

Submission on AIIB's Complaints Handling Mechanism

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Why accountability matters

Without their internal accountability mechanisms, IFIs like the AIIB are 'above the law' as it is not possible to challenge them in any court of law, on national or international level. Therefore internal accountability mechanisms provide the only, even if limited, opportunity for IFIs to be held accountable to the public, to taxpayers or to their shareholders. Accountability mechanisms can provide lessons learned for the institution and its shareholders on the adequacy of its policies and on the efficiency of its policy implementation tools.

Moreover, in countries where access to justice at national level is beyond reach for individuals and communities impacted by development finance, accessing remedy at the IFIs complaints mechanisms may be the only option. Therefore a strong problem solving function is crucial in ensuring that investments deliver on their development goals without harming communities.

Independence

Accountability mechanisms can only be legitimate in front of complainants and effective in delivering on their mandate, if they are independent within the institutions and can carry out their functions without interference from IFIs Management. A direct reporting line between the mechanism and the Board is one of the most important pre-conditions in ensuring its legitimacy and independence. As the CEIU has a wide spectrum of functions - compliance review, investigation, anti-corruption, evaluation of the integrity of operations- merged into one singular unit, it is critical that the Bank takes measures now to mitigate the risk of built-in conflict of interests. The role is to investigate on allegations in an impartial and effective manner.

A department charged with monitoring and evaluation will hardly be able to function as an independent entity that deals with external complaints which may call its own findings into question. By establishing an independent evaluation unit or division that evaluates the operations of the Bank - including that of the CEIU - it would help provide the additional 'checks and balances' assessment especially on testing the strength of compliance delivery of the projects the Bank finance.

Transparency

The AIIB is financing large scale infrastructure projects in the absence of an operationalized Public Information Policy. Its interim policy - the Public Information Interim Policy - its current shape does not provide any time-bound procedural requirements on project information disclosure, Board decision making process, and access to the CEIU, as well as complaints process and timeline. Therefore, it is pivotal that the Bank commits to a public review of its access-to-information which paves the ground rules in ensuring complainants access to information and decision-making process. Without a robust and functioning access-to-information policy, the integrity of the complaints handling mechanism simply cannot be measured or warranted, thereby compromising the 'clean' ambition of the Bank.

Functions [1]

The accountability mechanism at a minimum has to have two functions: a process for mediation and a compliance review. Mediation processes - or known as 'problem solving' - serve to directly address potentially negative impacts on the environment or affected communities. In the case of involuntary resettlement, for example, this means avoiding displacement whenever possible, and ensuring fair compensation and the restoration of lost livelihoods in case where it is not.

A compliance review, an independent investigation into whether the bank has adhered to its own policies, is also of fundamental importance. In cases where investigation results show poor implementation of policies, it creates the possibility of learning from experience and not repeating the same mistakes in future projects.

Both functions are not mutually exclusive and it should be the decision of the complainants whether to request a mediation process, a compliance review or both.

Admissibility and definition of project

Any natural or legal person, their representatives or civil society organisation that allege misconduct or non-compliance, feel or is affected by the bank's operations should be able to access the complaint mechanism. The alleged misconduct may refer to any bank's wrongdoing, non-compliance with own policies and standards, applicable law, environmental and social impacts of operations and access to information.

The mechanism plays an important role in prevention of misconduct or damages therefore it should be able to accept complaints alleging misconduct at the bank operations at the very beginning of project cycle, as early as possible at the consideration stage where problem solving, mediation, risks mitigation and impacts prevention and mitigation are the most effective and cost efficient.

The definition of "project" should include projects under loan consideration by the AIIB where there are acute social and environmental conflicts and should be eligible for problem solving and compliance review and thus included in the project definition. Further, complainants should be allowed to submit a complaint in the case when access to information and decision-making is denied.

We propose the World Bank Group's Compliance Advisor Ombudsman (CAO) approach, where complaints are eligible regarding the "planning, implementation or impact" of a project, without limiting the project definition.^[2] Or at the minimum, the AIIB to adopt the standards of the Asian Development Bank which deems the filing of a complaint to either problem solving or compliance review eligible during "the formulation, processing, or implementation of the project"^[3], to include a "proposed project" which refers to a project being prepared that has not been approved by the Board or the President (as delegated by the Board), financed or to be financed, or administered or to be administered by the Bank, indiscriminate of loan types to cover both sovereign and non sovereign operations.

Who can submit a complaint?

Any natural or legal person, their representatives or civil society organisation that allege misconduct or non-compliance, feel or is affected by the bank's operations should be able to access the complaint mechanism. This is the best practice used by the peer IFIs, in particular the European Investment Bank.

The bank should also ensure that those who complain are protected against intimidation and retaliation. Recent Bankwatch experience assisting project affected communities in preparing complaints has shown unexpected intimidation and threats made against these individuals in countries where IFIs prepare financing of projects. This strongly suggests organizations need to be allowed to submit complaints in lieu in order to protect the identities of the affected individual(s) and that other risks mitigation measures should also be adopted by the bank.

In further removing potential barrier in accessing the mechanism, **one individual** should be the minimum threshold for submitting a complaint. In ADB financed projects in Georgia, there were great difficulties in finding an additional project affected individual by the road projects due to geographic isolation.

Access of complainants to the mechanism

The major barrier for complainants to accessing accountability mechanism is lack of information about the investors and the existence of their mechanisms. Therefore the AIIB Compliance, Effectiveness and Integrity Unit (CEIU) should have sufficient resources to conduct outreach activities, including in countries where AIIB is already financing or considering financing category A and B projects. In addition, AIIB's clients for category A and B projects should be obliged to disclose information about the investment and the CEIU as part of their routine public consultation processes.

Outreach

An accountability mechanism can only do its work when its existence and processes are publicly known, especially among potentially affected communities. Existing accountability mechanisms of other financial institutions require regular outreach activities in recipient countries where the banks finance projects. This is often done in coordination with both international and local civil society organizations. As the AIIB is already financing a number of Category A project with documented environmental and social impacts including resettlement issues, we believe it is in the Bank's interest to conduct AM outreach events if not on-site projects then in these borrowing countries as a start.

Eligibility Assessment and draft of a compliance review report

Once an eligibility assessment expert has been appointed, the process should take no longer than 40 working days to produce a determination whether or not the complaint is eligible. The eligibility assessment expert should be able to conduct a site visit prior to determining eligibility. Complainants should have the opportunity to comment on the draft Eligibility Assessment Report. Terms of reference provided by eligibility assessment assessor should be followed by the experts conducting problem solving assessment.

Investigation

Investigation should be defined by time-bound requirements, similar to eligibility determination. During the investigation, the compliance review panel of experts should be encouraged to conduct a site visit as part of their investigation, and the necessary resources for site visits should be provided in the mechanism's budget. Taking stock from cases of other accountability mechanisms from development financial institutions, it is not uncommon that investigation can take years between the two, so things on the ground change - complainant dynamics change, material impacts change etc., so it helps to keep the mechanism in touch with the ground, not just rely on e-mail or call up-dates.

Further, complainants should have the opportunity to comment on the draft Compliance Review Report.

Follow-up on the compliance review [4]

In the event that the compliance review report identifies violations of safeguards and policies, the Board or the President should request that Management prepare a remedial action plan to ensure compliance is brought back into compliance.

Monitoring [5]

The Compliance Advisor Ombudsman (CAO), which is the AM of the International Finance Corporation, the private sector arm of the World Bank Group, has the mandate to monitor the implementation of the remedial action plan. This would be an example of international best practice.

Registration/Public Registry

Transparency in a public registry of all complaints submitted is step one to accountability and in ensuring complaints do not get undermined prior to reaching the eligibility determination phase. At the World Bank Inspection Panel all complaints submitted are registered and published.

Selection of AM officers and independent experts

Section committee should include both Internal and external members, subject to the approval of the Board. On appointment of experts for the expert panel, as complaints usually cover a wide spectrum of issues, it is important that multiple experts should reach consensus for ensuring 'check and balance' of the assessment. For example, a complaint on hydro power project will require the expertise of a range of topics, and a water resource expert cannot be expected to be well versed on the subject of resettlement or indigenous people.

[1] *Wichtige Merkmale eines Accountability Mechanismus (AM)*: a brief on accountability mechanism (June 09, 2017), Korinna Horta, Urgewald (www.urgewald.org).

[2] See CAO 2013 Operational Guidelines para 8, available at http://www.cao-ombudsman.org/documents/CAOOperationalGuidelines_2013.pdf

[3] See ADB 2012 Accountability Mechanism Policy para 140, available at [http://compliance.adb.org/dir0035p.nsf/attachments/accountability-mechanism-policy-2012.pdf/\\$FILE/accountability-mechanism-policy-2012.pdf](http://compliance.adb.org/dir0035p.nsf/attachments/accountability-mechanism-policy-2012.pdf/$FILE/accountability-mechanism-policy-2012.pdf)

[4] *Wichtige Merkmale eines Accountability Mechanismus (AM)*: a brief on accountability mechanism (June 09, 2017), Korinna Horta, Urgewald (www.urgewald.org).

[5] Ibid.