

Recommendations on the ADB’s Accountability Mechanism Policy Review (June 12, 2025)
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A. Credibility

Recommendations	Rationales
<p>1. Information should be disclosed on the SPF website on the reasons given when a complaint is deemed ineligible. Especially, for those cases finally found to be eligible for complaints, the reasons for the past determination of ineligibility/”not eligible” should be disclosed on the website.</p>	<ul style="list-style-type: none"> ● Despite the eventual eligibility of the complaint, the reasons for the initial ineligibility were not made public. ● For the Tanahu Hydropower Project in Nepal (SPF-2018-09-01-0078), a complaint was registered with the SPF on 23 August 2018, but it was found ”not eligible” and the reasons were not listed on the website. Another complaint(SPF-2020-02-02-0094) was filed and registered on 12 February, 2020, and it was found eligible for problem-solving process on 20 February 2020.The problem-solving process is on-going(https://www.adb.org/who-we-are/accountability-mechanism/complaint/nepal-tanahu-hydropower-project-1). <p>Reference:https://www.adb.org/who-we-are/accountability-mechanism/problem-solving-function/complaint-registry</p>

B. Access

Recommendations	Rationales
<p>2. The eligibility requirement of “good faith effort” (prior good faith efforts and consultation) should be deleted (Para 142 (ii), 2012 Accountability Mechanism Policy)</p>	<ul style="list-style-type: none"> ● Over 65 cases (both SPF and CRP) have been found ineligible due to the lack of prior good faith engagement requirement” from 2004 to 2025 June. Reference:https://accountabilityconsole.com/complaints/?iam=5&is_eligible=False&all_reasons=7&year_filed=&year_closed=&min_duration=&max_duration= ● Cases from the Accountability Mechanism demonstrate that the requirement to engage in “prior good faith effort” is applied in an

overly strict and technical manner that leads to ineligibility. For example, in the Georgia case, dialogue was conducted, but the efforts were deemed insufficient and the application of eligibility criteria is extremely ambiguous.

- Case: Regarding **Sustainable Urban Transport Investment Program-Tranche 3** project in Georgia, 4 complaints have been registered in total (the 1st filed on 14 March 2016, 2nd filed on 10 November 2016, 3rd filed on 21 June 2018, 4th filed on 11 October 2018). The first three complaints have in common the same road, which causes noise, vibration, air pollution, lack of ecological impact studies, and environmental categories, etc. The 4th complaint differs from the first three in that the complaint is about compensation for the resettlement.

Reason for the determination: Although the complainants have engaged in discussions with the relevant ADB operations department, no resolution has been reached. The CRP concluded that it is premature to determine that the complainants have made a **good faith effort**, and therefore found the complaint ineligible.

- In Pakistan's cases, complaints were determined ineligible due to lack of good faith (Especially, to address problems with ADB project team) but subsequently found to be eligible.

- Case: **Khyber Pakhtunkhwa Cities Improvement Project** in Pakistan (SPF-2024-20-04-0180), a complaint was filed on 22 August 2024 and acknowledged and registered on 27 August 2024. Then the complaint was determined "not eligible" because "complainants have yet to address problems with the concerned ADB project team" on 19 September 2024.

Complainants resubmitted a new complaint (see SPF-2025-07-09-0198) and was deemed eligible for the formal problem-solving process on 4 March 2025.

Reference: <https://www.adb.org/projects/51036-002/main>

	<ul style="list-style-type: none"> ○ Case: Central Asia Regional Economic Cooperation Regional Improving Border Services Project in Pakistan(SPF-2024-10-01-0170), a complaint about business income loss was received on 29 February 2024, then acknowledged and registered on 4 March 2024. The complaint was determined “not eligible” because “complainants have yet to address problems with the concerned ADB operations department” on 2 April 2024. Complainants resubmitted a new complaint (see SPF-2024-24-02-0184) and was deemed eligible for the formal problem-solving process on 5 November 2024. Reference:https://www.adb.org/who-we-are/accountability-mechanism/complaint/pakistan-central-asia-regional-economic-cooperation
<p>3. Complainants should be allowed to go to SPF even after doing compliance review as sometimes issues still remain pending even after a compliance review process.</p>	<ul style="list-style-type: none"> ● In the Georgia case, complaints could not continuously access SPF because of the compliance review process. ● Case: 3rd complaints filed on 21 June 2018 to the Sustainable Urban Transport Investment Program-Tranche 3 in Georgia. Background: <u>The request was initially submitted to the problem-solving function, but it was found ineligible as the issues raised were already under review by the CRP.</u> The complaint was deemed theoretically eligible under the compliance review function because it included new evidence not presented in the two previous submissions. However, the CRP determined that the new evidence—relating to compensation for resettlement—did not constitute a sufficiently serious noncompliance to warrant a separate compliance review. Reference: “CRP deems the complaint eligible but does not warrant a separate compliance review.” from https://www.adb.org/who-we-are/accountability-mechanism/complaint/crp-request-20181-georgia-sustainable-urban-transport

C. Effectiveness

Recommendations	Rationales
<p>4. Accountability Mechanism Policy should clearly state that it accepts objections to <u>direct, indirect and cumulative</u> impacts in order to be consistent with ESF and policy. ADB AM should also accept complaints that raise issues of likely or potential harm.</p>	<p>After the 2012 Accountability Mechanism Policy that came into effect, 2 SPF cases were rejected as “ineligible” on the grounds of direct or material harm, no link to the projects.</p> <p>2 SPF Cases</p> <ul style="list-style-type: none"> ● Pakistan: Peshawar Sustainable Bus Rapid Transit Corridor Project(SPF-2018-07-01-0076). Complaints claimed that consumers could not reach car show rooms because of the project and needed an alternative place for their showroom. On 4 June 2018, the complaint was found “not eligible, not directly affected by the project” (https://www.adb.org/projects/48289-001/main). ● Sri Lanka: Greater Colombo Water and Wastewater Management Improvement Investment Program – Tranche 3, Eligibility(SPF-2017-02-01-0059). On 24 March 2017, a complaint was filed and complaints pointed out involuntary resettlement happening because the project owner(Colombo Municipal Council) decided behind closed doors without any participation of the family to lose their house. Then they asked for compensation. On 25 April 2017, the complaint was found “not eligible, not directly affected by the project”(https://www.adb.org/who-we-are/accountability-mechanism/complaint/sri-lanka-greater-colombo-water-and-wastewater-0). <p>The following provisions from ESF demonstrate that ADB has obligations to prevent and mitigate both direct and indirect impacts of its projects.</p> <p>ADB’s Environmental and Social Framework 2024</p> <ul style="list-style-type: none"> ● ADB 2024 ESF, Definitions, p.xvi :Indirect impact. An impact that is caused by a project and is later in time or farther removed in distance than a direct impact but is still reasonably

foreseeable. ([ESSs 1, 6, 7, 8; Financing Modalities](#))

- ADB ESF, IV Requirements, para 9:
The borrower/client will ensure that the E&S assessment addresses, in an integrated way, **all direct-, indirect-, and cumulative-E&S risks and impacts** such that relevant E&S factors, including those set out in para. 26 (i) and (ii) and relevant contextual risks, are considered comprehensively and in a non-fragmented manner, throughout the concept design, preparation, and implementation phases of a project cycle together with any project-specific issues raised by ADB or identified by the borrower/client. ([Environmental and Social Framework 2024 ESS1](#), p.22)

However, the 2012 AM Policy limits complaints only to direct harms (Para 141 for SPF and Para 147 for CRP). We agree with the recommendation of the External Reviewer and practice at other IAMs in this regard.

External Review of AM

- **Problem** : Some have complained that this interpretive technique has raised doubts over the CRP's independence, eliminated any power to consider future harm or to investigate all evidence of possible non-compliance that emerges during a compliance review and has curtailed what should be a legitimate part of the CRP's monitoring mandate. Under a sound accountability policy, most of these matters should be explicit: the authority and powers of the CRP should be clearly delineated in the accountability policy, rather than leaving uncertainty to be "interpreted" and "clarified" by an ad hoc process. The time would now appear to be propitious for "policy amendment", as seemingly foreshadowed by the General Counsel. For example, contemporary IAM policies routinely contemplate that complaints or allegations of non-compliance may involve "actual or potential harm". At AfDB the IRM rules refer to harm that is actual or potential: "have been harmed" or "could be harmed".¹⁸⁷ EBRD's PAP also refers to harm that is actual or

	<p><u>potential</u>: “to have caused or to be likely to cause” and for compliance review harm must <u>be material and may be direct or indirect</u>.¹⁸⁸ IDB’s MICI deals with harm that is actual or potential, direct, causing material damage, or loss, arising from noncompliance. Harm may be “<u>actual or potential</u>” and “<u>direct, material damage</u>”, or “<u>loss</u> (actual or reasonably likely to occur in the future)”¹⁸⁹; and the EIB-CM policy refers to “maladministration” related to noncompliance with “policies, standards, procedures, human rights, principles of good administration, and environmental or social impacts“(Reference:External Review of the Accountability Mechanism for the Asian Development Bank p.55)</p> <ul style="list-style-type: none"> ● Other MDBs’ Definition of harm, linkage with noncompliance and covered policies(Reference:External Review of the Accountability Mechanism for the Asian Development Bank p.119) <ul style="list-style-type: none"> ○ EBRD:Covers harm that is actual or potential. For compliance review: harm must be direct or indirect and is material. ○ IFC:Covers harm that is actual or potential, direct or indirect. Must also be linked to noncompliance
<p>5. SPF and CRP should not reject objections due to reasons: other remedial measures, grievance redress mechanisms, internal efforts, etc. are ongoing</p>	<ul style="list-style-type: none"> ● Regarding Regional Urban Development Project in Nepal (SPF-2019-02-01-0082), a complaint was received and registered on 21 February 2019. On 13 March 2019, the complaint was found “not eligible” because “concerned ADB operations department is working with the project grievance redress mechanism to resolve the complaint”(https://www.adb.org/who-we-are/accountability-mechanism/complaint/nepal-regional-urban-development-project-0). Complainants submitted another complaint on 14 January 2020 (SPF-2020-01-02-0093) and was <u>deemed eligible</u> for problem-solving process on 14 January 2020. The problem-solving process is on-going. <p>This case shows the prior complaint was not fully addressed by the</p>

ADB operations department with the project grievance redress mechanism.

Moreover, in India's case, the Operations Department did not provide any further response to the complaints after the meeting, not even regarding the "internal efforts".

- Case :Rajasthan Urban Sector Development Program
The complainants reached out to the Operations Department, admittedly after submitting the complaint (so, not "prior"), but as soon as they were apprised of the **good faith policy**, in their first meeting with the OSPF. They received no further response from the Department during the length of the complaint. The OSPF possessed special information that the Operations Department was already made aware of the issues, and was making "**internal efforts**" that were never even communicated to the complainants. OSPF closed this complaint despite the acknowledgement that there was nothing further that the complainants could do in this case, and needless to say, they received no further response even as of the date of complaint closure. (Reference: <https://www.accountabilityconsole.com/newsletter/articles/the-adbs-accountability-mechanism-an-uphill-battle-for-communities/>)
- Case: 2018.6.21, Georgia, Sustainable Urban Transport Investment Program-Tranche 3 (**3rd** Compliance)
Background: The request was initially submitted to the problem-solving function, but it was found ineligible as the issues raised were already under review by the CRP. The complaint was deemed theoretically eligible under the compliance review function because it included new evidence not presented in the two previous submissions. However, the CRP determined that the new evidence—relating to compensation for resettlement—did not constitute a sufficiently serious noncompliance to warrant a separate compliance review. Furthermore, the area in question was already covered by the

	<p>existing remedial actions. Accordingly, the CRP decided not to authorize a separate compliance review, and the Board endorsed this decision.</p>
<p>6. The requirement for BCRC to authorize a compliance investigation should be withdrawn (Para 182, 2012 AM Policy)</p>	<ul style="list-style-type: none"> ● In the case of the Nenskra Hydropower Project in Georgia, the CRP indicated in the eligibility report that the complaint was eligible, but did not proceed to CR due to the Board's decision, which the BCRC's recommendation was taken into account. ● Case: On 7 December 2017, a complaint to the Nenskra Hydropower Project was received. Background: the BCRC recommended that ADB Management incorporate the issues identified in the CRP's eligibility report into the current project design. This approach was considered likely to enable a more timely implementation of remedial measures and to effectively achieve the specific objectives of the compliance review. The Board adopted the BCRC's recommendation and resolved that ADB Management should take into account the CRP's findings and prepare an action plan, including a compliance report and remedial and corrective measures. Reference: https://www.adb.org/who-we-are/accountability-mechanism/complaint/crp-request-20174-georgia-nenskra-hydropower-project ● In Samoa's case, the BCRC's recommendation was endorsed by the Board, leading the eligible complaint did not undergo Compliance Review. ● Case: On 20 April 2016, a complaint was received to the Promoting Economic Use of Customary Land and Samoa AgriBusiness Support Project. Background: According to the CRP's Compliance Review Report, the Government of Samoa intends to propose legal amendments that would adequately address the specific harm to the Requesters. Based on this, the BCRC recommended to the Board that a Compliance Review should not be conducted at this stage. At the

same time, the BCRC noted that if the legal process progresses but the risk of specific harm directly resulting from noncompliance with ADB's Public Communications Policy remains, it would reconsider its recommendation. The Board endorsed the BCRC's recommendation.

the CRP stated that there was "prima facie evidence" of non-compliance and recommended that the Board approve the CR as the complaint was eligible in the eligibility report. In response, the BCRC held a meeting with representatives of the CRP and the ADB Office of General Counsel (OGC), and as the BCRC, (a) did not follow ADB's public communication policy in that ADB did not confirm that adequate consultation had occurred with all districts in the affected communities, (b) that an agreed conclusion could not be reached as to whether ADB's noncompliance had caused or was likely to cause direct and specific harm.

The CRP's report recommended to the Board that the BCRC should not undertake a CR at this time, as the Samoan government is planning to propose legal changes that would sufficiently remove the specific harm to the complainant.

At the same time, the BCRC would reconsider this recommendation if the risk of specific harm directly attributable to ADB's non-compliance with its public communication policy still appears to remain after the above legal process has proceeded. The Board approved the BCRC's recommendation.

Reference: <https://www.adb.org/who-we-are/accountability-mechanism/complaint/crp-request-20162-samoa-promoting-economic-use>