

**Comments on the Working Paper on  
Review of the Inspection Function:  
Establishment of a New Accountability Mechanism**

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**Submitted by**

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## General Comments

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### 1. Sequential Model

We Strongly oppose the proposed sequential model. The Working Paper proposes that the claimants are required to file their complaints to the SPF before requesting compliance review. (Para. 45-46, 95 and 113) This sequential model will undermine the affected people's right to demand accountability of ADB. **Affected people should have discretion to choose whether they want to file for consultation process or compliance review.**

As stated in the working paper, the consultation process has nothing to do with the question of whether ADB has complied or not with its operational policies and procedures. (Para. 113)

We agree that the informal and flexible ways of problem solving that the SPF offers will benefit some affected people. But other people may want to solve their problems by emphasizing ADB's responsibilities to implement operational policies and procedures in project formulation, processing and implementation, because operational policies and procedures have been developed to benefit the people adversely affected by ADB projects. For those who are already sure they want their problems to be handled with a compliance review, a requirement to file their complaints to the SPF will be just another burden that replaces the current requirement to file an initial complaint to the President.

If the claimants are already exhausted from engaging in dialogues with ODs to the degree that they feel only a compliance review by the Compliance Review Panel (the Panel) can address the problems, they still need to file their complaints first to the SPF and wait more than one month just to complete the first course of action to be presented by the SPF. This step is redundant and a waste of energy and time for both claimants and the SPF.

The new accountability mechanism should allow the affected people to file their claims either for consultation process or for compliance review. This will make the mechanism simple and streamlined, and will give more space for affected people to decide the course of problem solving they want.

### 2. Independence of the Special Project Facilitator

**The criteria and selection process for the SPF described in the Working Paper will not ensure that the SPF will be an independent and impartial problem solving body.** (Para. 50) It is possible that a senior level staff of ADB will be appointed as the SPF, because most senior ADB staff will meet the criteria. If the SPF is chosen from within ADB, the SPF will not be considered to be independent from ODs, and affected people will hesitate to bring their problems to be dealt with by the SPF. Furthermore, the SPF may face serious conflicts of interest if the projects s/he has been involved as ADB staff are brought to the consultation process.

The experience of the CAO of IFC is informative. The CAO asserts that their independence and impartiality "are of the utmost importance<sup>1</sup>." Currently, the CAO's senior specialists have no experience in working for IFC. This independence and impartiality ensures the neutrality of the CAO and makes the CAO trusted problem solving mechanism to both affected people and private project sponsors.

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<sup>1</sup> International Finance Corporation, *Operational Guidelines for the Office of the Compliance Advisor/Ombudsman*, September 2000. Para. 1.3.1.

To ensure the independence and impartiality of the SPF, we would like to propose that:

- The SPF should meet additional criteria, which include (1) the ability to deal thoroughly and fairly with the complaints brought to her/him, (2) integrity and ability to be independent from ODs, (3) exposure to living conditions in developing countries.
- The SPF should not have worked for ADB for five years prior to service as the SPF. After serving as the SPF, s/he will be barred from employment at ADB.
- Staffs of the OSPF should be recruited by the SPF.
- The SPF should be able to directly recruit consultants and specialists outside ADB.
- The SPF should not be engaged in complaints in which s/he has a personal interest or has had significant prior involvement.

Furthermore, 'knowledge of ADB operations and practice or those of comparable institutions' can be offered by staffs of the OSPF, thus it should not be the requirement for the SPF.

### **3. Acceptance of Complaints after Project Completion**

The mechanism allows complaints to be filed before project completion. (Para. 57 and 95) This is progress from the current Inspection Function, but is not enough. **Complaints/requests for both consultation process and compliance review should be eligible for filing even after the project subject to request has been completed.**

The new environment policy states ADB's role in environmental monitoring even after project completion<sup>2</sup>. JBIC's draft compliance mechanism also allows complaints regarding environmental monitoring to be filed after the loan disbursement<sup>3</sup>. ADB's compliance should be subject to scrutiny regardless of loan disbursement.

**It is of particular importance that requests for the consultation process be accepted at any stage of the projects**, because the effectiveness of problem solving by the SPF will not be fundamentally affected by the completion of disbursement. The CAO, which has a certain degree of experience as a problem solving mechanism for IFIs, does not require complaints to be filed before project completion. We believe that trying to solve problems of local people even after the project's completion would enhance the accountability and credibility of ADB.

### **4. Board Compliance Review Committee**

**The proposed BCRC is redundant and irrelevant, and should be eliminated.** The working paper fails to provide convincing reason why the BIC should be restructured into BCRC.

BCRC is proposed to have two functions: (1) to clear the Panel's terms of reference and time frame, and (2) review the Panel's draft report on monitoring implementation of any remedial actions approved by the Board. (Para. 84, 102 and 111)

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<sup>2</sup> Asian Development Bank, *Environment Policy*, November 2002. Para. 67.

<sup>3</sup> Japan Bank for International Cooperation, *Summary of Procedures to Submit Objections Concerning Japan Bank for International Cooperation Guidelines for Confirmation of Environmental and Social Considerations (Draft)*, February 2003.

Clearance of terms of reference and time frame of the investigation is unnecessary, considering the World Bank Inspection Panel is not required to clear their work plan or the schedule<sup>4</sup> and this has caused no problems.

It is not clear why review of the monitoring report by BCRC is needed. (Para. 111) If the Board's involvement is necessary, the full Board can consider the monitoring report of the Panel and decide additional remedial actions. The review of the monitoring report only by a limited number of the Board member will not benefit any purpose.

## 5. Board's Acknowledgement of Policy Compliance

The Working Paper proposes that the Board will decide remedial actions on how to bring the projects into compliance and/or mitigate any harm at the end of the compliance review. (Para. 106) **The Board should also approve the Panel's findings on policy compliance.**

The Board that approved the policies and procedures is the supreme body to interpret its policies and procedures. The Board should exercise its power to direct the Management by deciding whether certain projects have complied with operational policies and procedures or not, and to make ambiguities in the policies clear to all stakeholders, especially the Management.

One of the most serious problems with the Inspection on the Samut Prakarn Wastewater Management Project in Thailand was that the Board could not reach an agreement on whether the Project was in compliance with ADB's operational policies and procedures or not<sup>5</sup>. Not only did this make a strong impression that ADB was an institution incapable of admitting to failure, it also allowed the Management to repeat the same misinterpretations of the operational policies, as seen in the Management Response to the Inspection Request for the Chashma Right Bank Irrigation Project<sup>6</sup>, especially on the requirement for full re-appraisal in supplemental financing that the Panel of Experts of Samut Prakarn Inspection and BIC clearly dismissed<sup>7</sup>.

As stated in the working paper, the main purpose of the compliance review is to investigate alleged violations of ADB's operational policies and procedures. (Para. 85) But only investigating the policy violations will not enhance the Management's performance in policy compliance. To ensure that this investigation will encourage the Management's efforts in policy compliance and bring the benefit of the policies to the affected people, the Board should make decision on policy compliance at the end of the compliance review.

## 6. Establishment of a Stakeholders' Forum for the New Accountability Mechanism

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<sup>4</sup> World Bank Inspection Panel, *Operating Procedures*, August 1994. Para. 42-44.

<sup>5</sup> Asian Development Bank, *Chairman's Concluding Statement: Board of Directors' Decision on Inspection Request-Samut Prakarn Wastewater Management Project*, March 2002.

<sup>6</sup> Asian Development Bank, *Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III) in the Islamic Republic of Pakistan*, February 2003. Para. 52.

<sup>7</sup> Asian Development Bank, *Report and Recommendation of the Inspection Committee to the Board of Directors on Inspection Request: Samut Prakarn Wastewater Management Project*, February 2002. Para. 18-33.

We appreciate that the process of the Inspection Function Review has involved extensive dialogue and consultations with external stakeholders. But the implementation of the proposed New Accountability Mechanism rests on how stakeholders' involvement will be continued after the Board's approval of the new policy. In particular, the current paper leaves the selection of the SPF/Panel and the establishment of operating procedures to ADB's internal decision making. Inputs from and discussion with external stakeholders should be an integral part of the implementation of the new mechanism so that the mechanism will achieve the ultimate goal: establishing accountability and enhancing development effectiveness.

The CAO has its Reference Group to advise the CAO. The Reference Group has served as a main communication channel to integrate stakeholders' expectations into the CAO's operations. JBIC is also proposing to set up a screening committee for the selection of an 'examiner'<sup>8</sup>.

**We propose the establishment of a Stakeholders' Forum for the New Accountability Mechanism**, as follows:

- The purpose of the Forum would be to ensure the accountability and impartiality of the mechanism through integrating the stakeholders' input into the implementation of the mechanism.
- The Forum would consist of representatives of affected people with experience filing claims to ADB, civil society organizations, DMCs and donor governments and the private sector.
- The function of the Forum would be to advise on the implementation of the mechanism, including overseeing the process of selection of the SPF/Panel and the process of establishing operating procedures. The Forum would also advise the SPF/Panel on the operations of the mechanism.
- The Forum would meet several times in its first year, to screen the candidates of the SPF/Panel and to help the SPF/Panel to establish their operating procedures. After the adoption of the operating procedures, the Forum would meet annually to advise the SPF/Panel in the implementation of the mechanism. The Forum would also advise the SPF/Panel in the process of the revision of the operating procedures and the mechanism itself.
- The Forum would not be involved in claims brought to the SPF/Panel.

We believe that by creating an official forum that guarantees broad participation of stakeholders, particularly in the crucial process of establishing operating procedures, selecting the SPF/Panel, and periodically reviewing the mechanism, will maximize the accountability and credibility of ADB.

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<sup>8</sup> Japan Bank for International Cooperation, *Major Rules for Establishment of Examiner in Charge of Environmental Matters (Provisional Name) (Draft)*, February 2003.

## Specific Comments

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**Private Sector Operations:** The mechanism should adopt the same procedures for the private sector operations. (Para. 44)

**Language of the Complaints/Request:** Complaints/Requests should be accepted not only in any of the official or national languages but also in local languages of requesters. ( Para. 54, 90 ) The World Bank Inspection Panel allows the requests for inspection to be filed in local languages<sup>9</sup>, while the CAO accepts the complaints in any languages<sup>10</sup>.

**Problem solving efforts with EA:** Complainants/requesters should not be required to explain how they attempted to solve the problems with EAs/DMC governments or private project sponsors. (Para. 55, 93) In some cases, to raise the problems with them could lead to severe retaliation against or abuse of human rights of the claimants. World Bank Inspection Panel does not have this requirement<sup>11</sup>.

**Time Frame of the Consultation Phase:** Time frame of the consultation phase should be clarified. (Para. 59-73)

**Immediate Rejection of Complaints:** The SPF should not have authority to reject the complaint at the registration phase. (Para. 61) These complaints can be easily screened in Step 3.

**Termination of the Consultation Process:** Requesters should be able to walk away from the consultation process when they believe that the implementation of the consultation process is not working. (Para.73) Current proposal only allows the parties to withdraw from the process when the SPF considers its not working.

**Postponement or Delay of Projects:** The policy should not state that 'project formulation, processing, and implementation will not be postponed or delayed during the consultation phase.' (Para. 78) Rather, the SPF should be able to recommend the postponement of the Board's approval of a project or the suspension of loan disbursement during the consultation process.

**Monitoring Requests:** The SPF/Panel should monitor the implementation of remedial measures when they receive serious complaints regarding the implementation by original complainants/requesters. (Para. 79, 111)

**Operational Policies and Procedures:** Definition of the operational policies and procedures subject to the compliance review is confusing and contradictory. (Para. 94, 132) We support the definition stated in paragraph 132. Paragraph 94 should be revised in accordance with paragraph 132. Furthermore, ADB should disclose the Project Administration Instructions and New Business Procedures that are not currently available to the public.

**Requesters' comments on the TOR and Time Frame:** Requesters should be given the opportunity to comment on the draft terms of reference and time frame of the compliance review. (Para. 102)

**Site Visit:** The Panel should not be required to seek the prior consent of concerned governments or private project sponsors for the site visit. (Para. 102, 122)

**Review of the mechanism:** The review of the mechanism should be done in an open and transparent manner with active participation of civil society organizations and project affected people, especially those with experience to filing claims to the mechanism. (Para. 137)

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<sup>9</sup> The World Bank Inspection Panel, *Ibid.* Para.8.

<sup>10</sup> International Finance Corporation, *Ibid.* Para. 2.3.1.

<sup>11</sup> *Ibid.* Para.5.

## Abbreviations

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ADB	Asian Development Bank
BCRC	Board Compliance Review Committee
BIC	Board Inspection Committee
CAO	Compliance Advisor/Ombudsman
DMC	Developing Member Country
EA	executing agency
IFC	International Finance Corporation
IFI	international financial institutions
JBIC	Japan Bank for International Cooperation
OD	operations department
SPF	Special Project Facilitator
OSPF	Office of the Special Project Facilitator

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