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June 23, 2017

Dear Mr. Sharif:

We welcome the opportunity to participate in the public consultations for the proposed Asian Infrastructure Investment Bank (AIIB) Complaints Handling Mechanism (CHM).

We are ten civil society organizations and networks with expertise in using the independent accountability mechanisms (IAMs) of development finance institutions and recommending improvements in their fairness and effectiveness. Some of us sit on IAM advisory groups and many of us regularly participate in the CSO session of the IAM Network annual meeting. Our organizations, through our combined work, have supported dozens of communities in Asia and around the world to submit complaints to the various IAMs, and helped those communities seek effective remedies through their processes.

We believe that the adoption of an independent, fair and effective accountability mechanism is crucial to the AIIB's institutional commitment to sustainable development. We applaud the AIIB's recognition in its Environmental and Social Framework that "social development and inclusion are critical for sound development." We agree with the bank that "inclusion means empowering people to participate in, and benefit from, the development process," and requires the removal of "barriers against vulnerable groups, who are often excluded from the development process," to ensure their voices are heard. We know from years of experience that an independent accountability mechanism is essential to these laudable goals.

The CHM must not be seen as an impediment to development, but rather an indispensable element to achieving positive development outcomes for the AIIB. A robust CHM is vital, not only in holding the institution accountable, but also for ensuring the sustainability of the AIIB's activities, enhancing project performance, and fostering a learning process, whereby future AIIB activities are guided and improved by the CHM's findings and insights.

In policy and practice, the CHM should strive to be a robust, independent, accessible, transparent, and impartial body. In the attached submission, we have assembled what we believe to be the best practice from IAMs around the world on the mechanisms' mandate; functions; structure; information disclosure and outreach; complaints process; and compliance review, dispute resolution and advisory functions. We have also recommended innovations to help ensure more effective accountability and remediation processes.

We hope that the AIIB will seize this opportunity to adopt and exceed the best practices of the existing IAMs and thereby assume a leadership role in the furtherance of just, inclusive and sustainable development.

We would welcome the opportunity to discuss our recommendations with you via teleconference.

Yours sincerely,

Centre for Research on Multinational Corporations (SOMO)

Inclusive Development International (IDI)

Bank Information Center (BIC)

International Accountability Project (IAP)

Accountability Counsel (AC)

Center for International Environmental Law (CIEL)

Urgewald

NGO Forum on ADB

CEE Bankwatch Network

Oxfam International

Submission on AIIB's Complaints Handling Mechanism

June 23, 2017

MANDATE

The overarching mandate of the Asian Infrastructure Investment Bank (AIIB) Complaints Handling Mechanism (CHM) should be two-fold: first and foremost, to prevent harms and provide effective remedy to project-affected people; and second, to ensure institutional accountability and continuous improvement vis-à-vis social and environmental risks and impacts of AIIB-supported projects.

As a best practice example, the International Finance Corporation's Compliance Advisor Ombudsman (IFC's CAO) Operational Guidelines (para. 1.1) state:

"CAO's mandate is to:

- *Address complaints from people affected by IFC/MIGA[Multilateral Investment Guarantee Agency] projects (or projects in which those organizations play a role) in a manner that is fair, objective, and equitable; and*
- *Enhance the environmental and social outcomes of IFC/MIGA projects (or projects in which those organizations play a role). In executing this mandate, the CAO process provides communities and individuals with access to a grievance mechanism that offers redress for negative environmental and/or social impacts associated with IFC/MIGA projects. This includes impacts related to business and human rights in the context of the IFC Policy and Performance Standards on Environmental and Social Sustainability."*

FUNCTIONS/ROLES

To effectively fulfill its mandate, the CHM should have three complementary functions: **Compliance Review, Dispute Resolution, and Advisory.**

- **Compliance Review (CR):** The compliance review function should be an impartial fact-finding body that investigates claims of social and environmental harm, or foreseeable harm, linked to non-compliance with bank policies and standards by the AIIB and its clients, or that result from weaknesses and gaps in AIIB policies. The United Nations Development Programme's Social and Environmental Compliance Unit (UNDP's SECU) (para. 2), for example:

"provides UNDP, and those affected by UNDP projects, with an effective system of independently and objectively investigating alleged violations of UNDP's social and environmental commitments. SECU seeks to protect locally-affected communities and, in particular, disadvantaged and vulnerable groups, and to ensure participation of local stakeholders."

- **Dispute Resolution (DR):** The dispute resolution function should be empowered and equipped to use a range of tools and approaches to assist parties in reaching resolutions to address or remediate adverse social and environmental risks and impacts. The mechanism should remain impartial and independent in this process, while also seeking to address the power imbalances between the parties. The African Development Bank’s Independent Review Mechanism’s (AfDB’s IRM) website characterizes its problem-solving function as:

“restor[ing] an effective dialogue between the requestors and any interested persons with a view to resolving the issue(s) underlying a request, without seeking to attribute blame or fault to any such party.”

- **Advisory:** The advisory function should derive thematic and systemic lessons from trends in the CHM’s caseload, both compliance and dispute resolution, in order to provide guidance to AIIB 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. The Guidelines of the IFC’s CAO describe this role as follows (para 1.2):

“CAO is a source of independent advice to the President and the senior management of IFC and MIGA. Advice is based on insights gathered from CAO’s dispute resolution and compliance interventions and is focused on broader environmental and social policies, guidelines, procedures, strategic issues, trends, and systemic issues based on the experiences gained through its case work, with the goal of fostering systemic improvements in IFC/MIGA.”

STRUCTURE

The mechanism must be structured in a manner that maximizes its independence, impartiality and legitimacy. For the mechanism to function effectively, it must be trusted by all stakeholders, including local communities, AIIB management, AIIB clients and interested civil society organizations (CSOs). Project-affected people must have confidence that the mechanism is empowered to address their problems and concerns. In order to foster this confidence, **the mechanism must be structured in a way that reinforces its independence from AIIB management.** This requires the following:

- **The CHM should report to the Board of Directors of the AIIB.** Independence from management is key to the mechanism’s legitimacy. Project-affected communities and CSOs will not use the mechanism unless they are assured that it is not beholden to or unduly influenced by AIIB management. As such, the CHM should report to the Board of Directors rather than to the President of AIIB. The World Bank Inspection Panel’s Operating Procedures (para. 6) state:

“[t]he Panel reports to the Board. The Board’s Committee on Development Effectiveness (CODE) is designated as the main interlocutor for the Panel.”

- **The CHM should be run by a director, who oversees dispute resolution and compliance function managers and a permanent staff.** Complainants need to be assured that their cases are being handled in a predictable and consistent manner, which can be undermined when the mechanism operates on a roster model, rather than through a permanent staff. A single director at the helm of the mechanism enhances internal governance, independence, and its strength within the institution politically. Having one primary person interact with Bank management and the Board helps shield function managers from undue influence from the Bank. Both the Inter-American Development Bank’s Independent Consultation and Investigation Mechanism (IDB’s MICI) and the IFC’s CAO are headed by a Director/Vice President, who oversees the compliance and dispute resolution functions. MICI’s Policy states (para. 8):

“The MICI is headed by a director, who is assisted by phase coordinators and the operations and administrative staff necessary to perform the Mechanism’s work efficiently and effectively. All MICI staff including consultants will report to the Director.”

- **External stakeholders should participate in the hiring process for the mechanism’s director and function managers.** External stakeholders on the selection committee help to legitimize the hiring process and build trust in the independence and integrity of the individuals selected. Additionally, the selection committees for mechanism principals should not include members of AIIB management. For example, as explained on the CAO’s website, the current head of the CAO was appointed by the World Bank Group President following an independent selection process led by civil society, industry and academia.
- **CHM staff should be selected by the mechanism’s director and function managers.** The mechanism should be responsible for hiring its own staff. For example, the CAO Guidelines state (para. 1.3):

“CAO staff are recruited by the CAO Vice President.”

- **The function managers should be empowered to hire outside consultants with technical expertise relevant to the complaint.** Complaints often raise technical issues on which the mechanism staff does not have sufficient expertise or that may require a skillset that the staff does not possess. Thus, the mechanism must be able to hire outside consultants to help it fulfil its mandate. For example, the IDB’s MICI Policy provides (para. 56):

“The MICI Director is authorized to contract any external expert necessary, in strict compliance with the Bank’s policies and procedures. In consultation with the Human Resources Department, the MICI Director will also prepare and maintain a list of independent expert consultants with specialized knowledge in areas such as mediation, dispute resolution, compliance, auditing, resettlement, indigenous peoples, environmental and social safeguard policies, and other required areas of expertise. These experts will not come from Management.”

- **There should be a pre-employment cooling off period of at least five years.** To ensure the mechanism’s impartiality and independence from the bank’s operations departments and management, there should not be a revolving door between the AIIB and the mechanism.

Pre-employment bans or cooling off periods for mechanism principals and staff are best practice at independent accountability mechanisms (IAMs). For example, the Asian Development Bank's Accountability Mechanism (ADB's AM) Policy states (paras. 109, 113):

"The SPF must not have worked in any ADB operations departments for at least 5 years before the appointment" and "[d]irectors, alternate directors, directors' advisors, Management, staff, and consultants will be ineligible to serve on the CRP [Compliance Review Panel] until at least 3 years have elapsed from their time of employment with ADB."

The AfDB goes further and does not allow former Bank staff to serve on the IRM's Roster of Experts (para. 85):

"Executive Directors, Alternate Executive Directors, Senior Advisers and Advisers to Executive Directors, any Officer or Staff member of the Bank or persons holding consultant appointments shall not serve on the Roster of Experts at the end of their service with the Bank."

- **There should be a post-employment ban for the principals of the mechanism and a cooling off period for staff.** The possibility of subsequent employment at the AIIB could compromise impartiality, or the perception of neutrality, of the director and key staff. Whether consciously or not, mechanism staff could inappropriately consider his or her relationship -- and future relationship -- with AIIB management while handling a complaint. The CAO Guidelines include an employment ban for the head and a cooling off period for staff (para. 1.3):

"Contracts for CAO staff restrict specialists and staff above that level from obtaining employment with IFC or MIGA for a period of two years after they end their engagement with CAO. The CAO Vice President is restricted for life from obtaining employment with the World Bank Group."

- **Person(s) with a conflict of interest must recuse themselves from the complaint process.** In the event that a member of the mechanism or a consultant has a conflict of interest in regards to a particular complaint, he or she should disclose that conflict of interest and recuse him or herself from the complaint process. For example, the CAO Guidelines (para. 1.3) say that:

"If a CAO staff or consultant has a conflict of interest in relation to a particular case, that person will withdraw from involvement in that case. In exceptional circumstances, contractual arrangements for CAO consultants may impose time-bound restrictions on their future involvement with IFC or MIGA."

INFORMATION DISCLOSURE AND OUTREACH

Many individuals who experience harm as a result of development finance institution (DFI)-supported projects are neither aware that a complaints mechanism exists nor understand the mechanism's process for reviewing and resolving concerns. In order to improve project-affected communities' awareness and understanding, AIIB and CHM policies should: commit to transparency and disclosure of information about the mechanism's procedures, operations, and cases; empower the CHM to conduct public outreach in the AIIB's countries of operation; and promote engagement by the CHM with external stakeholders. Specifically:

- **The AIIB should require clients and sub-clients to disclose the existence of the mechanism to project-affected communities.** Clients and sub-clients are often the primary source of information about a project for affected communities. The AIIB should require clients and sub-clients to disclose the existence of the mechanism during project consultation processes and through other appropriate means. Bank staff should also be required to work with clients to ensure disclosure of information for all types of financing, including indirect lending through financial intermediaries. ADB's AM Policy, for example, states (para. 211):

"Staff, working with the borrower, will disseminate information early in the project cycle about the Accountability Mechanism and its availability as a recourse in case other mechanisms for dealing with harmful project effects are not successful. The intensity and format of this activity will vary with the nature of the project. Operations departments will focus on projects with a high degree of safeguard risks, such as projects with heavy resettlement. Pamphlets in national or official languages, community notice boards, audiovisual materials, or other appropriate and effective means will be used to inform people."

- **Information about the mechanism should be included in relevant AIIB publications and feature prominently on its website.** A link to the mechanism's webpage should be displayed prominently on the Bank's website in a manner similar to the current link to "Report fraud or corruption," which is displayed on every page within the AIIB's website. Further, AIIB management should collaborate with the CHM in support of its efforts to publicize its role. For example, IDB's MICI Policy states (para. 60):

"[t]he MICI Director will coordinate with other Bank offices and units to ensure that information about the Mechanism is integrated into Bank activities and publications designed to promote information about the institution. Management will support the MICI's efforts to publicize the Mechanism."

- **Information about the CHM, including a model complaint letter, should be produced in multiple languages and accessible formats.** Informational documents about the CHM regarding its policies, guidelines, and other relevant materials should be produced in digital and printed formats in multiple languages. A simple model complaint letter, such as the template provided by the IFC's CAO, should be produced to guide communities to submit the necessary information for registering a complaint. For example, the CAO Guidelines (para. 1.6) commit to publishing:

“CAO Operational Guidelines, CAO’s Terms of Reference, information brochures, and other 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, and mak[es] these documents available in hard copy, online, and by other culturally appropriate means.”

- **The CHM should develop a public outreach strategy, including accessible events in the DFI’s countries of operation, with adequate budget to support participation by potentially affected communities.** Independent accountability mechanisms from multiple DFIs have begun to hold regular outreach events, sometimes jointly, such as one held in June 2017 in Bangkok by the World Bank’s Inspection Panel, the IFC’s CAO, and the ADB’s AM. The IDB’s MICI Policy states (para. 60):

The MICI office has a mandate to conduct public outreach throughout Latin America and the Caribbean. The MICI Director will develop and implement an outreach strategy to inform civil society.”

- **The CHM should publish a complete and updated complaint registry.** The registry should include pending, completed, and closed cases, including ineligible complaints, with links to complaint letters (redacted if complainants request confidentiality), decisions on complaint eligibility, assessment reports, dispute resolution reports and agreements, terms of references for compliance review investigations, investigation reports, management responses and proposed remedial actions, monitoring reports, conclusion reports, and other relevant documentation. This registry should be published online, in a similar manner to other accountability mechanisms. The MICI publishes all complaints received, even those later declared ineligible, and all related materials (para. 62):

“The Mechanism will maintain a virtual Public Registry that will provide up-to-date information on Requests submitted to the Mechanism and their processing, and will include the publication of the public documents provided for under this Policy.”

- **The CHM should establish an external stakeholder advisory group to regularly provide strategic guidance, advice and feedback.** The advisors should include representatives from CSOs and technical experts in fields such as accountability, sustainable development and conflict resolution. The CAO’s website specifies:

“CAO meets with a Strategic Advisors Group comprised of professionals from civil society, private industry, academia, and the field of mediation and conflict resolution.”

- **The CHM should join the IAM Network.** The IAM Network is a forum for information exchange and learning for mechanisms of public DFIs. The Network is guided by principles of independence, impartiality, transparency, integrity, professionalism, accessibility, and responsiveness. According to the IAM Network criteria, for the CHM to participate it must be,

inter alia, a “citizen-driven complaint and response mechanism” and be “operationally independent.”

Some IAM policies, such as that of the Independent Complaints Mechanism (ICM) of the Netherlands Development Finance Company (FMO) and the German Investment and Development Corporation (DEG), codify membership in the IAM Network (para. 1.2.7):

“The ICM is a member of the global network of Independent Accountability Mechanisms (IAM).”

By contrast, the World Bank’s Grievance Redress Service (GRS) is not operationally independent from Bank management and thus not eligible to join the IAM Network.

- **The CHM should regularly review its policy and guidelines through a public process.** In order to ensure that the mechanism continually improves and remains responsive to project-affected communities, it should conduct public reviews at regular intervals. The review should include a public consultation process, soliciting input from project-affected communities, complainants and other stakeholders. In addition to regular reviews, the CHM should implement systems to collect information about its own performance. For instance, the CAO has implemented a Monitoring and Evaluation system, which is a tool used to capture feedback from complainants. The European Bank for Reconstruction and Development’s Project Complaint Mechanism (EBRD’s PCM) Rules of Procedure enshrines a regular review (para. 72):

“The PCM will be reviewed by the Board every five (5) years or as needed.”

COMPLAINT PROCESS

In order to deliver real results for affected communities, the CHM’s jurisdiction and eligibility rules should be designed to **minimize barriers to access** to the mechanism and allow complaints to proceed in a **predictable, transparent, and effective manner**. Accordingly, the CHM’s framework should include, at minimum, the following provisions for the complaint process:

- **The CHM should accept complaints across all AIIB operations, and all stages of operations, including activities co-financed with other DFIs.** The risk of harm to communities and the environment is not limited to certain lending instruments but can result from all types of activities financed or co-financed by the AIIB. Accordingly, the jurisdiction of the mechanism should extend to all AIIB-supported operations and activities. The CAO’s jurisdiction extends to (para. 4.1):

“all IFC’s business activities including the real sector, financial markets, and advisory services.” The European Investment Bank’s (EIB’s) Complaints Mechanism (CM) Operating Procedures state (para. 4.3) *“A complaint is considered admissible if the allegations relate to a decision, action or omission by the EIB.”*

- **The eligibility requirements should be simple.** Complainants often lack the resources and information necessary to file detailed claims of their grievances and policy non-compliance. Complainants to the CHM should simply be required to outline how the alleged harm or potential harm affecting them is tied to AIIB-supported activities. For example, the CAO Guidelines state (para. 2.2.1) that the CAO will deem a complaint eligible if it:

“1. ...pertains to a project that IFC/MIGA is participating in, or is actively considering. 2. The issues raised in the complaint pertain to CAO’s mandate to address environmental and social impacts of IFC/MIGA projects. 3. The complainant is, or may be, affected by the environmental and/or social impacts raised in the complaint.”

- **Complaints should be admissible prior to project approval.** In order to prevent or mitigate potential adverse impacts, complainants should be able to bring complaints to the mechanism before the project is approved by the AIIB’s Board. Under the CAO Guidelines (para. 2.2.1), it can accept complaints if:

“The complaint pertains to a project that IFC/MIGA is participating in or is actively considering.”

- **Complaints should be admissible for a reasonable period of time following project completion.** The full implementation of applicable environmental and social standards – and the realization of their objectives – are sometimes only achieved after project loans have been fully disbursed and the “main” project activities (e.g. infrastructure construction) have been completed. Moreover, an activity’s social and environmental impacts may only be felt after project completion. Thus, the CHM should accept complaints throughout the project lifecycle and for a period of time after the project is closed. The Guidelines of UNDP's SECU (sec. 1.1) exclude complaints

“relating to projects or programmes [...] for which UNDP’s support has ended and its role can no longer reasonably be considered a cause of the concerns raised in the claim.” However, *“when UNDP’s support has ended, but impacts can fairly and reasonably be traced to UNDP’s involvement, the SECU will accept complaints that are likely to provide institutional learning, prevent future mistakes and abuses, or support resolution of concerns of communities.”* The ADB AM’s procedures state (para. 142(iv)): *“Complaints will be excluded if they are: ... about an ADB-assisted project for which 2 or more years have passed since the loan or grant closing date.”*

- **Complainants should not be required to take other steps to resolve their grievances as a precondition to filing a complaint to the CHM.** There are many reasons why project-affected people may not feasibly be in a position to attempt to resolve their grievances through other means. For example, AIIB staff and AIIB clients may not be accessible or equipped to address grievances. Additionally, project-affected people may fear reprisals if they attempt to challenge or oppose a project through local institutions and offices, and without their identities being kept confidential. Moreover, project-level grievance mechanisms, where they do exist, are frequently inefficient and ineffective because they lack independence, capacity and resources. The ADB’s AM Policy states (para. 144) that the AM:

“will not require complainants’ good faith efforts to solve problems with project-level grievance redress mechanisms as a precondition for their access to the Accountability Mechanism.”

- **The CHM should accept complaints from one or more individuals.** There is no correlation between the existence of harm and the number of complainants. Even just one complainant should have the right to seek redress for harm through the CHM. The CAO Guidelines state (para. 2.1.2):

“Any individual or group of individuals that believes it is affected, or potentially affected, by the environmental and/or social impacts of an IFC/MIGA project may lodge a complaint with CAO.”

- **Judicial or other parallel proceedings should not automatically bar complaints.** The CHM should only opt to bar or suspend a complaints process if parallel proceedings already instituted would interfere in their handling of the complaint, or vice versa. This is more likely to be the case with dispute resolution, as multiple processes involving the same parties and issues are usually not conducive to a positive outcome. As compliance review by CHM uniquely relates to AIIB policy, which will not be the subject of any other mechanism or proceeding, interference is unlikely, and the complaints process should be able to proceed. The Guidelines of the CAO outline (para. 1.1):

“CAO has no authority with respect to judicial processes. CAO is not an appeals court or a legal enforcement mechanism, nor is CAO a substitute for international court systems or court systems in host countries...where CAO is engaged in complaints that overlap the jurisdiction of other organizations’ accountability mechanisms, CAO will collaborate ... to ensure that the complaint is handled in a manner that is fair and efficient.”

- **Complainants should be allowed to have representation or advisors support them throughout the complaint process.** CSOs and other advisors can play an important role in informing, advising and otherwise supporting complainants throughout the complaint process, for both compliance review and dispute resolution. The CHM should respect this relationship and be open to the involvement of legitimate advisors in a manner requested by the complainants. Moreover, due to potential reprisals, affected communities may need to file complaints via a representative. Both local and international organizations should be allowed to represent and/or support the complainants. The EBRD’s PCM Rules (para. 5) allow for an Authorised Representative to serve as a

“point of contact for all formal communications between the PCM Officer and the Complainant.”

- **The CHM should ensure that the complaint process is culturally appropriate, gender responsive, and equally available to all.** For example, complainants should be able to submit complaints in a variety of forms, either in writing, orally, or via recording, and in their own language. UNDP’s SECU Investigation Guidelines state (sec. 7):

“Complaints are received by mail, email, telephone, facsimile, and SECU’s dedicated online submission form.” The Guidelines of the CAO state (para. 1.6):
“The working language of CAO is English, but CAO works to facilitate communications with its stakeholders in any language, including the submission of complaints and publication of CAO reports and materials.”

- **The CHM should routinely conduct site visits during the eligibility phase and as often as necessary throughout the process.** Site visits allow the mechanism to explain its process to complainants, clients, and bank staff and provide the mechanism with a better understanding of the issues and context germane to the complaint. The Inspection Panel’s Procedures (para. 37) provide for this:

“During the twenty-one day period, a Panel team normally conducts a field visit to the project area to help confirm the technical eligibility of the Request and inform the Panel’s recommendation to the Board. During the field visit, the Panel team meets with the Requesters, and briefs them orally about relevant information in the Management Response, including any proposed remedial actions, as relevant to the Panel’s recommendation to the Board. Bank staff of the country office, officials of the implementing agency and other interested parties may provide relevant information.”

- **Complainants should be allowed to choose dispute resolution, compliance review, or both and their sequence.** The CHM should be empowered to conduct dispute resolution and compliance review contemporaneously or sequentially, as appropriate and as requested by the complainants. UNDP’s SECU Guidelines provide (sec. 8.3) that

“[i]f 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.”

- **The CHM should adhere to clearly established timelines for each stage of the complaint process.** Predictability and transparency of the complaint process is essential for communities’ trust in the mechanism. The CHM should strictly adhere to its established timelines and provide clear reasons to complainants when it cannot meet those timelines. The CAO Guidelines state (paras. 2.3-2.4):

“CAO will complete the assessment within 120 working days of the date a complaint was determined eligible for assessment. CAO will provide an Assessment Report to the parties, the President, the Board, and the public...If the nature of the complaint or special circumstances requires more flexibility, CAO, in consultation with the parties, will review the timeline for handling the complaint.”

- **The CHM should keep complainants regularly updated on the status of their case.** Regular communication from the mechanism will reassure complainants that their complaint has not been forgotten even if there is little progress to report. Communication should be culturally and gender sensitive, in the complainants’ own language, and should account for the complainants’ literacy levels. The AfDB’s IRM assigns this responsibility to the director of the CRMU (para. 79(e)):

“Sending out notices of registered Requests to all interested persons; noting the progress of each Request on the Register and, if required by the circumstances, providing additional updates on such progress to the Requestors and other interested persons; responding to requests for information from Requestors and other interested persons in respect of a particular Request.”

- **The CHM should take measures to prevent and address retaliation against complainants.** Globally, individuals defending their human rights and the environment have increasingly faced intimidation, violence, and reprisals. The mechanism should develop a protocol for addressing threats of and actual retaliation against complainants or those associated with the complaint process. The Inspection Panel has developed such a protocol whose objective is to (sec. 3):

“(i) identify and monitor potential risks of retaliation, including emerging risks; (ii) plan and adopt preventive measures to address and reduce these risks; and (iii) identify appropriate responses if retaliation occurs.”

- **Prior to publishing or disclosing the complaint to other parties, including the AIIB, the CHM should seek the complainants’ permission to do so and ask if they wish to keep their identities confidential.** Confidentiality is an important safeguard to protect complainants who may be at risk if their identities were disclosed. The Policy of the FMO/DEG’s ICM states (para. 3.1.8) that the mechanism will:

“strictly respect and safeguard the absence of explicit consent by a complaining natural person, and refrain in such cases from disclosing the Complainants’ identity to internal and external parties.”

- **The CHM should have the authority to recommend the suspension of the project in the event of imminent harm.** Complaint processes can take a year or more to complete. The CHM should have the mandate to ensure that, if needed, measures are taken to protect affected communities from harm throughout the process. UNDP’s SECU Guidelines allow (sec. 13) the Lead Compliance Officer to:

“recommend to the Administrator that UNDP take interim measures pending completion of compliance review...Such interim measures could include suspending financial disbursements or taking other steps to bring UNDP into compliance with its social and environmental commitments, or to address the imminent harm. The Lead Compliance Officer will endeavor to consult potentially affected people on these measures, depending on time and related constraints.”

- **AIIB management and staff should be required to fully cooperate with the CHM in order to ensure the effective functioning of the mechanism.** Upon the request of the CHM, both compliance review and dispute resolution, AIIB management and staff should, inter alia, provide full access to project-related information, respond frankly to questions posed by the CHM in the course of its activities, and assist in arranging travel to the project site and field offices. The ADB’s AM Policy contains a provision requiring ADB management and staff to cooperate in a number of listed ways in the mechanism’s processes (para. 137):

“ADB Management and Staff will (i) ensure that the OSPF and CRP have full access to project-related information in carrying out their functions; (ii) provide assistance to the OSPF in problem-solving; (iii) coordinate with the CRP on compliance review; [...]” etc.

COMPLIANCE REVIEW (CR)

A robust compliance review function is a hallmark of all IAMs. CR seeks to ensure that the DFI has complied with its environmental and social policies, standards and other criteria. As such, the CR function is a critical tool to ensure the accountability of an institution to its policies and commitments. In addition, the results of CR should inform continuous improvements to policies and procedures, and their implementation, to prevent and minimize problems from arising in the future.

Most importantly, a compliance review process should end in material remedies for complainants. Restoring a project to compliance with the DFI’s requirements necessarily includes necessary “fixes” that will prevent harms and the redress of any harm already done to complainants. **Achieving full and effective remedy through a compliance review process requires the active and constructive participation of DFI management**, an aspect that is often lacking at most DFIs. Management must be required to engage meaningfully with complainants to find mutually agreeable ways to address the IAM’s findings. The process for management engagement should be elaborated either in the IAM’s policy or in a separate procedure governing Management’s role in a complaint process.

In order to effectively achieve both institutional accountability and redress for complainants, the following elements of a CR are necessary:

- **In addition to accepting complaints from project-affected people, the CHM should have the authority to initiate a CR itself.** In limited circumstances—for example if the CHM becomes aware of information suggesting serious non-compliance by the DFI or if the filing of a complaint would entail significant risk to project-affected people—the CHM should initiate its own investigation. The IFC’s CAO has exercised this authority, resulting in significant policy reform in a few cases. The CAO Guidelines state (para. 4.2.1):

“Compliance appraisals of one or more IFC/MIGA projects are initiated in response to any of the following circumstances: A request from the CAO Vice President based on project-specific or systemic concerns resulting from CAO Dispute Resolution and Compliance casework.”

- **The CHM should assess compliance against a set of criteria appropriate to the case at hand.** These criteria could derive from, for example, applicable AIB policies, standards, guidelines, environmental and social assessments, host country legal and regulatory requirements and international standards. For example, the Guidelines of the IFC’s CAO state (para. 4.3):

“The compliance investigation criteria include IFC/MIGA policies, Performance Standards, guidelines, procedures, and requirements whose violation might lead to adverse environmental and/or social outcomes. Compliance investigation criteria may have their origin, or arise from, environmental and social assessments or plans, host country legal and regulatory requirements (including international legal obligations), and the environmental, social, health, or safety provisions of the World Bank Group, IFC/MIGA, or other conditions for IFC/MIGA involvement in a project.”

- **The CHM should additionally seek to identify weaknesses and gaps in AIIB policies and standards that result in adverse social and environmental risks and impacts.** The investigation of the risks and impacts that emerge from projects as they are designed and implemented provides the best opportunity to identify policy lacunae. Such identification should then lead to policy improvements, reducing the risk of negative impacts in the future. The CAO Guidelines (para. 4.2.1), for example, seeks to determine whether:

“[t]here are indications that a policy or other appraisal criteria may not have been adhered to or properly applied by IFC/MIGA” and whether “[t]here is evidence that indicates that IFC/MIGA’s provisions, whether or not complied with, have failed to provide an adequate level of protection.”

- **The CHM should be allowed to seek outside legal counsel for advice.** A DFI’s legal department will often be involved in legal matters involved in project preparation, approval and supervision. The legal department is also likely to be involved in preparing management responses to complaints. It is therefore an inherent conflict of interest if the legal department also provides advice to the IAM or the Board in the course of a CR. For that reason, the CHM should be allowed to seek outside counsel, as the MICI Policy provides (para. 64):

“Except with regard to the Bank’s rights and obligations, the MICI Director may also, at any time, seek external legal advice on Request-related issues as they arise.”

- **The CHM should make recommendations to bring the project into compliance and redress harms.** Where the CHM finds non-compliance that has contributed to harms or the risk of harm, the CR report should include a set of recommendations for remedial measures. Both the complainants and the AIIB should have an opportunity to comment on the recommendations at the same time as they comment on other parts of the draft CR report (see below). The EBRD’s PCM Rules (paras. 44-45) give the experts the authority to make recommendations and allow complainants to comment on them:

“If the Compliance Review Expert concludes that the Bank was not in compliance with a Relevant EBRD Policy, the Compliance Review Expert will issue a Compliance Review Report which will include recommendations to: a) address the findings of non-compliance at the level of EBRD systems or procedures in relation to a Relevant EBRD Policy, to avoid a recurrence of such or similar occurrences, and/or b) address the findings of non-compliance in the scope or implementation of the Project, taking account of prior commitments by the Bank or the Client in relation to the Project.” And: “Taking account of the Management Action Plan and Complainant’s comments, the Compliance Review Expert may adjust his or her recommendations.”

- **All parties should have the opportunity to comment simultaneously on a draft CR report.** Most IAMs allow complainants to review a draft of the CR report to suggest factual corrections. Best practice by the IAMs, represented by the IDB's MICI and the ADB's CRP, is to share the draft with complainants and the DFI simultaneously for their comment. Doing so preserves the integrity of the IAM and the complaint process by preventing the appearance that management has undue influence on the CR findings or recommendations. The ADB's AM Policy states (para. 185):

"Upon completion of its compliance review, the CRP will issue a draft report of its findings to the complainants, the borrower, and Management for comments and responses within 45 days [...] Each party will be free to provide comments, but only the CRP's final view on these matters will be reflected in its final report." The MICI Policy states (para. 44): "Once the MICI has completed its investigation, it will issue a draft report including a review of its main findings of fact and recommendations, and forward them to Management and the Requesters for their comments. Management and the Requesters will have a term of 21 Business Days to send comments on the draft report."

- **The final CR report should be shared simultaneously with complainants and the AIIB Board and management.** Complainants should have access to the CR report before entering into dialogue with management regarding the action plan to give effect to the recommendations. Complainants also require the final report in order to inform the Board of their perspectives on its findings and the proposed recommendations to address them. The AfDB's IRM represents best practice on this element (para. 63):

"...the Compliance Review Report shall be made available to the Requestors at the same time as it is submitted for consideration and decision [by the President or Board]."

- **AIIB management must be required by Board-approved policy to develop and implement an action plan to give effect to the CHM's recommendations as approved by the Board.** In the absence of this requirement, management may simply disregard the CR findings and prevent the CHM from fulfilling its mandate. The Policy of the ADB's AM represents best practice (para. 190):

"If the CRP concludes that ADB's noncompliance caused direct and material harm, Management will propose remedial actions to bring the project into compliance with ADB policies and address related findings of harm."

- **Management should consult with complainants on the development of the plan, and the Board should have the benefit of the complainants' perspective on its adequacy prior to approving the plan.** Obtaining the ideas and perspectives of the complainants in the development of the action plan is essential to ensuring that the measures will satisfactorily address their grievances and redress harms they have suffered. The Procedures of the World Bank's Inspection Panel require consultation with complainants (para. 70):

“Management will communicate to the Panel the nature and the outcomes of the consultations with the affected parties on the action plan agreed between the Borrower and the Bank. The Panel may submit to the Board, for its consideration, a written or verbal report on the adequacy of these consultations.” Under the Rules of Procedure for the EBRD’s PCM, complainant’s comments on the action plan are shared with the Board (para. 46): “The PCM Officer will then: ... b) submit the Management Action Plan and the Complainant’s comments on the Management Action Plan to the Board of Directors or the President, as the case may be, who may decide to accept the Management Action Plan or to reject it in whole or in part.”

- **The CHM should have the mandate to monitor the case until all instances of non-compliance have been remedied.** It is not sufficient for the IAM to monitor the implementation of the action plan because the measures taken by management might not bring the project back into compliance. The duration of the monitoring period should not be prescribed by the policy. The Guidelines of the IFC’s CAO represents best practice in this regard (para. 4.4.6):

“In cases where IFC/MIGA is/are found to be out of compliance, CAO will keep the compliance investigation open and monitor the situation until actions taken by IFC/MIGA assure CAO that IFC/MIGA is addressing the noncompliance. CAO will then close the compliance investigation.”

- **The CHM should consult with parties in the development of its monitoring reports and conduct site visits, as appropriate, to verify information provided to it.** Cases should not be closed unless there is verifiable evidence that the non-compliance has been remedied. That will require the CHM to consult with all parties involved and conduct site visits to document progress or lack thereof. Cases often receive less attention after the CR report has been published, but ensuring that findings have resulted in concrete improvements on the ground is critical to an effective grievance mechanism. The EBRD’s PCM Rules (para. 47) and the ADB’s AM Policy (para. 194) in combination represent best practice:

“The PCM Officer will issue Compliance Review Monitoring Reports at least biannually or until the PCM Officer determines that monitoring is no longer needed. In the preparation of each report, the PCM Officer will consult with the Relevant Parties as appropriate.” And: “The methodology for monitoring may include (i) consultations with the complainants, the borrower, the Board member concerned; Management; and staff; (ii) a review of documents; and (iii) site visits. The CRP will also consider any information received from the complainants and the public regarding the status of implementation.”

In addition, we believe the following innovations would help ensure a more effective compliance review and remediation process:

- **The CHM should have the power to suspend a project if non-compliance is not remedied.** Several IAMs have the mandate to recommend the suspension of disbursements to a project if it is possible that serious harm would result (see section on Complaints Process), but that mandate should extend to suspending disbursements if non-compliance is not remedied in a reasonable period of time.

- **The AIIB should establish a fund to assist in providing remedy to complainants for harm that it contributed to by its non-compliance with its commitments.** Clients should not be solely responsible for providing remedy; the DFI must discharge its own responsibility for the harm that was caused. The fund should also be available when the client is unable or unwilling to address the harm. There are several examples where DFIs have contributed their own funds to seek solutions for complainants. The AIIB should establish a permanent fund available for this purpose.

DISPUTE RESOLUTION (DR)

Nearly all IAMs have a dispute resolution (sometimes called a “problem-solving”) function. In general, this function allows the IAM to attempt to resolve grievances about negative social and environmental risks and impacts of a project through a range of approaches, including facilitated dialogue or mediation, joint fact-finding, and other forms of multi-stakeholder problem solving as appropriate to the case at hand. **It is important that the DR function be broadly empowered and equipped to tailor its approach to the particulars of the case, its setting and the parties to the dispute.** The decision to attempt to resolve grievances through DR should not preclude a compliance investigation; and a compliance investigation need not become an obstacle to DR and productive efforts to reach agreement among the parties. Such efforts should be taken into account in the compliance review.

Complainants to IAMs are almost always poor, marginalized from decision-making, and otherwise at a disadvantage to the owners, developers, and operators of the project that affects them. In recognition of this power imbalance, **any DR process between complainants and clients of the AIIB, and indeed AIIB itself, should ensure the application of a set of protections to ensure fairness, legitimacy and trust.** The DR process should include the following protections, at minimum:

- **The DR function should appoint a neutral, professional mediator, or other facilitator as appropriate, agreed to by the parties.** The mediator’s background and skills should be suitable to the context and dynamics of the case. Parties should agree to the mediator. For example, the rules of procedure of the FMO/DEG’s ICM state (para. 3.2.6):

“In the Dispute Resolution phase, a Complaint may be handled by the Independent Expert Panel or mediators selected by the Panel, as long as all parties agree on the selected mediator.”

- **The CHM should raise awareness among all parties of the rights and entitlements of project-affected people, including entitlements under AIIB’s Environmental and Social Framework (ESF), which should form the basis of resolutions reached.** The CHM should also ensure that any resolutions reached comply with host country and international law. The CAO Guidelines state (para. 3.2.2):

“In pursuit of resolution, CAO will not support agreements that would coerce one or more parties, be contrary to IFC/MIGA policies, or violate domestic laws of the parties or international law.”

Further, if compliance review is completed prior to or during a DR process, the findings should be used to help ensure DR outcomes are consistent with AIIB policies, including the ESF.

- **Complainants should have the right to withdraw from DR at any time and have their complaint handled by the compliance function.** The voluntary participation of parties is essential to mediations and other DR processes. If at any stage complainants believe that the DR process is not productive or fair, they should be free to withdraw, without repercussions or penalty. In this instance, their complaint should be transferred to the compliance function unless they explicitly request to withdraw their complaint entirely. The Policy of the ADB AM provides (para. 153):

“The complainants will decide and indicate whether they want to undergo the problem-solving or compliance review function. They can exit the problem solving function and file for compliance review. Complainants can also request compliance review upon the completion of step 3 of the problem solving process [...] if they have serious concerns on compliance issues. Complainants can exit or disengage from either the problem solving or compliance review function at any time, which will terminate the process.”

(Step 3 is the actual problem solving process in which the mechanism facilitates engagement of the parties to resolve the problem. This can be completed on the initiation of the complainants themselves (or any other party) if they decide to walk away from the process because they do not consider it purposeful.)

- **The CHM should have the power to monitor the implementation of agreements reached and commitments made through the DR process.** A monitoring role is essential to the effectiveness of the DR process in bringing about material redress. The CHM should consult with the parties as part of its monitoring role. The CAO Guidelines, for example, state (para. 3.2.3):

“Any agreements reached by the parties will usually contain a program and timelines for implementation. The CAO Dispute Resolution team will monitor whether the agreements have been implemented, and publicly disclose the outcomes on CAO’s website.” The Policy of the ADB’s AM states (para. 174): *“As part of the monitoring process, the [Special Project Facilitator] will consult with the complainants, the borrower, and the operations department concerned.”*

In addition, we believe the following innovations would help ensure a more effective dispute resolution process:

- As with CR, the experience of DR processes at other IAMs have revealed the need for a **dedicated fund that can be accessed to cover costs associated with mitigation or remedial actions that are agreed to through a DR process, but which fall outside the scope of the client’s responsibilities.** For example, following an agreement reached by an AIIB client and complainants on land boundaries between the project and the affected households, the fund might cover the costs of land registration for the households to give full effect to the agreement and ensure the community’s tenure security, preventing the reemergence of disputes.
- **The CHM should have a small claims window that people can access for quick resolution of small-scale harms resulting from an AIIB-funded project.** This window should only be triggered when explicitly requested by the complainants and the issues raised in the complaint are clearly defined,

limited in scope, and appear to be amenable to a rapid solution in the interests of the complainants. Such a small claims window should be designed with specific parameters in consultation with CSOs. A complainant should not be required to use the small claims window prior to DR or CR. The use of the small claims window --whatever the outcome-- should not prevent complainants from accessing DR or CR, if they wish to avail themselves of these processes.

ADVISORY

If systematically captured and utilized, the CHM's experiences can provide a valuable source of learning to improve the AIIB's performance and outcomes for project-affected communities. As at other IAMs, an advisory function would authorize the CHM to provide pragmatic, evidence-based recommendations gleaned from the CHM's dispute resolution and compliance casework, shedding light on gaps in the AIIB's policies and their implementation. Additionally, the advisory function helps to embed an institutional culture of continuous learning and improvement of policy and practices. Specifically:

- **The CHM should undertake and publish independent analysis on trends and systemic issues arising from its cases.** The CAO has published advisory papers on numerous re-occurring issues from its dispute resolution and compliance work, including the: *CAO Grievance Mechanism Toolkit* (July 2016); *Advisory Series Lessons from CAO Cases: LAND* (August 2015); and *Participatory Water Monitoring: A Guide for Preventing and Managing Conflict* (2008). The publications identify tools to help project-affected communities and clients overcome common challenges.
- **The CHM should provide input on the development and revision of the AIIB's policies and guidelines.** Drawing on the lessons from its cases, the CHM will have valuable recommendations to contribute to the development and revision of the AIIB's policies and practices. For example, the CAO published its *Review of IFC's Policy and Performance Standards on Social and Environmental Sustainability and Policy on Disclosure of Information* (May 2010) to inform the IFC's review of its Sustainability Framework. The CAO's recommendations to strengthen the IFC's Framework were based on 10 years of casework. Similarly, the Inspection Panel's lessons learned series from its caseload were important considerations in the update of the World Bank's environmental and social safeguard policies. The World Bank benefited from the Inspection Panel's insights—despite the absence of the mechanism's official advisory mandate.
- **The CHM should provide its advice to AIIB Board and Management in writing and monitor the AIIB's implementation of its advice.** To maintain the transparency and accountability for the advice provided, the CHM should provide advice in writing and disclose it publicly. Just as with the dispute resolution and compliance review functions, the CHM should monitor the actions taken to implement its advice under its advisory function. The CAO Guidelines represent best practice among IAMs (paras. 5.1.2 and 5.3.3):

"CAO advice is given formally in writing." And: "Advice will be integrated into CAO's monitoring and evaluation activities. CAO monitors IFC's/MIGA's implementation of advice and reports CAO's findings to the President."

LIST OF ACRONYMS

ADB's AM	Asian Development Bank's Accountability Mechanism
AfDB's IRM	African Development Bank's Independent Review Mechanism
AIIB	Asian Infrastructure Investment Bank
CHM	Complaints Handling Mechanism
CODE	Committee on Development Effectiveness
CR	Compliance Review
CRP	Compliance Review Panel
CSOs	Civil Society Organizations
DFI	Development Finance Institution
DR	Dispute Resolution
EIB's CM	European Investment Bank's Complaints Mechanism
EBRD's PCM	European Bank for Reconstruction and Development's Project Complaint Mechanism
IAM	Independent Accountability Mechanism
ICM of FMO & DEG	Independent Complaints Mechanism (ICM) of the Netherlands Development Finance Company (FMO) and the German Investment and Development Corporation (DEG)
IDB's MICI	Inter-American Development Bank's Independent Consultation and Investigation Mechanism
IFC's CAO	International Finance Corporation's Compliance Advisor Ombudsman
UNDP's SECU	The United Nations Development Programme's Social and Environmental Compliance Unit