested by the Head of the IRM, the General Counsel of the GCF or a counsel designated by the General Counsel will provide legal advice to the IRM on the GCF's rights and obligations and GCF operational policies and procedures relevant to a request, grievance or complaint. The Head of the IRM may also seek external legal advice on a request-, grievance- or complaint-related matter or with regard to any other matters concerning the IRM. Where legal issues are materially relevant to the findings or recommendations of the IRM in a report to the Board, those issues (including any legal advice) will be included in the IRM's report to the Board. With respect to interpretation of its TOR, the IRM will apply the TOR as it understands them, subject to the Board's review.

## B. Accessibility

### I. Eliminate the “good faith effort” eligibility requirement.

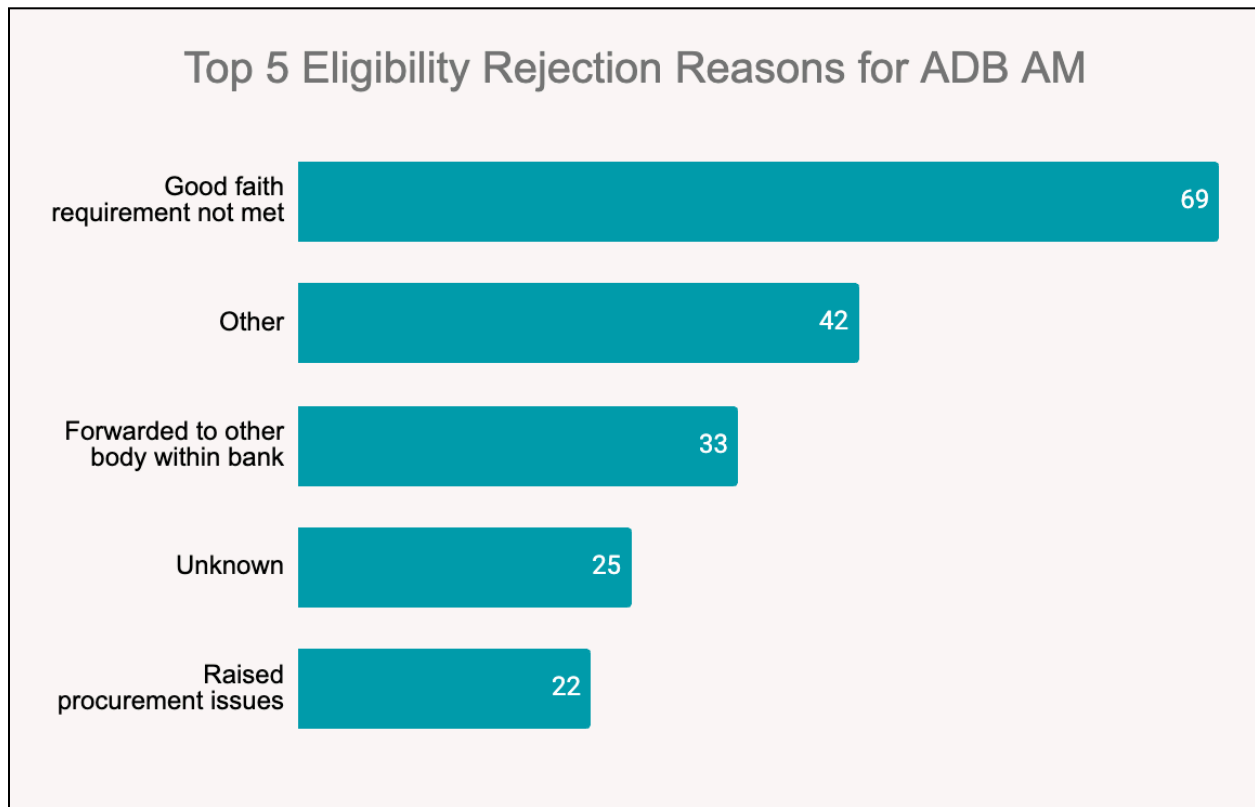
The AM should eliminate the requirement for project-affected persons to make “good faith efforts” to resolve complaints with the ADB operations department before approaching the AM. This eligibility requirement is the single most limiting factor for access to the AM, and as Fig. [2] and Fig. [3] demonstrate, it has contributed strongly to the ADB AM having one of the lowest eligibility rates among all IAMs:

Fig. [2]



**Note:** Due to inconsistencies in registry reporting, we are missing a number of unregistered complaints from our database for the years 2016-2024.

Fig. [3]



**Note: There may be minor inconsistencies explained by the double counting of a few cases, however this would not significantly change the volume of cases that are rejected due to the good faith requirement.**

Requiring mandatory prior engagement, with no exceptions, is too strict. There may be good reasons why project-affected people do not attempt to resolve their grievances with ADB management before going to the AM, including the risk of retaliation that has been [extensively documented](#). Requiring affected communities to engage with project-level operational staff, who are often closely working with project borrowers, may prevent communities from filing complaints out of fear. Communities' concerns about retaliation are not limited to interaction with project-level staff: affected communities and their representatives have also faced retaliation from government promoters after visiting ADB Head Quarters in Manila.

The best practice among IAMS is to allow complainants to include information about prior engagement with project-level or Bank management staff on a voluntary basis, with no effect on eligibility.

While some IAMS allow complainants to cite fear of retaliation as an exception to a requirement of prior engagement, this approach is unsuitable for the ADB AM. ADB has

extensive operations in many countries with, where the [risk of retaliation](#) is pervasive, insidious, and unpredictable. Therefore, it is likely that the vast majority of complaints would invoke the “fear of retaliation” exception. This will either dilute the rule itself or will lead to the AM adopting a strict interpretation of what constitutes “retaliation” that undermines the purpose of the exception. The **only** effective solution is making “prior engagement” voluntary.

The benefit of making prior good faith engagement voluntary is that it allows the AM to accept the complaint on its merits, and then monitor its progress regardless of whether it goes through a full AM process. ADB management still has plenty of opportunity to address the complaint once it is accepted by the AM. The priority should be to address the issue being brought forward and make the overall approach more requester friendly.

Moreover, there are [several concerns](#) about the manner in which the prior good faith engagement requirement is being implemented. It is restrictive, overly technical, places a higher burden on communities, and in many cases can render the ultimate complaint futile.

First, the ABD AM’s interpretation of who qualifies as relevant staff for project-affected persons to engage with is too narrow. Under the current interpretation, the requirement can only be satisfied through engagement with ADB operations department - not project management officials or non-ADB staff consultants working on the project. Since this interpretation is under-inclusive of project actors, it does little to further the requirement’s ostensible purpose of providing relevant actors with notice and opportunity to address complaints directly. Moreover, on the ground, it is not always clear to project-affected communities which Bank is funding the project, or the roles and relationships of the different parties and whether they are independent from one another - Bank, implementing agency, state officials, contractors etc.<sup>2</sup> This makes it difficult and time-consuming for communities to understand the chain of actors and processes to file complaints. Finally, this requirement may undermine complainants’ ability to maintain confidentiality, as complainants would effectively have to disclose prior complaints made confidentially.

Complaints have been found ineligible on a single technicality, i.e., during prior good faith engagement, communities did not elaborate on all of their “distinct and shared

---

<sup>2</sup> See, [South Asia Subregional Economic Cooperation Mugling-Pokhara Highway Improvement Eligibility Report \(2022\)](#):

*“Para 25: The CRP notes that the complainants thought that the ‘Environment Safeguard Specialist PD ADB’ who was present in the 18 February 2022 meeting was an ADB staff member.”* Para 27 of [https://lnadbg4.adb.org/dir0035p.nsf/attachments/NEP-EligibilityReport-Final-6Oct.pdf/\\$FILE/NEP-EligibilityReport-Final-6Oct.pdf#PAGE=9](https://lnadbg4.adb.org/dir0035p.nsf/attachments/NEP-EligibilityReport-Final-6Oct.pdf/$FILE/NEP-EligibilityReport-Final-6Oct.pdf#PAGE=9)

concerns”. Complaints have been found ineligible even when it is the Operations Department that does not respond to attempts of prior engagement, suggesting that the burden of good faith engagement lies only on complainants and not on ADB staff.<sup>3</sup> Finally, the 2012 AM Policy requires prior good faith engagements even when it would lead to the 2-year eligibility window running out, thus making the complaint futile.

Changing the manner of application to make it less restrictive is an important step, such as by replacing “prior good faith engagement” with a simpler “prior knowledge” requirement. However, for the reasons discussed above, this revision would not fix the underlying roadblock of retaliation risk. Making prior engagement with other actors voluntary is the best option for ADB.

The data from other IAMs show that making prior engagement with management voluntary, does not lead to a flood of cases. The IFC CAO, which does not require communities to engage with management or clients before filing a complaint, has received [406 complaints](#) in nearly 25 years of functioning. Since its establishment in 1994, the International Finance Corporation (IFC) financed more than [8500 projects](#), demonstrating that the vast majority of its projects do not result in a CAO complaint. Of these 406 complaints, 229 complaints have been eligible (around 56%). This small number of complaints with a high eligibility rate indicates that rather than leading to a deluge of frivolous complaints, eliminating a prior engagement requirement leads to the IAM being able to consider more complaints based on their merits.

### *Examples of Good Policy*

#### GCF’s IReM Procedures, Paras. 25-26

There are no formal requirements for filing a grievance or complaint ... [W]here possible a complainant may wish to include ... A description of other efforts including access to grievance/redress mechanisms of AEs or other dispute resolution processes, if any, that the complainant has pursued or intends to pursue to resolve the concerns, and redress, if any, already received from such efforts.

#### IFC CAO Policy, Para 38:

<sup>3</sup> There has been one complaint in 2024 ([Pakistan: Khyber Pakhtunkhwa Cities Improvement Project](#)) where simply reaching out to ADB and raising concerns about the project was found to be meeting the threshold. However, that complaint was found ineligible for other reasons.



Complainants and Clients/Sub-Clients are encouraged to make good faith efforts to resolve concerns in the most effective and efficient manner, at the Project-level where possible.

One impact of the low eligibility rates at the AM has been that the mechanism conducts a low number of compliance reviews and dispute resolution processes relative to the number of complaints it receives. It is unclear whether or how the AM tracks complaints it has rejected and referred to management, despite repeated [commitments](#) to centralize and formalize the tracking system. Therefore, it is unknown whether those complaints have resulted in any outcomes for the affected communities. This is a missed opportunity for the AM to prevent harm and facilitate accountability, remedy, and institutional learning.

## *II. Simplify the admissibility requirements of filing a complaint.*

It is unduly burdensome to require complainants to show how the adverse impacts they've suffered are 'direct' or 'material,' and this requirement further risks creating a bias in the application of the AM. ([Para 151\(vi\), 2012 AM Policy](#)). Complainants should simply be required to outline the harm arising, or likely to arise out of an ADB-financed project. Moreover, the ESF which is parallel to the 2012 AM Policy includes measures to address indirect, non-material harm and thus accountability for non-compliance should extend to that.

### *Example of Good Policy*

EBRD IPAM Policy, Definitions, Page 4:

Project-affected People: one or more individuals who live in an area that is impacted, or likely to be impacted, by a Project, who have experienced (or are likely to experience) environmental, social or cultural harm as a direct or indirect result of a Project.

Harm may be related (but is not limited to): labour and working conditions; health and safety; pollution; land acquisition, involuntary resettlement or economic displacement; impacts to biodiversity, protected areas, or the sustainable management of living natural resources; loss of tangible or intangible cultural heritage, or a lack of stakeholder engagement or information disclosure;

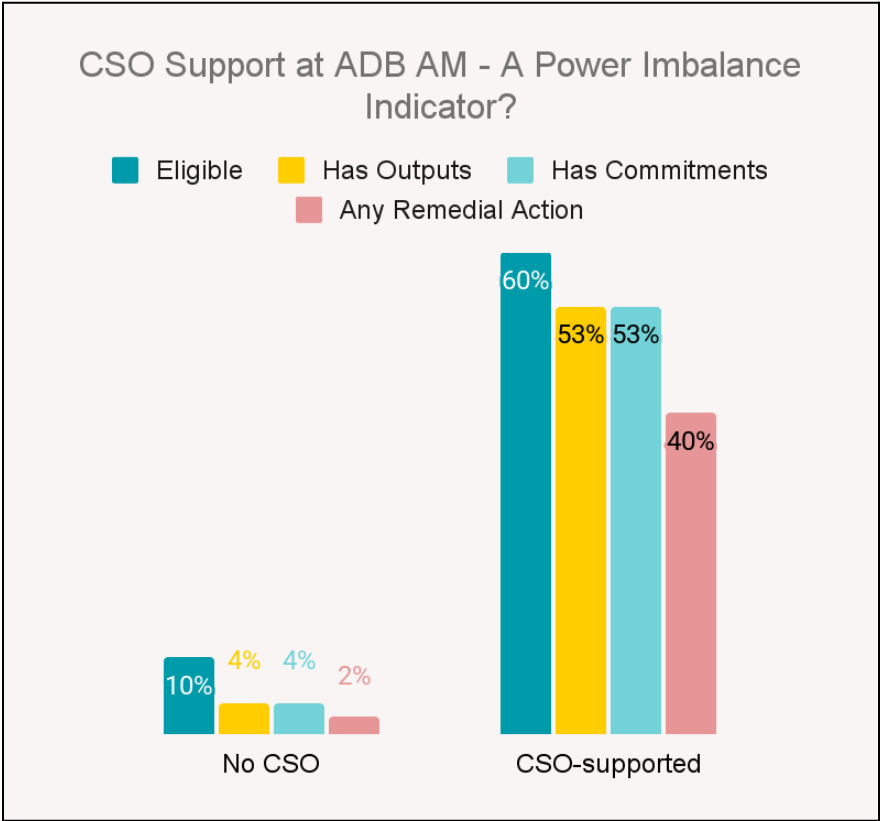
## *III. Allow complainants to choose their CSO representatives without restriction.*

CSOs provide critical support to communities during the complaint process in the form of language skills, knowledge, resources, and legal expertise. Therefore, access to CSO representatives should continue to be protected under the new AM policy.

AM complaint data shows that CSO support greatly increases the chances that a complaint will be found eligible, that the process will result in commitments from the ADB or the borrower to perform remedial actions, and that those commitments will be fulfilled.

Data from ADB AM in Fig. [4] demonstrates that the chances of a complaint being found eligible improved from 10% to 60% when complainants were supported by CSOs. Moreover, instances where the AM complaint process resulted in some remedy for the complainants increased from 2% to 40%<sup>4</sup> when complaints were supported by CSOs.

Fig. [4]



**Note:** CSO participation is rarely referenced in ADB complaint data, representing only 15 complaints compared to 321 with no information on CSO support. The "No CSO" chart almost

<sup>4</sup> By "remedy," we mean that at least some of the commitments made in remedial action plans or problem solving agreements were fulfilled.

certainly includes complaints with substantial CSO support that was not disclosed on the complaint registry.

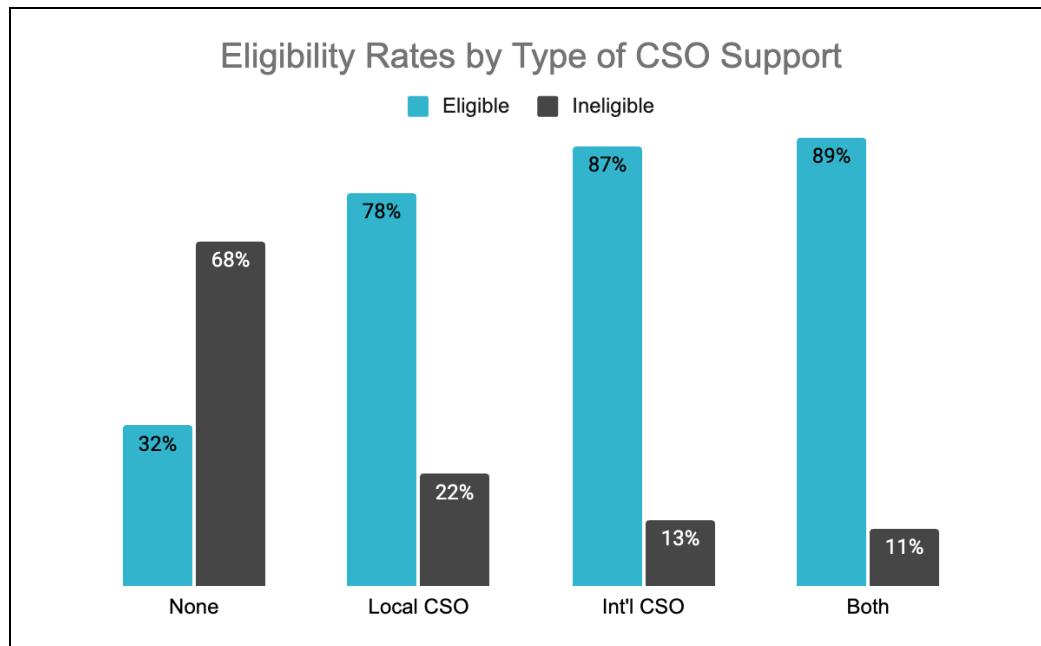
However, currently only 4% of complaints to the AM are publicly disclosed as being supported by CSOs, which demonstrates that complainants' access to representatives is quite limited.

To increase access to CSO support, the new AM policy should allow complainants to be supported by representatives of their choosing, including non-local or international CSOs. The 2012 AM Policy unduly limits complainants' access to non-local CSOs, allowing non-local representation only in exceptional circumstances:

*Para. 138: For both the problem solving and compliance review functions, complaints may be filed by (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; (ii) a local representative of such affected persons; or (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.*

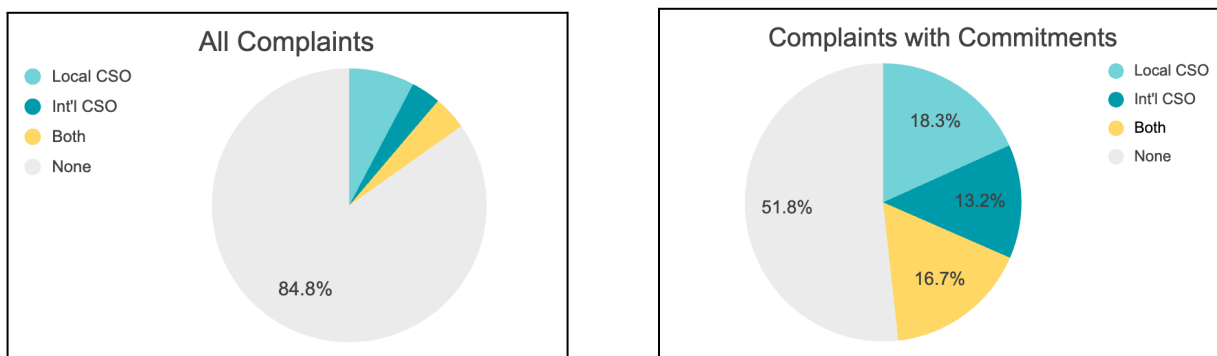
Data from across IAMs confirms Fig. [5] that though eligibility rates increase dramatically when complainants partner with a local CSO, eligibility rate increases even more when both local and international CSOs support the complainants.

Fig. [5]



Similarly, when it comes to complaint outcomes, data from across IAMs in Fig. [6] shows that while only 15.2% of all complaints are supported by CSOs, 48.2% of complaints that resulted in remedy commitments were supported by CSOs. Complaints that had both local and international CSO support made up the largest share of these CSO-supported complaints that generated remedy commitments.

Fig. [6]



Allowing complainants to freely choose their representatives enables them to take advantage of the differing strengths that local and non-local CSOs offer. For example, strategic support from international organizations can help overcome some of the barriers that local CSOs may face when engaging in the AM process. These may include language barriers, financial constraints, a lack of access to relevant contacts at the ADB, and unfamiliarity with the legal and technical aspects of filing an AM

complaint, including lack of awareness of AM procedures. Furthermore, local CSOs can face risks of retaliation from the local government or the state that are similar to risks the complainants face. Similarly, local CSOs bring deep expertise that international CSOs may lack, including technical expertise on the complaint issues, local language skills, and regular engagement with affected communities. It is no surprise that communities have the best chance of success at navigating the IAM process when both international and local CSOs provide support.

Therefore, complainants should be free to access either or both local and international CSOs to support them in all aspects of the complaint process. The ADB and borrowers face no restrictions on the kind of representation they can engage to support them during the complaint process, and in fact often have a team of international and local lawyers supporting their every move. As a matter of equitability, complainants should enjoy a similar right to engage whatever representation best meets their needs, without restriction based on availability of local representatives.

*IV. Accept complaints relating to harms against the environment, biodiversity, natural habitats, protected areas, and other global public goods.*

Under the 2012 AM Policy, harms against the environment, biodiversity, natural habitats, protected areas, and other global public goods can only be raised if complainants are able to demonstrate that they have been directly affected by it. This excludes harms that may only impact complainants indirectly or not impact individuals at all. In order for the Board to meaningfully exercise oversight on whether the obligations under [Environmental and Social Standard 6](#) are being complied with, the AM's mandate to receive complaints relating to these issues must be expanded. There are multiple and complementary approaches that the AM can take to meet international good practice found at other IAMs.

*Examples of Good Policy*

EBRD IPAM Policy, Definitions, Page 4:

Project-affected People: one or more individuals who live in an area that is impacted, or likely to be impacted, by a Project, who have experienced (or are likely to experience) environmental, social or cultural harm as a direct or indirect result of a Project.

Harm may be related (but is not limited to): labour and working conditions; health and safety; pollution; land acquisition, involuntary resettlement or economic displacement; impacts to biodiversity, protected areas, or the sustainable management of living natural

resources; loss of tangible or intangible cultural heritage, or a lack of stakeholder engagement or information disclosure;

European Investment Bank (EIB) Complaints Mechanism (CM) Policy, Para 4.3.1:

Any natural or legal person who alleges a case of maladministration by the EIB Group in its decisions, Actions and/or omissions can lodge a complaint.

*V. Allow the CRP to self-initiate compliance reviews.*

In circumstances where it is difficult, threatening, or impermissible under the AM Policy for affected communities to file a complaint with the AM themselves, or where there appear to be serious problems with a project and a compliance review could help the ADB prevent harm and learn lessons, and/or where there are systematic failures of ADB to adhere to ADB policy requirements and those failures impose a risk of direct or indirect harm to affected communities or people, the AM (Chair, CRP) must have the ability to self-initiate compliance investigations.

It can be designed so that it is triggered only in very specific circumstances, so that it is a relatively rare occurrence but one which is useful to have in the AM's arsenal. The reason the Chair, CRP should also be empowered to initiate CR themself (as well as the Board and President as is the current situation) is that the AM is well placed to notice where compliance is in jeopardy even before the President or the Board apprehend the risk.

Self-initiation is especially important in cases of severe civil society repression or conflict, where there would be significant risks of retaliation to communities for filing a complaint to the AM, especially given how the new ESF considers the quality of civic space as part of its [E&S risk classification](#).

Many IAMs, including the AfDB's IRM, the IFC CAO, the GCF's IRM, and the United Nations Development Programme's (UNDP) Social and Environmental Compliance Unit (SECU), allow for self-initiated compliance reviews. An example of good policy at another mechanism includes:

*Example for Good policy*

AfDB IRM Procedures, Para 14:

Under specific circumstances, the Director of IRM may initiate Compliance Reviews. These circumstances include:

- Complaints raised to the IAMs of co-financiers in a Bank Group co-financed Operation for which no complaint has been submitted to IRM;
- Operations in the public domain where there is a reputational risk for the Bank Group
- Cases where IRM receives information from a credible source that a Bank Group Financed Operation has adversely impacted or may impact persons, a community or the environment; or
- Cases where IRM is informed of a risk of retaliation if a Complainant came forward.
- If a Compliance Review could provide an important learning opportunity.

#### *VI. Reduce undue discretion in the intake process.*

Between 2012 to 2024, ADB AM's [complaint registry data](#)<sup>5</sup> shows that it received 131 cases of which 56 were deemed to be non-AM related and 75 were processed as AM cases. Of these 75 cases, 26 have been marked by the Complaints Receiving Officer (CRO) as closed and 5 as still pending with the CRO.

- a) Determination of non-AM related cases: Under the 2012 AM Policy, the only specified reason to determine a case as non-AM related is “if the complaints fall outside the mandate of the Accountability Mechanism, such as those on procurement or corruption, according to the relevant ADB policies.” ([Para 124\(iii\), 2012 AM Policy](#)). Given the high number of cases (56) categorized as non-AM related, the review should investigate whether in practice the CRO has limited its analysis according to its mandate, as opposed to analyzing cases for any other eligibility criteria.
- b) Lack of sufficient information: According to a [2018 Joint Learning Report](#), a significant number of complaints received by the CRO do not go forward as they lack basic information needed to meet admissibility. Instead the cases are marked incomplete and closed within 6 weeks.<sup>6</sup> The CRO should be taking necessary steps to contact complainants and communicate the need for information and should disclose that information on the complaint registry. Despite best efforts to simplify processes, language and technical barriers can be a challenge for potential complainants and in the absence of CSO support, communities continue to require support in navigating AM processes. The review should specifically empower the CRO to play that role during the intake process.

---

<sup>5</sup> The 2024 data can be found [here](#).

<sup>6</sup> Or 60 calendar days according to this [memo](#).

- c) Forwarding of complaints to OSPF and OCRP: Under the 2012 AM Policy any party in ADB can object to the CROs decision regarding where to forward the complaint ([Para 158, 2012 AM Policy](#)). It should be the complainants' decision (not CRO's decision) and there should be no opportunity for objection. We understand that once a complaint is with the OSPF, they would need to assess the willingness of the other parties. Similarly once it is in OCRP, the management is provided an opportunity to present their point of view about the project/why there are not compliance issues, etc. But in either of those cases, the complainant's choice should be paramount in deciding the function.

## *VII. Strengthen Complainants' Choice of Function*

Currently, complainants cannot switch from compliance review to problem solving during the compliance review process, or request problem solving upon the completion of a compliance review. ([Para 153, 2012 AM Policy](#))

Case experience across IAMs demonstrates that compliance review does not always address all complainants' concerns. For one thing, the scope of compliance review is limited to the ADB's compliance with relevant policies, which may not cover all the project impacts that the community is experiencing, and which the borrower may be well positioned to address. Furthermore, the Remedial Action Plans that result from compliance review may not even address all areas of non-compliance identified by the CRP. Given that issues important to complainants may be left unaddressed, the option to pursue problem-solving with the borrower should remain open after compliance review.

Many successful problem solving processes end up commissioning their own independent experts to help assess and resolve disputed facts, which essentially produces reports akin to compliance review reports within the problem solving process, and that these reports can actually facilitate the ability of parties to mutually agree on solutions.

### *Examples of Good Policy*

UNDP'S SECU Investigation Guidelines, Para. 33

If both processes are applicable, the Complainant will be informed that both are applicable, and be given the choice to proceed with compliance review, stakeholder response [dispute resolution], or both.



IKI ICM'S Policy, Para. 4.2.1(H)

The complaint mechanism allows for flexibility in conducting a compliance review after a problem-solving process, and vice versa.”

There are some types of complaints and allegations that are unsuitable for dispute resolution and should come under CRP. Complaints regarding Gender Based Violence (GBV), Sexual Exploitation and Harassment (SEA), including Child SEA, are not suitable for problem solving given the nature of harm and need for perpetrators to be held accountable, and power imbalance between survivors/affected persons and other parties. However, any provision around the types of complaints that are not suitable for problem solving should also include a provision on respecting complainants' choice, even when that choice does not align with this approach. For instance, if there is a GBV/SEA case, or a large population is affected by environmental harm that is best suited for compliance review, there might still be instances where affected persons/communities want a problem solving process and the new AM Policy should honour that.

#### *VIII. Increase transparency in financial intermediary cases.*

For the CRP - and the AM more widely - to be accessible to affected communities, they must first know that the project impacting their lives and livelihoods has been funded by the ADB. In the case of investing via financial intermediaries (FIs), the ADB's link to projects is often obscured, as there is little to no project information disclosure as would be the situation in direct investment lending. In the decade after 2012, the ADB invested over \$6 billion into FIs such as private equity funds or commercial banks, which then on-lent to other intermediaries or sub-projects. This form of 'hands-off' financing is riskier as the investment chain is longer and environmental and social standards can be watered down - or simply not applied at all. The fact that the ADB has rarely received complaints about projects funded via financial intermediaries is therefore likely less an outcome of exceptionally well-implemented projects than it is a lack of information about the ADB's links to issues on the ground.

The ADB's new ESF has made several improvements in how it will disclose information about its FI subproject investments.

This will include disclosure of information about higher risk transactions supported by the ADB via FIs:

ADB Environmental and Social Requirements for Financing Modalities and Products, 2025, Para J 67:

“For FI-1 and FI-2, ADB will disclose monitoring reports for the activities and transactions supported by ADB financing. For higher risk transactions to be supported by ADB financing, ADB will also disclose any draft, or final if available, documentation prepared by FI borrowers/investees and submitted to ADB relating to the E&S assessment of such transactions.”

It is vital that this new openness is echoed in the new AM Policy, to improve disclosure at the project level and by FI clients.

- The AM Policy should ensure that the availability of the AM as a recourse mechanism is clearly communicated, in local languages and in a manner and format accessible to local communities, at subproject sites, so that affected communities are aware of the ADB’s involvement and that they can make a complaint if needed, and how.
- The AM should periodically request proof from ADB management that ADB clients and sub-clients are implementing this requirement at project sites.

*Examples of Good Policy:*

AfDB Operational Safeguard 9 (Financial Intermediaries), Para 28:

The FI will require the subprojects to disclose AfDB’s support to them, the existence of the project-level Grievance Redress Mechanism (GRM), the Bank’s Independent Recourse Mechanism (IRM) and ensure that this information is clearly visible, accessible and understandable to affected communities.

AfDB IRM Procedures, Para 4:

Any AfDB Borrowers/Clients and sub-clients (including Financial Intermediaries) shall be required to disclose the existence of the IRM to project-affected communities.

Inter-American Development Bank (IDB) Environmental and Social Policy Framework, Para 39:

The Borrower will inform project-affected people about the project's grievance mechanism and the IDB's Independent Consultation and Investigation Mechanism in the course of the stakeholder engagement process.

#### Development Finance Corporations IAM Terms of Reference, Para. 5:

The DFC will assist the IAM in carrying out its outreach efforts, including requiring Clients and Sub-Clients (for financial intermediary projects) to disclose the existence of the IAM to project-affected communities in a culturally appropriate, gender sensitive, and accessible manner, including in a local language (in written and non-written forms). The existence of the IAM and how to contact it will be included in appropriate project documents.

### *IX. Develop a Retaliation Protocol.*

Out of all the development finance institutions, the [ADB has the second largest portfolio in countries with closed civic space](#). In closed and restricted contexts, there is an increased risk of retaliation for communities, defenders and civil society organizations, which hinders them from approaching the accountability mechanism and/or following through with the complaint, and can cause them to withdraw complaints due to fear.

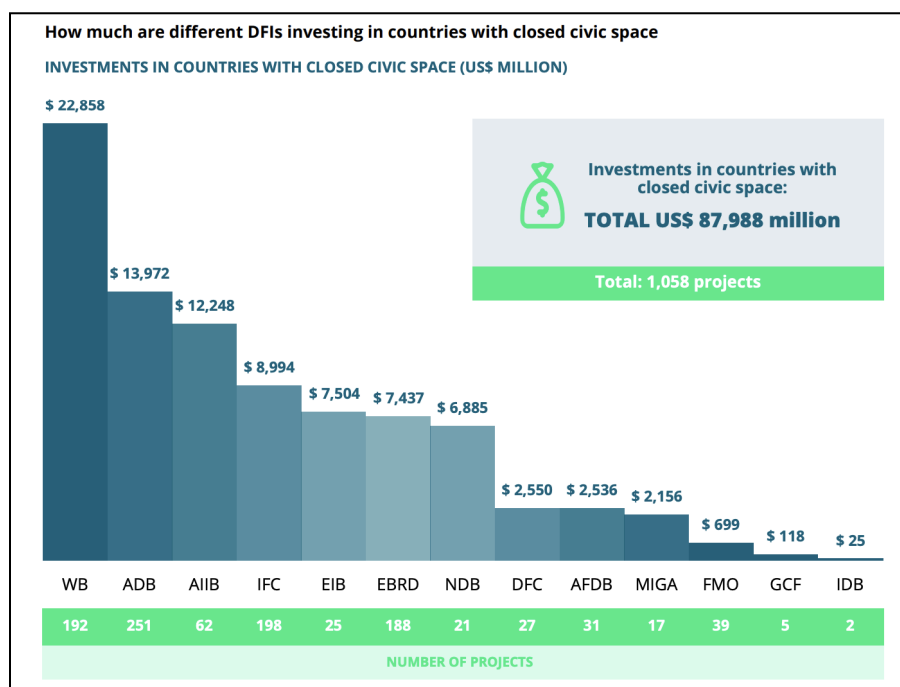


Fig. [7] (From [Financing Repression](#))

Given this context, it is crucial for the ADB and its AM to have a clear, robust and proactive approach in identifying, preventing, mitigating, and addressing retaliation risks. The [“Guide to Approaches to Risks of Retaliation by the Asian Development Bank’s Accountability Mechanism: Processes and Activities”](#) (Guide) lays out important key principles and concrete, actionable steps on how the bank’s AM will act on threats and cases of reprisals. In the review of the AM Policy, it is important for this guide to be included and further strengthened in the official policy, in order to give weight and commitment to these principles.

Furthermore, we call for the new policy to reflect these principles:

- a) Institutional declaration on zero tolerance to retaliation.

The ADB should release an institutional declaration on its zero tolerance to retaliation, with the new AM policy having clear reference to this policy.<sup>7</sup> This policy should have reference to international human rights standards and norms such as the Universal Declaration of Human Rights, UN Declaration on Human Rights Defenders and UN Guiding Principles on Business and Human Rights. This public institutional policy will send a clear message to its staff, partners and clients.

- b) Adopt a proactive approach in assessing, mitigating and responding to retaliation risks.

Integrate the risk identification and reduction steps stated in the guide within the AM processes and policy.

1. The Guide mentions engaging proactively on risks and having a participatory and ongoing risk assessment. This is a welcome commitment but could be further improved by indicating when and how this will be done. Once the AM receives a complaint, it should undertake a reprisal risk assessment that looks at the quality of civic space in the project site and the likelihood of a reprisal occurring. The assessment should result in risk-reducing strategies and a response protocol when reprisals do occur. The Guide commits to discussing risks and prevention measures with the complainants, along with CSOs or other experts, which should be implemented.
2. The Guide vaguely mentions what the AM should be doing when they receive an allegation of retaliation and how it will engage the bank management, staff, and clients. With this, the AM should establish a clear procedure on what actions to take

---

<sup>7</sup> The Guide contains this declaration which should be incorporated into the new AM policy.

once they receive allegations of reprisals. This would include a directive for the staff on how to assess, prevent, mitigate and respond to reprisal risks. AM staff should have the capacity to maintain secure channels with complainants at risk, verify information independently from clients and adequately respond to reprisals. This should also be supported by capacity building initiatives and sufficient resources for bank staff.

3. The AM should ensure that affected communities and defenders have multiple secure avenues to raise retaliation risks. This can include the bank staff, management, and board members. A direct feedback loop of the AM, through an assigned focal point, with affected communities can be valuable in reporting cases of reprisals and sensitively respond to these. If needed, the mechanism should be able to ask support from multilateral institutions, protection groups and other CSO.
4. The AM should ensure that outreach events and site visits are conducted in a safe manner, with sufficient assessment and putting in place security protocols to prevent retaliation threats after the visit.
5. The AM Policy should also indicate how the AM plans to identify, mitigate and address heightened risks faced by women and Indigenous defenders, along with other marginalized groups.

c) Provision of emergency assistance.

The AM should be able to provide emergency assistance to complainants at risk, allocating resources for an independently-managed fund that is accessible to defenders and communities impacted by the bank's projects. The emergency fund should be broad in scope to be used for various purposes depending on the severity of the retaliation (for example to be used for basic necessities, legal fees, hospital bills, temporary relocation, among others).

d) Ability to recommend immediate measures and binding recommendations.

The AM must be able to recommend immediate measures to address cases of reprisals from before the eligibility decision and throughout the whole process, upon consultation with defenders at risk. These could include temporarily suspending financing or project implementation. Furthermore, the AM should be able to recommend substantial and binding recommendations for clients that engage in retaliation to the bank management and board of directors. This would include how the bank should be using its leverage to prevent recurrence of violations, which could include issuing of public statements highlighting and condemning retaliation, divestment or disengagement, and inclusion in public sanctions or abetment lists.

In cases where defenders and impacted communities are facing retaliation and are not able to file complaints (due to reprisal risks and/or technical ineligibility) and they approach the AM for support, the AM should be able to communicate with the bank management and recommend actions for them to take to prevent, mitigate and respond to retaliation risks. This could take the form of public communication (with consent from the impacted communities and security considerations) or other means of engagement.

e) Institutional learning.

The AM should produce systematic documentation of reprisals, disclosing statistical information and disaggregated data, on retaliation cases they encountered. This should include the kind of reprisal, sectors and clients involved, countries where it took place, and responses of the bank. This would contribute to the mechanism's transparency and bank's institutional learning on civic space and human rights. This information and learning would also be useful for the AM to self-initiate complaints if complainants are not in the position to file one themselves. The bank and the AM should invest in the capacity development of its staff to be able to respond to risks of reprisals and engage with affected communities in a safe manner.

For other recommendations coming from defenders and communities from Asia and Caucasus on how IAMs should be addressing reprisal risks, please refer to this [page](#).

*Examples of Good Policy:*

EBRD IPAM Policy, Other Provisions, Page 22.

Approach to Concerns Regarding Retaliation. IPAM does not tolerate Retaliation against Requesters or any other individuals involved in an IPAM process or outreach activity, and rejects any form of threat, intimidation, harassment, violence, or discrimination based on the fact that they have exercised their right to raise concerns. IPAM is committed to taking steps to a) assess the risk of Retaliation against persons involved in IPAM processes and outreach, and b) implement Retaliation risk mitigation measures in connection with Requests or outreach activities, in consultation with the Requesters (or their Representatives, if any), if IPAM is informed by Requesters (or their Representatives, if any) that concerns around Retaliation exist.

IDB Guidelines for Addressing Risk of Reprisals in Complaint Management, Introduction, Page 7.

At every processing stage of a Request, MICI will seek to prevent, reduce or mitigate risk to Requesters, their families, and associates, by integrating and periodically

updating Risk of Reprisals Assessment (RRA) throughout the case management cycle, as well as designing and implementing a Joint Plan to Reduce Risk of Reprisals (JPRR) with Requesters.

AfDB Anti-Retaliation Toolkit Addressing Risks of Retaliation in Complaint Management, Responding to Alleged Threats and Incidents, Page 17.

The IRM may also engage in the following actions in responding to threats and incidents of retaliation:

- (a) The IRM may refer the complainants and witnesses to emergency assistance resources.
- (b) The IRM and/or the AfDB Management may issue a public statement reiterating the right of people who believe they are negatively impacted by AfDB-funded projects to raise their concerns with the IRM.
- (c) The IRM may request public statements from regional or international human rights mechanisms and organizations.
- (d) The IRM may request the intervention of the United Nations through the Special Procedures of the Human Rights Council.
- (e) The IRM may submit information to the African Commission Special Rapporteur on Human Rights Defenders.
- (f) The Director of the IRM may make an interim recommendation to the Boards of Directors and the President to suspend further work or disbursement if the Director is of the opinion that serious, irreparable harm will be caused by the continued processing or implementation of the AfDB-funded project under clause 27 of the existing IRM Rules (2021).

## C. Effectiveness

### *I. Introduce specific measures to address power imbalances.*

Power imbalances between complainants and other parties can affect the parties' ability to engage equally during the complaint process. In both compliance review and problem solving, power imbalances tend to lead to diminished outcomes for project-affected communities. A key responsibility of the AM is to handle complaints equitably. This requires taking into account, and actively working to mitigate, power imbalances.

Project-affected communities come to the complaint process from a drastically different position than other parties. The ADB or borrower takes part in the complaint process as part of their job: they participate in their professional capacity and are compensated for the time they spend engaging in the process. Complainants, on the other hand, engage in the process outside of their day-to-day lives, and often while continuing to experience disruptive impacts from the project. Compared to other parties, project-affected communities also typically have less access to information, less political power, and fewer resources. Project-affected communities may also belong to communities with geographical vulnerabilities or that are marginalized due to religious, ethnic, or caste differences that leave them further susceptible to local power hierarchies.

Case examples of power imbalance undermining the complaint process:

- Before the [Rehabilitation of the Railway in Cambodia Project](#) went to CRP for compliance review, it was handled by the OSPF. The different approaches of the two sides of the mechanism with regard to power imbalances was stark. The CRP took into account the community context, including the risk of reprisals and inability of community members to speak freely in the presence of government officials, conducting household interviews discreetly and arranging for separate private meetings with complainants. In contrast, the OSPF facilitated household-by-household negotiations that included ADB management and Cambodian government officials and excluded NGO advisors. This disempowering approach quickly led to distrust of the mechanism and a failure of the problem solving process. While the case was processed under the 2003 AM Policy and is an example of bad historical practice, not the current operations of the OSPF, it highlights the need for the AM Policy to set explicit standards around mitigating power imbalances to avoid these types of problems and create a more predictable and rights compatible process across the mechanism as a whole.



The AM should take general measures across both compliance review and problem solving to ameliorate power imbalances:

- a) Publish information and communicate with complainants in their local language.

The 2012 AM Policy prioritizes English, and only allows complaints to be filed in other languages if they are “official or national languages of ABD’s DMCs.” ([Para 150, 2012 ADB AM Policy](#)) This disadvantages speakers of minority and Indigenous languages, who may already be marginalized within their own countries, and places the burden on them to secure translation services throughout the complaint process. Therefore, the new AM Policy should allow complaints to be submitted in any language.

Similarly, all communication with the AM thereafter, including documents such as eligibility reports, investigation reports, management action plans, and problem solving agreements, should be made available to complainants in their own language and in a culturally appropriate format. Particularly for complainants who are not supported by a CSO, the AM may need to communicate key information in formats other than writing, which may require site visits, phone calls, or video conferences.

#### *Example of Good Policy*

##### IFC CAO Policy Paras 163-164:

While CAO’s working language is English, CAO seeks to make reports and communication materials available in relevant local languages to promote accessibility. CAO issues public information materials in the official languages of the World Bank Group (Arabic, Chinese (Mandarin), English, French, Russian, Spanish, and Portuguese), and additional languages where deemed necessary. CAO makes available these materials in electronic and hard copy and by other culturally appropriate means. Complainants may submit a complaint to CAO in any language, and CAO’s correspondence and engagement with the Complainant and its representatives will be in both the language of the complaint and English.

- b) Cover complainants’ costs of participating in the complaint process.

Given that the project itself may have impacted affected persons’ livelihoods and access to resources, it is unfair for complainants to shoulder the financial costs of their engagement to seek remedy. Complainants incur a range of costs when participating in a complaint process. For example, they may need mobile phone credits so that they can communicate with the AM, or bus fare to travel to meeting locations. Complainants may also incur opportunity costs if they must lose a day’s wage or leave their fields in order

to participate in a problem-solving session or a compliance review site visit. This is in stark contrast to ADB staff or borrowers, whose job responsibilities include participation in the complaint process.

The AM's budget should adequately provide for covering complainants' travel to meetings, translation services, and other required expenses for engaging in the process.

### *Examples of Good Policy*

#### GCF IReM Procedures, para 91:

The IRM shall bear the costs of conducting problem solving, compliance review and monitoring as well as the costs of ensuring the meaningful participation of complainants, witnesses and stakeholders in problem solving, compliance review or monitoring.

#### AfDB IRM Procedures, para. 101:

The IRM shall bear all reasonable costs associated with conducting Problem-Solving, Compliance Review and monitoring as well as ensuring meaningful participation of Complainants, witnesses and stakeholders in Problem-Solving, Compliance Review or monitoring. For purposes of the cost provisions, 'stakeholders' refers to a person, group of persons or community who is/are or may be directly affected by the implementation or outcome of an AfDB-funded project under consideration in a Complaint, and who is participating or has participated in Problem-Solving, Compliance Review or monitoring in some manner other than as the complainant.

#### U.S. DFC IAM Terms of Reference, para. 63:

During the assessment process, the Parties decide whether they would like to initiate IAM's problem solving or compliance review function. If both Parties agree to undertake problem solving, the IAM will facilitate this process. This may include covering reasonable and directly related costs, including those for invitational travelers, subject to relevant U.S. Government restrictions or exemptions, for ensuring the meaningful participation of the Requesters and their Representatives in problem solving, compliance review or monitoring. If there is no agreement by the Parties to pursue problem-solving, the IAM will refer the request to the IAM's compliance review function.

## *II. Strengthen the effectiveness of the CRP.*

There are two important aspects to measuring the effectiveness of the CRP (a) Whether CRP is operating *at capacity* in terms of the number of compliance investigation it handles and time taken for these cases, and (b) Whether CRP processes are leading to outcomes that sufficiently address non-compliance *and* prevent likely harm or redress existing harm to communities.

a) Strengthen the CRP's ability to conduct compliance investigations.

Under the 2012 AM Policy, OCRP has completed only 3 compliance investigations (in 2013, 2016 and 2021) and only one in the last 5 years. This is even lower than ADB's performance under 2003 AM Policy.

When comparing this data with all major IAMs, it becomes clearer that the CRP is not operating at capacity. Fig. [8] compares CRP with other IAMs on the number of compliance reviews conducted and the number of cases with non-compliance found since 2012. And finds that barring AIIB's PPM, ADB's CRP has conducted the lowest number of compliance reviews.

Fig. [8]

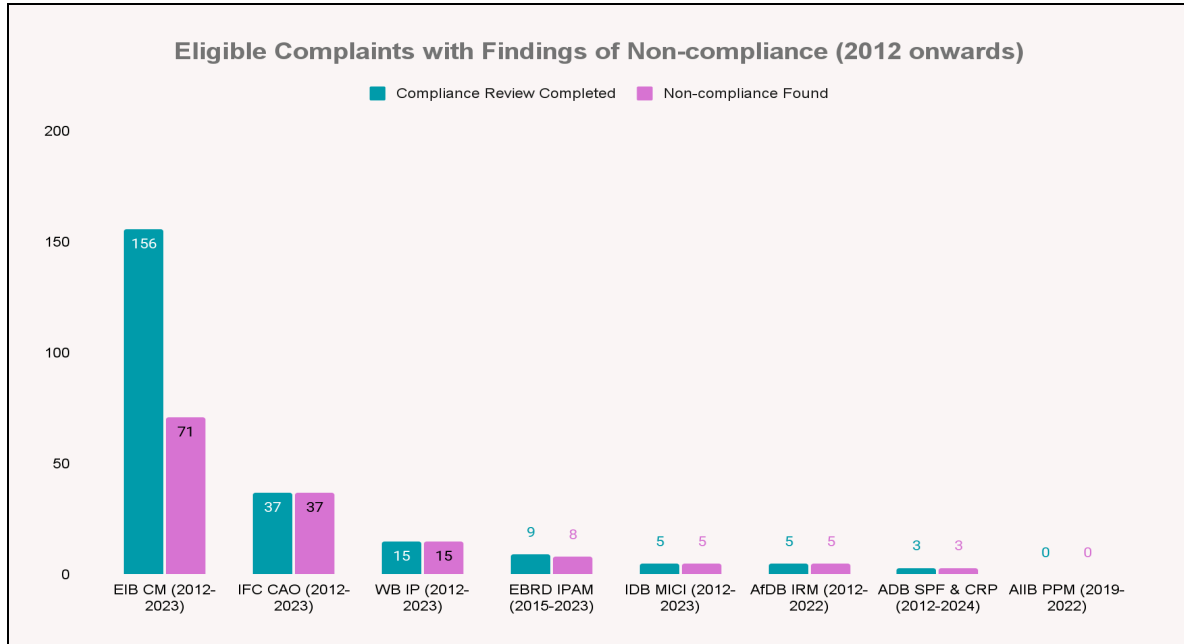
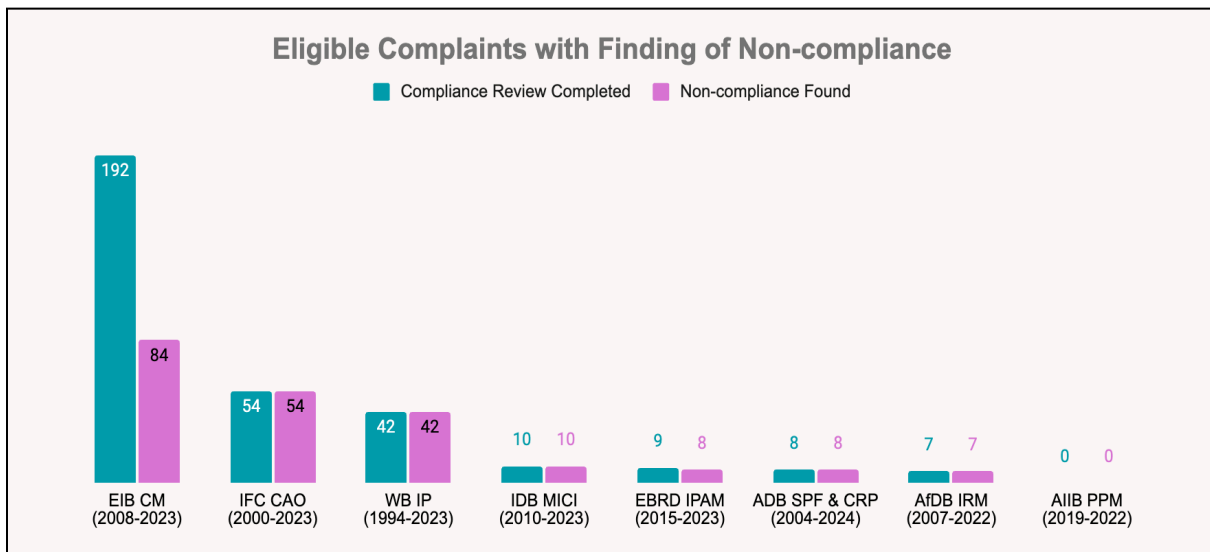


Fig. [9] compares CRP with other IAMs on the same metrics across their operating period. For CRP this includes the period under the 2003 AM Policy. ADB CRP is still underperforming compared to other IAMs active during the same period.

Fig. [9]



The CRP is one of the key ways in which the Board exercises independent oversight exercises over management processes relating to environmental and social monitoring and implementation. It is an important tool for the Board to verify whether the new Environmental and Social Framework is actually being implemented. If there are

unnecessary barriers to conducting compliance investigations, the ADB Board will not have adequate insight into the procedural gaps that are leading to non-compliance and not receiving lessons that can prevent harm and strengthen operations. If the Board wants to be confident of whether ADB is in compliance with its policies, a well-functioning, effective CRP is crucial. One of the key barriers to accessing compliance review at ADB has been discussed above in Section [B.1](#). Here are some additional recommendations.

1. Reform the compliance appraisal process.

In addition to the eligibility criteria contained in [Para 142 and Paras 145-149](#), the 2012 AM Policy introduces 3 additional criteria ([Para 179](#)) before the complaint can be considered eligible for a compliance review:

These are:

*The CRP must be satisfied that (i) there is evidence of noncompliance; (ii) there is evidence that the noncompliance has caused, or is likely to cause, direct and material harm to project-affected people; and (iii) the noncompliance is serious enough to warrant a compliance review.*

This is akin to a compliance appraisal process that adds another layer of barrier before a compliance investigation can take place. The additional criteria must not be exclusionary, not allow for undue discretion, nor create potential for inconsistent application. There are multiple issues with the existing criteria including, what standard of proof the CRP is using to determine whether there is evidence of non-compliance and what constitutes “serious enough” non-compliance. The issues around CRPs ability to investigate and require remedy for instances of likely, indirect, and non-material harm is discussed below.

The current criteria allow too much discretion and are out of step with good practice at other IAMS. We recommend that the standard of proof should be modified to “preliminary indications” of noncompliance and that the causation requirement be modified such that complainants must show that the harm is “plausibly” linked to the potential non-compliance without having to meet the potentially insurmountable barrier of proving actual causation. The requirement of identifying whether the non-compliance is serious enough to warrant a compliance review should be removed as often the extent of the non-compliance is unclear in a preliminary stage and can only be determined during the course of a full investigation.

### *Examples of Good Policy*

#### IFC CAO Policy, Para 91:

CAO will apply the following appraisal criteria in determining whether a compliance investigation is necessary:

- a. Whether there are preliminary indications of Harm or potential Harm;
- b. Whether there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies; and
- c. Whether the alleged Harm is plausibly linked to the potential non-compliance

#### EBRD IPAM Policy, Para 2.6(b):

Criteria. A Case is eligible for a Compliance Review if IPAM deems that:

- i. upon preliminary consideration, it appears that the Project may have caused, or may be likely to cause, direct or indirect and material harm to the Requesters (or, if different, the relevant Project-affected People); and
- ii. there is an indication that the Bank may not have complied with a provision of the Environmental and Social Policy (including any provision requiring the Bank to monitor Client commitments); or the Project- specific provisions of the Access to Information Policy, in force at the time of Project approval.

2. Remove the requirement to obtain Board authorization to undertake compliance review.

To bring the 2012 AM Policy in line with international good practice, the OCRP should have the authority to execute its mandate, including proceeding with compliance investigations, without needing authorization from the Board.

Under the 2012 AM Policy, there were 2 instances (in [2016 and in 2018](#)) where despite the CRP recommending a compliance review investigation, the BCRC did not proceed with the authorization. As the external review report documented, in both instances the BCRC agreed that there was evidence of non-compliance, but it failed to authorize for extraneous reasons. The external review report also [notes](#), “The requirement to obtain Board authority to conduct a compliance review, together with a lack of clarity when the Board refuses to authorise a review, undermines the independence of the CRP and the integrity of the process to hold ADB accountable.”

The Board members may also have a conflict of interest if the complaint originates in their country or relates to the actions of its government. Involving the Board in approving a recommendation to investigate unduly politicizes what should be a reasoned decision. Instead, the decision to conduct a compliance review should be an objective one based on clear criteria taken by an entity without conflicts of interest.

### *Examples of Good Policy*

#### EBRD IPAM Policy, Para 2.6 d):

Outcome and Reporting. Upon completion of the Compliance Assessment stage, IPAM will prepare a Compliance Assessment Report presenting its findings and: i. submit it to the Board and the President for information, if it recommends proceeding to a Compliance Review, having determined that the criteria set out in Paragraph 2.6(b) are met.

#### IFC CAO Policy, Para 96-97:

At the conclusion of the appraisal process, CAO will prepare an appraisal report stating its reasoning and decision on whether to investigate, merge, defer, or close the case. When the appraisal outcome is a decision to investigate, CAO's appraisal report will also include terms of reference (see paragraph 118 below), indicating the scope of the compliance investigation.

Every appraisal decision, whether to investigate, close, or defer, will be made at the discretion of the CAO DG, applying the criteria set out in this section (see paragraphs 91-92 above).

#### AfDB IRM Procedures, Para 63:

The IRM will make its recommendation to conclude or continue the Compliance Review in its Compliance Eligibility Assessment Report which will be completed within sixty (60) Business Days of the initiation of the Eligibility Assessment by the IRM. The Compliance Eligibility Assessment Report will be issued to the Boards of Directors with a copy to the President.

3. Set clear time limits for compliance investigations.

The external review report provides [data](#) on the time taken from the receipt of a complaint until Board consideration on the CRP's final report in relation to 5 compliance reviews, and finds based on five cases that the process takes anywhere between 14 months to 24 months. The AM has shared concrete suggestions on reducing the timelines for conducting the compliance investigation process under the 2012 AM Policy which can significantly reduce unnecessary delays. Currently, the compliance investigation stage at ADB AM is not time bound. Different IAMs take different approaches and the review should consider the merits of introducing time limits for compliance investigations. Some IAMs like the EBRD<sup>8</sup> and CAO<sup>9</sup> provide time limits but others like the WB's Inspection Panel simply notes: "The Panel carries out investigations without undue delay."<sup>10</sup> CRP similarly has a panel structure. It is also crucial that time limits are accompanied by sufficient resources for the CRP to enable adherence.

b) Strengthen the CRP's ability to provide Outcomes.

A true measure of an AM's effectiveness is its ability to facilitate the prevention and remediation of harm for complainants and associated communities. It's the primary reason why communities file a complaint to AM. Unremediated harm can lead to persisting environmental and social harms that prevent banks from fulfilling their development mandate and can lead to delay in projects, alienate communities that reside in the area, exacerbate conflict, and cause reputational harm to banks.

One of the fundamental weaknesses of the CRP is that under the 2012 AM Policy, there is no commitment to mitigate/remedy harm caused due to ADB's non-compliance with its own policies. Instead, it explicitly recognizes that harm may not be mitigated, saying that the CRP's primary function is to "review ADB's compliance with its operational policies and procedures. The resulting remedies (if any) to bring a project into compliance *may or may not mitigate any harm.*" ([Para 160, 2012 AM Policy](#)) The review provides an opportunity to provide the CRP with an explicit mandate to remedy any existing harm and impose a corresponding obligation on Bank management to implement such a mandate. Associated with this is the CRP's ability to investigate and enable remedy in cases of future or likely harm, which is consistent with the CRP's preventative function.

There are a number of concrete ways to improve the AMs ability to facilitate remedy, some of which will be discussed below. However this is also an opportunity for ADB to

---

<sup>8</sup> 140 Business Days, Page 23, EBRD IPAM Policy

<sup>9</sup> Within 1 year, Para 121 IFC CAO Policy

<sup>10</sup> Para 74, World Bank Inspection Panel Operating Procedures 2022



pursue a comprehensive remedy framework that reinforces and realizes its “Do No Harm” commitment. As the external review report [notes](#), “It now seems inevitable that the effectiveness of an IAM will hinge on the commitment to deliver quality outcomes to APs within reasonable timeframes.”

1. The AM (including the CRP) should have an explicit remedy mandate.

The current mandate for the AM is limited in as much as it assumes that affected communities access it purely as a learning exercise. Instead the mandate should be updated to also recognize affected communities’ legitimate expectations of receiving remedy for harm due to ADB’s non-compliance with its own policies. This further means recognizing that ADB as a financier has an active role to play in preventing, mitigating and remedying harm that may be associated with its financing.

This includes ensuring that borrowers adhere to the [mitigation hierarchy](#) contained in the ESF which notes “(iii) once risks and impacts have been minimized or reduced, mitigate, restore, and/or compensate for adverse impacts on the environment and project-affected persons. Where significant residual impacts remain, the borrower/client will compensate for or offset them, where technically and financially feasible.”

This provides scope for a broad range of actions that constitute remedy, including remedial action that ADB AM has already facilitated. Fig. [10] and Fig. [11] provide the top ten remedial commitments that have arisen out of ADB AM’s problem solving and compliance review function, respectively.

Fig. [10]

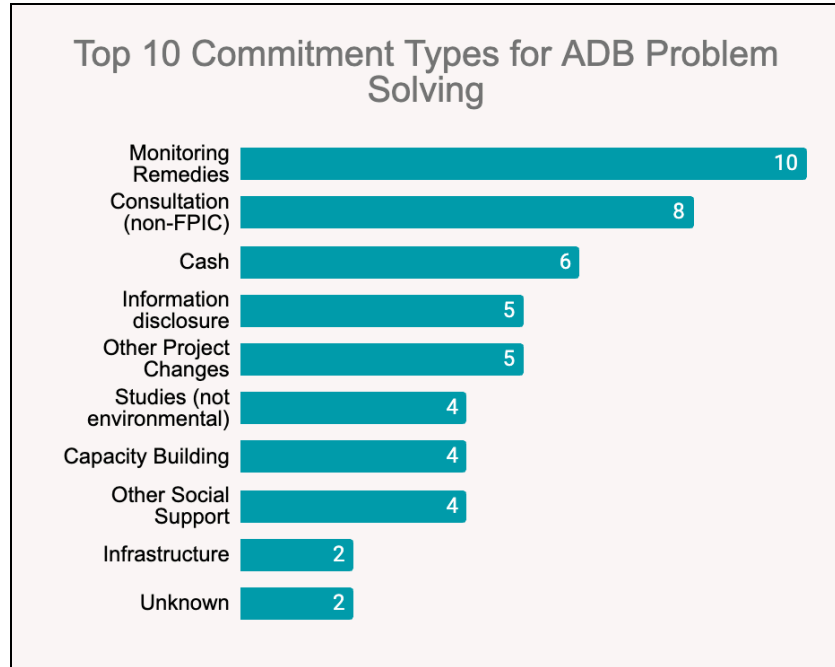
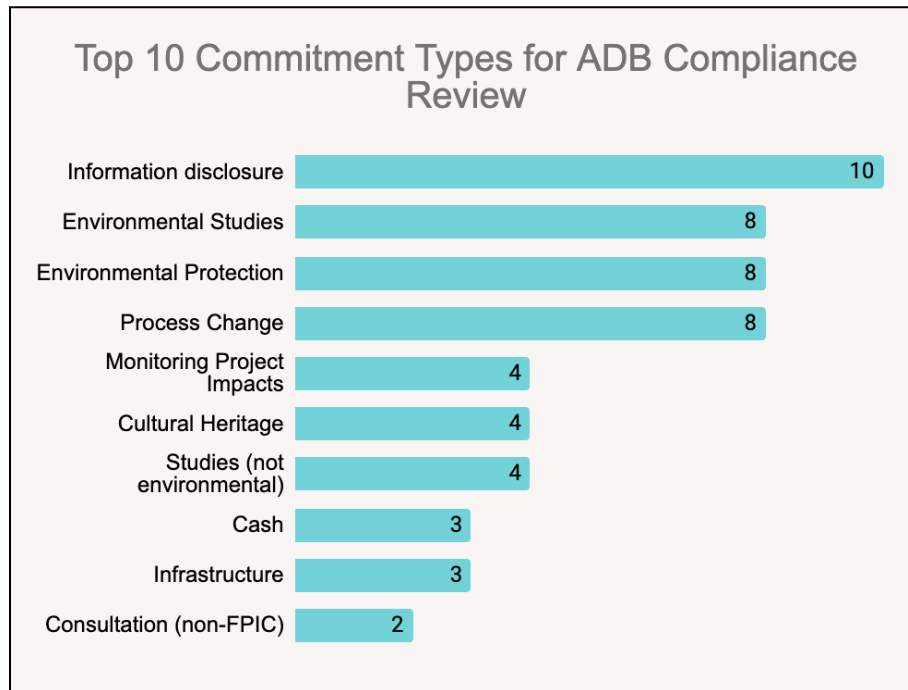


Fig. [11]



This reflects a fraction of the [outcomes](#) that have been achieved via other IAMs which include social support, access to education, housing, water, improvements in sanitation,

replacement land, job trainings, creation of a community development fund, micro-finance, apologies, temporary suspensions and withdrawal of funding. The new AM Policy should be able to facilitate this type and scope of remedial actions.

ADB should further ensure that adequate resources are available and effectively utilized. [The Cost-Benefit Analysis Report](#) demonstrates that ADB already spends resources on CRP cases,<sup>11</sup> so it is also a question of whether those resources are being effectively utilized for mitigating harm. ADB should contribute to remedy in cases where the ADB has contributed to harm as established by an AM process. A remedy fund should be set-up to ensure financial resources for remedial actions. A remedy fund is needed for all types of remedy, and redress measures across the board should be consulted with affected-communities, should be proportional to gravity of harm, and should restore individuals/communities to their pre-violation condition (to the extent possible). There should also be monitoring on the use of the remedy funds in a systematic manner.

### *Example of Good Policy*

IFC CAO Policy, Para 1: In executing its mandate, CAO facilitates access to remedy for Project-affected people in a manner that is consistent with the international principles related to business and human rights included within the Sustainability Framework.

## 2. Affirm the CRP's mandate to address likely harm.

Currently, based on the guidance of the interpretation memo, the CRP is able to make findings about instances of likely harm, thus triggering the need for remedial action under [Para 190, 2012 AM Policy](#), *only if* they can prove with a reasonable certainty that the harm will occur in the future. In the [Georgia: North-South Corridor \(Kvesheti-Kobi\) Road Project](#), CRP found that they were unable to meet the reasonable certainty threshold in order to make a finding on future harm because even an “initial remedial action with an unclear chance of success” between the CRP’s eligibility determination and its final report would displace the reasonable certainty threshold.

The CRP should be able to investigate cases of non-compliance that could lead to harm in the future, and its mandate should enable preventative remedial measures and

---

<sup>11</sup> More internal analysis is needed to identify how ADB resources have been spent and utilized in past AM cases.

monitoring of those measures to help ensure that such harm does not occur. An unduly high standard for finding and remediating likely harm reduces the likelihood of ADB being able prevent harm, which is often much easier than mitigating or remediating harm when it has already occurred. Moreover it is standard practice across IAMs to include likely harm in their mandate, and the pushback against this principle at ADB stands out as an longstanding attempt to restrict CRPs mandate and Board oversight over the implementation of ADB's policy.

The CRP should also have the ability to investigate indirect and non-material impacts.

### *Examples of Good Policy*

#### IFC CAO Policy, Para 91:

CAO will apply the following appraisal criteria in determining whether a compliance investigation is necessary:

- a. Whether there are preliminary indications of Harm or potential Harm;
- b. Whether there are preliminary indications that IFC/MIGA may not have complied with its E&S Policies; and
- c. Whether the alleged Harm is plausibly linked to the potential non-compliance

#### EBRD IPAM Policy, Para 2.6(b):

Criteria. A Case is eligible for a Compliance Review if IPAM deems that:

- i. upon preliminary consideration, it appears that the Project may have caused, or may be likely to cause, direct or indirect and material harm to the Requesters (or, if different, the relevant Project-affected People); and
- ii. there is an indication that the Bank may not have complied with a provision of the Environmental and Social Policy (including any provision requiring the Bank to monitor Client commitments); or the Project- specific provisions of the Access to Information Policy, in force at the time of Project approval.

3. Allow the CRP to make recommendations alongside findings.

The CRP's ability to make recommendations on how to address non-compliance and remedy harm should be restored as it is directly linked to the likelihood that the

compliance review process will produce positive impacts on the ground for harmed communities. CRP recommendations provide the Board and management with an independent view from technical experts on how to address non-compliance and remedy harm and thus pave the way for a stronger, more effective Management Action Plan. Under the 2012 AM Policy, the CRP's power to make recommendations were withdrawn on [two grounds](#):

*“First, the CRP recommendations are sometimes **too specific and detailed**, blurring the mandates between compliance review and project design and implementation by operations departments. Second, the CRP recommendations are sometimes **too broad**, touching upon the adequacy and suitability of ADB policies and procedures, even though the 2003 Accountability Mechanism states that this should not be part of compliance review (para. 72, 2003 Accountability Mechanism policy, footnote 2).”*

The issue of the CRP making recommendations that are too specific and detailed, or conversely too broad, can be better addressed by ensuring that there is clarity on good practices for making recommendations, as opposed to completely divesting the CRP of that power. Moreover, under the 2003 AM policy, the Board had the ability to review and modify (or even reject) the CRP's recommendations before making them binding on ADB Management, meaning that even if the CRP's recommendations were too detailed or too broad in any given case, there was still sufficient opportunity to correct such issues. Removing the CRP's power to make recommendations under the 2012 AM Policy crippled the AM's ability to facilitate remedy.

[Case Study: Securing Redress for Communities Displaced by the Rehabilitation of the Railway in Cambodia Project - Loans 2288 and 2602](#)

More than 4,000 families were involuntarily relocated to make way for the rehabilitation of Cambodia's railway system. Affected families faced threats and intimidation during the resettlement process and were compensated at amounts well below the cost of a basic adequate house in Cambodia. Some resettlement sites were located very far from former residences, urban centers and livelihood opportunities, causing a drop in household incomes that in turn forced many families to assume unmanageable debt burdens to meet basic needs.

After finding their complaint eligible, the CRP conducted an in-depth, 17-month investigation, ultimately concluding that serious non-compliance had left a substantial number of affected households worse off and impoverished. Notably, the case was processed under the 2003 AM Policy, which empowered the CRP to make

recommendations on remedial actions to bring the project into compliance with ADB policy.

The CRP's recommendations, which were informed by its deep and impartial examination of the harms and areas of non-compliance, provided a critical high-level framework for remedial action. The CRP made seven substantial recommendations to bring the project into compliance, which included establishing a \$3-4 million compensation deficit payment scheme to ensure that affected households received their full and fair entitlements and improving facilities at the resettlement sites, among other measures. The ADB Board approved three of the recommendations without modification, made minor modifications to three other recommendations, and did not adopt the final recommendation due to a change in the project scope requested by the borrower.

These recommendations, made binding by the ADB Board's decision, created a framework within which ADB Management and the borrower were required to formulate a remedial action plan, as well as creating an impartial and authoritative benchmark against which that action plan could be assessed and revised. This process led to implementation of remedial actions that in all likelihood – based on the track record of ADB Management in the years prior to the compliance investigation – would never have occurred had the CRP not been able to issue recommendations in the first place.

The case marks an unfortunately rare example of a project in which the compliance review process and subsequent Remedial Action Plan resulted in [extensive material improvements](#) in the well-being of affected households through additional compensation payments, debt relief and enhanced livelihood improvement projects that led to a [significant increase in household incomes](#), and in improvements to the infrastructure, services and conditions at project-sponsored settlement sites.

ADB management acknowledged as much in its [Project Completion Report](#) (September 2021, para 66):

*The project has demonstrated the effectiveness of ADB's accountability mechanism. Extensive efforts by the government, executing agency, and ADB to achieve full compliance with CRP's recommendations mitigated the unintended negative impacts on the PAPs.*

The ADB should be seeking to replicate this positive outcome by reinstating the CRP's power to make recommendations.

### *Examples of Good Policy*

#### EBRD IPAM Policy, para. 2.7(D)(II):

[T]he Compliance Review Report will:...ii. provide Bank Management with specific recommendations to address the findings of non-compliance: a. at the Project level, identifying Project-specific actions to bring the Bank into compliance and address the harm or potential harm associated with the findings of non-compliance; and b. at the procedural and systemic levels, identifying changes to EBRD practices, procedures, guidance or systems to bring the Bank into compliance and to avoid recurrence of such or similar situations on the Project at issue in the Request as well as in other Projects.

#### AfDB IRM Procedures, Para. 67(iii):

If the Compliance Review Report concludes that any Bank Group action, or failure to act, in respect of a Bank Group Financed Operation has resulted in any material non-compliance in accordance with Paragraph 9, it may recommend: [...] c. That redress be provided to those harmed, which may include financial and/or non-financial considerations, as the case may be.

### *III. Improve the quality of Remedial Action Plans arising from CRP.*

Conversations on the effectiveness of CRP are incomplete without understanding and evaluating the role played by ADB management in the process. Ultimately, it is management that is empowered to propose remedial action, provide borrowers with the technical and financial capacity to redress harm, and/or use its leverage over borrowers to ensure compliance with its E&S policies. The review process must address the lack of effectiveness of the role played by management in past compliance review cases.

Some concrete recommendations to increase management's effectiveness are specified below:

- a) Require management to consult with affected communities on Remedial Action Plans.

Under the 2012 AM Policy, while coming up with an Action Plan, management is required to "obtain the agreement" of the borrower, and management "may consult" the CRP. ([Para 190](#)) However at no point is management required to consult complainants

themselves, who are only informed of the remedial actions once the Board approves them. This further means that the Board does not have the benefit of complainants' comments while they're approving the remedial actions. This exclusion of complainants is a blatant flaw in the way the process has been designed, leading to serious consequences that impact the legitimacy of the process and may produce "remedial" actions that no one wants or are not feasible under the circumstances, leading to a losing situation for everyone involved.

#### *Case Study: Complainants Reject Management Action Plan in Mundra Ultra Mega Power Project - Loan 2419*

In July 2015, communities impacted by Tata Mundra (Coastal Gujarat Power Ltd) coal power plant in Kutch rejected the Action Plan developed by the Asian Development Bank (ADB), [calling it](#) "non-serious, lacks genuineness, commitment or imagination." Earlier the complainants had questioned the process of developing the Action Plan, particularly since the ADB team, which visited the project site for preparing the Action Plan, never met or consulted the people.

In particular, they [raised](#) serious concerns about the \$1.2 million budget allocated for the Action Plan, given that 57% of the budget was set aside for studies. Moreover concerns were raised about the Livelihood Improvement Plan being restricted to only those that practiced foot fishing, and that the Action Plan had predetermined an amount of \$300,000 for livelihood improvement, despite there being no idea about the number of people who require alternative livelihood support.

It's worth noting that complainants even put together a [People's Action Plan](#) in a bid to engage in the remedial action process, although the Management Action Plan took no note of it.

In 2023, ADB's own cost-benefit analysis confirmed the inadequacy of the Action Plan [noting](#) that "none of the CRP's findings of ADB's noncompliance had been fully addressed to bring the project back into compliance." It also notes that ultimately only \$70,000 was spent on the Livelihood Improvement Plan.

In response to this report, complainants [characterized](#) the process as "**a waste of time for complainants and wasteful expenditure.**"

#### *Example of Good Policy*

EBRD IPAM Policy, Para 2.7.1 f):



Upon a finding of non-compliance in respect of a Project, IPAM will submit the final Compliance Review Report; the final Management Action Plan; the Management Response, if any; and Requesters' or Representatives' comments on the draft Management Action Plan, if any, to the President and the Board... The IPAM Head will communicate to the Board, whether, in IPAM's view, the commitments identified in the final Management Action Plan adequately address the findings and recommendations of the Compliance Review Report.

- b) Require Remedial Action Plans to deliver remedy to complainants.

In addition to requiring consultation with complainants, there should be an explicit obligation for Remedial Action Plans to be clear and concrete, detailed, time bound, and achieve remedy for affected populations.

#### *Example of Good Policy*

##### AfDB IRM Procedures, Para 69

If IRM finds the Bank to be non-compliant, Management shall:

- (a) Prepare a Management Action Plan based on the recommendations of the Compliance Review within sixty (60) Business Days of submission of the Compliance Review Report.
- (b) Include in the Management Action Plan clear time-bound actions for returning the Bank to compliance and achieving remedy for affected populations.

- c) Require BCRC to review whether Remedial Action Plans prevent, mitigate and remediate harm.

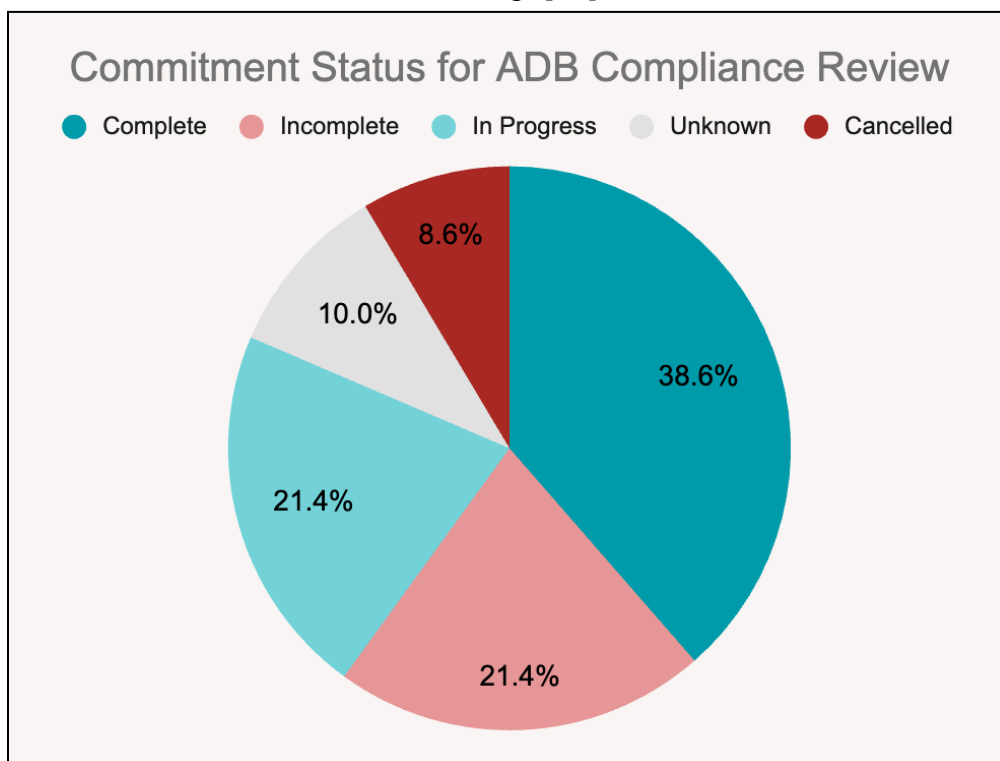
Under [Para 191 of the 2012 AM Policy](#), the BCRC is required to make a decision regarding the remedial action "to bring the project into compliance and/or mitigate any harm, as appropriate." The BCRC should also be required to review whether Remedial Action Plans prevent likely future harm and achieve remedy for affected populations.

- d) Strengthen implementation of Remedial Action Plans.

The final roadblock to effective outcomes is the implementation of the Remedial Action Plan. Even the very few cases that lead to concrete outcomes in the form of commitments to undertake remedial action, not all such commitments are completed.

Fig. [12] demonstrates that only 38.6% of the commitments that arose out of the CRP's 8 completed compliance review cases have been reported as completed. Significant number of commitments have been marked [incomplete](#), [cancelled](#), or even [unknown](#).

Fig. [12]



The review must lead to strengthening of the implementation of the commitments undertaken in these Action Plans. While this focuses on the compliance review, the [challenges of implementation](#) are true for both problem solving and compliance review. Research demonstrates that there are [8 complaints](#) where none of the publicly disclosed commitments have been reported as complete, meaning no publicly verifiable action has occurred. 50% of problem solving commitments and 10% of compliance review commitments are unknown which may be an issue of information disclosure but may also relate to the AM Policy, whereby once AM monitoring periods come to an abrupt end, there is no way to publicly verify implementation of commitments.

Some specific recommendations are discussed below.

1. Require monitoring mandates to continue until all instances of non-compliance and harm are remedied.

Given that there are no direct consequences for non-implementation of Remedial Action Plans, at the very least the CRP should be empowered to monitor until all instances of non-compliance and harm have been remedied. This will allow the Board to maintain some oversight over the process.

### *Examples of Good Policy*

#### FMO/DEG/PROPARCO'S Independent Complaints Mechanism Policy. Para. 3.2.22

In cases where material non-compliances are identified, the ICM will monitor the situation until actions taken by FMO assure the ICM that FMO is addressing the material non-compliance(s).

#### 2. Publish and discuss monitoring reports with complainants.

The 2012 AM Policy under [Para 192](#) already has a broad monitoring methodology which includes consultation with complainants, site visits, and requires that the report is made publicly available to complainants. This should be retained.

#### 3. Impose consequences on borrowers for failure to implement remedial action.

The review provides an opportunity to consider consequences for borrowers that refuse to engage in efforts to remediate identified environmental, social, and human rights harms stemming from their activities, including in particular harm that has been identified through the CRP.

### *Example of Good Policy*

#### U.S. DFC Rule on Nonprocurement Suspension and Debarment:

“(c) DFC may debar a person or entity for refusing to engage in efforts to remediate identified environmental, social, and human rights harm stemming from their activities, including harm that may be identified through a DFC Office of Accountability complaints process.”

#### EBRD IPAM Policy para. 2.2(G)(I):

“When Bank management submits a newly proposed Project to the Board or the relevant approver (if the Board has delegated the approval authority), it will first

establish if the proposed Client has ever been a Party to a Case reviewed by IPAM or its predecessors, and determine, in conjunction with IPAM, if this information, and the outcome of the Case, must be included in the submission for consideration by the Board or the relevant approver.”

#### IV. *Strengthen the effectiveness of the SPF*

- a) Establish an objective standard and clear timeline for the assessment phase.

Currently, the AM Policy instructs the SPF to exercise undue discretion over whether or not to pursue problem solving:

Para.163: “ To find a complaint eligible, the SPF must be satisfied with the following requirements: (i) the complaint satisfies all eligibility criteria and scope and does not fall within any of the exclusions (paras. 141–143); and *(ii) the SPF believes, at his or her sole discretion, that the SPF’s involvement could be useful.*”

Para 168: “Based on the assessment and taking into account the comments received, the SPF will decide, *solely at his or her discretion*, whether to (i) proceed with problem solving, or (ii) determine that no further problem solving efforts will be purposeful and conclude the process.”

In practice, leaving decision making to the SPF’s discretion has led to the assessment phase taking up to two years. Rather than the SPF’s subjective opinion, the project-affected community’s choice of process should drive whether problem solving can occur. Once project-affected persons choose problem-solving, the SPF should facilitate that process if the ADB borrower agrees to participate.

#### *Example of Good Policy*

IFC CAO Policy, Paras. 56 & 59:

CAO will complete the assessment within 90 Business Days of the date it determines a complaint to be eligible. The CAO DG may extend the assessment timeframe by a period not exceeding 30 Business Days if after the 90 Business Day period: (1) the Parties confirm that resolution of the complaint is likely; or (2) either Party expresses interest in dispute resolution, and there is potential that the other Party will agree. CAO will notify the Parties, IFC/MIGA, and the Board of the decision to extend the assessment, and CAO will post such decision on its website.

During the assessment process, the Complainant and the Client and/or Sub-Client decide whether they would like to initiate CAO's dispute resolution or compliance function. If both Parties agree to undertake dispute resolution, CAO will facilitate this process.

b) Adopt ground rules for respecting community agency in problem solving.

The new AM Policy should have provisions for establishing ground rules to facilitate the problem process that respect community agency.

### *Example of Good Policy*

IDB Independent Consultations and Investigation Mechanism (MICI) Guidelines for the Consultation Phase para. 4.19:

When the Consultation Phase involves indigenous peoples, CP officials will take particular care to respect local decision-making structures, gender aspects, history and legacy issues, customary practices, ancient traditions, language preferences, existing legislation on prior consultation, and capacity building needs throughout the case processing.

*Case Study: In Nepal: Tanahu Hydropower Project, Indigenous complainants demand that OSPF respect and uphold FPIC during complaint process.*

The need for respecting community agency during the problem-solving process takes on an additional dimension when complainants belong to Indigenous communities. In the OSPF led process for the Tanahu Hydropower Project, impacted complainants who belonged to the Magar community found that Free, Prior, and Informed Consent and its associated procedural norms<sup>12</sup> were not always complied with.

"...they often received communication about field missions and meetings at the last minute or were not properly consulted. The initial complainants had earlier raised concerns about the appointment of the land evaluator by the OSPF, who was chosen without their consent, and that there was minimal community participation in the process of land valuation. While the OSPF...claim to uphold FPIC, the complainants feel they

<sup>12</sup> FPIC & Rights Forum, [Free, Prior, and Informed Consent Protocol](#) (2020)

have had to reiterate their protocols for consultation and self-determination according to FPIC at each stage of the complaint process.”<sup>13</sup>

In all situations, the problem-solving process should be based on mutual and informed consent. When the case involves Indigenous Peoples, the OSPF should take particular care to respect community-specific decision-making structures, gender inclusivity, history and legacy issues, customary practices, ancient traditions, language preferences, existing legislation on prior consultation, and capacity-building needs.

- c) Facilitate any capacity-building that may be necessary to enable parties to engage effectively.

Before beginning formal activities associated with a problem solving process, the SPF or mediators should set up sessions with each of the Parties to learn their expectations for the process and to share practical tools to maximize their participation. Depending on the specific needs of the parties, the SPF may propose additional capacity building exercises to facilitate effective and meaningful participation.

### *Examples of Good Policy*

#### AfDB’s IRM Procedures, para. 48:

The Problem-Solving exercise shall be particularly sensitive to the existence of power asymmetries between the negotiating parties, particularly concerning the availability of information needed and the capacity of the parties to participate effectively in these processes. The IRM may propose capacity building exercises to facilitate meaningful participation by the parties.

#### IDB’s MICI Consultation Phase Guidelines Para 3.7:

In accordance with MICI’s guiding principles (Section C, Paragraph 6) and in order to ensure ethical, transparent and effective case management, CP officials must observe the following principles:

Attention to Asymmetries: CP [problem-solving] processes should be particularly sensitive to the existence of considerable asymmetries between the Parties so as not to undermine the possibility of reaching satisfactory results. Particular attention is to be paid to asymmetries in availability of the information needed, and in the capacity and ability to participate effectively in these processes. MICI officials may propose capacity

---

<sup>13</sup> Vaishnavi, [What will our children get? Communities in Nepal assert their right to land for compensation and meaningful consultations](#) (2022)

building activities and exercises to facilitate the Parties' effective and fruitful participation.

- d) Select neutral and professional mediators who are acceptable to both parties.

For problem solving to work, it is essential that all parties trust the mediators. Mediators should be selected based on their expertise, neutrality, and understanding of the cultural context of the complaint, which includes understanding the specific power imbalances at play and potential risks to complainants' safety. Rather than being solely the SPF's choice, the Parties to problem-solving should be able to actively accept or reject proposed mediators.

### *Example of Good Policy*

#### IFC CAO Policy, Para. 73:

In managing the dispute resolution process, CAO will determine the knowledge and skills required in each case and engage a mediator who:

- a. Possesses the appropriate expertise;
- b. Has the ability to understand the cultural context; and
- c. Is considered acceptable as independent and impartial by the Parties.

- V. *Allow the AM to recommend suspension of projects due to concerns of imminent harm.*

In order for the AM to be able to effectively prevent and protect affected-communities from harm, the AM should be able to do what it can to ensure that, if needed, measures up to and including suspension of the project will be taken to protect affected communities from harm throughout the process. This is particularly important as complaint processes can be lengthy, and serious, irreversible harm can take place during the time it takes for a complaint process to conclude. The ability to recommend suspension of projects should also be considered in cases where reprisals are imminent.

### *Examples of Good Policy*

UNDP SECU Policy, Para 47:

There are numerous options to encourage compliance with UNDP's social and environmental commitments. Such options include: . . . .

- Action by the Administrator, where harm to affected people is imminent, to stop UNDP's financial disbursements or other support to a project pending the outcome of SECU's compliance review [...]

International Climate Initiative's (IKI) Independent Complaints Mechanism Policy, Section 7:

If at any time during the processing of the complaint, the complaint mechanism believes that serious, irreparable harm could be caused by further project implementation, the complaint mechanism may recommend that IKI suspend disbursements for the project.

*VI. Create an advisory function for the AM*

The advisory function should derive thematic and systemic lessons from trends in the mechanism's caseload, in both compliance and dispute resolution, and other sources in order to provide guidance to the financial institution's leadership on improving the institution's social and environmental performance. The advisory function helps to embed an institutional culture of continuous learning and improvement of policy and practices.

This authority is needed so that the AM can provide advice to ADB's management and its board to help improve ADB's systemic performance on environmental and social sustainability and to reduce the risk of harm to people and the environment from ADB financed projects. In some cases, where complaints are able to be not brought or initiated, but harms or risks from ADB's non-compliance or implementation of its policies systematically or continue to repeatedly occur, this tool is can be critical in helping to protect communities and help significantly reduce risk of harm from ADB projects.

*Examples of Good Policy*

GCF'S IRM Procedures, Para. 107:

The IRM will report to the Board, through the Board Committee, on lessons learned and insights gained from handling cases and from good international practices, and may



recommend reconsideration of relevant GCF operational policies and procedures, guidelines and systems.

## **D. Emerging Issues**

### *I. Ensure that the AM remains available to communities affected by ADB's Private Sector Operations*

The External Review Report [recommends](#) that the review process “[c]onsider the merits of adopting specialised operational procedures to apply to complaints received by the IAM in relation to ADB’s [private sector operations] PSO.” The report characterizes private sector financing as highly sensitive to risk, and particularly the risks of a compliance review, and the fear that private sector sponsors may resort to early prepayment. These concerns seem to stem from the sensitivity of the PSO Department (PSOD) with the CRP based on past “bruising and tortuous experiences” and a view that “ADB policies and procedures ‘don’t always easily fit with private sector projects.’” In a previous [report](#) conducted by the CRP on lessons learned from compliance reviews of ADB projects, some PSOD staff members consider ADB’s policy requirements as challenges, remarking that there is a “significant gap between ADB policy requirements...and what is realistically achievable in a private sector transaction context.”

As the ADB aims to expand its private sector operations (PSO) under its Strategy 2030, the AM needs to improve its effectiveness and bring its 2012 AM Policy in line with international good practice. In order to be effective in delivering accountability and remedy to affected communities, the ADB should maintain the application of the ESF as well as the AM to all of the Bank’s investments, including private sector operations (PSO) projects. The AM should not exempt any PSO projects from the AM’s mandate, as has been suggested in comments in previous reports, which would create a high risk that ADB’s funding would be linked to unremediated social and environmental harm. This would leave a significant portion of ADB’s investments - comprising almost a third of the ADB’s operations in 2023 - at risk of causing harm and leave affected communities with no recourse to accountability or remedy. This is already the case at the Asian Infrastructure Investment Bank (AIIB) where its [eight capital market projects](#) worth almost \$2 billion are not eligible for the bank’s accountability mechanism, the Project-affected People’s Mechanism. There is documented evidence that sub-projects causing environmental and social harms to affected communities are included in the portfolios of these capital market projects.

Similarly, all complainants should have equal access to either problem solving or compliance review. Contrary to the observation in the External Review that complaints regarding private sector projects “could be resolved efficiently if they are brought to the SPF rather than directly to the CRP”, the AM Policy should not require particular cases to go through problem-solving before going to compliance review. Private sector operations are not less suited for compliance reviews than sovereign operations. The objective of a compliance review is to determine non-compliance with ADB’s safeguards, operational policies and procedures. While problem-solving may address specific problems raised by complainants, this is not a proxy for compliance with ADB’s policies. Moreover, some complainants do not want to go to problem solving for a variety of reasons, including security concerns and/or the belief that the type of harm they have experienced is better addressed through compliance review. Additionally, compliance review can address the root causes of the harms that underlie a complaint and can help the ADB mitigate wider harms in the project as well as to learn lessons to prevent similar mistakes in other future projects.

The ADB should not dilute its safeguards or accountability policies for private sector clients. If currently, ADB does not have adequate leverage over private sector clients, then ADB must reevaluate its loan agreements and other tools to ensure it creates this leverage so that ADB’s private sector operations also meet ADB’s development mandate. This is what distinguishes ADB from other sources of private or commercial financing and to lose this essential characteristic would risk making ADB irrelevant.

While ‘private sector expertise and experience’ can be an asset, the focus and mandate of the CRP on reviewing a project’s compliance with the ADB’s policies should be maintained and should not be bent towards what is perceived as realistically achievable in a private sector transaction context.

Widespread institutional changes and a renewed commitment towards compliance as a result of compliance review of PSO projects have been documented in several reports by the ADB, further strengthening the case that compliance review is appropriate and effective in improving the Bank’s private sector operations. The ADB should ensure that the staff, including from the PSOD, understand and appreciate the function and mandate of the AM’s OCRP through required staff training and regular in-reach by the AM to ADB’s different teams/departments.