

**WORKING PAPER**

(For consideration by the Board on or about 17 March 2003)

**ASIAN DEVELOPMENT BANK**

**REVIEW OF THE INSPECTION FUNCTION:  
ESTABLISHMENT OF A NEW ACCOUNTABILITY MECHANISM**

**February 2003**

## ABBREVIATIONS

ADB	–	Asian Development Bank
AfDB	–	African Development Bank
BIC	–	Board Inspection Committee
BCRC	–	Board Compliance Review Committee
CAO	–	Compliance Advisor/Ombudsman
DMC	–	developing member country
EA	–	executing agency
EBRD	–	European Bank for Reconstruction and Development
EDC	–	Export Development Canada
IBRD	–	International Bank for Reconstruction and Development
IDA	–	International Development Association
IDB	–	Inter-American Development Bank
IFC	–	International Finance Corporation
IMF	–	International Monetary Fund
JBIC	–	Japan Bank for International Cooperation
MDB	–	multilateral development bank
MIGA	–	Multilateral Investment Guarantee Agency
NAAEC	–	North American Agreement on Environmental Cooperation
NAFTA	–	North American Free Trade Agreement
NGO	–	nongovernment organization
OCRIP	–	Office of the Compliance Review Panel
OD	–	operations department
OED	–	Operations Evaluation Department
OER	–	Office of External Relations
OGA	–	Office of the General Auditor
OGC	–	Office of the General Counsel
OM	–	Operations Manual
OSEC	–	Office of the Secretary
OSPF	–	Office of the Special Project Facilitator
PCR	–	project completion report
PPS	–	private project sponsor
PSOD	–	Private Sector Operations Department
RD	–	regional department
RSDD	–	Regional and Sustainable Development Department
SPF	–	special project facilitator
UN	–	United Nations
WB	–	World Bank

## NOTE

In this report, "\$" refers to US dollars.

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## EXECUTIVE SUMMARY

In December 1995, the Asian Development Bank's (ADB) Board of Directors approved the establishment of the Inspection Function to provide a forum for project beneficiaries to appeal to an independent body relating to ADB's compliance with its operational procedures and policies in ADB-financed projects. ADB established the Inspection Function in the context of increased attention to public participation, transparency, and sustainability by ADB, other multilateral development banks (MDBs), and their member countries. The approval of the Inspection Function was designed to complement ADB's existing audit, supervision, and evaluation systems.

Support for strong accountability mechanisms at ADB and other MDBs has continued throughout the past decade. The World Bank (WB) and the Inter-American Development Bank (IDB) established inspection mechanisms in 1993 and 1994, respectively. The International Finance Corporation (IFC) and the Multilateral Investment Guarantee Agency (MIGA) created a Compliance Advisor/Ombudsman (CAO) in 1999. In 2000, ADB's donors recommended a strengthened and more independent inspection function that should have oversight of private sector projects as well.<sup>1</sup> In 2002, two leading bilateral export credit agencies (Export Development Canada and Japan Bank for International Cooperation), announced their intention to create accountability mechanisms. In 2002, the European Bank for Reconstruction and Development developed a proposal for an independent recourse mechanism which is expected to be discussed by its Board in the first half of 2003.

At the time of approval of ADB's inspection mechanism, the ADB Board stipulated a review within 2 years that would assess the operations of the Board Inspection Committee (BIC) and related inspection procedures and review the Inspection Function's application to ADB's private sector operations. In 1998, the review of the Inspection Function was begun, but ADB had had limited experience with the inspection process, and few conclusions could be drawn regarding the existing system. Only two requests, both regarding the Korangi Wastewater Management Project in Pakistan, had been filed by then, and BIC had deemed them ineligible.

From April 2001 to March 2002, ADB conducted its first full inspection process, relating to the Samut Prakarn Wastewater Management Project in Thailand. During the Samut Prakarn Inspection, it became evident that the current inspection process and procedures are too lengthy, confusing, and complex for all stakeholders. This experience reinforced the need for a further review of the current structure, and an evaluation of options for the future. Other significant issues that arose during the Samut Prakarn Inspection included the independence of the Inspection Function in terms of ensuring credibility and effectiveness of the inspection process, and the lack of transparency and information dissemination in the inspection process.

The Inspection Function review has been the subject of extensive internal and external consultations. ADB engaged two staff consultants to assist in carrying out the review of the Inspection Function as well as acting as resource persons during the external consultations. They attended staff meetings; interviewed ADB staff, including operations staff; and interviewed ADB Board members, including BIC members, prior to preparing an initial issues paper, followed by initial first, second, and third drafts of the working paper.

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<sup>1</sup> ADB. 2000. *Seventh Replenishment of the Asian Development Fund*, para. 129. Manila.

The issues paper and the first and second drafts were posted on the ADB web site for comments. ADB held two rounds of public consultations in June and August 2002 to solicit comments on the first and second drafts of the working paper, respectively. The consultations were held in ten venues in ADB member countries. The first round was held in Tokyo, Manila, Frankfurt, Ottawa, and Washington DC. The second round was held in Phnom Penh, Kathmandu, Beijing, and Sydney. Prior to the second round, a special consultation was held in Karachi in early August 2002. The purpose of the special consultation was to obtain the views of the requesters and their representatives in inspection requests concerning the Korangi Wastewater Management Project in Pakistan on their experience in accessing the inspection process and on the establishment of a more efficient and cost-effective mechanism. The public consultations were attended by government officials from developing member countries and donor countries, the private sector, civil society (including nongovernment organizations), project-affected people, and requesters in ADB inspection requests. ADB staff, ADB panel roster members, and Board members also participated in these consultations.<sup>2</sup>

In the last quarter of 2001, the President set up a steering committee (to oversee the review) and a working group (to carry out the review).<sup>3</sup> From October 2001 to October 2002, the steering committee/working group/inspection function review committee met on 12 occasions to discuss preliminary drafts of the issues paper and working papers, and the direction of the review. An informal Board briefing was held in June 2002 after the first workshop in ADB's external consultations on the review. An informal Board retreat was held to discuss the preliminary draft of the second working paper on 25-26 July 2002. Internal consultations were also held with the regional departments, the Regional and Sustainable Development Department, and the Private Sector Operations Department in July and August 2002 on the choice of a suitable accountability mechanism.

The public consultations reinforced broad support for an independent accountability mechanism that addresses the grievances of adversely affected people in ADB projects. There was also broad support for increased problem-solving efforts and problem prevention measures by ADB. Additionally, there was a strong expectation that the new mechanism should complement and enhance ADB's objectives of poverty reduction, development effectiveness and efficiency, and increased project quality.

At each stage of the public consultations, four non-exclusive options (with variants) were provided, as follows:

- (i) **Option A:** Maintain the existing Inspection Function with improvements in the system such as strengthening the secretariat and streamlining the procedures.
- (ii) **Option B:** Establish an independent inspection panel based on the WB panel model with improvements, including an independent secretariat, an annual budget, and at least one full-time chairperson of the panel.

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<sup>2</sup> The outcome of each public consultation is posted on the ADB web site at <http://www.adb.org/Inspection/review.asp>.

<sup>3</sup> The steering committee and the working group were merged in September 2002 as the inspection function review committee to carry out the review as one single group. Its membership was also expanded to include the directors general of all regional departments.

- (iii) **Option C:** Adopt a problem-solving approach, perhaps similar to the ombudsman's role in IFC/MIGA's CAO office.
- (iv) **Option D:** Establish a two-step approach with both a consultation and compliance review mechanism. This approach would (a) facilitate solving the problems of affected people at an early stage through consultation or some other form of dispute resolution; and (b) conduct a compliance review of those claims at the request of the claimants, irrespective of the problem, that raise potential policy violations.

Overall, the public consultations expressed broad support in favor of Option D (the two-step approach of consultation and compliance review). There was also support for Option B (the WB model) and to a lesser degree, interest in Option A (revising the existing system), and even less in Option C (the problem-solver only). Some participants presented their own models based on one or more of the options.

The combined results of both internal and external consultations indicate, at the minimum, broad support for a compliance review panel that is an improved version of the WB panel. The design of the consultation phase preceding the compliance review presented the more difficult challenges in terms of consensus building. There is a diversity of views of how this phase should be designed and implemented. Key questions presented by consultation participants include (i) whether the project counselor should be appointed by and report to the President or to the Board, (ii) the relationship between the project counselor's office and the compliance review panel, and (iii) the sequence of the claimant's initial approach to the two functions.

Further internal consultations took place subsequent to the public consultations from September to November 2002. Following these internal consultations, a preliminary working paper with a proposal on the new accountability mechanism was prepared in November 2002 for the Board to provide their views at an informal seminar. The informal Board seminar was held in January 2003 and this paper has been prepared taking into account the various comments made by the Board, including comments from the internal and external consultations. The proposal in this paper is a variant of Option D that consists of two separate but complementary functions. The **two functions** would be (i) a consultation phase consisting of a special project facilitator (SPF), who will respond to specific problems and concerns of locally affected people in ADB projects through a range of informal and flexible methods; and (ii) a compliance review phase consisting of an independent panel (the Compliance Review Panel) to investigate alleged violations of ADB's operational policies and procedures that have resulted in direct, adverse, and material impacts on project-affected people, and to make recommendations to ensure future compliance and reduction of these impacts. Although the offices will be physically and functionally separate from each other, they will be linked through the purposes of responding to the grievances of affected people, enhancing ADB development effectiveness, and improving project quality.

The consultation phase will consist of one senior-level person (the SPF), who will be assisted by one professional staff member and two support staff members. The Compliance Review Panel will consist of three Panel members, one of whom will be the Chair of the Panel. The Panel will be assisted by an office serving as secretariat with two professional staff members, one of whom will also act as the secretary of the Compliance Review Panel, and

three support staff members. The new accountability mechanism will apply to all ADB operations in the public and private sectors. If deemed necessary, the accountability mechanism may adopt additional and different procedures for processing and reviewing private sector operations.

This paper provides the following: (i) a review of the current ADB Inspection Function, including background and an overview of the current Inspection Function's policy and procedures; (ii) a discussion of the consultations on the review of the ADB Inspection Function, including an overview of options for an ADB accountability mechanism; (iii) a proposal for a new ADB accountability mechanism, with a two-step system of consultation and compliance review, including resource implications, effective date of the new accountability mechanism, and transition arrangements; and (iv) a recommendation on the establishment of the new mechanism and related matters.

## I. CURRENT ADB INSPECTION FUNCTION

### A. Background

1. On 5 December 1995, the Asian Development Bank's (ADB) Board of Directors approved the establishment of the Inspection Function to provide a forum for project beneficiaries to appeal to an independent body relating to ADB's compliance with its operational policies and procedures in ADB-financed projects.<sup>1</sup> ADB's Inspection Function was the third such accountability mechanism, following closely on the creation of inspection functions at the World Bank (WB) in 1993 and the Inter-American Development Bank (IDB) in 1994.

2. At the time of approval of ADB's Inspection Function, the Board stipulated that:

[T]he operation of the Board Inspection Committee and related inspection procedures, and consideration of the application of these inspection procedures to the Bank's private sector operations, should be reviewed by Management within two years after the Board's approval of the initial Roster, and the results of this review, together with any proposals for improvements in the operation of the Committee or in the related inspection procedures, should be submitted to the Board.<sup>2</sup>

3. In 1998, ADB commenced the review of the Inspection Function. During the initial review ADB sought the views of civil society including nongovernment organizations (NGOs), private sector lenders and investors, and the ADB Management and Board. An initial working paper was submitted to the Board in September 1999.<sup>3</sup> The working paper considered the functioning of the Board Inspection Committee (BIC), reviews by WB and IDB of their inspection mechanisms, issues and lessons learned, and the application of the Inspection Function to ADB's private sector operations. At that time, ADB had limited experience with the inspection process, and few conclusions could be drawn regarding the existing system. Only two requests, both regarding the Korangi Wastewater Management Project in Pakistan, had been filed by then, and BIC had deemed both ineligible. Since 1999, ADB has gone through its first complete inspection process, relating to the Samut Prakarn Wastewater Management Project in Thailand. During the Samut Prakarn Inspection it became evident that the current inspection process and procedures are lengthy, confusing, and complex for stakeholders inside and outside ADB. This reinforced the need for a further review including public consultations, and an evaluation of options for the future. Other significant issues that arose during the Samut Prakarn Inspection included the independence of the Inspection Function in terms of ensuring credibility and effectiveness of the inspection process, and the lack of transparency and information dissemination in the inspection process.

4. In 2002, two earlier drafts of the working paper were extensively discussed at both internal and external consultations during the review of ADB's Inspection Function. These two drafts analyzed the issues raised by the current Inspection Function in detail and offered various options for a future mechanism. This paper has been prepared taking into account the comments made by the Board at an informal seminar in January 2003, including comments from the internal and external consultations.<sup>4</sup> Section I of this paper provides information on the

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<sup>1</sup> ADB. 1995. *Establishment of an Inspection Function*. Manila.

<sup>2</sup> *Ibid.*, para. 51(d).

<sup>3</sup> ADB. 1999. *Working Paper on Review of Inspection Function*. Manila.

<sup>4</sup> This paper will be posted on the ADB web site when it is presented in February 2003 to the Board for discussion.

current ADB Inspection Function. The experiences with accountability mechanisms by other institutions are provided in Appendix 1 (multilateral development banks [MDBs]) and in Appendix 2 (institutions other than MDBs). A summary of ADB inspection requests is provided in Appendix 3. Section II provides information on the consultations on the review of the ADB Inspection Function. Appendix 4 summarizes the four options presented in the previous draft working papers. Appendix 5 summarizes in matrix form the consolidated comments received from both within and outside ADB during the consultations, and ADB's responses. Section III describes the proposal for the ADB accountability mechanism with a two-step approach (consultation and compliance review), including resource implications, effective date of the accountability mechanism, and transition arrangements. Appendix 6 provides the institutional setup of the new accountability mechanism. Appendix 7 summarizes suggested modes of response to complaints and the dispute settlement procedure. Finally, Section IV makes a recommendation on the establishment of the new mechanism and related matters.

## **B. Purposes and Objectives of the ADB Inspection Function**

5. The emergence of accountability mechanisms at ADB and other MDBs was a direct response to broader changes both inside and outside MDBs. Beginning in the 1980s and throughout the 1990s, the activities of MDBs came under increased scrutiny by civil society groups, parliamentarians, and nonfinance ministry officials in both borrowing and donor countries. At the same time, there was a shift in development models toward sustainable development that was formally recognized at the 1992 United Nations Conference on Environment and Development. In response to these trends, MDBs began to develop new environmental and social policies that aimed at improving long-term development effectiveness, in part by emphasizing the interests of affected communities.

6. The environmental and social policy frameworks set minimum standards for the design and implementation of MDB-financed projects. The policy frameworks were developed to respond to concerns that MDBs not fund projects that, for example, had unreasonable environmental impacts (e.g., environment policy), unfairly disadvantaged vulnerable groups (e.g., indigenous people and involuntary resettlement policies), or were conducted with little or no local knowledge or participation (e.g., access to information and consultation policies). The policies were also seen as improving the consistency of project implementation and as an appropriate way for the boards of directors of MDBs to elaborate substantive standards for staff operations. Through establishing minimum standards to be applied consistently, such a policy framework improves the quality and effectiveness of development projects funded by MDBs.

7. Soon after the policy frameworks were developed, concerns arose from civil society groups and member governments that these policies were not being implemented or adhered to properly or consistently. Additionally, MDBs faced an increasing need to carry out independent and objective investigations into the grievances of groups and communities affected by MDB projects. A number of high profile citizens' grievances arose in the 1980s, particularly against WB, and stakeholders inside and outside MDBs identified the need to create mechanisms to handle these complaints constructively. Due to the immunities and privileges enjoyed by MDBs under international law and through their charters, MDBs are shielded from citizen lawsuits in member countries. This immunity basically denied affected people an effective forum to air their grievances and seek redress.<sup>5</sup>

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<sup>5</sup> ADB. 2001. *Samut Prakarn Wastewater Management Project: Legal Opinion on the Question of ADB's Potential Liability under the Inspection Function*. Manila.

8. These factors led first WB, and then other MDBs, including ADB, to create accountability mechanisms aimed at enhancing public accountability and compliance with their policies. The WB Inspection Panel was created in 1993, followed by the IDB Independent Investigation Mechanism in 1994, ADB's Inspection Function in 1995, and the International Financial Corporation/Multilateral Investment Guarantee Agency (IFC/MIGA) Compliance Advisor/Ombudsman (CAO) in 1999. These accountability mechanisms have all aimed to improve the institutions' development effectiveness both by enhancing the staff's accountability to the board of directors through monitoring compliance with the underlying policy framework and increasing MDBs' responsiveness to project-affected people. In 2002, two leading bilateral export credit agencies (Export Development Canada and Japan Bank for International Cooperation) announced their intention to create accountability mechanisms. In 2002, the European Bank for Reconstruction and Development (EBRD) developed a proposal for an independent recourse mechanism which is expected to be discussed by its Board in the first half of 2003. Appendix 1 summarizes the accountability mechanisms at other MDBs, and Appendix 2 summarizes the accountability mechanisms at institutions other than MDBs.

9. ADB identified similar objectives for establishing its Inspection Function. According to the 1995 Board policy, the specific rationale for establishing the Inspection Function covered the following:

- (i) Establishment of an inspection function and related inspection procedures would be consistent with ADB's policy of encouraging transparency and accountability in its operations.
- (ii) Establishment of such a function would complement ADB's policy of allowing greater public access to ADB documents and publications, as well as ADB's increased emphasis on beneficiary participation in the formulation and implementation of projects.
- (iii) Independent investigation of the facts underlying the grievance of a group arguably affected by ADB's failure to follow its operational policies and procedures would permit a fair hearing of the views of the affected group.
- (iv) The activities and recommendations of an inspection body would help to educate the public at large about the variety and complexity of issues involved in development programs in the region.
- (v) The existence of an inspection body would foster greater confidence in and support for ADB and its operations.<sup>6</sup>

10. The purpose of the inspection policy as provided in the Inspection Procedures<sup>7</sup> is "to ensure that the Bank's operational policies and procedures are followed in the formulation, processing and implementation of Bank-financed projects."<sup>8</sup>

<sup>6</sup> ADB. 1995. *Establishment of an Inspection Function*, para. 5. Manila.

<sup>7</sup> The Inspection Procedures were approved by BIC on 9 October 1996 and are included in ADB's *Inspection Policy: A Guidebook* dated October 1996. The Inspection Procedures were prepared to provide detailed guidance on the operation of the inspection policy.

<sup>8</sup> ADB. 1996. *Inspection Procedures*, para. 3. Manila.

### C. Current Inspection Function's Policy and Procedures

11. The current ADB Inspection Policy provides a formal channel for local communities and affected people to request an independent review or "inspection" of alleged policy violations in the formulation, processing, or implementation of ADB projects. The Policy is contained in the Board Paper R225-95 (10 November 1995).<sup>9</sup> The Inspection Procedures in *ADB's Inspection Policy: A Guidebook* provide additional detailed guidance on the operation of the Policy.

12. Under the current Inspection Function, the following parties can request an inspection regarding an ADB-financed project: (i) communities, organizations, or other groups residing in the borrowing member country where the project is being implemented or is proposed to be implemented; (ii) similar groups residing in another member country adjacent to such borrowing member country if the group is affected or likely to be affected by the project; (iii) representatives of such groups residing in the same country or, in exceptional cases, where no local representative is available, by nonlocal representatives; and (iv) one or more Board members in special cases involving allegations of serious violations with respect to an ongoing project.

13. Requests must be submitted in writing in English and must describe the following: (i) how ADB has failed to follow applicable operational policies and procedures in connection with the project; (ii) how the requester has been or is likely to be directly and materially harmed by ADB's act or omission, and what rights or interests of the group have been or are likely to be adversely affected; and (iii) a description of the steps taken by the requester to bring the grievance to ADB's attention, ADB's response, and a statement of why ADB's response was inadequate.<sup>10</sup>

14. Requests that are beyond the scope of the Inspection Function and will not be considered include the following: (i) complaints relating to actions that are the responsibility of other parties or that do not involve ADB action or omission in violation of its operational policies and procedures; (ii) complaints regarding decisions made by ADB, the borrower, or the executing agency (EA) on procurement of goods and services, including consulting services; (iii) complaints relating to completed projects or substantially completed projects where 95% of the loan funding has been disbursed; (iv) complaints that have been already disposed under ADB's inspection procedures, unless the requesters present new evidence not known at the time of the original request; (v) complaints about the adequacy of ADB's existing policies or procedures; (vi) complaints within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or that relate to ADB personnel matters; and (vii) complaints involving ADB's private sector projects.

15. The current inspection process includes the following steps:

- (i) An affected party sends a written complaint to the ADB President about an ADB-financed project.

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<sup>9</sup> This Board paper, which was approved in December 1995, is available on the ADB web site at <http://www.adb.org/Documents/Policies/Inspection/default.asp?p=inspdocs - contents>. Printed copies are available from ADB's Public Information Center.

<sup>10</sup> See *ADB's Inspection Policy: A Guidebook*, October 1996, for detailed requirements on filing an initial complaint and a request for inspection.

- (ii) Management responds to the complaint within 45 days from receipt of the complaint by the President.
- (iii) If the affected party is unsatisfied with the response, it can send a request for inspection to BIC. BIC consists of six Board members, including four regional Board members (at least three of whom must be from borrowing countries) and two nonregional Board members. The request for inspection should contain the same information as the original complaint as well as a description of the steps taken by the requester to bring the grievance to the attention of Management, and why Management's response was inadequate.
- (iv) BIC will determine eligibility and ask Management for a response to the request within 30 days from Management's receipt of the request.
- (v) BIC recommends to the Board whether the requested inspection should be authorized within 14 days from receipt of Management's response.
- (vi) The Board determines whether to authorize an inspection within 21 days from receipt of BIC's recommendation.
- (vii) Within 7 days from the Board decision, BIC informs the requesters of the Board decision.
- (viii) If the Board authorizes an inspection, BIC selects a panel of available experts from the panel roster to inspect the project.
- (ix) After the inspection, the ADB panel sends a report to BIC.
- (x) Management submits its response to the panel report within 30 days from receipt.
- (xi) BIC sends a recommendation to the Board within 14 days from receipt of Management's response, along with the panel report and Management's response.
- (xii) The Board makes a decision on the panel report within 21 days from submission to the Board, and recommends to Management appropriate measures.
- (xiii) BIC informs the requesters of the Board decision within 7 days from the Board decision.

16. From the above steps, it takes at least 117 days before the requester knows whether an inspection has been authorized. It takes at least 182 days before the requester knows the outcome of the Board decision. These days do not take into account extensions of time to file documents and the duration of the panel inspection, which is not time-bound.

#### **D. Requests for Inspection**

17. ADB has received eight requests for inspection since 1996: three from Pakistan, four from Sri Lanka, and one from Thailand. Six requests have been deemed ineligible by BIC. Only one request—the Samut Prakarn Wastewater Management Project in Thailand—has gone

through a full inspection process. The eighth request for inspection—the Chashma Right Bank Irrigation Project (Stage III) in Pakistan—was received by ADB in November 2002. A summary of the ADB inspection requests is given in Appendix 3.

## II. CONSULTATIONS ON THE REVIEW OF THE ADB INSPECTION FUNCTION

### A. Internal and External Consultations

18. In the last quarter of 2001, the President set up a steering committee (to oversee the review) and a working group (to carry out the review).<sup>11</sup> ADB engaged two staff consultants (Ms. Lori Udall and Mr. David Hunter) to assist in carrying out the review as well as to act as resource persons during the external consultations. They attended staff meetings;<sup>12</sup> interviewed ADB staff, including operations staff; and interviewed ADB Board members, including BIC members, prior to preparing an initial issues paper, and the initial, first, second, and third drafts of the working paper.

19. An extensive public consultation exercise included the following: (i) posting on the ADB web site a consultation plan on the review of the Inspection Function;<sup>13</sup> (ii) a timetable of activities relating to the review;<sup>14</sup> (iii) a schedule of workshop consultations;<sup>15</sup> (iv) a dedicated e-mail address to receive comments on the issues paper, and the first and second drafts of the working paper all of which were posted on the web site;<sup>16</sup> and (v) posting of comments received on the web site.<sup>17</sup> From October 2001 to October 2002, the steering committee/working group/inspection function review committee met on 12 occasions to discuss preliminary drafts of the issues paper and the working papers and the direction of the review. An informal Board briefing was held in June 2002 after the first workshop in ADB's external consultations on the review. An informal Board retreat was held to discuss the preliminary draft of the second working paper on 25-26 July 2002. Internal consultations were also held with the regional departments, the Regional and Sustainable Development Department, and the Private Sector Operations Department in July and August 2002.

20. ADB held two rounds of public consultations in June and August 2002 to solicit comments on the first and second drafts of the working paper, respectively. The public consultations were held in ten venues in ADB member countries. The first round was held in Tokyo, Manila, Frankfurt, Ottawa, and Washington DC. The second round was held in Phnom Penh, Kathmandu, Beijing, and Sydney. Prior to the second round, a special consultation was held in Karachi in early August 2002. The purpose of the special consultation was to obtain the views of the requesters and their representatives in ADB inspection requests concerning the Korangi Wastewater Management Project in Pakistan on their experience in accessing the inspection process and on the establishment of a more efficient and cost-effective mechanism.

<sup>11</sup> The steering committee and the working group were merged in September 2002 as the inspection function review committee to carry out the review as one single group. Its membership was also expanded to include the directors general of all regional departments.

<sup>12</sup> Including the working group on the review of the inspection function.

<sup>13</sup> At [http://www.adb.org/Inspection/consultation\\_plan.asp](http://www.adb.org/Inspection/consultation_plan.asp).

<sup>14</sup> At <http://www.adb.org/Inspection/timetable.asp>.

<sup>15</sup> At [http://www.adb.org/inspection/consultation\\_schedule.pdf](http://www.adb.org/inspection/consultation_schedule.pdf).

<sup>16</sup> The issues paper was posted in April 2002 at <http://www.adb.org/Inspection/issuespaper.pdf>. The first draft of the working paper was posted in May 2002 at <http://www.adb.org/Inspection/draft.pdf>. The second draft of the working paper was posted in July 2002 at <http://www.adb.org/Inspection/draft2.pdf>.

<sup>17</sup> External comments received were posted at <http://www.adb.org/Inspection/comments.asp>.

Similar special consultation missions were also scheduled at the same time in Bangkok and Colombo to obtain the views of the requesters and their representatives in ADB inspection requests in the Samut Prakarn Wastewater Management Project in Thailand and the Southern Transport Development Project in Sri Lanka, but these consultations did not materialize.

21. The public consultations were attended by representatives from DMCs and donor countries, the private sector, civil society (including NGOs), project-affected people, and requesters in ADB inspection requests. ADB staff, ADB panel roster members and Board members also participated in these consultations. The outcome of each public consultation, including a summary discussion report (for the special consultation in Karachi) and a summary proceedings report (for the remaining consultations), and presentation of group findings at the various workshops, are posted on the ADB web site.<sup>18</sup>

22. Further internal consultations took place subsequent to the public consultations from September to November 2002. Following these internal consultations, a preliminary working paper with a proposal on the new accountability mechanism was prepared in November 2002 for the Board to provide their views at an informal seminar. The informal Board seminar was held in January 2003 and this paper has been prepared taking into account the various comments made by the Board, including comments from the internal and external consultations.

## **B. Issues Relating to the Current Inspection Function**

23. The present review of the Inspection Function will not change the fundamental policy statements adopted by the 1995 policy: (i) that it is intended to ensure that ADB's operational policies and procedures are followed in the formulation, processing, and implementation of ADB-financed projects, and (ii) that it is externally driven by project-affected people's request for inspection where they must demonstrate reasonable evidence that their rights or interests have been or are likely to be directly, materially and adversely affected by an action or omission of ADB as a result of ADB's failure to follow its operational policies and procedures in connection with a proposed or ongoing ADB project. Instead, the present review has focused on several difficult issues relating to structural and procedural problems that have emerged throughout ADB's experiences with the Inspection Function.

24. The ad hoc nature of the panel of experts being selected from the roster of experts on a case-by-case basis will not develop the accumulation of knowledge and expertise as part of institutional memory nor contribute to the continuity and stability of the panel of experts. BIC, whose membership is from Board members, also faces the same shortcomings as that of the panel of experts. Since the panel of experts reports to BIC, the relationship between the panel and BIC, on the one hand, and the relationship between the BIC and the Board, on the other, have not only affected the independence of the panel, but also the functions of BIC and

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<sup>18</sup> At <http://www.adb.org/Inspection/review.asp> generally and at the following for each specific consultation:

- [http://www.adb.org/documents/events/2002/inspection\\_function/tokyo/default.asp](http://www.adb.org/documents/events/2002/inspection_function/tokyo/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/manila/default.asp#workshop](http://www.adb.org/documents/events/2002/inspection_function/manila/default.asp#workshop)
- [http://www.adb.org/documents/events/2002/inspection\\_function/frankfurt/default.asp](http://www.adb.org/documents/events/2002/inspection_function/frankfurt/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/ottawa/default.asp](http://www.adb.org/documents/events/2002/inspection_function/ottawa/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/washington/default.asp](http://www.adb.org/documents/events/2002/inspection_function/washington/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/karachi/default.asp](http://www.adb.org/documents/events/2002/inspection_function/karachi/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/phnom\\_penh/default.asp](http://www.adb.org/documents/events/2002/inspection_function/phnom_penh/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/Kathmandu/default.asp](http://www.adb.org/documents/events/2002/inspection_function/Kathmandu/default.asp)
- [http://www.adb.org/documents/events/2002/inspection\\_function/Beijing/default.asp](http://www.adb.org/documents/events/2002/inspection_function/Beijing/default.asp) and
- [http://www.adb.org/documents/events/2002/inspection\\_function/sydney/default.asp](http://www.adb.org/documents/events/2002/inspection_function/sydney/default.asp).

Management's relations with them, resulting in delays, debates, and potential conflicts of interest in the application of the policy. The perceived lack of the independence of the panel has threatened the credibility and viability of the inspection process.

25. Procedurally the process is too complex and difficult to follow for project-affected people who have to go through too many steps and the process needs to be streamlined. For transparency and communication, both the panel of experts and BIC did have clear guidelines dealing with the release of information to the public from the panel or BIC.

26. Also controversial is the confusion created by the treatment of operational policies and procedures included in the Operations Manual (OM). Some operational policies and procedures have been approved by the Board, but have not yet been placed in the OM. Some of the OM provisions are not consistent with the underlying Board-approved policies. The OM review and updating exercise has been undertaken since March 2002 in parallel with the present review of the Inspection Function.

27. In addition, a broad range of issues relating to the current Inspection Function were also identified during the consultations, including the following:

- (i) the need to establish proactive and preventive steps inside ADB that will prevent problems from escalating into controversies that are brought to the accountability mechanism;
- (ii) the scope of the Inspection Function, including the policies and procedures that the Inspection Function should cover and the 95% disbursement limit in filing a claim;
- (iii) the application of the Inspection Function to ADB's private sector operations and related concerns about business confidentiality, the difference between public and private sector cycles, added costs to the borrower, and legal liability;
- (iv) eligibility and screening requirements and questions relating to who should be able to file a request for inspection, the number of claimants required, their relationship to the project, and the language and substantive requirements for filing a request;
- (v) how to ensure that site visits by the panel are accepted by all stakeholders;
- (vi) the cost of the inspection process, particularly in terms of staff time and resources and costs to DMCs;
- (vii) the potential for real and perceived conflicts of interest and the resulting impact of establishing "firewalls" and outside perceptions of independence;
- (viii) the adversarial nature of inspections; and
- (ix) the need for post-inspection monitoring to ensure that Board recommendations are implemented and that processes exist for learning broader lessons from the accountability mechanism's experiences;

28. From the consultations, and based on ADB's experience with the Inspection Function, including the Samut Prakarn Inspection, there is nearly universal agreement that the current system should be replaced. Any change proposed for improvement must premise that the accountability mechanism is an important learning tool that will allow ADB to draw on lessons learnt, thereby improving its operational efficiency and effectiveness.

29. The major issues raised during the consultations are discussed at length in the first two draft working papers and include the following: (i) preventing and/or resolving problems upstream from the accountability mechanism; (ii) scope of the ADB accountability mechanism; (iii) eligibility and screening requirements; (iv) independence of the Inspection Function; (v) length and complexity of procedures and process; (vi) cost of the Inspection Function; (vii) adversarial nature of inspections; (viii) conflict of interest issues; (ix) transparency and information dissemination; (x) issues relating to remedial actions; (xi) post-inspection monitoring; and (xii) issues relating to liability.

### **C. Options for an ADB Accountability Mechanism**

30. The following two general purposes of an ADB accountability mechanism have emerged from the internal and external consultations: (i) to provide an opportunity for hearing and resolving the specific concerns and problems of locally affected people in project areas, and (ii) to provide an independent office for determining violations of ADB's operational policies and procedures that adversely affect local populations.

31. Building on these purposes and the experiences and lessons learned at ADB and the other MDBs, the previous draft working papers presented the following four non-exclusive options (with variants) for consideration:

- (i) **Option A:** the existing system with improvements;
- (ii) **Option B:** the independent compliance review panel, based on the WB panel model with improvements;
- (iii) **Option C:** the ombudsman or problem-solver, based on the CAO model; and
- (iv) **Option D:** a two-step approach of consultation and compliance review.

32. These four options are described in more detail in Appendix 4.

### **D. Outcome of the Consultations**

33. The public consultations reinforced broad support for (i) an independent accountability mechanism that addresses the grievances of adversely affected people in ADB projects, and (ii) increased problem-solving efforts and problem prevention measures by ADB. Additionally, there was a strong sentiment that the new mechanism should complement and enhance ADB's objectives of poverty reduction, development effectiveness and efficiency, and increased project quality.

34. The public consultations reflected broad support in favor of Option D (the two-step approach of consultation and compliance review). There was also support for Option B (the WB model with improvements) and to a lesser degree interest in Option A (revising the existing system) and Option C (the problem-solver only). Some participants presented their own models

or variations based on one or more of the Options.<sup>19</sup> Appendix 5 summarizes in matrix form the consolidated comments received from both within and outside ADB during the consultations, and ADB's responses.

35. The combined results of both internal and external consultations indicate broad support for Option D, with a compliance review panel that is an improved version of the WB panel. The design of the consultation phase preceding the compliance review presented the more difficult challenges in terms of consensus building. There was a diversity of views of how this phase should be designed and implemented. Key questions presented around this phase included the following: (i) whether consultation should be conducted by ADB operations staff or management, a senior official located in DMCs, or an independent office; (ii) whether the project counselor should be appointed by and report to the President or the Board; (iii) the relationship between the project counselor's office and the compliance review panel; and (iv) the sequence of the claimants' initial approach to the two phases.

### **III. PROPOSAL FOR A NEW ADB ACCOUNTABILITY MECHANISM: A TWO-STEP SYSTEM OF CONSULTATION AND COMPLIANCE REVIEW**

#### **A. The Reasons for Option D**

36. A majority of external stakeholders preferred Option D of the second draft of the working paper or its variations, which would include what is commonly referred to as a "problem-solving" function and an "inspection" function. In the second draft of the working paper, a "problem-solving" function is referred to as a "consultation process" in order to avoid unrealistic expectations that every problem would be resolved by ADB and to give a more flexible, informal and multimethod approach to the facilitation of problem-solving efforts between the parties to a problem, and an "inspection" function is described as a "compliance review process." In the course of the external and internal consultations there has emerged a broad consensus backed by general expectations inside and outside ADB that there would be, at the minimum, an independent inspection panel similar to that of WB, that is, an independent panel of experts to be appointed by the Board of Directors upon the recommendation of the President. Even with the establishment of an independent inspection panel, however, it is now universally recognized and accepted that under the present system—both ADB's and WB's—once a request for inspection is authorized, the inspection process will run its own course entirely within the organization; at the end of the long process, the complainants will be informed of what happened to their requests, but the real grievance could remain unresolved on the ground.

37. The choice of Option D or its variations therefore reflects a common recognition that ADB needs to address the grievances of people affected by its projects. It is accepted that, as a development finance institution, ADB is a principal interested party in the success of the project it finances, and accordingly, ADB cannot walk away from the problems on the ground. Nonetheless, it is acknowledged that, because the legal ownership of the projects lies with the developing member country (DMC) government concerned, the question of "problem-solving" in general and during project implementation in particular, is primarily the function of the DMC

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<sup>19</sup> Some participants at the Phnom Penh and Kathmandu consultations presented their own models (two variations of Option B, and a variation of Option A). These presentations are available on the ADB web site at the following:

- [http://www.adb.org/documents/events/2002/inspection\\_function/phnom\\_penh/group\\_findings.pdf](http://www.adb.org/documents/events/2002/inspection_function/phnom_penh/group_findings.pdf) (for the Phnom Penh consultation) and
- [http://www.adb.org/documents/events/2002/inspection\\_function/Kathmandu/group\\_findings.pdf](http://www.adb.org/documents/events/2002/inspection_function/Kathmandu/group_findings.pdf) (for the Kathmandu consultation).

government concerned. It cannot be denied that the DMC government concerned has all the resources needed to solve the problem, such as technical expertise, institutional backing, local knowledge, financial resources and so on, at its disposal that could be mobilized at will. The EA/DMC government is naturally the immediate party that the complainants should first approach to present any grievances about the project.

38. The question faced by ADB as a principal interested party in the success of the project it finances is how ADB can best facilitate the resolution of the problem on the ground as the other party to the loan agreement, recognizing that the complaints are primarily between the project owner, i.e., the EA/DMC government and the project beneficiaries, i.e., the local people affected by the project. The proposal presented in this paper reflects a new approach to this question.

39. The new approach seeks to strike a balance between the need for an objective, detached perspective on the project and the need for sufficient knowledge and experience of the project concerned. Striking the appropriate balance suggests that the consultation phase should be located within the organization directly under Management. Any complaint of affected people will arise in the course of the formulation, processing, and implementation of the project concerned, and all of these phases of the project-financing process are directly under Management's responsibility. So long as this senior staff member originally referred to as "project counselor" in Option D reports independently to the President and is detached from, and not directly involved in, any aspect of the formulation, processing, and implementation of the project concerned, he/she will be in a position to take a second look at the problem submitted by complainants in a more objective and detached manner. Needless to say, he/she cannot perform the consultation function without the cooperation from staff of the OD concerned who are knowledgeable about the project concerned and equipped in terms of technical competence and experience relating to the project concerned.

40. The consultation process is not for the determination of liability or apportionment of blame or fault among the parties concerned; rather, it is designed to have the genuine grievances properly addressed by ADB as a principal interested party in the resolution of the complaints of people affected by ADB projects. As such, the question of conflict of interest does not arise about the project counselor, who is a senior staff member directly responsible to the President, since it is incumbent upon Management to facilitate the resolution of the problem. Whether the project counselor can maintain his/her credibility of, and effectiveness in, the performance of the problem-solving function (and correspondingly, enhance the credibility of Management) hinges upon his/her good faith efforts in trying to facilitate the resolution of the problem.

## **B. Introduction to the New Mechanism**

41. Following extensive internal and external discussions, a variation of Option D as described below is proposed. It is a new accountability mechanism for ADB that has two separate but complementary functions: (i) a **consultation phase** consisting of a special project facilitator (SPF) who will respond, to specific problems and concerns of locally affected people in ADB projects through a range of informal and flexible methods; and (ii) a **compliance review phase** comprising an independent panel (the compliance review panel) to investigate alleged violations of ADB's operational policies and procedures that have resulted in direct, adverse, and material impacts on project-affected people, and to make recommendations for ensuring future compliance and reducing adverse impacts. Although the offices will be physically and functionally distinct from each other, they will be linked through the objectives of responding to

the grievances of affected people, enhancing ADB's development effectiveness, and improving project quality.

42. The proposal set out below reflects expectations widely shared among all the stakeholders inside and outside ADB that ADB should strengthen its so-called "problem-prevention" capabilities. Admittedly, problem prevention is, at the least, part of the result of ADB's compliance with its operational policies and procedures in the formulation, processing, and implementation of the project. It is premised on the basis that adequate project preparation and proper consultation with stakeholders in the project area have been undertaken so as to ensure project quality. Such problem prevention efforts are part of an ongoing process within the operations departments (ODs)<sup>20</sup> on the basis of the feedback from the Operations Evaluation Department's project performance audit and, strictly speaking, are outside the accountability mechanism. Within this broad problem prevention function of the ODs, however, certain areas of activities performed by the ODs can be considered as part of the "problem-solving" function within them, in that all the complaints or grievances relating to the project are invariably filed with the OD concerned in the first place. The OD is usually the first contact point within ADB to respond to such grievances. The proposal is designed to improve and strengthen this part of the internal process of the OD.

43. The consultation phase will consist of one senior-level staff (the SPF). The SPF will be assisted by one professional staff member and two support staff members serving as secretariat. The compliance review panel will consist of three panel members, one of whom will be the chair of the panel. ADB will establish an office of the compliance review panel to assist the panel. This office will serve as a secretariat, with two professional staff members, one of whom will also be the secretary of the compliance review panel, and three support staff members. Appendix 6 provides the institutional setup of the new accountability mechanism.

44. The new accountability mechanism will apply to all ADB operations in the public and private sectors. The concerns relating to private sector operations are discussed in the second draft working paper. If deemed necessary, the accountability mechanism may adopt additional different procedures for processing and reviewing private sector operations.

### **C. Relationship between the Consultation Phase and the Compliance Review Phase**

45. Grievances relating to the project under the proposed new accountability mechanism will first go to the consultation phase without seeking to establish ADB's accountability under the compliance review phase. The reasons for this sequence are as follows: (i) the filing of grievances about the project is not necessarily contingent upon the alleged noncompliance by ADB with its operational policies and procedures, and (ii) the objectives of the consultation phase are to listen to grievances, opinions, and requests from the project-affected people and to facilitate the resolution of the problem on the ground whereas the objectives of the compliance review phase are to establish whether the direct and material harm complained of by the project-affected people is the result of ADB's failure to follow any of its operational policies and procedures as they relate to the formulation, processing, or implementation of the project.

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<sup>20</sup> The term "operations department" refers to any department that handles the formulation, processing, and implementation of any project. The ODs include the regional departments, the Regional and Sustainable Development Department, and the Private Sector Operations Department.

46. Since the ground of complaints and the objectives of each phase are different from the other phase, it is theoretically possible to run the consultation phase and the compliance review phase in parallel, allowing project-affected people to make a choice. In the interest of economy and efficiency, however, the proposed new accountability mechanism places the consultation phase first because (i) project-affected people are more interested in having their grievances addressed first rather than focusing on the establishment of ADB's accountability, which may not necessarily result in satisfactory resolution of the problem on the ground, and (ii) preliminary investigation and fact-finding about the complaint must be undertaken under either phase and the consultation process provides a conducive forum for fact-finding about the complaint in a more informal and flexible manner, which will in the end reduce the burden of the compliance review panel. Although the proposed new accountability mechanism contemplates the filing of a request for compliance review before or after the completion of the consultation phase, a request for compliance review is not an appeal to a higher body of authority in the form of an appellate jurisdiction. Irrespective of whether a problem on the ground is resolved or not to the satisfaction of the parties concerned, the question of accountability will remain. The filing of a request for compliance review is a separate process altogether for that purpose.

#### **D. Basic Principles and Criteria for the New Mechanism**

47. The following general principles and criteria will guide the design, establishment, and operation of ADB's new accountability mechanism:

- (i) The mechanism should enhance ADB's development effectiveness.
- (ii) The mechanism should be responsive to the concerns of project-affected people and should be fair to all stakeholders.
- (iii) The mechanism's staffing and operations should reflect the highest professional and technical standards.
- (iv) The mechanism should be as independent and transparent as possible.
- (v) The mechanism should be cost-effective, efficient and complementary to the other supervision, audit, and evaluation systems already existing at ADB.

48. The new accountability mechanism is also designed to be less adversarial and legalistic, and less divisive than the existing Inspection Function. The mechanism should become a productive asset for ADB that builds confidence in the credibility of the institution. For any accountability mechanism to work effectively, it must be provided the full support of Management and staff who should work with it in a spirit of cooperation and with the mutual goals of enhancing the development effectiveness and quality of ADB projects.

#### **E. The Consultation Phase**

##### **1. Basic Features, Composition, and Appointment**

49. The SPF will be a senior staff member at the level of director general selected by, and reporting to, the President. With the SPF reporting to the President, this will enhance the credibility of ADB in taking a proactive role in facilitating the resolution of problems in projects to which it is a principal interested party. By reporting directly to the President and being separate from the ODs, the SPF would have substantial independence. The SPF will not supplant the

existing project administration and project-solving functions inherent to each OD, which has the initial responsibility for responding to the concerns of affected communities; nor will it interfere in the internal matters of any DMC.

50. The President will appoint the SPF directly and inform the Board. One professional staff member and two support staff members will provide secretariat assistance. The SPF selection criteria will include significant experience in development issues, knowledge of the region, and ADB operations and practice or those of comparable institutions. The SPF must disclose to all stakeholders immediately upon learning that he/she has a personal interest or has significant prior involvement in a matter.

## **2. Functions of the Special Project Facilitator**

51. The consultation phase is to assist project-affected people with specific problems caused by ADB projects through a number of informal, consensus-based methods, e.g., consultative dialogue, good offices or mediation. The SPF will not mediate between the complainant and the local authorities. Rather, the SPF will seek consensus and agreement among the parties as to the identification of the matters in dispute, the modality of problem-solving, and its time frame by creating a common forum conducive to problem-solving among the parties concerned. The SPF will suggest different approaches, including convening meetings with various stakeholders, organizing and facilitating consultation processes, or engaging in a fact-finding review of the situation. The consultation phase is not meant to supplement the existing project administration function of each OD and the role played by its "special project administration" missions as part of its problem-solving role. Appendix 7 summarizes suggested modes of response to complaints and the dispute settlement procedure. The SPF will prepare operating procedures to give effect to the operational provisions in this paper. The operating procedures will be approved by the President and furnished to the Board. At any time after the President's approval of the operating procedures, the SPF may review these procedures, including the provisions for private sector operations, and recommend changes for the President's approval.

52. The specific activities of the Office of the Special Project Facilitator (OSPF) will include the following:

- (i) collate and integrate internal and external experiences of problem-solving to be fed back into ADB's operations, including the design and preparation of projects;
- (ii) support and give advice to ODs in their problem-solving activities;
- (iii) conduct outreach programs to the public;
- (iv) review and assess complaints;
- (v) obtain from the ODs all materials and analyses relating to the complaints;
- (vi) facilitate a consultative dialogue, use its good offices, and/or establish a mediation mechanism (see Appendix 7); and
- (vii) inform the Board and other stakeholders on the results of specific consultation activities.

### 3. Eligibility

53. **Who Can File a Complaint.** Complaints may be filed by any group of two or more people (such as an organization, association, society, or other grouping of individuals) that is, or is likely to be, directly affected materially and adversely by a project financed or to be financed, or administered or to be administered, by ADB (the project) in the course of the formulation, processing, and implementation of the project. The term "project" covers both public sector operations (loan, guarantee, or technical assistance grant) and private sector operations (loan, guarantee, equity investment, or technical assistance grant). The complainants must reside in the borrowing country or in a member country adjacent to the borrowing country. Complaints may also be filed on behalf of those affected by the project. If a complaint is made through a representative, it should clearly identify the people on whose behalf it is made and provide evidence of authority to represent them.

54. **How to File a Complaint.** Complaints must be in writing and be specifically addressed to the "Special Project Facilitator." The working language of the accountability mechanism is English, but complaints may be submitted in any of the official or national languages of ADB's DMCs. In those cases where the complaints are submitted in languages other than English, additional time may be required to allow for translation. Complaints will be accepted by mail, facsimile, electronic mail, or hand-delivery to ADB headquarters. Complaints may also be received by any ADB office such as a resident mission or representative office, which will forward them unopened to the SPF. The identity of complainants will be kept confidential if requested, but anonymous complaints will not be accepted. Material and information submitted on a confidential basis will not be released to any other parties without the consent of the party that submitted it.

55. **Contents of a Complaint.** The complaint must specify (i) that the project-affected people have suffered or are likely to suffer direct and material harm relating to an ADB project; (ii) that the project-affected people believe the harm is, or will be, the result of an act or omission of ADB in the course of the formulation, processing, or implementation of the ADB project; and (iii) the remedies that they believe ADB should provide or help through the accountability mechanism. More specifically, the complaint should include the following information:

- (i) identification of the complainants (and their representatives, if any) and contact information;
- (ii) if a complaint is made through a representative of the project-affected people, evidence of authority to represent them;
- (iii) a brief description of the project, including the name and location if available;
- (iv) a description or identification of the ways in which the project is harming or will harm the complainant;
- (v) an explanation of how the complainant attempted in good faith to solve the problems with ADB staff and the EA/DMC government or the private project sponsor (PPS);
- (vi) a statement of the desired outcome or remedies the complainant would hope to receive from the process;

- (vii) an explanation of why any of the above information cannot be provided; and
- (viii) any supporting documents relevant to the facts.

#### **4. Scope and Exclusions**

56. The scope of the consultation phase is broader than either the existing Inspection Function or the proposed compliance review phase. The consultation phase is outcome-driven, focusing not on the identification and allocation of blame, but on finding ways to improve the situation of project-affected people. Specifying what policies and procedures are violated is thus not necessary for the consultation phase.

57. Complaints will be excluded if they are

- (i) about actions that are not related to ADB projects;
- (ii) about decisions made by ADB, the borrower or EA, or the PPS on procurement of goods and services, including consulting services;
- (iii) about a completed project (meaning a project for which a project completion report has been issued);
- (iv) relating to matters already considered by the compliance review panel (unless there is new evidence presented that was not known at the time of the original complaint or unless the subsequent complaint can be readily consolidated with the earlier complaint);
- (v) about the adequacy or suitability of ADB's existing policies and procedures;
- (vi) frivolous, malicious, trivial, or generated to gain competitive advantage;
- (vii) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or relate to ADB personnel matters; and/or
- (viii) about ADB's non-operational matters.

#### **5. Procedural Steps and Time Frame**

58. The following are the procedural steps and proposed time frames for the consultation phase. The process is designed essentially to strengthen the internal problem-solving function of the ODs by creating the OSPF under the President.

59. The consultation process will take a total of about 3 months from the date when the complaint is filed with ADB. This period excludes translation time, any request for extension of time to file documents, and the time needed by the parties to solve their problems during the implementation of the course of action. It is in the parties' interest to move along in the process to have their problems resolved as early as possible. The complainant is free to refer the matter for compliance review at certain stages, including as early as step 3.

60. **Step 1: Filing of the Complaint.** The affected party, or its representative, files a complaint with the SPF. If complaints are received by Management or other departments, or by

an ADB office such as a resident mission or a representative office, they will be forwarded unopened to the SPF.

61. **Step 2: Registration and Acknowledgement of the Complaint.** Upon receipt of the complaint, the SPF registers the complaint in the registry of complaints and sends an acknowledgement to the complainant, with a copy to Management. This step is mainly administrative, although if the SPF immediately determines that the complaint cannot be accepted because it is not within ADB's mandate or he/she cannot assist with the problem, the SPF will notify the complainant, with a copy to Management.

62. **Step 3: Screening and Eligibility.** Upon receipt of the complaint, the SPF will screen the complaint and determine eligibility. The SPF must be satisfied that the complaint meets the following requirements:

- (i) The complaint must demonstrate that the complainant is, or is likely to be, directly affected materially and adversely by the project concerned, irrespective of any allegation of noncompliance by ADB with its own operational policies or procedures.
- (ii) The complaint relates to an aspect of the formulation, processing, implementation, or social or environmental impact of the project.
- (iii) The complainant has made a good faith effort to resolve the complainant's concerns, with the OD and the EA/DMC government or the PPS, as the case maybe.
- (iv) The complaint is genuine and does not fall within any of the specific exclusions listed above.
- (v) The SPF believes, in his/her sole discretion, that his/her involvement could be useful.

63. During this screening stage, the SPF will hold consultations with all the stakeholders, including ADB staff, the complainant, the EA/DMC government or the PPS, as well as the concerned Board members, in order to determine eligibility. If, for any reason, the SPF rejects the complaint, he/she will explain the reason for the rejection and will inform the complainant the reason for rejection and will also inform the complainant that a request for compliance review can be brought to the compliance review panel, which will make its own determination of eligibility according to its criteria.

64. **Step 4: Review and Assessment of the Complaint.** If the complaint is accepted, the SPF will undertake an initial review to determine how best to address the issues raised in the complaint. During this review, the SPF will typically meet with the complainant, the EA/DMC government or the PPS, and the OD, as well as any other people the SPF believes would be useful. The SPF will obtain information from the OD, and if necessary, will request advice and support. The SPF will review relevant documents, and may field a fact-finding mission on his/her own initiative or participate, in consultation with the OD, in a special project administration mission of the OD. The review will normally include site visits, interviews and meetings with the complainant and the EA/DMC government or the PPS.

65. After the review is completed, the SPF will make an assessment and determine what the real problems are; who the real parties to the problem are; what kind of remedies the complainant seeks to obtain; and how best a mechanism for the resolution of the problem should be worked out. The SPF will complete the review and assessment, and report his/her findings to President with a copy to the Vice-President concerned. The SPF will also refer the findings to the OD and the complainant for their comments.

66. **Step 5: Review and Comments of the SPF's findings by the OD and the Complainant, and Recommendation by the SPF.** Upon receipt of the SPF's findings, the OD and the complainant will review and provide their comments. Upon receipt of comments from both the OD and the complainant, the SPF will take into account their comments and will make a recommendation and seek the President's approval for either of the following:

- (i) determine that no further review will be purposeful and conclude the consultation process; or
- (ii) work out the proposed course of action in consultation with the complainant, the OD concerned, and the EA/DMC government or the PPS, and obtain their concurrence with its issuance.

67. If the complainant is dissatisfied, the complainant can file a request for compliance review.

68. **Step 6: Consultation Process Conducted.** In consultation with the complainant, the OD concerned, and the EA/DMC government or the PPS, the SPF implements the course of action. Each course of action will be tailored to the individual complaint, depending on such factors as the type and seriousness of the problem, the principal parties to the problem, the remedies being sought by the complainant, the urgency required in fashioning appropriate mitigation measures, and the likelihood that the consultation process could have positive outcomes.

69. The object of the consultation process is to find a flexible, informal, and cost-effective way to address issues raised in the complaint. The SPF may choose one or more of several approaches including (i) continuing the consultative dialogue on the consultation process in seeking to find a mutually acceptable solution to the complaint, (ii) facilitating the consultation process by creating a forum through the SPF's good offices between the complainant and the EA/DMC government or the PPS, and (iii) establishing a mediation mechanism. Subject to the President's approval, the SPF may engage a technical expert, in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB, to monitor the progress of the course of action.

70. Implementing the consultation process requires the consent of every party involved, including ADB, the complainant, and the EA/DMC government or the PPS. If consent does not exist, then the options available for dialogue and consultation will be necessarily reduced. If the consultation process is working, all parties will continue with the process until an agreement is reached.

71. When the consultation process using the consultative dialogue and/or good offices modes is complete, the SPF will submit a report, including the settlement agreement (if any), to the President with a recommendation agreed to by the complainant, the OD concerned, and the EA/DMC government or the PPS. The SPF will issue a report incorporating the President's

decision on the recommendation and furnish the report to the complainant, the EA/DMC government or the PPS, and the Board for information. When the consultation process using the mediation mode is complete, the mediator will furnish his/her report to the SPF. The SPF will submit the report to the President for information with a copy to the Board.

72. In some circumstances, the consultation process may end with no resolution. The SPF may, for example, determine that no further consultation will be purposeful. In such circumstances the SPF will submit a report to the President summarizing the complaint, the steps taken to try to resolve the issues raised by it, and a recommendation. The final report incorporating the President's decision on the recommendation will be furnished to the complainant, the EA/DMC government or the PPS, and the Board for information. Upon submission to the Board, the final report will be provided to the public. If the complainant is dissatisfied, the complainant can file a request for compliance review.

73. **Step 7: Termination of the Consultation Process.** All parties to the consultation except the SPF can "walk away" from the process if there is no consensus on the course of action or if its implementation is not working in the SPF's reasonable opinion. Termination of mediation is subject to the procedural rules of mediation. These actions are a formal closure to the consultation process.

## 6. Transparency and Information Dissemination

74. The SPF's operations under steps 4, 5 and 6 will be as open and transparent as possible, consistent with relevant ADB policies and procedures and the need to ensure that any dialogue and consultation process is given the maximum opportunity for success. General descriptions about the process can typically be made public, but substantive details about the discussions will be kept confidential until a final solution is reached. In some cases, the final agreement and resolution may also be kept confidential by the agreement of the parties.

75. The SPF and other staff in the OSPF will be subject to ADB's information policy and strategy,<sup>21</sup> and confidentiality and disclosure of information policy,<sup>22</sup> including those provisions aimed at ensuring that confidential business information is not disclosed.

76. Material and information submitted to the SPF on a confidential basis from any party will not be released to any other party without the consent of the party that submitted it. The SPF will maintain a low profile whenever conducting a site visit or otherwise operating in a member country.

77. The SPF will also carry out outreach programs to the public, including meeting with the public, preparing materials describing the SPF, and providing advice to prospective claimants. The SPF will regularly update the registry of complaints, including changes in the status of any ongoing consultation. The SPF will have authority to issue press releases and public communications. Prior to releasing any news releases or other media communications, the SPF will inform OER, not for purposes of review, but in order to provide ADB with an opportunity to prepare response to queries from the media or the public. The SPF will maintain its own dedicated web site and specific milestone events during the consultation phase for which information disclosure is helpful, will include events such as updating of the registry of

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<sup>21</sup> ADB. 1994. *Information Policy and Strategy of Asian Development Bank*. Manila.

<sup>22</sup> ADB. 1994. *Confidentiality and Disclosure of Information*. Manila.

complaints, termination of the consultation process, and monitoring reports. The SPF will also inform the Board of these milestone events.

## **7. Remedial Actions**

78. Any remedial actions that are adopted as a result of the consultation process will reflect an agreement among the relevant parties. The range of potential remedies is quite broad. Remedial actions, if any, will typically be specified in a written agreement or series of agreements made by the relevant stakeholders. Remedial actions involving a major change in the project will require approval by Management or the Board according to ADB's procedures. Project formulation, processing, and implementation will not be postponed or delayed during the consultation phase.

## **8. Monitoring**

79. The SPF will be in charge of monitoring implementation of any agreement. Unless the President specifies a different timetable, the SPF will report semi-annually to the President and the Board regarding the status of implementation. As part of the monitoring effort, the SPF will consult with the OD concerned, the complainant, and the EA/DMC government or the PPS. All stakeholders, including the public, may submit information regarding the status of implementation to the SPF. The SPF's monitoring reports will be sent to the complainant and posted on the web site after being submitted to the President and furnished to the Board for information.

## **F. The Compliance Review Phase**

80. The compliance review panel is based generally on the experience of the WB inspection panel, with some variations to reflect ADB's institutional context and to streamline the inspection process.

### **1. Basic Features, Composition, and Appointment**

81. ADB will establish an independent compliance review panel consisting of three members, one of whom will be the chair of the panel. ADB will also establish an office of the compliance review panel to assist the panel. This office will serve as secretariat with two professional staff members, one of whom will also be the secretary of the compliance review panel, and three support staff members. The Panel may engage technical experts as consultants in accordance with ADB's *Guidelines on the Use of Consultants* and other arrangements satisfactory to ADB, to assist it in its work, including postcompliance review monitoring.

82. Two panel members will be from regional countries with at least one from a DMC. The third panel member will be from a nonregional country. The selection criteria for panel members will include (i) the ability to deal thoroughly and fairly with the request brought to them; (ii) integrity and independence from Management; (iii) exposure to developmental issues and living conditions in developing countries; and (iv) knowledge and experience of operations of ADB or comparable institutions, and/or private sector experience. The President will recommend the panel members to the Board, and the Board will appoint the panel. Each panel member will have a 5-year, nonrenewable term except that the first panel members will be appointed on a staggered basis of 3, 4, and 5 years, respectively. One of the first three panel members will be appointed as the chair of the panel, to work full-time for a minimum of 1 year to

establish the Office of the Compliance Review Panel (OCRP), prepare the operating procedures, participate in public debate on these procedures, carry out outreach programs to the public, and to facilitate access with the public. The remaining two members will be appointed part-time to work only when the workload of the panel requires their time. Directors, alternate directors, directors' advisors, staff, and consultants will be ineligible to serve on the panel until at least 2 years have elapsed from their time of employment. After serving on the panel, former panel members will be barred from employment at ADB. In the performance of their duties, panel members will be entitled to enjoy the privileges and immunities accorded to experts performing missions for ADB under ADB's charter. A panel member may be removed from office for cause only by a majority decision of the Board of Directors. A panel member will be disqualified from participation in a compliance review where he/she has a personal interest or has significant prior involvement in the matter.

83. The panel will report directly to the Board on all activities, including postcompliance review monitoring and their outcome, except on the specific activities provided in para. 84 where the panel will report directly to the Board Compliance Review Committee (BCRC). The panel will adopt operating procedures to provide detail to the operational provisions in this paper. Within 2 years from the adoption of the operating procedures, the panel will evaluate the operating procedures, including the provisions for private sector operations, and will recommend changes as necessary.

## **2. Board Compliance Review Committee**

84. It is proposed that BIC be restructured as BCRC to have oversight function of the following: (i) clear the panel's proposed terms of reference and time frame before they are released by the panel, and (ii) review the panel's draft reports on monitoring implementation of any remedial actions approved by the Board as a result of a compliance review before the panel finalizes them. BCRC will consist of the same Board members in BIC, i.e., six Board members, including four regional Board members (at least three of whom must be from borrowing countries) and two nonregional Board members. The replacement and reappointment of BCRC members will in accordance with the Board's Rules of Procedures. OCRP will provide secretariat support to BCRC. The yearly operating expenses of BCRC will be funded out of the Board of Directors' budget and administered by OCRP. These operating expenses will include costs of administrative support to BCRC. BCRC will adopt operating procedures to provide detail to the operational provisions provided in this paper, including conflict of interest provisions to ensure that BCRC will not be directly involved in the panel's operations.

## **3. Basic Functions**

85. The main purpose of the compliance review panel is to investigate alleged violations of ADB's operational policies and procedures in a project financed or to be financed, or administered or to be administered, by ADB caused by an act or omission of ADB that materially and adversely affects local people. The term "project" covers both public sector operations (loan, guarantee, or technical assistance grant) and private sector operations (loan, guarantee, equity investment or technical assistance grant). The panel will issue findings on noncompliance and make recommendations to the Board about how to bring the project back into compliance and, where appropriate, mitigate any resulting harm.

86. Specific activities of the compliance review panel will include the following:

- (i) receiving and determining eligibility of requests for compliance review;

- (ii) conducting thorough and objective reviews of policy compliance;
- (iii) issuing draft reports to Management and requesters that include findings and recommendations on policy compliance;
- (iv) consulting with Management, requesters, and the EA/DMC government or the PPS, on findings and recommendations;
- (v) issuing final reports to the Board with findings and recommendations;
- (vi) monitoring implementation of decisions made by the Board; and
- (vii) issuing annual reports that provide advice based on lessons learned from past cases.

87. Other responsibilities include developing a roster of independent technical experts that can assist with specific investigations, and liaising with the accountability mechanisms at other institutions.

#### 4. Eligibility

88. **Who Can File a Request for Compliance Review.** Similar to ADB's current Inspection Function and the WB panel, a request for compliance review can be filed by

- (i) any group of 2 or more people (such as an organization, association, society, or other grouping of individuals) in a borrowing country where the ADB project is located or in a member country adjacent to the borrowing country; or
- (ii) a local representative of the affected party; or
- (iii) a nonlocal representative, in exceptional cases where local representation cannot be found and the panel agrees; or
- (iv) any one or more members of the ADB Board of Directors, in special cases involving allegations of serious violations of ADB's operational policies and procedures relating to an ongoing ADB project.

89. If a request for compliance review is made through a representative, the request should clearly identify the people on whose behalf the request is made and provide evidence of authority to represent them.

90. **How to File a Request for Compliance Review.** Requests for compliance review must be in writing and specifically addressed to the "Secretary, Compliance Review Panel." The working language of the accountability mechanism is English, but these requests may be submitted in any of the official or national languages of ADB's DMCs. In those cases where the complaints are submitted in languages other than English, additional time may be required for translation. Requests will be accepted by mail, facsimile, electronic mail, or hand-delivery to the Secretary, Compliance Review Panel at ADB headquarters. Requests may also be received by any ADB office such as a resident mission or a representative office, which will forward them unopened to the Secretary, Compliance Review Panel. The Secretary, Compliance Review

Panel will keep the identity of requesters confidential if requested to do so, but anonymous requests will not be accepted. Material and information submitted on a confidential basis will not be released to any other parties without the consent of the party that submitted it.

91. The affected party should demonstrate that its rights and interest have been, or are likely to be, directly materially and adversely affected by the act or omission of ADB during the formulation, processing, or implementation of an ADB project.

92. Most of the eligibility criteria are the same for the consultation and compliance review phases. If the SPF has already determined that the complaint meets the eligibility criteria for the consultation phase, the panel will only determine whether issues of compliance with ADB policies or procedures are relevant to the request for compliance review. If, for any reason, the SPF has rejected the eligibility of the complaint, the panel will determine independently whether in its judgment the request for compliance review meets the panel's eligibility criteria. In these instances, the panel alone determines eligibility.

93. **Contents of the Request for Compliance Review.** A request for compliance review should include the same information as provided in the complaint to the SPF. The request should also explain the results of the requester's efforts to resolve the issue first with the OSPF. If the SPF rejected the complaint as ineligible, the complainant/requester should explain why they believe the claim is nonetheless eligible for compliance review by the panel. If possible, the requester may also identify any relevant policies or policy violations the requester believes may be relevant to the claim.

## 5. Scope and Exclusions

94. The compliance review panel addresses whether ADB has followed specific operational policies and procedures during the formulation, processing, and implementation of a project. The operational policies and procedures that apply to an ADB project under compliance review will be those that were in effect on the date the project was approved (or, in the case of a proposed project or in the case of a request regarding the administration of an ongoing project, those that were in effect on the date when the request was filed with the panel). For a project processed or approved by the Board prior to the outcome of the updating of the OM, the operational policies and procedures that apply will be those relating to the formulation, processing, and implementation of ADB projects approved by the Board whether or not they were expressly incorporated into the existing OM. The panel will determine the relevant policies and procedures based on the information provided in the request for compliance review and through consultation with the OD concerned and other stakeholders. The scope includes all ADB operational policies and procedures as they relate to the formulation, processing, or implementation of a project financed by ADB (including situations where ADB is alleged to have failed in its follow-up on the borrower's obligations under the loan agreements with respect to such policies and procedures). These policies and procedures are referred to as "ADB's operational policies and operational procedures." They do not include guidelines and similar documents or statements, but staff instructions or other documents that relate to the formulation, processing, or implementation of a project and that are intended to be incorporated eventually into ADB's operational policies and operational procedures are subject to compliance review.

95. All types of requests specifically excluded from the consultation phase are also specifically excluded from the scope of the compliance review panel. In addition, for the purpose

of compliance review, the following requests will be excluded from the scope of the compliance review panel:

- (i) complaints relating to actions that are the responsibility of other parties, such as a borrower or potential borrower, or that otherwise do not involve an action or omission by ADB's failure to follow its operational policies and procedures;
- (ii) complaints relating to the laws, policies and regulations of the EA/DMC government concerned unless they directly relate to ADB's compliance with its operational policies and procedures; and
- (iii) complaints that have not first been filed with the SPF.

## 6. Procedural Steps and Time Frame

96. The following are the procedural steps and proposed time frames for the compliance review phase. This phase is preceded by the consultation phase described above, except in cases where a member of the ADB Board of Directors files a request for compliance review, which then would go directly to the compliance review panel.

97. The requester will learn whether the request for compliance review has been authorized by the Board after at least 49 days from receipt of the request for compliance review by ADB (this is 68 days sooner than under the current system). The requester will know the outcome of the Board decision after at least 149 days from receipt of the request for compliance review by ADB (this is 33 days sooner than under the existing system). These periods exclude the time taken by the parties in the consultation phase (at least 22 days from receipt of the complaint by the SPF in step 3 of the consultation phase), translation time, any request for extension of time to file documents, and the duration of the panel's compliance review, which is not time-bound. The 149-day period takes into account the step for the complainant to respond and comment on a draft panel report (step 7), which is provided for the first time in any accountability mechanism on compliance review. Also, the procedure has been streamlined so that the Board will now decide on one document from the panel which incorporates responses from Management and the complainant instead of several documents from the panel.

98. **Step 1: Filing of the Request.** A request for compliance review is filed with OCRP. As long as the complaint is subject to the consultation process conducted by the SPF, an affected party or its representative is not allowed to request compliance review.

99. **Step 2: Registration and Acknowledgement of the Request.** Within 7 days of receiving a request for compliance review, OCRP will register the request and inform the requester of its acknowledgement of the request. The registration of the request will be made on a register accessible to the public through the web site. The panel will inform the Board of any registration of the request. The panel will also release a press advisory that it has registered the request.

100. **Step 3: Determination of Eligibility of the Request.** Within 7 days from registration of the request for compliance review, the panel determines eligibility of the request and informs the requester of its decision. Because the SPF has already reviewed most eligibility issues, the primary issue for the panel to address is whether the request implicates potential policy violations. Although there is no mandatory requirement to cite policy violations in the request, the requester may identify potential policy violations and any material harm that the requester

believes is linked to an action or omission of ADB contrary to its operational policies and procedures. If the requester does not allege any specific policy violations, the panel will evaluate the request itself to determine if, in its opinion, the request raises issues of potential policy violations. During the eligibility phase, the panel may consult the requesters, Management and staff, and the EA/DMC government or the PPS, and review documents, in accordance with the loan agreement and/or ADB's operational procedures. If the panel determines that the request is eligible, the panel sends a recommendation to the Board that a compliance review should be authorized. If the panel determines that the request is ineligible, the panel will inform the Board of the ineligibility of the request and will inform the requester in writing.

101. **Step 4: Board Authorization of the Compliance Review.** Within 21 days from receipt of the panel's recommendation, the Board authorizes the compliance review on a no-objection basis and without making a judgment on the merits of the request. This is similar to the WB system. Within 7 days from Board authorization, the requester is informed of the Board's decision on authorization of the compliance review, and the Board's decision will then be posted on the web site.

102. **Step 5: Conducting the Compliance Review.** As soon as the Board authorizes the compliance review, the panel begins its review. The panel's review is not time bound, because the amount of time will vary considerably depending on the nature, complexity and scope of the project and the potential policy violations. The panel will clear with BCRC the proposed terms of reference and time frame before they are released by the panel. BCRC's function is to ensure that the panel operates within the scope of compliance review. Within 14 days from receipt of Board authorization of the review, the panel will release proposed terms of reference and a time frame that will indicate the methodology and estimated duration of the review. The terms of reference and time frame will be provided to the Board and to all stakeholders, and posted on the web site in the registry of requests. During this period, the panel will consult all concerned stakeholders, including affected people, Management and staff, relevant Board members, and the EA/DMC government or the PPS. The DMC to which the ADB project under compliance relates and the Board member representing that country will be consulted during the compliance review. They will be given an opportunity to record their views. The panel will also conduct a site visit and review documentation. The panel will seek the prior consent of the concerned government and the PPS before carrying out a site visit.

103. **Step 6: The Panel's Draft Report.** At the completion of its review of compliance, the panel will issue a draft report of its findings and recommendations to Management and the requester for comments. The draft report is sent to the Board for information purposes, and the Board is not formally involved at this stage.

104. **Step 7: Management's Response and Requester's Response to the Panel's Draft Report.** Both Management and the requester have 45 days from receipt of the panel's draft report to provide their responses to the panel's draft report. This is Management's opportunity to respond formally to the claim. Management can respond to all parts of the report and make its own recommendations in consultation with the panel, regarding bringing the project into compliance. By waiting until this stage, the process remains less formal and less adversarial during the earlier stages, including the eligibility stage. Indirect costs of Management and staff time should therefore be reduced. Each party would be free to provide comments on the draft report, but only the panel's final view on these matters would be reflected in its final report. Each party would be asked to provide a clear statement in respect of each recommendation made as to whether they agree, disagree or agree with qualification.

105. **Step 8: The Panel's Final Report.** Within 14 days from receipt of the responses from Management and the requester, the panel considers their responses to its draft report, and makes changes as necessary before issuing to the Board its final report with its findings and recommendations. The panel's final report will contain the panel's findings and recommendations, the responses from Management and the requester, and the changes made based on these responses.

106. **Step 9: The Board's Decision.** Within 21 days from receipt of the panel's final report, the Board considers the report and makes the final decision regarding any recommendations on how to bring the project into compliance and/or mitigate any harm, if appropriate. Within 7 days of the Board's decision, the decision, the panel's final report with the responses attached, are released to the requester and the public, and then posted on the web site.

## 7. Transparency and Information Dissemination

107. All stages of the compliance review phase will be as transparent as possible, subject to relevant ADB policies and the panel's goals of conducting a fair and impartial compliance review. The compliance review panel has authority to issue its own press releases and media communications. Prior to releasing any news releases or other media communications, the compliance review panel should inform the Office of External Relations (OER), not for purposes of review, but in order to provide ADB with an opportunity to prepare a response to queries from the media or public. The panel will exercise discretion, keep a low profile in the host country, and not give media interviews while making site visits.

108. Specific milestones during the compliance review phase where there is information disclosure will include the following:

- (i) registration and acknowledgment of the request (step 2);
- (ii) determination of eligibility of the request by the panel (step 3);
- (iii) Board authorization of the compliance review (step 4);
- (iv) during the compliance review (step 5);
- (v) panel's final report (step 8); and
- (vi) Board's decision (step 9).

109. The compliance review panel will issue an annual report that contains a description of the claims considered, a summary of activities, monitoring information, budgetary information, and policy advice based on lessons learned from previous requests for compliance review. The compliance review panel will maintain its own dedicated web site and develop its own distinctive logo and letterhead.

110. The compliance review panel and the staff in its office will be subject to ADB's information policy and strategy, and confidentiality and disclosure of information policy, including those provisions aimed at ensuring that confidential business information is not disclosed. When requested, the panel will withhold the identity of the claimants from other stakeholders. In addition, any material or information submitted to the panel members on a confidential basis

from any party will not be released to any other party without the consent of the party that submitted the material or information.

## **8. Monitoring**

111. The panel will monitor implementation of any remedial actions approved by the Board as a result of a compliance review. Unless the Board specifies a different timetable, the panel will annually monitor implementation of Board decisions related to remedial measures and will determine progress on bringing the project into compliance. The methodology for monitoring will include consultations with Management, the requester(s), the EA/DMC government or the PPS, and Board members; document review; and site visits. The panel will also consider any information received from the original requester(s) and the general public regarding the status of implementation. The panel will forward to BCRC draft reports on monitoring implementation of any remedial actions approved by the Board as a result of a compliance review for its review before finalizing them. The panel will then make these finalized reports available to the Board, Management, the requesters, the EA/DMC government or the PPS, and the public.

### **G. Specific Issues Related to the New Mechanism**

112. Three key issues that apply to the mechanism as a whole have received significant comments during the consultations. These issues are (i) the linkage between the consultation and compliance review phases, (ii) the cost implications of the accountability mechanism, and (iii) site visits.

#### **1. Linking the Consultation Phase with Compliance Review**

113. One of the major issues debated during the internal and external consultations was how the consultation and compliance review phases are related. The objective of the consultation phase is for ADB to address complaints on an ADB project regardless of any allegation of noncompliance by ADB with its operational policies and procedures, and to facilitate resolution of the problem on the ground. The consultation phase has nothing to do with the question of whether ADB has complied or not complied with its operational policies and procedures. This question squarely falls in the compliance review phase. The proposal in the new accountability mechanism is that the complainant has to first approach the SPF. The consultation phase becomes the initial "window" for both phases that provides an assessment, determines eligibility, conducts troubleshooting, and attempts to resolve grievances. With the course of action prepared by the SPF, the complainant is informed on the next steps to be taken, e.g., how the SPF proposes to address the situation in an informal and flexible way. The compliance review panel thus becomes an option of "last resort" available only after the complainant or the SPF decides the consultation phase is not likely to work, and the complainant then proceeds to make a separate request for compliance review.

#### **2. Cost Implications**

114. The costs associated with an accountability mechanism at ADB are of widespread concern—not only the direct costs of operating the accountability mechanism but also the indirect costs of staff time and the potential increases in costs of implementing projects. The cost estimates for the first inspection authorized by the Board in the Samut Prakarn Wastewater Management Project were approximately \$1.7 million in ADB staff time and resources, and \$200,000 for the ADB panel. The cost estimates for the inspection request on the Southern

Transport Development Project in Sri Lanka are about \$160,000 in ADB staff time. These estimates do not include BIC costs related to the inspections.

115. By comparison, in 2000, the WB panel was allotted a budget of \$2.23 million, and its expenses were \$2.20 million. In 2001, the WB panel's budget allotment was \$2.0 million and its expenses were \$1.8 million. In some years, the WB panel utilizes all the funds, but in slower years it has had a surplus. The expenses are directly related to the number of inspections that are carried out within a given year. The WB's management has also expressed concern about costs in terms of staff time. For example, the management estimated that the China Western Poverty Reduction Project (Credit No. 3255-CHA and Loan No. 4501-CHA) inspection—probably the most expensive and controversial claim under the WB system—would cost \$1.5 million in staff time and resources. By contrast, the 2001 operating budget for the IDB panel was \$236,500. However, only \$44,959 was spent, which reflects its small workload.

116. The IFC/MIGA CAO office has an annual operating budget of nearly \$1.3 million and a revolving budget of \$600,000. This includes the CAO at a vice-president level and the two senior specialists (one for the ombudsman's office and one for the compliance audit), as well as administrative support. Although several of CAO's complaints have been handled with minimal resources, a full mediation process can be labor-intensive and costly. The ongoing mediation involving Peru's Yanacocha mine, for example, may reach \$2.5 million in costs (at least part of which is being paid by the company, which is receiving much of the value of increased dialogue with the community). The President of the WB Group has agreed to contribute more funds if needed.

117. Also significant are the costs relating to time spent by the Board on inspection issues. BIC's investment in the inspection process requires extensive time and resources. If other requests come in, BIC members may not have time to fulfill their other Board duties. Currently, BIC has one full-time professional staff member and a full-time support staff member. BIC has no extra resources or staff for assisting with the workload. Because WB, IDB, and CAO do not have Board committees with this role, no comparisons can be drawn in this regard.

118. DMC governments, in particular, have also expressed concerns that an accountability mechanism may directly or indirectly increase the costs of projects financed by ADB, as a result of project delays or change in project design. Experience with other MDB accountability mechanisms suggests that project delays and significant changes in project design as a direct result of inspections are relatively rare. Moreover, any remedial changes suggested by the OSPF or the compliance review panel that would result in changes in project design would have to be made in consultation with the concerned DMC and Management, and would have to be approved by Management or the Board in accordance with ADB's procedures.

119. Some indirect costs related to policy compliance in projects may be unavoidable if one assumes that a compliance review panel is effective in improving compliance with ADB's operational policies and procedures. These costs may simply reflect the costs of doing business under the policy framework adopted by the Board and in pursuing ADB's objectives of enhancing development effectiveness and improving project quality.

120. ADB's proposed accountability mechanism will entail significantly more direct costs than the current system. It will require one full-time person who will be a senior staff at the director general level (SPF) and three panel members, one of whom will be the chair of the panel. The consultation process and the compliance review panel will each have a full-time secretariat (one professional staff and two support staff for the consultation phase, and two professional staff

and three support staff for the compliance review phase). OCRP and OSPF will coordinate and carry out public outreach on the accountability mechanism, including production of annual reports.

### **3. Site Visits**

121. Site visits to host countries during an ADB panel inspection have become a particularly controversial issue that affects the independence as well as effectiveness of the panel investigation. In both internal and external consultations, there are strong voices that site visits are essential for inspection effectiveness, stakeholder participation, and the independent verification of facts and alleged policy violations. As a result, some stakeholders have suggested that ADB must insist on site visits in the new mechanism procedures and policy, otherwise the process will be compromised. Some of these stakeholders suggest that site visits and general cooperation with the panel should be included in the conditions of loan agreements for all projects, similar to the requirement that member governments permit entrance to ADB staff. On the other hand, DMC governments have legitimate concerns that they should be able to schedule and condition site visits based on the local context. In part, DMCs are concerned that the inspection process creates a misperception that the host government has done something wrong and is being inspected. Some argue that requiring site visits unconditionally infringes on the DMC's sovereignty and that DMCs have every right to turn down a site visit, both legally and within the current procedures.

122. If as many stakeholders believe site visits are important to the compliance review process, then a sensible approach is to enable panel visits to occur, but with the least amount of disruption to the host government, and respecting the decisions of the host government about panel conduct in the country. When the Board approves a new inspection policy mechanism, the policy and procedures should assume the good faith cooperation of all parties in the inspection process, including the host government. This would also contribute to a collaborative spirit of improving ADB accountability and policy compliance. Seeking prior consent of the host government, under an operating assumption that such consent would be routinely given, would be preferable to the heavy-handed approach of including conditions in the loan agreement. For this reason, ADB does not propose at this time any changes in the policy regarding site visits. ADB expects that site visits will be a routine and noncontroversial aspect of the accountability mechanism in the future, and expects that the accountability mechanism personnel and DMC member governments will be able to reach mutually acceptable terms for site visits.

### **H. Resource Implications**

123. The institutional setup of the new accountability mechanism, including staffing needs, is provided in Appendix 6. The implementation of the recommendation as set out in this paper will have budgetary implications as described below. The staffing for the new accountability mechanism will be as follows: one full-time chair of the panel for a minimum term of 1 year, fees for two part-time panel members, the SPF (director general level), one professional staff and two support staff for OSPF, two professional staff for OCRP (including one as executive secretary), and three support staff for OCRP. Based on the proposed staffing and the start-up costs, including carrying out outreach programs and translation, the budget for the new mechanism in the first year of operation is estimated to be about \$1.25 million. About \$400,000 will be for OSPF, and about \$850,000 will be for OCRP. In addition, two more lawyer positions will be required by the Office of the General Counsel (OGC) who will be assigned to work on the new accountability mechanism.

### **1. Office of the Special Project Facilitator**

124. The SPF will be appointed by the President. One professional staff with appropriate operations background and experience, and two support staff will provide secretariat assistance.

### **2. Office of the Compliance Review Panel**

125. ADB will require two professional staff and three support staff in this office. One of the professional staff will also act as the secretary of the compliance review panel.

126. This office will also perform various functions, including (i) carrying out information dissemination and conducting public outreach regarding the accountability mechanism, and the functions of OSPF and the compliance review panel, both within ADB and in member countries; (ii) providing advice or guidance to potential requesters; (iii) providing secretariat support to BCRC, including administering the yearly operating expenses of BCRC; and (iv) production of annual reports.

127. This office will, in coordination with ODs, the NGO Center and OER, ensure that such dissemination is integrated with ADB's activities designed to promote interaction with project beneficiaries or stakeholders including civil society groups and to disseminate information on ADB's operational policies and operational procedures.

### **3. Compliance Review Panel**

128. The compliance review panel will consist of three panel members, one of whom will be the chair of the panel who will be appointed full-time for a minimum of 1 year. Before the end of the initial full-time appointment, the Board will review the need for the chair to work on a full-time or part-time basis.

### **4. Related Staff Requirements**

129. In addition, with the establishment of the new accountability mechanism, it is expected that overall demands for legal services in OGC will be increased to provide focused legal advice to the ODs, not only in the course of the consultation phase, but, more importantly, during the compliance review phase. It is estimated that OGC will require two additional lawyers assigned to the accountability mechanism.

#### **I. Status of the Operations Manual Updating in the Context of the Inspection Policy**

130. A review process on the Operations Manual (OM) updating in the context of the inspection policy is under way. The intention underlying this review is for the Inspection Function to cover all elements of all operational policies and procedures that provide ADB staff with mandatory directions on how to formulate, process, and implement projects. The Inspection Function will not cover housekeeping policies such as finance and administration. The issue of OM updating is distinct and separate from the updating of ADB's operational policies and procedures for purposes of inspection. In March 2002, a senior staff committee was established by the President to oversee the review process and implement a work plan. The work done by the senior staff committee is separately undertaken from, but related to, the review of the Inspection Function. The results of this review process was intended to be linked to the review

of the Inspection Function as the compliance review policy refers to "ADB's Operational Policies and Operational Procedures."

131. A memorandum was presented to the Board in October 2002 on the status of the review process, together with a list of ADB's operational policies and procedures subject to inspection contained in a compendium on the ADB web site on the Review of the Inspection Function. The compendium was posted on the ADB web site for public comments from November 2002 to January 2003. The comments received have not been positive and in response, ADB has withdrawn the compendium from the web site in early February 2003 and is presently working on the way to move forward on the OM review and updating.

132. For the present and for purposes of the policy on the mechanism, the scope of compliance review is "ADB's operational policies and procedures" as they relate to the formulation, processing, and implementation of an ADB project. They are included in the Operations Manual (OM), the Project Administration Instructions (PAIs), and the New Business Processes (NBP). For those operational policies and procedures which have been approved by the Board, but have not been properly incorporated into the OM, original policy papers as approved by the Board will be used in the absence of either express incorporation in OM sections or as staff instructions or similar documents that are intended to be issued eventually as OM sections, or in the event that there is a conflict between a Board-approved policy and an OM.

#### **J. Effective Date of the New Accountability Mechanism**

133. The effective date of the new accountability mechanism will be 30 days from the appointment of the SPF or the panel members, whichever occurs later. Upon the effectiveness of the new accountability mechanism, BIC will be restructured as the Board Compliance Review Committee with revised operating procedures, subject to the need to satisfy the transition arrangements described in para. 134, and the Inspection Procedures will cease to apply, and the members of the roster will be informed of the termination of their services.

#### **K. Transition Arrangements**

134. Those who have filed an initial complaint to the President or intend to file a request for inspection after receiving Management's response will transfer their original requests for inspection directly to the compliance review phase of the new accountability mechanism. Any request for inspection filed will, at the option of the requesters, either go through the current inspection process or wait until the new mechanism becomes effective and go directly to the compliance review phase, except that when an inspection under the current system has been authorized by the Board and the panel has been selected, the current inspection mechanism will continue to apply. Claims brought under the current inspection process, and disposed of by BIC, are precluded from being considered under the new accountability mechanism unless new evidence is being presented that was not known at the time of the original request.

### **IV. RECOMMENDATION**

135. The appointment of staff and the organization of offices come squarely under the power of the President, together with his power to delineate areas of responsibility and to prescribe functions among various departments and offices in accordance with policies approved by the Board of Directors. The consultation phase of the proposed new accountability mechanism,

particularly the function of the SPF, may be considered part of the President's authority if it is segregated from the rest of the proposed new accountability mechanism, since the function of the SPF is aimed at strengthening the internal processes of the ODs. The consultation phase, however, is part and parcel of an integrated accountability mechanism, and as such, it cannot be described in isolation from the rest of the accountability mechanism recommended here for Board consideration.

136. In this connection, it is recognized that the consultation phase will underpin the effective functioning of the proposed new accountability mechanism upstream. The relationship between the ODs and the SPF is designed to support the purpose of the accountability mechanism. To this end, the President will review, from time to time, the working of the consultation phase and make necessary adjustments or revisions to its structure and the operating procedures.

137. Accordingly, the President recommends that the Board approve the following:

- (i) the establishment of the new accountability mechanism, referred to in paras. 41-111 of this paper, providing for the Office of the Special Project Facilitator under the President and the compliance review panel under the Board of Directors;
- (ii) the establishment of the Office of the Compliance Review Panel, referred to in para. 43 of this paper;
- (iii) the allocation of budgetary resources to meet the staffing requirements referred to in paras. 123-129 of this paper;
- (iv) the effective date of the new accountability mechanism referred to in para. 133 of this paper;
- (v) the transition arrangements referred to in para. 134 of this paper;
- (vi) the restructuring of the Board Inspection Committee as the Board Compliance Review Committee upon the effectiveness of the new accountability mechanism, referred to in paras. 84 and 133 of this paper; and
- (vii) the operation of the new accountability mechanism and related operating procedures should be reviewed by Management within 3 years after the Board's approval of this accountability mechanism, and the results of this review should be submitted to the Board.

## ACCOUNTABILITY MECHANISMS AT OTHER MULTILATERAL DEVELOPMENT BANKS

1. This Appendix briefly summarizes the accountability mechanisms at other MDBs.

### A. World Bank Inspection Panel

2. The World Bank Inspection Panel (WB panel)<sup>1</sup> was created on 22 September 1993 "for the purpose of providing people directly and adversely affected by a Bank-financed project with an independent forum through which they can request the Bank to act in accordance with its own policies and procedures."<sup>2</sup> The WB panel is an independent unit within WB that is separate from management and reports directly to the Board. The WB panel receives and investigates claims from project-affected people alleging that they have been harmed by the WB's violations of its policies and procedures. The WB panel consists of three permanent members, each of whom serves for five years. Panel members are recommended by the President and selected by the Board. The chairman is the only full-time member of the WB panel while the others work and are compensated only as required by the inspection workload. In practice, they have been engaged full-time. The WB panel also has a permanent Secretariat with five staff, including an Executive Secretary, two Assistant Executive Secretaries, and two support staff. The annual operating budget of the WB panel is approximately \$2 million.

3. Claims to the Inspection Panel can be filed by any affected party—other than a single individual—in the borrower's territory.

The affected party must demonstrate that its rights or interests have been or are likely to be directly affected by an action or omission of the Bank as a result of a failure of the Bank to follow its operational policies and procedures with respect to the design, appraisal and/or implementation of a project financed by the Bank (including situations where the Bank is alleged to have failed in its follow-up on borrower's obligations under loan agreements with respect to such policies and procedures) provided in all cases that such failure has had, or threatens to have, a material adverse effect.<sup>3</sup>

4. The affected party's local representative, WB's Board of executive directors, or, in some cases, any one executive director are also eligible to file claims. Nonlocal representatives can represent affected parties only in "exceptional cases" where "appropriate representation is not locally available."<sup>4</sup>

5. Claims must be in writing and must include the following information: a description of the project, an explanation of how WB policies, procedures or contractual documents were violated, a description of the claimant's interests harmed by the violation of policies, and a description of the steps taken to have WB staff resolve the violations. The claimant must demonstrate that it has exhausted other remedies by first providing WB staff a reasonable opportunity to respond to the

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<sup>1</sup> Information on the WB panel is available at <http://www.worldbank.org/inspectionpanel>.

<sup>2</sup> World Bank. 1994. *World Bank Inspection Panel, Operating Procedures*, 19 August 1994, p. 1.

<sup>3</sup> IBRD. 1993. *Resolution No. IBRD 93-10*, 22 September 1993, para. 12; IDA. 1993. *Resolution No. IDA 93-6*, 22 September 1993, para. 12.

<sup>4</sup> IBRD. 1993. *Resolution No. IBRD 93-10*, 22 September 1993, at para. 12; IDA. 1993. *Resolution No. IDA 93-6*, 22 September 1993, para. 12.

allegations. If the claim is related to one already submitted to the WB panel, the request must also specify any new evidence or changed circumstances that justify revisiting the issue.

6. The following types of complaints are explicitly excluded from the WB panel's jurisdiction: (i) complaints about actions that are the responsibility of parties other than WB and which do not involve any act or omission on the part of WB; (ii) complaints relating to procurement decisions; (iii) complaints filed after the loan closing date or after at least 95% of the loan proceeds on the project concerned have been disbursed; and (iv) complaints addressing matters already heard by the WB panel unless justified by new evidence.

7. Upon receiving a complete request for inspection that is not clearly outside the scope of the panel's authority, the panel registers the claim in the WB panel Register, notifies the claimant and the executive directors, and forwards a copy of the claim to WB management, which has 21 days to respond. The WB panel then has 21 days to review WB Management's response, to seek clarification from management or the claimant, and to make a recommendation to the executive directors regarding whether the claim is eligible and warrants a full investigation. Prior to submitting its recommendation in this initial phase, the WB panel typically undertakes a preliminary assessment, including a site visit, to gather more information regarding the request.

8. For investigations that go forward, the WB panel enjoys broad investigatory powers including access to all WB Management and staff. Any member of the public may provide the WB panel with supplemental information relevant to evaluating the claim. After the investigation, the WB panel issues its report, which includes at least the following: (a) a summary of the relevant facts and of the steps taken to conduct the investigation; (b) a conclusion regarding whether WB has complied with relevant policies and procedures; (c) a list of supporting documents available from the panel; and (d) statements of any separate views of any panel members.

9. Within 6 weeks after receiving the WB panel's report, WB Management must submit its response to the Executive Directors. The Executive Directors review both the Panel Report and Management's response and make any necessary decisions. Within 2 weeks of any decision, the WB panel informs the claimant of the results of the investigation and any action decided by the Board, and publicly releases the Panel's Report, Management's recommendations, and the Board's decision.

10. The Resolution establishing the WB panel called for a review within two years from the date of appointment of the first panel members.<sup>5</sup> The WB Board completed its first review of the WB panel in October 1996. In this review, the WB Board determined that opinions of the General Counsel relating to inspection panel issues and management's initial response to the claim could be released to the public after the Board considered them. The Board determined that the "affected party" was defined to include any two or more persons who had a common interest, and reaffirmed that the WB panel could only cover claims where there was an alleged failure by WB to follow its operational policies and procedures in the design, appraisal or implementation of a project. The WB Board confirmed that the Board has the ultimate authority to interpret the panel resolution, but that the WB panel could apply the Resolution as "it understands it" in specific claims. The WB Board also stipulated that in determining eligibility the WB panel could make a "preliminary assessment" to determine the harm that was suffered by the claimants.

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<sup>5</sup> IBRD. 1993. *Resolution No. IBRD 93-10*, 22 September 1993, para. 27; IDA. 1993. *Resolution No. IDA 93-6*, 22 September 1993, para. 27.

11. The second review of the WB panel concluded in 1999 and resulted in a second clarification of the Resolution.<sup>6</sup> Prior to the second review of the panel in 1999, the first phase of the inspection process caused substantial controversy and delay. Management was frequently providing a full action plan (with little or no consultation with the claimant) in an attempt to avoid an inspection. The WB panel was responding with a preliminary report that essentially drew conclusions about the noncompliance of WB and resulting material harm, if any, to the project affected people. The Board frequently rejected the panel's request for an inspection and therefore, very few claims were getting through the entire process. In the 1999 clarification, all the parties agreed that both the WB panel's preliminary assessment and the WB Management's initial response should focus on the eligibility of the claim only. Most importantly, if the panel recommended an investigation the Board agreed to authorize an investigation without making a judgment on the merits of the claimants' request, and without discussion except with respect to certain technical criteria.<sup>7</sup> The 1999 clarification thus essentially streamlined the panel process from a two-step to a one-step process, with the Board restricting its role to reviewing the final panel and Management reports.

12. When responding to the claimant's request, the 1999 clarification instructed WB Management to follow the resolution and respond only to WB panel findings regarding whether it has complied with WB policies and procedures, whether any noncompliance resulted from an action or omission by WB, and what steps management intended to take to bring itself into compliance. Management was not supposed to comment on eligibility of the claimants or on the merits of the claim. The WB Board also clarified that "action plans" drawn up by management (detailing next steps management would take to improve the project) in response to specific claims were outside the WB panel's mandate for review, except that the WB panel could review the adequacy of consultations with affected parties during management's preparation of the action plans.<sup>8</sup>

13. As of 12 February 2003, the WB panel has received a total of 27 formal requests for inspection: nine from Africa, seven from South Asia, nine from Latin America, and two from East Asia and the Pacific. A majority of the requests have cited violations of the WB's safeguard policies, including the policies on environmental assessment, indigenous peoples, and involuntary resettlement. Also frequently cited were the WB's policies on information disclosure and project supervision.<sup>9</sup> Out of these 27 requests, the WB panel has recommended an investigation in 13, and the WB Board approved investigation of nine. In some cases where the WB Board had rejected a full investigation, it asked the WB panel to be involved in reviewing the WB's implementation of action plans or progress on the project. Since the 1999 clarification in the Panel's procedures, however, the Board has approved every investigation recommended by the panel on a no-objection basis.

14. Some general conclusions can be drawn from the extensive history of the WB panel. The WB panel is widely respected as credible and independent by civil society organizations around the world. The WB panel has also clearly strengthened the Board's ability to review staff compliance with WB policies. On the other hand, the WB panel's lack of authority to provide recommendations in its reports and its lack of authority to provide post-inspection monitoring of implementation of WB Management recommendations and Board decisions on the final panel report has reduced its long-term impact in aiding project-affected people on the ground or

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<sup>6</sup> WB. *1999 Clarification of the Board's Second Review of the Inspection Panel*.

<sup>7</sup> WB. *1999 Conclusions of the Board's Second Review of the Inspection Panel*, para. 9.

<sup>8</sup> *The WB Inspection Panel, Annual Report*, 1 August 2000 to 31 July 2001, p. 30-31.

<sup>9</sup> See *The WB Inspection Panel, Annual Reports 1994-2001*.

improving project quality. Many WB requesters have reported few improvements in projects due to continued noncompliance and non-implementation of remedial measures. Additionally, the WB panel's mandate to "inspect" the performance of WB initially created strong dissent among staff and some developing country members, polarizing the entire inspection process. In recent years, however, the WB panel has become better understood and now engenders less fear and resentment among WB staff.

## **B. IFC/MIGA Compliance Advisor and Ombudsman**

15. The WB panel does not apply to IFC or MIGA, which provide loans, insurance guarantees and other support to private sector projects. Although part of the WB Group, IFC and MIGA are separate institutions distinct from one another and from IBRD and IDA. When the WB panel was created, neither IFC nor MIGA had any environmental or social policies and there was thus little discussion about whether the WB panel should cover their activities.

16. In 1996, IFC and MIGA began to analyze what type of accountability mechanism should be applied to their operations, including whether the WB panel should be extended to the IFC and MIGA and what accommodations, if any, should be made for the special characteristics of the private sector.<sup>10</sup> This Board-driven process was essentially tabled after President James Wolfensohn announced in 1999 the creation of an office of the compliance advisor/ombudsman (CAO).<sup>11</sup>

17. In addition to CAO (presently Ms. Meg Taylor), the permanent staff includes a specialist for the ombudsman function, a specialist for the compliance function, and two administrative staff. CAO's office also uses a number of consultants, mediation experts and other advisors as needed. In addition, CAO has established a volunteer external Reference Group of independent stakeholders from the private sector, the NGO community, academia and other institutions. This group meets annually to provide advice regarding CAO's activities.

18. CAO, which reports directly to the President of the WB Group, has the following three distinct but related roles:

- (i) Responding to complaints by persons who are affected by projects and attempting to resolve the issues raised using a flexible, problem-solving approach (the ombudsman role);
- (ii) Providing a source of independent advice to the President and management of IFC and MIGA. CAO will provide advice both in relation to particular projects and in relation to broader environmental and social policies, guidelines, procedures, resources and systems (the advisory role); and
- (iii) Overseeing audits of IFC's and MIGA's social and environmental performance, both overall and in relation to sensitive projects, to ensure compliance with policies, guidelines, procedures, and systems (the compliance role).<sup>12</sup>

<sup>10</sup> *Proposed Inspection Mechanism for Private Sector Projects: IFC and MIGA Inspection Panel*, June 27, 1996 (CODE 96-40); see also *Consultations with Private Sector Clients and Co-financiers on the Possible Establishment of an Inspection Mechanism for IFC and MIGA*, August 19, 1997 (CODE 97-50).

<sup>11</sup> Information on CAO is available at <http://www.ifc.org/cao/>.

<sup>12</sup> *CAO Operational Guidelines*, April 2000, p. 7.

19. The **ombudsman's role** is driven by the concerns and interests of project-affected communities or groups that file a request. The ombudsman has a proactive and flexible mandate aimed at solving problems. According to the CAO Operational Guidelines, the "aim is to identify problems, recommend practical remedial action and address systemic issues that have contributed to the problems, rather than to find fault."<sup>13</sup>

20. Any individual, group, community, entity or other party affected or likely to be affected by the social and/or environmental impacts of an IFC or MIGA project may make a complaint to CAO. Representatives of those affected by a project may also file a complaint on their behalf, provided they provide explicit evidence of authority to represent them.

21. CAO acknowledges receipt of all complaints, typically within five days of receipt. CAO then evaluates whether the complaint falls within its mandate, and, if it does, whether to accept or reject the complaint. Complaints must demonstrate that the complainant has been, or is likely to be, affected by actual or potential social or environmental impacts on the ground. The complaint must relate to an aspect of the planning, implementation or impact of an IFC or MIGA project. Complaints that are "malicious, trivial or which have been generated to gain competitive advantage" are not accepted.<sup>14</sup>

22. Once a complaint is accepted, CAO immediately notifies the complainant and registers the complaint on a tracking database. It also immediately refers the complaint to the relevant IFC or MIGA personnel with a request for information, and informs the project sponsor that a complaint has been lodged. Management has 20 working days to respond to the request for information.

23. CAO then undertakes a preliminary assessment to determine how it proposes to handle the complaint. This process is not time-bound but normally takes 30 working days after the decision to accept the complaint. After the preliminary assessment, CAO provides to the claimant a specific proposal for how it proposes to address their complaint.

24. The proposal may include anything from convening informal consultations with IFC/MIGA or the project sponsor, to organizing a more formal mediation process, or to conducting a compliance audit. During the early stages of handling a complaint, CAO seeks to facilitate self-generated, mutually acceptable solutions, rather than on identifying fault or apportioning responsibility. In some cases, CAO will further investigate the facts underlying the complaint. Such investigations may provide the basis for conciliation or mediation, or for making recommendations to the President. CAO has broad investigatory powers and designs the investigations to meet the needs of the specific complaint, but may include review of IFC or MIGA files; meetings with the affected people, IFC or MIGA staff, project sponsors, and host country government officials; project site visits; public meetings held in the project area; written submissions requested from any source; and expert consultants to research or address specific issues.<sup>15</sup>

25. CAO concludes the complaint process either when a settlement agreement has been reached or when CAO determines that further investigation or problem-solving efforts are unlikely to be productive. At that point, CAO will inform the complainant of its decision and report to the President of the WB Group. The report to the President may include specific

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<sup>13</sup> *Ibid.*, p. 13.

<sup>14</sup> *Ibid.*, p. 17.

<sup>15</sup> *Ibid.*, p. 22-23.

recommendations CAO believes could help to solve problems raised by the complaint. CAO may also conduct a compliance audit to address noncompliance issues identified in the course of responding to the complaint or may refer any policy issues to the advisory role of CAO's office.

26. As of 12 February 2003, CAO's ombudsman function has received 11 claims. They have resolved or closed four of them.

27. CAO's **compliance** role may be triggered through the ombudsman's process, at the request of management or on CAO's own initiative. The purpose of a compliance audit is to determine whether IFC, MIGA or in some cases the project sponsor have complied with the environmental and social safeguard policies of the institution concerned. The compliance report may also contain specific recommendations for improving compliance both in the specific project and more generally. A report with findings and recommendations from each compliance audit is first provided to the President of the WB Group, because CAO reports to the President. After discussion with the President, the report is disclosed to the Board of IFC and MIGA, as applicable. There is a strong presumption, subject to concerns of business confidentiality, of public disclosure of the findings and recommendations of a compliance audit. In June 2002, CAO issued its guidelines on conducting compliance audits, including guidelines on reporting, confidentiality and disclosure. CAO has identified a number of projects of which it expects to conduct a compliance audit pending the selection of the senior specialist for compliance.

28. CAO's **advisory** role is meant to provide both informal and formal advice to help IFC and MIGA avoid problems in projects under preparation and to identify, analyze and improve systemic problems in existing policies or their implementation. The Advisory function is explicitly not intended to pre-screen or endorse any specific project. CAO's advisory activities result from requests by the President, IFC or MIGA management, or on CAO's own initiative. Examples of CAO's advisory activities include: managing the review of IFC's environmental and social safeguard policies; contributing several case studies to the extractive industry review; and participating in the preparation of IFC's sustainability agenda.

29. Given the relatively short period of time in which CAO has been operating, there is insufficient experience to determine its long-term success in resolving the problems of project-affected people or in improving IFC's and MIGA's policy compliance. To date, there have been no internal or external evaluations of CAO's work, but CAO is planning a review of its operations in the next year. In several cases, however, the affected people have been satisfied with the outcomes of the process. In other cases, affected people have appreciated CAO's preliminary assessments because it validated their initial concerns. IFC and MIGA staff also emphasize that the focus of the ombudsman function is primarily on problem-solving and not on identifying policy violations. On the other hand, CAO's compliance function, which will conduct environmental and social audits of specific projects, is only now being fully implemented; it is likely to engender more tension with IFC and MIGA staff than has the ombudsman function.

### **C. Inter-American Development Bank Independent Investigation Mechanism**

30. The IDB's Independent Investigation Mechanism (IDB Mechanism)<sup>16</sup> was established in August 1994 to address "complaints that the Bank ha[d] failed in the design, analysis or implementation of proposed or ongoing operations to follow its own established operational policies, or norms formally adopted for the execution of those policies (including enforcement of

<sup>16</sup> Information on the IDB Mechanism is available at <http://www.iadb.org/cont/poli/investig/brochure.htm>.

compliance with borrower's obligations required by such policies and/or norms), when material adverse effects have or might reasonably be expected to occur as a result of such failure by the Bank."<sup>17</sup> The IDB's Mechanism is the most similar to the ADB Inspection Function in that they both employ a roster system of independent experts for their panel. The IDB Mechanism does not have a Board Committee specifically dealing with inspection issues, however, as the full Board approves investigations and considers the final investigation report. The IDB Mechanism applies to private sector operations.

31. Any affected party, defined as an organization, association, society or other grouping of individuals, can file a request to the IDB Mechanism. The affected party must offer reasonable evidence that its rights or interests have been or are likely to be directly and materially affected as a result of a failure of IDB to follow its operational policies or norms. A request may be filed on behalf of affected people by local representatives and, in exceptional cases when no local representative is available and the Executive Directors so agree, by non-local representatives. Any Director of IDB may also file a claim in exceptional circumstances when a serious violation of IDB's operational policies or norms may have occurred.

32. Requests for inspection must be in writing and must state facts and provide any evidence explaining how the IDB has failed to follow or enforce its operational policies and norms, how such failure has harmed the affected people, and how the situation was brought to the attention of IDB's Management and the response of IDB's management.

33. When the IDB Mechanism was created, all requests had to be submitted to the President for an initial determination of eligibility. In 2001, after a brief review of its policy, the IDB Board created a staff "coordinator" position that reviews the initial complaint along with the legal department to determine whether the request meets the initial eligibility requirements. If the request appears eligible, the President assigns a member from the Panel Roster to review the claim to determine whether it is substantive or frivolous. If the request is deemed non-substantive or frivolous and the IDB Board concurs, the requester is informed that IDB management will not be asked to form a response and that an investigation is not warranted. If, on the other hand, the consulting member of the Roster concludes that the request is substantive, the request is sent to the IDB management for a response.

34. IDB's management has 30 calendar days to prepare its response. After reviewing management's response, the consulting member of the Roster makes a recommendation to the Board regarding whether a full investigation is warranted. At the same time, the Coordinator informs the requesters that the matter is before the Board for consideration and within fifteen days of any Board decision on the matter.

35. Once the IDB Board determines that an inspection is warranted, it selects a panel of no fewer than three members of the Roster, each of a different nationality. In consultation with the President, the Board also selects one member of the panel to serve as its chair. The panel determines its own procedures for investigating the request. The panel has access to all staff and IDB records and can carry out site investigations with the prior consent of the government within which the project is located. IDB's Office of the Secretary serves as the panel's secretariat.

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<sup>17</sup> Inter-American Development Bank. 2000. *The IDB Independent Investigation Mechanism, Rules and Procedures*, para. 1.1.

36. The IDB panel submits its findings along with any recommendations to the Board and President. Within 30 calendar days, IDB management submits a response to the panel's findings. The Board then makes a determination of what preventive or corrective steps, if any, shall be taken in response to the request. Management shall report on its implementation of the Board decision within a period designated by the Board. The panel report and management's response are made public within 90 days of the Board receiving them. Management's report on implementation of the Board decision is also made public.

37. IDB has had only one full "investigation" since its establishment, and that was before the amendments in 2001. In the Yacyretá Hydroelectric Project, the IDB Board agreed to an independent review of the situation in the project area rather than authorizing an investigation. In 1997, the IDB Board took note of the panel report and Management's comments, without taking a final decision on the recommendations of the panel. In July 2002, the IDB Board authorized an investigation of the Termoeléctrica del Golfo Project. A panel of investigators has been appointed and initiated investigation in October 2002.

#### **D. European Bank for Reconstruction and Development**

38. In October 2002, the European Bank for Reconstruction and Development (EBRD) developed a proposal for an independent recourse mechanism. EBRD's decision to develop a mechanism is apparently in response to the continued interest of the G-7 donor governments in the creation of a compliance mechanism at all MDBs,<sup>18</sup> as well as a specific request to create such a mechanism made in 2001 by a coalition of civil society groups from EBRD borrowing countries. The proposal is expected to be discussed by the EBRD's Board of Directors in the first half of 2003.

#### **E. African Development Bank**

39. The African Development Bank (AfDB) developed and circulated a proposal for an inspection panel in 1994.<sup>19</sup> That proposal would have included a three-member, part-time panel patterned substantially after the WB panel. The proposal did not explicitly address whether the proposed panel would have covered private sector projects. AfDB's Board of Directors never approved the proposal, in part because beginning in January 1995, AfDB went through major reorganizations involving its environment and social policy divisions. AfDB hired a consultant in 2002 to prepare a study and proposal for an inspection mechanism, and a draft study has been prepared.

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<sup>18</sup> See, e.g., Statement of the G-7 Finance Ministers and Central Bank Governors in Palermo, 17 February 2001, para. 12.

<sup>19</sup> African Development Bank. 1994. *Draft Statement on Proposed ADB Inspection Panel*.

## ACCOUNTABILITY MECHANISMS AT INSTITUTIONS OTHER THAN MULTILATERAL DEVELOPMENT BANKS

1. The World Bank (WB) panel was the first citizen-driven accountability mechanism at any international institution. Aside from ADB, other MDBs also have accountability mechanisms, such as IADB and IFC/MIGA. This Appendix briefly summarizes related accountability mechanisms at institutions other than MDBs.

### A. International Monetary Fund

2. In 2001, International Monetary Fund (IMF) established an Independent Evaluation Office (IEO) to provide "objective and independent evaluations" of IMF policies, comparative cross-country analysis of IMF's economic policies, and evaluations of completed country operations. The overarching objective is to improve IMF's effectiveness through among other things lessons learned, increased transparency, providing feedback to the IMF Board and promoting greater understanding of IMF work. The evaluation office was set up to be independent from IMF management and staff and reports to the IMF Board.<sup>1</sup> The IEO is relatively new and untested.

### B. Export Development Canada

3. In April 2002, Export Development Canada (EDC)<sup>2</sup> announced the creation of a new "compliance officer" position "to review and help resolve issues concerning transparency and disclosure, environmental reviews, human rights and business ethics."<sup>3</sup> The position is intended to encourage dialogue between EDC and stakeholders and will provide EDC with advice regarding best practice, oversee compliance audits and monitor EDC's performance in environmental, human rights and social areas. Any individual, group, community entity or other party affected or likely to be affected by EDC's activities can file a complaint. Complaints do not have to follow any specific format, but must be in writing in either French or English. The Compliance Officer reviews the complaint, registers eligible complaints, and makes a preliminary assessment to determine what actions would be appropriate. The focus is on facilitation and problem-solving at first, but in some cases the Compliance Officer will conduct investigations into the facts and policy compliance. No complaints have yet been filed with this mechanism.<sup>4</sup>

### C. Japan Bank for International Cooperation

4. The Japan Bank for International Cooperation (JBIC) is the largest bilateral export credit and development agency in the world. In 2002, JBIC approved its first environmental policy. This policy requires environmental assessments and certain other standards. JBIC has also publicly announced that it will now begin the process of developing an accountability mechanism to receive and respond to concerns of locally affected people. This would make

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<sup>1</sup> Information on the IEO is available at <http://www.imf.org/external/np/ieo/index.htm>.

<sup>2</sup> Information on the EDC is available at [http://www.edc.ca/corpinfo/csr/compliance\\_officer/index\\_e.htm](http://www.edc.ca/corpinfo/csr/compliance_officer/index_e.htm).

<sup>3</sup> Press Release, Export Development Canada, 10 April 2002, available at [http://www.edc.ca/docs/news/2002/04-10-02\\_e.htm](http://www.edc.ca/docs/news/2002/04-10-02_e.htm).

<sup>4</sup> Export Development Canada, *Resolution Respecting the Establishment of a Compliance Officer Position for Export Development Canada*; see also *Resolution Guidelines*, both available at [http://www.edc.ca/corpinfo/csr/compliance\\_officer/board\\_resolution\\_e.pdf](http://www.edc.ca/corpinfo/csr/compliance_officer/board_resolution_e.pdf).

JBIC the second export credit agency to create such a mechanism, after Export Development Canada (described in para. 3 of this Appendix).

**D. Citizen Submissions under the North American Agreement on Environmental Cooperation**

5. The three countries (Mexico, Canada and the United States) that joined the North American Free Trade Agreement (NAFTA) also agreed to the North American Agreement on Environmental Cooperation (NAAEC).<sup>5</sup> NAAEC created the North American Commission for Environmental Cooperation (the Commission), which among other things receives citizen submissions under Article 14 of NAAEC.

6. Article 14 of NAAEC creates a mechanism for citizens residing in any of the three NAFTA countries to assert that one of the countries is failing to enforce its environmental laws effectively. Submissions must be in writing and must provide sufficient information to allow the Secretariat of the Commission to review the submission, including any supporting documentary evidence. Once the Secretariat finds that a submission meets the eligibility criteria and more generally warrants a response from the country, the Secretariat forwards to the country the submission and any supporting information. After receiving a country's response, the Secretariat informs the parties if it believes a factual record is warranted. The Commission must approve preparation of the factual record by a majority vote of the three NAFTA countries. Thus, an investigation cannot be blocked simply because the party complained against refuses to consent. Once the final record is completed, the Council may make it available to the public by majority vote; otherwise it remains confidential.

7. Although not completely analogous to the ADB Inspection Function, the NAAEC Citizen Submission process is informative. It is part of the broader trend in international institutions toward transparent compliance monitoring mechanisms triggered by citizens. The NAAEC process has received over 30 citizen complaints in the nearly 10 years that it has been operating. All three countries have been subjected to complaints and the process has at times been very controversial. Factual records are typically made public and have in several cases catalyzed improvements in the enforcement and implementation of national environmental laws.

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<sup>5</sup> Information on NAAEC is available at [http://www.naaec.gc.ca/eng/index\\_e.htm](http://www.naaec.gc.ca/eng/index_e.htm).

## SUMMARY OF ADB INSPECTION REQUESTS

1. The following is a brief description of the requests for inspection ADB has received to date. ADB has received eight requests for inspection since 1996: three from Pakistan, four from Sri Lanka, and one from Thailand. Six of the requests have been deemed ineligible by BIC. Only one request—the Samut Prakarn Wastewater Management Project in Thailand—has gone through a full inspection process.

2. ADB's first and second requests for inspection regarded the Korangi Wastewater Management Project in Pakistan and were deemed ineligible by BIC. The requests were deemed ineligible because the requesters had not cited specific policy violations or demonstrated that policy violations were linked to direct and adverse impact on their rights and interests. Additionally, by the time of the second request, the loan agreement was terminated before the project commenced and there had been no disbursements.<sup>1</sup>

3. In April 2001, BIC received a third request for inspection from the Mayor of Klong Dan and two Klong Dan villagers regarding the Samut Prakarn Wastewater Management Project.<sup>2</sup> The Samut Prakarn Wastewater Management Project is located in the Samut Prakarn province, an industrialized urban area outside of Bangkok, Thailand. The project is designed to improve the health and well-being of Samut Prakarn district residents, and directly benefits one million residents by providing a cleaner environment and improved water quality by eliminating 72,000 tons of organic pollutants and 90 tons of heavy metals that were previously discharged with little or no treatment into the Gulf of Thailand. The complaint alleged that ADB moved the wastewater treatment plant to a new location at the Klong Dan site, without re-assessing the environmental and social impacts of the project on local communities and without conducting a full reappraisal at the time of a supplementary loan to the project. The requesters charged that ADB had violated 13 policies, including, among others, the policy on supplementary financing of cost overruns of ADB-financed projects.

4. The ADB Panel inspecting the request concluded that there was noncompliance with 6 policies, and that by failing to conduct a full reappraisal at the time of the supplementary loan, ADB violated the policy on supplementary financing of cost overruns.<sup>3</sup> While Management disagreed with the Panel's conclusions, BIC agreed that there should have been a full reappraisal and that by not conducting the full reappraisal, there was also breach of policies on involuntary resettlement, incorporation of social dimensions, and benefit monitoring and evaluation. Key recommendations from BIC and the Board on the outcome of the Samut Prakarn Inspection included the following: (i) ADB should affirm its commitment to being an active participant in the discussions with the Klong Dan Community; and (ii) Management should monitor resettlement impacts, ensure public participation, and provide semi-annual reports on the status of resettlement implementation. BIC and the Board also requested Management to provide semi-annual reports on initiatives that Management had already undertaken, including the system for monitoring of socioeconomic impacts based on baseline

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<sup>1</sup> ADB. 2000. Inspection Request: *Korangi Wastewater Management Project* (Loan 1539-PAK(SF)), Manila.

<sup>2</sup> Loan 1410-THA: *Samut Prakarn Wastewater Management Project*, approved 7 December 1995; and Loan 1646-THA: *Samut Prakarn Wastewater Management Project (Supplementary)*, approved 3 December 1998.

<sup>3</sup> ADB. 2001. *Final Report of Inspection Panel on Samut Prakarn Wastewater Management Project*, Manila, p. 38.

data, the progress in community development, and measures taken to respond to any problems associated with odor and effluent.<sup>4</sup>

5. Between November 2001 and March 2002, four requests were filed regarding the Southern Transport Development Project in Sri Lanka.<sup>5</sup> The requests alleged violations of 10 ADB policies. In the first two requests, BIC concluded that there was insufficient basis to recommend an inspection to the Board, and the Board did not authorize an inspection. The third and fourth requests were also deemed ineligible by BIC because it concluded that the requesters did not present reasonable evidence that their rights and interests had been or were likely to be directly, materially and adversely affected by a failure of ADB to follow its policies or procedures.

6. In November 2002, ADB received a request for inspection regarding the Chashma Right Bank Irrigation Project (Stage III)<sup>6</sup> in Pakistan from 6 NGOs representing local persons affected by this project. The request alleges violations of ADB's policies and guidelines. Management has filed its response on in February 2003. As of 12 February 2003, BIC is considering the request and Management response.

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<sup>4</sup> ADB. 2002. *Report and Recommendation of the Inspection Committee to the Board of Directors, Asian Development Bank, on Inspection Request: Samut Prakarn Wastewater Management Project (ADB Loan Nos. 1410-THA [7 December 1995] and 1646-THA [3 December 1998])*. Manila; and ADB. 2002. *Board of Directors' Decision on Inspection Request: Samut Prakarn Wastewater Management Project*. Manila.

<sup>5</sup> ADB. 2002. *Loan 1711-SRI(SF): Southern Transport Development Project – Inspection Requests by Gama Surakeema Sanvidhanaya, United Society for Protection of Akmeemana, seven local community groups, and Kahatuduwa*.

<sup>6</sup> Loan 1146-PAK(SF): *Chashma Right Bank Irrigation Project (Stage III)*, approved 17 December 1991.

## SUMMARY OF THE FOUR OPTIONS PRESENTED IN PREVIOUS DRAFT WORKING PAPERS

1. The previous draft working papers presented the following four non-exclusive options (with variants) for consideration:

- (i) **Option A:** the existing system with improvements;
- (ii) **Option B:** the independent compliance review panel, based on the WB panel model with improvements;
- (iii) **Option C:** the ombudsman or problem -solver, based on the CAO model; and
- (iv) **Option D:** a two-step approach of consultation and compliance review.

2. These four options differed in structure, but shared several important attributes. All options involved establishing a permanent independent secretariat with at least one full-time professional staff member. All options required the claimants to attempt in good faith to resolve their issues or problems with ADB Management before filing a complaint. All options either restructured or eliminated BIC, and all reflected a more streamlined process with fewer days for determining eligibility and authorizing a consultation or compliance review. All options also allowed for increased information disclosure and enhanced rights of participation for the claimants. The eligibility requirements were broadened to allow claims in the official or national languages of ADB's DMCs, and in each of the options the identity of claimants was protected from disclosure, if requested.

3. **Option A** the existing mechanism with improvements, included creating a permanent full-time secretariat reporting to BIC. The secretariat would conduct public outreach and assist potential claimants. BIC's role would be restructured primarily to authorize inspections and select the panel members from the roster of experts. At the end of the compliance review process, BIC would not make recommendations to the full Board, but would forward the panel report with Management response to the Board for consideration. The roster would be reconstituted with only five professionals of high credentials who would be expected to be available more regularly during their tenure as roster members. This would result in a roster of experts that would be more accountable and more experienced. The panel would be chosen by, and report to, BIC. The compliance review process would be streamlined because the complaint to the President would be eliminated and other procedural steps would be shortened. In Option A, eligibility would be determined and a compliance review authorized within 35 days from receiving a request for review.

4. **Option B**, the independent compliance review panel, would be similar to the WB system with improvements, with variations to reflect ADB's institutional context and to streamline the process. This option would create a permanent full-time compliance review panel with at least one full-time senior panel chairperson and two part-time panel members who would work only when required. In this system, this panel would report to the Board, and BIC would be eliminated or restructured to have only an oversight role. The panel would determine eligibility and the Board would authorize investigations on a no-objection basis. In Option B, eligibility would be determined within 26 days from receiving a request for inspection, and an investigation would be authorized within 47 days from receiving a request for inspection.

5. **Option C**, the ombudsman or problem-solver, was modeled after the IFC/MIGA CAO ombudsman office and involved the creation of a permanent secretariat with one senior level person responding to specific requests from project-affected people. Eligibility in Option C would be broader, because it would not be linked to policy violations. The ombudsman would be outcome-driven, focusing on finding ways to improve the situation of project-affected people. The ombudsman could be appointed by, and report to, either the Board or the President. The Ombudsman would use various methods to assist in solving problems including consultation, conciliation, mediation, or dispute resolution. The consultation period would last until all parties come to an agreement; the agreement would then be sent to the Board for approval. If the process is not working, any party to the consultation could "walk away" from it. The system would be less formal than a compliance review. Within 35 days from receiving a claim, eligibility would be determined and a consultation plan would be issued.

6. **Option D** would be a two-step sequential approach including a consultation phase with a project counselor followed by (if requested) a compliance review. The claimant would be required first to attempt to resolve the concerns or problems with the project counselor. In this structure, the compliance review would become a last resort. There are five variations to this basic approach that would provide alternative methods for structuring and linking the consultation and compliance review phases. As in Option C, the project counselor could be an ADB senior-level staff (reporting to the President) or an independent senior-level officer (reporting to the Board). Option D would require the setting up of a permanent office with a full-time secretariat and hiring at least two full-time professionals and an executive secretary. Although functionally separate from each other, the offices could share a secretariat and support staff. In the consultation phase, eligibility would be determined and the consultation plan issued within 35 days from the filing of the claim. If the claimant is not satisfied with the consultation process or consultation plan, the claimant could withdraw from the consultation phase and file a claim with the compliance review. In the compliance review phase, eligibility would be determined and investigation would be authorized within 10 and 31 days from the filing of the request for inspection, respectively.

## SUMMARY OF COMMENTS FROM THE CONSULTATIONS AND ADB'S RESPONSES

The following table presents comments received from both within and outside ADB during the consultations on the review of the Inspection Function. Many comments that were similar have been consolidated. The review has resulted in a proposed new accountability mechanism, as provided in this Working Paper. The Working Paper will be discussed by ADB's Board of Directors, which will make the final decision regarding the accountability mechanism. The responses provided below are based on the existing system and the proposed mechanism. All of the comments received both internally and externally have been considered in the development of ADB's proposed accountability mechanism.

Comment		ADB Response
<b>A. Purposes and Objectives of an Accountability Mechanism</b>		
1.	The mechanism should maintain its current focus on reviewing ADB compliance. Original limitation on the scope of the inspection mechanism—that is on ADB compliance—is correct.	ADB's new mechanism will contain a compliance review panel. In addition, ADB is considering options to formalize a problem-solving, consultation phase.
2.	Dealing with alleged violations of policy and procedures should not be the only concern of a mechanism.  The mechanism should serve two purposes: respond to the problems of affected people and also provide a way to review policy compliance.	ADB is currently considering a two-step approach of consultation followed by (if requested) a compliance review.
3.	The mechanism should focus primarily on improving impacts on the ground and receiving and resolving concerns of affected people.  We should look for better outcomes, not look for a punitive process.  ADB must have a vehicle for hearing the voices of affected people, but also ADB is dealing with sovereign governments who have their own domestic processes.	Responding to the concerns and problems of affected people has been identified as one of the key purposes of a new mechanism. The other purpose of ensuring policy compliance may also help to alleviate impacts on the ground, particularly if there is post-inspection monitoring and follow-up on compliance issues.
4.	Any mechanism should support the ultimate goal of ADB, which is to "assist countries in their development". Let the government make decisions about balancing interests among their people.	The Inspection Function is intended to enhance development effectiveness and enhance project quality by ensuring that ADB complies with the minimum standards set forth in ADB's policies. ADB member countries approved the Inspection Function and the underlying policy framework to support ADB's overall development mission.
5.	The current has had little success in achieving its goals.	There is broad acknowledgement among all stakeholders that the current process is not working for ADB staff, Management or affected people. That is in part why ADB has launched this substantial effort to review and improve the Inspection Function process.

Comment		ADB Response
<b>B. Basic Principles and Criteria of an Accountability Mechanism</b>		
1.	The mechanism should be independent, transparent and fair to all stakeholders, including affected people, DMCs and ADB staff.	The 1995 inspection policy specified the need for independent investigation, transparency, and accountability among the reasons for establishing the IF. There is broad consensus among stakeholders inside and outside ADB that the mechanism should have these qualities by structural design. The current proposed mechanism is designed to be as independent, transparent and fair as possible, while balancing cost and time considerations.
2.	The mechanism should serve ADB-affected communities. The current process is too difficult. The mechanism should be easily accessible, user-friendly, and it should respond respectfully and quickly. The current design is compliance-focused, not complainant-focused.	Part of the rationale for the Inspection Function review is that the current process has not served any stakeholders, including potential claimants, well. Responsiveness to the concerns of affected people is a general principle that has emerged from the public consultations. ADB is committed to simplifying the current process, and to exploring ways to make the mechanism more accessible to affected people.
3.	The mechanism should be accountable to affected people and communities and to the Board.	Under the current system, there is no permanent panel that can be held accountable. The roster system is probably not conducive to building relationships and trust inside or outside ADB. ADB is considering ways to enhance the accountability mechanism including the appointment of three panel members, and more transparency during the compliance review process.
4.	The mechanism should be based on equal participation of all stakeholders.	Equal participation is related to the principles of fairness and transparency as part of due process. Participation could be improved through new procedures, for example, by increasing equal access to the mechanism through information disclosure during milestones, transparency of the process, and opportunity for input at important stages of the process.
5.	The proportion of ADB financing in specific projects should be taken into account.	ADB may have less influence over some issues as result of being a minor funder in a project, but it can attempt to set a positive example on accountability, transparency, and participation in all projects. In addition, ADB's policies apply to all projects it funds, regardless of the level of support.
6.	Accountability of the multilateral development banks (MDBs) means that the public has the right to expect compliance with policies and procedures that govern MDB activities related to loans and projects.	Accountability for policy compliance was a recognized purpose for establishing the Inspection Function in 1995. Based on public consultations, it has continued to be highlighted as an essential general purpose of a new mechanism. A compliance review panel is part of the proposed mechanism and is under consideration.

<b>Comment</b>		<b>ADB Response</b>
7.	Any mechanism should enhance ADB's development effectiveness. The overarching principle of the mechanism should be the long-term goal of development effectiveness.	A well-designed accountability mechanism will enhance ADB's development effectiveness and improve project quality by ensuring that the concerns of project-affected people are considered and ADB's policies are followed in the design and implementation of ADB projects.
8.	Ensuring cost effectiveness is important because money spent on this mechanism is money that is unavailable for other development purposes.	Cost effectiveness and efficiency are broadly recognized as important principles for a mechanism and are being considered in the proposed mechanism.
9.	The mechanism should try to ensure that everyone, including DMCs, project sponsors, ADB staff and affected people, are willing partners in the process.	Consultations on the review of the Inspection Function have taken into consideration the concerns of all stakeholders. ADB is currently considering specific ways to ensure broader transparency and participation by all stakeholders in the proposed mechanism.
<b>C. Preventive Measures</b>		
1.	<p>ADB needs to implement preventive measures so that problems do not get to the point of inspection.</p> <p>ADB could prevent many future problems by enhancing public participation and outreach in the project design stage.</p> <p>Since environmental and social concerns are major concerns of DMCs, it would be more prudent to address such issues involving community before loan negotiations are concluded.</p>	Preventive measures are addressed by ADB as part of designing, processing and implementing projects. They are part of the ongoing process of enhancing project quality but they are generally outside the scope of the Inspection Function review.
2.	If Management responds promptly and effectively to complaints, many problem projects can be prevented from becoming worse.	As part of project implementation, operations staff routinely respond to problems. ADB is considering how to improve the effectiveness of its responses to problems brought forward by affected people through formalizing a consultation phase. The proposed mechanism suggests Management and staff involvement in early problem-addressing as one possibility.
3.	A complaints response mechanism should emphasize problem prevention early in project design and preparation.	Problem prevention in early project design and preparation is the responsibility of operations staff. However, a mechanism could improve project design and preparation where claims are brought early enough in the process. A mechanism could also, based on its experience over time, make recommendations for preventing problems in the design or preparation of future projects.
<b>D. Scope of the Accountability Mechanism</b>		
<b>D(1) Scope: Which policies should be inspectable?</b>		
1.	ADB's accountability mechanism should inquire into compliance with elements of international conventions where appropriate.	The primary purpose of the Inspection Function is to determine compliance with ADB policies, many of which (for example, the safeguard policies) are consistent with other MDBs and current international standards.

	Comment	ADB Response
2.	<p>With respect to the applicability of the IF, ADB should distinguish between policies that are mandatory and policies that are recommendations.</p> <p>The Inspection Function should decide which policies are inspectable.</p> <p>The Board should decide which policies are inspectable.</p> <p>Management should not have a role in determining what policies or strategies are mandatory, nonmandatory or a mix of the two.</p>	<p>Currently, there is a policy review underway within ADB to determine which policies will be "inspectable." All policies that are related to design, processing and implementation of projects are being reviewed and classified as mandatory, nonmandatory and "mixed." The intention is that the new mechanism will cover all mandatory elements of policies that relate to project formulation, processing and implementation. A review process on the Operations Manual (OM) updating in the context of the inspection policy is under way. The issue of OM updating is distinct and separate from the updating of ADB's operational policies and procedures for purposes of inspection. In March 2002, a senior staff committee was established by the President to oversee the review process and implement a work plan. The work done by the senior staff committee is separately undertaken from, but related to, the review of the Inspection Function.</p> <p>A memorandum was presented to the Board in October 2002 on the status of the review process, together with a list of ADB's operational policies and procedures subject to inspection contained in a compendium on the ADB web site on the Review of the Inspection Function. The compendium was posted on the ADB web site for public comments from November 2002 to January 2003. The comments received have not been positive and in response, ADB has withdrawn the compendium from the web site in early February 2003 and is presently working on the way to move forward on the OM review and updating.</p>
3.	<p>Policies (including what is mandatory or best practice) lend themselves to different interpretations and this becomes a problem when considering policy violations. Interpretation of policy must be done by the ADB panel, and not by Management.</p>	<p>During the inspection process, the claimants, panel and Management all interpret policies and policy violations in their submissions. The Board also makes a determination on policy violations when it considers the panel's report. Various interpretations may be unavoidable, but confusion can be avoided by ensuring policies are clearly written and unambiguous. The policy review will improve clarity on which policies are mandatory.</p>
4.	<p>All policies approved by the Board should be inspectable, whether they are in the Operations Manual (OM) or not.</p> <p>All Board-approved policies should be implemented and inspectable immediately after being approved.</p>	<p>This is consistent with the World Bank (WB) and IDB inspection panels. ADB is currently undergoing a review of its policies. In WB's case, "operational policies and procedures" consist of the WB's "Operational Policies, Bank Procedures and Operational Directives, and similar documents issued before these series were started, and does not include Guidelines and Best Practices and similar documents or statements."</p>
5.	<p>Only environmental and social safeguard policies should be inspectable. These are the</p>	<p>ADB has an institutional interest in ensuring that all of its policies are complied with, although the</p>

	Comment	ADB Response
	ones most relevant to affected people.	safeguard policies have been the most often cited policies in claims filed by affected people at ADB as well as at WB. In recent ADB claims, other policies commonly cited were benefit monitoring and evaluation, supplementary financing of ADB-financed projects, and confidentiality and disclosure of information.
6.	Who has responsibility for ensuring policies are followed during project implementation?	Normally, operations staff and Management are responsible for ensuring policies are properly implemented in the projects.
7.	Loan agreements that contain references to policies and procedures should be "inspectable."	This is currently under consideration by ADB. This would be consistent with the WB panel that has jurisdiction over alleged failure of WB to monitor implementation of the loan agreements "with respect to such policies and procedures." (World Bank Resolution, para. 12) In this case, the loan agreement has to make specific reference or otherwise to incorporate the policies or procedures.
8.	In addition to project loans, program loans should also be inspectable.	They are subject to inspection, consistent with the WB panel that investigates claims related to the design, planning and implementation of program loans.
9.	The current review process may lead to policies currently in the OM being excluded from the scope of the inspection.	Some elements of policies in the OM are not intended to be mandatory or even written in mandatory language, and this may provide limited practical basis for an inspection claim. The current review of the policies is intended to identify all mandatory policies or mandatory parts of policies.
10.	The OM is just a notebook for holding policies. Rather than referring to the OM, special reference to inspection could be placed in each of the appropriate policies or procedures. The OM can be used for this purpose only if the policies are translated into the OM within three months. Operational Board policy papers should also be included as an underlying document to provide guidance in interpreting the OM.	ADB recognizes the confusion that reference to the OM caused in the original inspection function, and is considering various ways to eliminate that confusion, including the suggestions in this comment.
11.	There should be an attempt to determine what policies are relevant to affected people.  It may be complex to apply the inspection policy to all ADB's operational policies. The ultimate scope should consider relevance and practicality, and be selective.	Based on the experiences at ADB, WB, and CAO, it seems that the safeguard policies are the most often cited in claims. Other policies, however, have also been important to specific claims, including, for example, project supervision. Therefore, it is difficult in advance to determine which policies may be protective of project-affected people in any specific case.
12.	There is a need to be selective about which policies are inspectable because we should not overburden the system.	Which policies are inspectable and which are not will be established more clearly after the policy review. Restricting the scope of policies probably would not have significant impact on the number of claims, as experience at WB has shown that most claims involve multiple policies. Also there is no reason to believe, based on the WB

Comment		ADB Response
		experience, that the system will be overburdened if all policies are inspectable.
13.	In practice, even if all policies are inspectable, only a small number of them would arise in complaints.	This is probably correct if one looks at the WB panel as an example. Out of the 27 claims, only a small number of WB policies were cited. The most commonly cited were seven safeguard policies dealing with environmental and social issues. In addition to these safeguard policies, nonsafeguard policies such as project supervision, and economic evaluation of investment operations were often cited.
14.	During the policy review process, policies should not be watered down in the process of determining what is mandatory.	The policy review process should increase clarity on what policies are mandatory and which ones are advisory or non-mandatory. It is not intended to change the policies substantively.
15.	The policy review process should be more transparent and there should be ample opportunity for public participation.	This is under consideration by ADB.
<b>D(2) Scope: Applicability to Private Sector Operations</b>		
16.	Private Sector Operations (PSOs) must be covered by the accountability mechanism. Private sector projects can do just as much damage as public projects; governments are about public interest where companies follow only private interests so maybe there is more reason to apply to private sector than public sector.  PSOs should not be covered at all by the accountability mechanism, or should not be covered until ADB gains experience with the new accountability mechanism.	ADB is committed to applying the accountability mechanism to PSOs. A majority of stakeholders inside and outside ADB believe that PSOs should be covered by the accountability mechanism. There may be a need to issue separate procedures to accommodate PSO concerns of project delay, added costs and business confidentiality.
17.	The main concerns of PSOs are delays, cost, confidentiality, and abuse of the mechanism for competitive gain.	ADB recognizes the concerns of private sector in relation to the new mechanism. These issues and how they could be addressed under the new accountability mechanism are discussed in the second draft of the working paper and in this paper.
18.	The issue of how much confidentiality can be afforded to the private sector should be clearly laid out in the procedures.  Environmental and health-related information should not be withheld based on claims of business confidentiality.  ADB already protects business confidentiality in its many relationships with businesses, so there should be no problem maintaining business confidentiality in this context.	The issue of business confidentiality and whether separate inspection procedures are needed for private sector is currently under consideration by ADB. The new accountability mechanism will most likely be covered by the same disclosure and confidentiality rules.

Comment		ADB Response
19.	PSOs should be willing to accept the mechanism if they want to do business with ADB.	A survey with about 60 officials in private sector companies carried out by ADB in 2001 indicated that most respondents would participate in projects where there is an inspection mechanism as long as business confidentiality is strictly assured, they incur no extra costs, and the project is not delayed.
20.	Private sector loan agreements will need to be revised to incorporate the new mechanism. Compliance activities could be provided for in contracts with PSOs.	Whether the new mechanism will require changes in loan agreements or a separate set of procedures for private sector is under consideration by ADB.
21.	PSOs may be more reluctant to accept inspection than problem-solving.	This may be correct, since there is already experience with problem-solving and mediation in private sector development at the CAO ombudsman that has some success in resolving problems of affected people. The process is also less adversarial than inspection. However, the CAO office also has a compliance audit role that covers private sector projects. Many private sector concerns can be addressed in the design of the new compliance review mechanism and implementation of procedures that ensure confidentiality and address other PSO concerns.
<b>D(3) Scope: The 95% Disbursement Rule</b>		
22.	<p>The 95% rule is unfair because some projects have an adverse impact after they are completed and substantially completed, and ADB's institutional interest in policy compliance may extend through the life of the project.</p> <p>Claims should be allowed at any time prior to submission of the project completion report, because ADB's responsibility for policy compliance extends throughout the life of the project.</p> <p>The 95% standard should be reduced to 50% or 75% so that claims do not interfere with projects that are almost completed. Also, the contract awards should be considered, not disbursements because contract awards obligate ADB in advance of disbursements.</p>	Changes in the 95% disbursement rule are currently under consideration by ADB.
23.	The 95% rule means that claims will be virtually impossible to bring in "fast-disbursing" loans such as structural adjustment lending.	The experience with the WB panel suggests that a panel can investigate structural adjustment loans notwithstanding the 95% exclusionary rule.
24.	Claims should only be allowed in the project design and preparation phase, because claims during implementation inevitably lead to an inspection of borrower performance.	ADB has an institutional interest in allowing claims during the implementation phase for both consultation and compliance review, because problems arise during implementation as much as in the design and planning phase.

Comment		ADB Response
<b>D(4) Scope: Procurement and Corruption</b>		
25.	The mechanism should accept all claims involving corruption and procurement. The mechanism can refer a claim to the anti-corruption unit. In the event there is a parallel corruption investigation, the mechanism should consider the conclusions of the anti-corruption unit in its overall assessment of the claim.	Currently, ADB's Anticorruption Unit handles allegations of fraud and corruption in ADB-financed projects or of its staff.
26.	There should be a working relationship between the accountability mechanism and the anti-corruption units, including for example information-sharing.	The relationship between the new mechanism and other ADB offices is under consideration.
27.	The Inspection Function should develop clear criteria for claims it cannot handle.	The list of exclusions under the current procedures is explicit and clear although the policy reasons for the exclusion may not be adequately explained. The current ADB exclusions are consistent with other MDB accountability mechanisms.
28.	The mechanism should cover procurement decisions, including selection of consultants.	This exclusion is consistent with the scope of other accountability mechanisms at WB and IDB. At ADB, the Central Operations Services Office already handles complaints about procurement issues, including the hiring of consultants.
<b>E. Eligibility Issues</b>		
1.	Present policy is fine with respect to screening and who can bring complaints, but the focus should be kept on affected communities and representatives thereof.	The present policy is generally consistent with that of WB and IDB. ADB agrees that the focus should be on assuring that the process is accessible to project-affected people.
2.	Only directly affected people should be able to file a complaint.	Currently, local and non-local "representatives" of affected people can file claims on behalf of affected people. This is viewed as necessary because the language and technical requirements of a claim may be too complex for the affected community, and could prevent them from coming to the Inspection Function at all. Claimants must show that their rights and interests have been or are likely to be materially and adversely affected by an act or omission of ADB. Also one or more Board members may, in special cases, file a claim.
3.	Getting to the panel process should be more difficult, perhaps requiring a mediation stage first with a permanent independent mediation expert and secretariat.	This is one of the variations being considered under the proposed mechanism.

Comment	ADB Response
<p>4. The current eligibility requirements are too lax because only a small number of people can trigger an inspection that questions a project that benefits many thousands.</p> <p>ADB should require a greater number of people to be complaining before the process could be triggered.</p> <p>A minority of people should not be able to block progress; ADB can decide whether or not to give a loan but should not be put in the place to be the defender of the minority in a community that is harmed by a project.</p> <p>Instead of a specific number, maybe ADB should require that any claim reflect a significant or substantial problem.</p>	<p>The eligibility criteria for the new mechanism are under review and ADB is considering different approaches. The current Inspection Function eligibility requirements in this regard are similar to those of other MDBs. Most of the policies do not put a numerical limit on the number of people who must be affected before the policy applies.</p>
<p>5. "Affected people" should be interpreted broadly to include more than just those living in the project area, because national groups may have a substantial interest in issues (for example, protection of a national park).</p> <p>People or communities in countries outside of the project area should be able to bring claims, at least where there are trans-boundary impacts.</p>	<p>The eligibility criteria for the new mechanism are under review and ADB is considering different approaches. The current eligibility requirements in this regard are similar to those of other MDBs. ADB's current system allows claims from a neighboring member country.</p>
<p>6. Under no circumstances should groups located outside the country be allowed to bring claims.</p>	<p>The current Inspection Function eligibility requirements on authorized representation of local communities are similar to those of other MDBs. ADB's current system allows claims from a neighboring member country but the claimants must show that they are or will be materially and adversely affected by the project.</p>
<p>7. There should be assistance for filing a claim in English, because most affected people do not speak or write English.</p> <p>Request for Inspection should be accepted in local languages.</p> <p>Requests for Inspection should be accepted in the national or official languages of each member country.</p> <p>The inspection process should be accessible to ordinary people. The present requirement that all complaints should be in English biases the process in favor of educated elites and international NGOs.</p>	<p>The requirement that claims only be in English is under consideration. The current proposed mechanism requires claims to be in any one of the official or national languages of ADB developing member countries. The WB panel and CAO allow claims in any language. The primary argument against allowing claims in any language is the costs and time required to conduct translations, and the large number of local languages existing in the region. Providing assistance to potential claimants may be one way of addressing the situation, while controlling costs.</p>
<p>8. The identity of claimants should be withheld if requested. Confidentiality of claimants is important.</p>	<p>This is currently under consideration similar to CAO and WB which allow the claimants' identity to be withheld.</p>

Comment		ADB Response
9.	Claimants should not be required to detail specific policy violations; this should be the task of the mechanism.	It has been broadly acknowledged during the consultations that the requirement to cite policy violations is burdensome for affected people who may not have access to, or knowledge of, ADB policies. At WB, claimants have been assisted informally to understand policies that apply to their claims. The current proposal does not require claimants to cite specific policy violations. This issue is under consideration by ADB.
10.	The ADB Board members and the President should be able to file a request for inspection.	Under the current ADB Inspection Policy, in special cases involving allegations of serious violations of ADB operational policies and procedures in respect of an ongoing project, one or more ADB Directors can file a request for inspection. Currently, the President cannot because the President is part of Management and the compliance review phase of the accountability mechanism is meant to be independent of Management. This is the same at WB.
11.	If a request is not clearly ineligible, then the panel should conduct an initial investigation including a site visit.	This proposed process is similar to the WB panel that routinely makes a site visit to determine eligibility. The procedures for the new mechanism are currently under consideration.
12.	If the panel decides not to inspect a claim, then it should release a draft report for the requesters to comment first.	Under the current system, when the claimants are deemed ineligible, BIC recommends against an authorization of inspection, and the claimants are notified that they are ineligible. This suggestion would create an opportunity for the requester to refute the ineligibility finding before the recommendation is finalized; this may increase fairness and transparency in the system and arguably improve efficiency because otherwise the claimants' only recourse is to file an entirely new claim (if they provide new facts).
13.	The process should not be abused by NGOs. There should be a screen for frivolous complaints.	The current initial screening process is aimed at identifying claims that do not relate to impacts of noncompliance on affected people. The initial review of eligibility should be able to screen frivolous claims quickly and efficiently.
14.	Multiple claims on the same project should not be allowed to keep the process going forever.	ADB is considering procedures that allow the accountability mechanism to consolidate similar claims from the same project. Also, if claims raise exactly the same issues as claims previously reviewed without raising any new evidence, they may be excluded under current rules.
<b>F. Independence of the Mechanism</b>		
1.	The current mechanism is not independent from Management and the Board.	There is broad consensus that the current mechanism is not sufficiently independent. The current proposed mechanism has increased independence as a result of a permanent structure, annual budget, and authority to determine eligibility.

<b>Comment</b>		<b>ADB Response</b>
2.	A permanent independent panel with a secretariat that is independent from Management should replace the current panel roster.	An independent panel consisting of three panel members with a secretariat is proposed.
3.	An independent mechanism will be better equipped to safeguard confidential information, including the identity of claimants (when necessary).	An independent panel consisting of three panel members with a secretariat is proposed. Withholding the identity of the claimant upon request is under consideration by ADB.
4.	The panel should report to the Board.	In the current proposed mechanism, the compliance review panel reports to the Board.
5.	The roster of experts had no independence at all, never met, and received no information from ADB regarding past or ongoing claims (unless they were selected to do an inspection). Roster was not used or activated and thus became essentially an "honorary" position.	There is broad consensus that the roster system has disadvantages including those suggested in these comments. ADB is considering a panel to replace a roster of experts. However, the compliance review panel and the SPF may be supported by experts to assist in technical aspects of reviews or consultations.
6.	A permanent mechanism as opposed to a roster of experts will allow for institutional learning and continuity. A permanent body will allow for regular communication with the Board and ADB stakeholders.	There is broad consensus that the roster system has disadvantages. ADB is considering a panel to replace a roster of experts. ADB agrees that an independent panel will allow more regular communication with the Board and other stakeholders.
7.	The compliance division of the Regional and Sustainable Development Department cannot replace the need for an accountability mechanism because the compliance division is not independent and it only looks at compliance with safeguard policies.	The current proposed mechanism continues to have a role in investigating policy compliance issues.
8.	If the Board delegates to a panel the authority to determine whether there is an investigation, then practically speaking the Board will want to identify clear criteria for how that authority will be exercised (i.e., the standards for authorizing an investigation).	Eliminating the Board's direct involvement in approving an inspection would increase the mechanism's independence, and reduce the time and costs of the process. However, if the Board were not directly involved at this stage, they would need to be informed and have oversight.
9.	Anyone, including a panel member, who is paid by ADB will not be independent.	Experience with the current system and with other MDB panels suggests that panel members can be independent if selected through a transparent nomination process, proper selection criteria, and limitations on prior and subsequent employment by ADB.
<b>G. Site Visits</b>		
1.	The language for site visits must be in accordance with ADB's charter.	ADB's accountability mechanism will necessarily be in accordance with ADB's charter.
2.	Site visits are essential; a standard clause ensuring that site visits can occur should be included in loan agreements.  The language on site visits in para. 52 of the Inspection Procedures should be amended, perhaps along the lines of the WB's resolution.  While DMCs have the right to control activities in their countries, para. 52 of the Inspection	This is a very sensitive issue that is being carefully considered and discussed at ADB. Many stakeholders believe that site visits are important for the accountability mechanism, allowing the panel to meet affected people, project authorities, host government, visit the project site and independently verify facts. Both the WB and current ADB systems require the prior agreement of the host government. The current proposed mechanism requires prior consent of the DMC for

	Comment	ADB Response
	<p>Procedures requiring consent for site visits should not be used to undermine the inspection process.</p> <p>Requiring site visits would be a major problem. It is not just an issue of sovereignty but also a practical issue of a country's interests in managing expectations and issues at the local level. It is also about the respective roles of ADB and the government.</p> <p>The current provision requiring prior consent for site visits is adequate. Any objections by the host country should be respected because the host country has to be a willing partner in an inspection.</p>	<p>both the consultation phase and the compliance review phase. ADB member governments feel strongly that they must be able to control the conditions under which site visits occur, if at all.</p>
3.	<p>The inspection can be handled by reviewing documents and talking to ADB staff. It does not necessarily require a site visit to the host country.</p>	<p>Many stakeholders have stated that the inspection process needs to be able to have access to the site to operate effectively in most claims. This is also the view of the members of the WB panel. In the new mechanism, ADB is looking for a way to balance the interests of an effective compliance review process with the concerns of DMC governments.</p>
4.	<p>Site visits can be very disruptive and politically sensitive because the inspection process gives the impression that the host country is being inspected and/or has done something wrong.</p>	<p>Particularly when the project is high profile or controversial there may be a misperception that the host country is being inspected. The panel members will have a responsibility to make it clear that they are assessing policies violations by ADB, and not by the DMC. The panel members can also keep a "low profile" in the country and limit their interaction with members of the press.</p>
5.	<p>Panel members have the same legal status as ADB staff, so there is no reason to have para. 52 of the Inspection Procedures because it only provides a way to undermine inspections.</p> <p>The no-objection clause in the current procedures should be removed.</p>	<p>While panel members may have the same privileges and immunities as ADB staff, panel site visits are potentially more controversial and contentious than a regular ADB mission in the field. DMCs have concerns about the timing of panel visits and activities of a panel in their countries, as well as sovereignty issues.</p>
6.	<p>There must be a practical solution to the site visit problem. Better than trying to impose a requirement would be to have reasonable guidelines for these site visits and to work it out, with the expectation that perhaps the Samut Prakarn Inspection was the exception and not the rule. If the process is more consultative, then there may be fewer problems in the future. In some cases, maybe site visits can even help the project sponsor.</p>	<p>ADB's first experience with site visits, involving the inspection under the Samut Prakarn Wastewater Management Project, may have presented special circumstances. Better guidelines, communication, and a consultation process with the host government and Board member concerned may help to increase understanding in the future.</p>

Comment		ADB Response
<b>H. Length and Complexity of Procedures</b>		
1.	The current process takes too long. The Inspection Procedures should be simpler; they are currently too complicated, complex and legalistic for affected people. This limits the usefulness of the Inspection Function for most people.	There is broad consensus both inside and outside ADB that the current procedures are too complex and need to be simplified and clarified. New procedural steps and time frames that reduce the number of days, streamline the process, and make it user-friendly are being considered.
2.	There is confusion over the initial complaint letters because ADB staff often do not know when a letter is an initial complaint to the President or just a letter detailing concerns about a project.	Alternatives to the initial complaint letter are being considered, including the requirement that the claimant has made an attempt to address their problem first with ADB Management.
3.	Management's response should be limited to providing an implementation plan based on the remedies recommended by the panel.	The procedures for Management's response are under consideration.
4.	Any investigation conducted by the panel should also be time-bound.	The procedures and time frame for the compliance review process is under consideration. It would not be prudent to specify time-based periods for panel investigation as is the case in the WB system.
5.	The process should also have a clear ending, and should not be allowed to drag on indefinitely.	ADB is considering ways to ensure that the process is clear and reaches final closure in a reasonable amount of time.
<b>I. Cost Issues</b>		
1.	The cost of the current system is too high.	There is broad consensus that the current system has high indirect costs in terms of staff and board time and resources. The cost of the first inspection under the Samut Prakarn Wastewater Management Project was \$1.7 million in staff time and resources and the direct costs for the panel process were \$200,000. There are opportunities to lower indirect costs through increased clarity and simplification of the procedures. However, there will always be some costs inherent in the system.
2.	There is no reasonable argument to strengthen the secretariat or to increase direct costs.	Costs will be an important factor in the future accountability mechanism. Strengthening the secretariat will reduce costs by clarifying roles and responsibilities over time.
3.	How does one verify the costs of the inspection function?	ADB considers both the indirect (and opportunity) costs of staff and Board time, as well as the actual budget of the Inspection Function, to evaluate the costs of the Inspection Function.
4.	Cost should be kept as low as possible to avoid using funds that would otherwise be available for development purposes.  Not only direct costs, but also indirect costs, must be taken into account, including the costs of having to remove good staff from the preparation of other development projects, so that they can respond to a claim.	Both indirect and direct costs are important considerations in the design of the new mechanism. ADB believes that a well-designed and implemented accountability mechanism will enhance ADB's development effectiveness.

<b>Comment</b>		<b>ADB Response</b>
5.	Management, not the Inspection Function, is responsible for the high indirect costs. Management digs in its heels and takes every step possible to avoid and resist inspections, thereby increasing the costs of inspections.	In addition to reviewing and streamlining the accountability mechanism's procedures, ADB is considering ways to reduce the costs of Management's response to claims. Particularly because the Samut Prakarn Wastewater Management Project was the first full inspection claim, the lack of clarity and confusion over procedures and process probably added to the cost.
6.	The cost of handling complaints should be an integral part of the ADB project/program costs and not seen as "additional" costs.	The project cost is separate from complaints-related costs which should not be included as part of the project cost. ADB agrees that ensuring the full participation of affected people and of listening to their concerns should be considered as part of the expected costs of doing business. Costs associated with responding to formal complaints are being considered in the design of the proposed mechanism.
7.	Consideration should be given to the cost of inspection to borrower governments, including costs of project delays, officials' time spent, and even costs of ineligible complaints.  When problem solving or compliance review results in changes to project design or project delays, the costs will be incurred by the DMC, (either directly or indirectly).	The costs of inspection should be incurred by ADB, but there may be unintended costs or costs of "hosting" the panel (i.e., meetings or hearings) incurred by the DMC during an inspection. These should be considered and minimized as much as possible. Benefits may outweigh these costs if project quality and effectiveness is improved or major problems are avoided as a result of inspection.
8.	The most important costs are the added costs to project preparation and implementation due to closer scrutiny of ADB policies.	Any increased costs of project preparation and implementation increase due to the enhanced policy compliance caused by the accountability mechanism should not be considered a cost of the compliance mechanism, but a cost of the policy.
9.	In addressing the costs of any accountability mechanism, ADB should not forget to also consider the benefits.	ADB agrees that it is important to balance the costs and benefits of the new mechanism.
10.	Addressing complaints and problems at an early stage is the best way to prevent incurring higher costs.	Mechanisms and approaches for preventing and resolving problems at an earlier stage are under consideration.
<b>J. Adversarial Nature of Inspections</b>		
1.	The inspection process can be either constructive or destructive; every effort should be made to make it a constructive process.	ADB agrees that the new process should be more constructive.
2.	Some major claims at both ADB and WB have injured the respective bank's relationship with its borrowers.	ADB is considering ways to make the process less adversarial for all stakeholders, and to ensure that the DMCs are willing partners in the process.
3.	If staff feels under pressure and over scrutinized, they will be forced to pursue only non-risky projects. The process damages staff morale.	This concern has been expressed broadly among different stakeholders. The impact on staff morale and willingness to take risks in project development has been carefully considered in the design of the proposed accountability mechanism.

<b>Comment</b>		<b>ADB Response</b>
4.	<p>The current process is unnecessarily adversarial; it should be less legalistic.</p> <p>ADB should not be afraid of the adversarial nature of an accountability mechanism; it is inherent to the concept of accountability or oversight and the mechanism should not be watered down to make it less adversarial.</p>	<p>To a certain extent, an inspection process is adversarial by its nature. It is likely that if this process is chosen, there will continue to be an adversarial relationship between the panel and Management, but once inspections become more routine, the problem may not be as intense as it was during the Samut Prakarn Inspection.</p>
5.	<p>It is natural for staff to feel defensive when their project is being scrutinized. However, staff should receive training on how to respond to the process and not to over-react.</p> <p>There should be training and information for the staff on the Inspection Function.</p> <p>Lack of experience with an accountability mechanism may explain why staff morale was undermined during the Samut Prakarn inspection process. ADB needs to educate its staff that accountability issues are inherent in their jobs, and that being accountable is an asset for the institution, not a liability.</p>	<p>There have been extensive internal consultations regarding the review of the Inspection Function. ADB is also considering how to provide better information to the staff regarding the purpose and processes of the future mechanism. Input on training for staff is being gathered and is under review.</p>
6.	<p>Management should not dispute the findings of the mechanism's compliance arm. Management's response should only address remedial changes.</p>	<p>ADB believes that in the interest of fairness, Management should be able to comment on the panel's report and take issue with the panel's findings and recommendations. Management should also be able to make its own recommendations on how to bring the project back into compliance.</p>
7.	<p>The compliance mechanism should be viewed as an opportunity to learn rather than being a threat.</p>	<p>ADB is considering ways to enhance the role of the accountability mechanism in helping the institution learn from its experiences.</p>
8.	<p>Positive language should be used: "problem-solving" and "compliance review" instead of "inspection."</p> <p>We should not raise the public's expectations too high with a name like problem-solver.</p>	<p>ADB is considering new names for the future mechanism to avoid negative associations with the term "inspection" and to avoid raising unreasonable expectations. Terms under consideration in the new mechanism include "project counselor", "special project facilitator" and "compliance review panel."</p>
<b>K. Conflict of Interest Issues</b>		
1.	<p>It is a conflict of interest for OGC to advise simultaneously Management, the Board, BIC and the Inspection Panel.</p>	<p>OGC has recognized the potential for conflict of interest issue with advising various parties to the inspection process. In order to avoid this, one firewalled assistant general counsel was assigned to BIC and the panel and other firewalled project counsel or assistant general counsel are assigned to advise project staff on each project subject to inspection. This has helped to reduce the potential conflict of interests. In April 2002, OGC issued guidelines regarding the provision of legal advice in inspection proceedings. These guidelines install a system similar to that in WB.</p>

Comment		ADB Response
2.	BIC members have conflicting roles and interests given their membership in the full Board.	The restructuring of BIC as the Board Compliance Review Committee (BCRC) with specific oversight function is proposed in the new mechanism.
3.	In any future mechanism, members of the accountability mechanism should not participate in any claim in which they have a conflict of interest.  The ADB President has a conflict of interest as a signatory to management's response and then chairing the Board meeting that makes a decision on the outcome. The existence of BIC is also a conflict since the same people are participating in the "upper and lower courts."	Potential conflict of interest issues are under consideration by ADB in the design of the new mechanism.
<b>L. Transparency, Communication, and Claimant Access to the Process</b>		
1.	There should be a greater role for the claimant in the process. The claimants should be in agreement with solutions proposed; they should be able to propose site visits, and the names of individuals and organizations that the mechanism should interview. The claimants should not have to travel to Manila.	ADB agrees that the accountability mechanism should ensure meaningful participation of the claimants, as well as information disclosure during important milestones. Proposals to enhance the claimant's role and increase access to the panel are under consideration by ADB.
2.	Documents about the Inspection Function on the web are in English and are not accessible to most project-affected people in DMCs. Operational policies should be available in local languages.	Once a new mechanism is adopted, ADB will consider making basic information about the mechanism available in languages other than English. ADB will also consider making operational policies available in local languages.
3.	The Inspection Function should be able to conduct public outreach and advise affected people informally on eligibility. Other stakeholders such as DMCs, private sector and staff should also be informed of the Inspection Function process. Resources should be allocated for public outreach.	In the current system, BIC secretariat conducts some public outreach to give information about the Inspection Function. ADB expects to conduct outreach with respect to any new mechanism.
4.	The mechanism should have access to all relevant internal documents and ADB staff who are involved in the project planning, negotiation and decision-making.	The current system allows for the panel to have access to all concerned staff and pertinent ADB documents.
5.	Information on claims should be made available to the public when they come in; all claims should be posted on the website.	Any accountability mechanism should be transparent in its operations and during compliance reviews. How to enhance information disclosure during the compliance review process is under consideration.
6.	Management's response should be provided to the requester at the same time it is sent to the Board. Any final (either inspection or problem-solving) reports should be made public at the same time they are sent to the Board. Requesters should be given an opportunity to comment on a draft panel report before it goes to the Board.	Normally, documents sent to the Board for consideration are confidential and have a restricted circulation. Exceptions to this in the context of compliance review documents are being considered.
7.	Complaints should be submitted in writing by mail, fax or by hand.	The current requirement is that initial complaints to the President be written in English and sent "by registered or certified mail" or delivered by hand in

Comment		ADB Response
		a sealed envelope against receipt. The complaint can be sent to ADB headquarters or to ADB resident mission or representative office for forwarding. The request should be sent in the same manner to BIC, the Office of the Secretary, or an ADB resident mission or representative office. The reason why faxes were not accepted was to safeguard the request and ensure that there is actual receipt and acknowledgement of the complaint or request. In the new mechanism, fax and electronic mail are included (together with submission by mail and hand delivery).
8.	The Inspection Function should communicate with affected people in their own languages; documents relevant to the inspection should be translated into the relevant local language.	The requirement that claims be in English is under consideration. The proposed mechanism suggests that claims should be accepted in the official or national languages of ADB's DMCs. The WB panel and CAO allow claims in any language. The primary arguments against allowing claims in any language are the costs and time required to conduct translations, and the large numbers of local languages existing in the region. Providing assistance to potential claimants may be one way of addressing the situation, while controlling costs. Once a new mechanism is adopted, ADB will consider making basic information about the mechanism available in languages other than English.
9.	The new mechanism should have the authority and budget to issue its own communications and maintain its own website.  Requesters should be given monthly updates on the progress of their request.  There is an inherent disadvantage for affected people in any process where Management is given so many opportunities to respond and has all of the information in its control.	ADB is considering ways to enhance information disclosure for all stakeholders during the compliance review process.
10.	Management should be required to actively disseminate information about the accountability mechanism to ADB resident missions, field missions, and in meeting and consultations.	Currently, BIC secretariat is available to answer questions and provide clarifications on the inspection procedures. Whether and how Management should disseminate information on the new mechanism is under consideration.
<b>M. Role and Rights of DMC Governments</b>		
1.	ADB cannot impose remedies or outcomes on project sponsors.	The accountability mechanism will result in recommendations for improving ADB's compliance with its policies. ADB expects that through the accountability mechanism, other recommendations for improving project performance will be identified and that these may be adopted with the consent of the borrower.

Comment		ADB Response
2.	<p>The inspection process should not infringe on DMC sovereignty. How to set up a system that does not interfere with or undermine the government's role?</p> <p>There is a need to respect the rights and concerns of the borrower government during the inspection process.</p>	<p>The compliance review process is involved in assessing whether there are policy violations as a result of an act or omission of ADB and not the member government. Currently, BIC is expected to consult with the relevant Board member on proposed site visit of the panel, and if the government objects, then the panel should modify its work plan. The interests of DMCs are being considered in the design of the new mechanism. Although the focus of inspection is on ADB's failure, ADB should be mindful of the role of the borrower as the owner of the project.</p>
3.	<p>DMCs have different standards from ADB, and ADB needs to honor the government's system. The current system imposes ADB's standards on the DMCs.</p> <p>ADB must ensure in-country procedures are both respected and trusted.</p> <p>Resettlement, land acquisition and environmental issues, for example, are all primarily jobs for the national government and we must respect sovereignty.</p> <p>The inspection function should not impair the DMC's rights of eminent domain.</p>	<p>The accountability mechanism is aimed at reviewing ADB's noncompliance with its operational policies and procedures. Nonetheless, it is clear that some of ADB's policies are intended to, and do, set certain minimum standards on how ADB projects are designed or implemented.</p>
<b>N. The Role of the Board and BIC</b>		
1.	<p>The Board should have oversight of the panel process and should only be brought in when the panel is recommending a change in a Board decision.</p>	<p>The role of the Board during the consultation phase and the compliance review in the new mechanism is under consideration.</p>
2.	<p>The Board should be involved only at the end of the process. It is not appropriate for the Board to look into technical issues. The current BIC system creates too many problems with DMCs and staff.</p> <p>The country where the project is located should have a seat on BIC to ensure that there is knowledge of national conditions. The country was not even allowed into the room as an observer for some of BIC deliberations.</p> <p>BIC should be abolished.</p> <p>The role of BIC dilutes the independence of the panel, by serving as a screen between the panel and the full Board.</p> <p>BIC probably does not have much of a future role, except perhaps some role in monitoring or oversight after the Board makes a decision on the panel report. The problem is Board</p>	<p>The restructuring of BIC as the Board Compliance Review Committee (BCRC) with specific oversight function is proposed in the new mechanism.</p>

Comment		ADB Response
	<p>members are not prepared to go into the details of enforcement and should not conduct the actual monitoring itself. This would be best left for the panel.</p> <p>BIC or a Board committee might have some role in making appointments to the panel.</p> <p>BIC is a good balance between a complete outside panel and ADB Management. A Board committee can interact all the time with the panel and the country involved. The conflicts of interest are not that significant.</p>	
<b>O. Composition and Appointments</b>		
1.	<p>Panel member should all be from DMCs and should understand the cultural, economic, and social realities of the country where an inspection is occurring.</p> <p>Panel members should be rotated from different countries over time, so all countries would eventually be represented on the panel for some period of time.</p> <p>The DMC in which the project is located should be represented on any panel conducting an inspection.</p> <p>The panel should reflect mixed expertise and backgrounds, including NGO, international and ADB.</p> <p>Criteria for selection of specialists: should have substantial prior knowledge of MDBs; should be able to demonstrate technical competence, and have awareness of complex environmental and social implications of development projects; should have interpersonal skills and experience required to interact with all stakeholders; be able to deal thoroughly and fairly with complaints; have recognized integrity and independence from ADB Management; have not been employed by ADB for 5 years prior and be excluded from future employment at ADB.</p> <p>The panel should be comprised of no more than five people.</p> <p>Options for selecting panel members could include nominations from the public or other international organizations.</p>	<p>Composition, selection criteria and the nominations process of the compliance review panel are under consideration.</p>

Comment		ADB Response
2.	How panel members are selected and criteria are important for independence of process.  The Board should appoint members of the new mechanism through a transparent process with input from a multi-stakeholder selection committee.	The panel nomination process and the selection criteria for the new mechanism are under consideration.
3.	The number of specialists on staff should be dependent on the workload. Initially, it may be sufficient to appoint three permanent senior specialists: the chairperson, the problem-solver, and the accountability arm.	The composition of the new mechanism is under consideration. ADB recognizes that there are advantages in having a permanent presence for the accountability mechanism, but how large a presence must ultimately be balanced with issues of cost.
4.	The panel should report to the Board.	The compliance review panel will report to the Board in the new mechanism.
5.	The term limit should be for 5 years for any member on the panel.  Specialists should be appointed on a fixed-term and renewable basis.	The term limit for the panel members is under consideration.
<b>P. Issues Relating to Remedial Actions</b>		
1.	The panel report should contain remedies for the project, and the panel's conclusion on Management's compliance. Panel recommendations on remedies should be developed in consultation with Management and DMCs.	Under the current procedures, the panel can discuss whether policies are violated and make recommendations about bringing the project back into compliance; the panel is also required to consult with Management and the DMCs on its recommendations.
2.	At the stage when the panel has provided its full report, Management should respond only to the recommendations, thus avoiding a legalistic exchange focused on dissecting the text of policies and project documents.	ADB recognizes that steps should be taken to make the process less formal and adversarial. At the end of the inspection process, the focus should be on the recommendations for improvement and potential remedies.
3.	ADB should consider loan suspension during inspection.  The mechanism should be empowered to recommend to the Board that they renegotiate or suspend loan disbursements if there is potential for irreversible harm or damage.	Under the current procedures a request for inspection or an authorization of inspection by the Board will not suspend a project or affect the processing or implementation of a project "unless Management (in the case of a proposed or ongoing project) or the Board (in the case of an ongoing project) expressly directs otherwise." If a project were to be suspended by ADB, it will be made in accordance with the relevant legal documents and standard ADB procedures. Refer to <i>ADB's Inspection Policy: A Guidebook</i> , para. 44. Suspension is therefore a possibility, but likely only if there are violations of the loan agreement between ADB and the member country. Since the inspection process is assessing the ADB's compliance with its own policies and operational procedures and is not inspecting the country, it will not serve the process to punish the government by suspending the project for policy violations on the part of ADB.

Comment		ADB Response
4.	How can ADB ensure that through loan agreements the policies are complied with?	Although policy compliance is not explicitly a part of current loan conditions, ADB believes that it has the authority to address material violations of policies under existing loan conditions that include the borrower's obligations.
5.	Who will pay once there is a violation of the policy found—will ADB pay compensation or is it the country that must pay? The ADB should pay compensation when the panel finds that ADB's failure to comply with its policies has damaged the claimants.	Remedies will be designed on a case-by-case basis, and normally will not involve compensation.
6.	There is a gap between local regulations and laws and ADB policy; ADB cannot force governments to make changes that are in violation of their laws.	The accountability mechanism will result in recommendations for improving ADB's compliance with its operational policies and procedures. ADB expects that through the accountability mechanism, other recommendations for improving project performance will be identified and that these may be adopted with the consent of the borrower.
<b>Q. Post-Inspection Monitoring and Lessons Learned</b>		
1.	A monitoring unit should be created to ensure that Board and panel recommendations are implemented.	Monitoring of implementation of Board and panel recommendations after the compliance review process is completed is under consideration.
2.	Affected people should be able to go to a monitoring unit after a period of time if the recommendations are not implemented.	A monitoring system after the consultation phase and the compliance review is under consideration. Consideration is being given to a monitoring system that could be triggered by the claimant, among other stakeholders.
3.	How does inspection relate to evaluation and performance?	In the current system, the Operations Evaluation Department (OED) conducts evaluations of projects once the project is completed. OED looks at the overall performance of the project that may include compliance issues. While there is no formal connection between the Inspection Function and OED, information from a compliance review will be useful to OED in carrying out its work.
4.	A Board committee (such as BIC) could conduct monitoring.	The compliance review panel is being considered for monitoring in the new mechanism with a restructured BIC as BCRC to carry out an oversight function in reviewing the panel's draft monitoring reports.
5.	The panel should conduct monitoring.	The panel may be in a strategic place to conduct monitoring since it is already familiar with all the issues and stakeholders. This is under consideration in the proposed mechanism.
6.	Monitoring should be followed up with a report on lessons learned that could be fed back into operations.  A monitoring unit should report annually to the Board.	A monitoring system is under consideration.

Comment		ADB Response
7.	ADB should improve the mechanism by considering lessons learned from past experience. ADB is a learning institution. The mechanism should have a learning component to ensure that lessons learned are fed back into the policy development process and to other ADB activities.	The current review is considering the experiences of the MDB mechanisms, as well as ADB experience to date. How a monitoring unit will feed back into operations is under consideration.
8.	The accountability mechanism should be empowered to provide proactive advice to the ADB Board, Management and staff.	This is under consideration by ADB.
9.	The panel should publish annual report identifying the "lessons learned" and making general recommendations to the ADB for improving its policies and operations.  The mechanism should also include an advisory role, to ensure that the lessons learned during the mechanism's operations are fed back into the ADB's policy development and other operations.	ADB agrees that a feedback system for lessons learned is important and should be established. How to ensure that lessons learned from the consultation phase and compliance review process are incorporated into operations is being considered by ADB.
<b>R. Options – Specific Suggestions for a New Mechanism</b>		
1.	The revised mechanism should include an effective process for solving problems. It is in the interest of all stakeholders that ADB have an effective problem-solving mechanism so that potential adverse impacts can be mitigated or addressed properly.	The need for a consultative phase either by Management or by an independent unit has broad consensus inside and outside ADB.
2.	The new mechanism should have the option of hiring outside consultants and should have its own legal counsel separate from ADB's OGC.	This is under consideration by ADB.
3.	There could be a Board subcommittee established to appoint specialists, review the performance of the specialists, and renew contracts.	The role of a Board committee in the new mechanism may be considered, if necessary.
4.	A panel should be able to bring 10% of its own claims, based on troubleshooting and problem prevention efforts.  To check violations of ADB policies, an independent panel can be constituted to select a certain percentage of the loans every year and give their report to the ADB Board. This would make the procedure both independent and internal and would prevent the demoralization of ADB staff.  The panel members should be able select projects to monitor or investigate proactively, based on experiences in similar cases.	The process for triggering a compliance review other than by an affected party is under consideration.

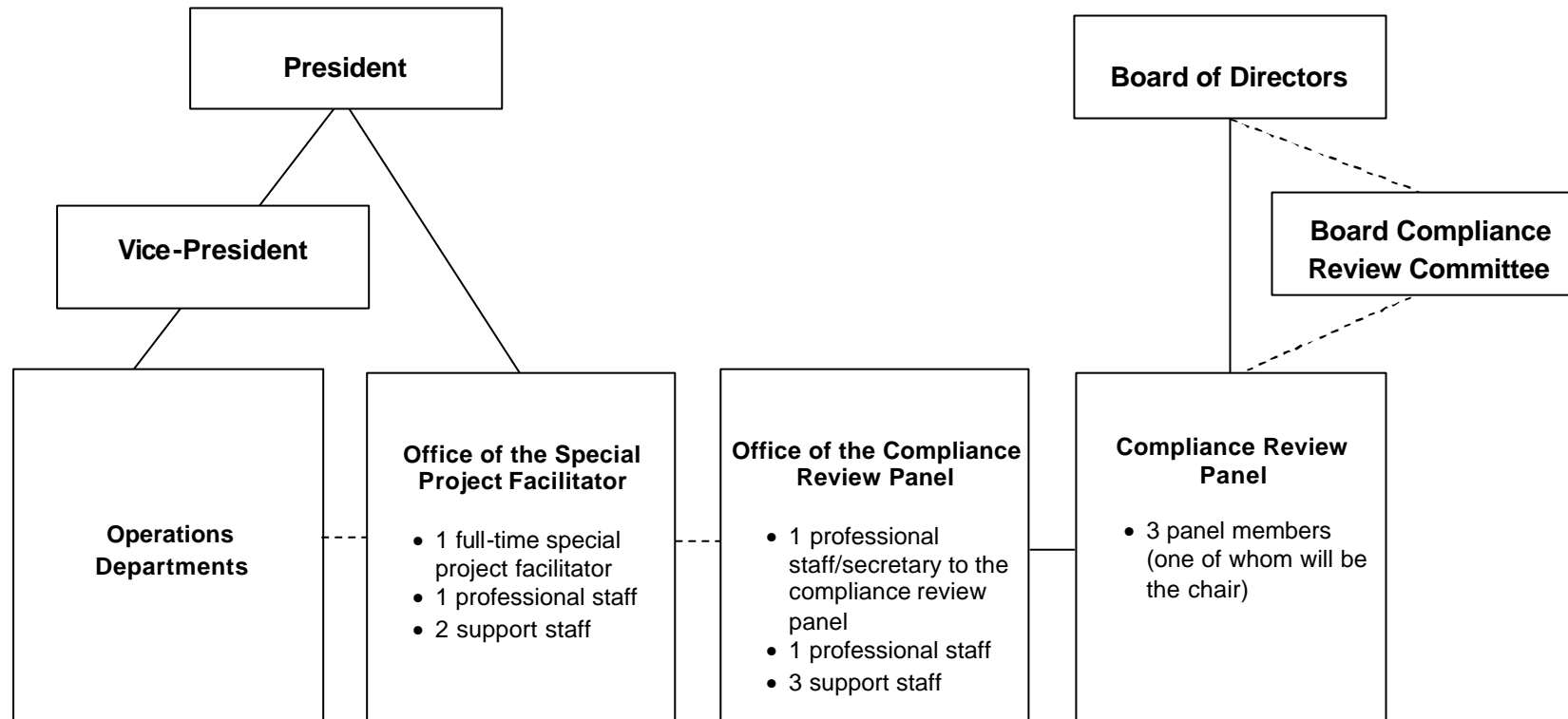
<b>Comment</b>		<b>ADB Response</b>
5.	The role of the Board should be: to establish and select the mechanisms personnel in consultation with civil society; to authorize the mechanism's budget; to review the performance of the mechanism's specialists; to supervise the mechanism and evaluate problem-solving and compliance issues; to approve findings and recommendations of the mechanism on a no-objection basis; and to review Management's performance in policy compliance and in solving problems as recommended and facilitated by the mechanism.	The relationship of the Board with the new mechanism is under consideration. In general, ADB agrees with the comments made regarding the prospective role of the Board with respect to the accountability mechanism.
6.	The mechanism may grow too large, because new bureaucracies always try to create new work for themselves and try to expand.	Presumably, the workload of the new mechanism will dictate the size, budget and composition. In WB, the number of panel members has stayed the same for 8 years; only one professional (assistant executive secretary) and one support staff have been added.
7.	One cannot pretend that the panel or mechanism is "all powerful." There should be a way for Management and the Board to criticize the panel.	The new compliance review mechanism will report to, and be accountable to, the Board. There will be opportunity for the Board and Management to register concerns about the mechanism's activities.
<b>S. Option A of the Second Draft of the Working Paper</b>		
1.	Given the controversies and strong feelings regarding the existing mechanism, something that feels very new will be important.	This is one of the major disadvantages recognized in the Working Paper: that the existing system may simply be too controversial at this point.
<b>T. Option B of the Second Draft of the Working Paper</b>		
1.	The current WB panel is also very problematic as there is no accountability over the panel itself. They are free to reject the judgment of everyone else, including the professional bank staff, the country and all other opinions. There is a need for checks and balances on the panel.	In the WB system, the panel reports to the Board. The Board also reviews the technical decision about eligibility and is responsible for reviewing Management's recommendations on remedial actions.
2.	ADB should look to harmonize its policy with the WB policy. There is some value in this harmonization, and also no one from the outside can criticize ADB if it is doing what WB has done.	ADB recognizes harmonization as one of the advantages of moving forward with a mechanism based on the WB panel for public sector projects. This will also apply to a mechanism like Option C for private sector operations. These options are under consideration.
3.	Maybe the inspection process could be an internal process; compliance function integrated within the Regional and Sustainable Development Department is one step. And then we could find a way for affected communities to signal the need for an inspection review, which would be conducted by staff.	ADB believes that the compliance review function should report to the Board, as in the existing ADB and the WB panel systems.
<b>U. Option C of the Second Draft of the Working Paper</b>		
1.	The ombudsman process should be flexible and easy to use.	ADB agrees that one of the major potential advantages of this option is that it could be more flexible and easy to use.

<b>Comment</b>		<b>ADB Response</b>
2.	The problem-solving function should have one senior person, with a lot of credibility and discretionary power.	The structure and composition of the consultation phase are under consideration.
3.	There seem to be some limitations to the CAO model even at IFC. For example, larger and more complex infrastructure projects may not be appropriate for CAO.	CAO has worked relatively effectively at IFC/MIGA, including with respect to infrastructure projects.
4.	CAO has not been tested and is unlikely to work well in the context of public sector projects.	ADB recognizes this as one of the potential disadvantages in adopting Option C.
5.	If you give the ombudsman the power to make recommendations, then the Board could approve any consensus-based recommendations developed during the consultation on a no-objection basis.	ADB recognizes that even in cases where all of the stakeholders have reached agreement on a potential solution to the problem, the Board may still need an opportunity to review the proposed remedies involving ADB or changes in already approved projects.
6.	ADB cannot solve all problems and thus a name such as "facilitation" or "consultation" should be used rather than "problem-solving."	ADB proposes to adopt a similar term for the consultation phase.
<b>V. Option D of the Second Draft of the Working Paper</b>		
1.	Neither problem-solving nor accountability mechanism alone will work, so you need to develop some kind of dual system like Option D, but the problem is how the two functions relate.	The internal and external consultations expressed broad support for Option D. A dual system is currently being seriously considered by ADB.
2.	The functions need to be separate, independent of each other and not confused.	In the proposed mechanism, the consultation phase and the compliance review phase have completely separate functions and are independent of each other. The primary linkage between the two is the process that the claim must go through to move from one phase to the other. The two offices may also share some support staff.
3.	The best approach under Option D is for the affected people to go to a "window" that would determine whether the claim is sent to the ombudsman or the inspection panel.	This variation of Option D is one of those under consideration and noted as Variant 3.
4.	There should be a requirement to go to the problem solver first, and only then proceed to the compliance review.	This sequential approach of Option D is under consideration.
5.	The requesters should be able to choose which mechanism they want to file their claim.	This variation of Option D is one of those under consideration and is noted as Variant 1.
6.	Requesters in the problem-solving process may file a claim for inspection anytime, but a requester who is under inspection review should not be able to file a claim with the problem-solver.	The relationship and sequence between the consultation phase and the compliance review phase, as well as the claimants, is under consideration.
7.	The panel should be able to send back to the "facilitator/ombudsman" if they feel that there was not enough effort put into consultation in the first phase.	This is one of the possible variations under consideration within Option D.

Comment		ADB Response
8.	For problem-solving, Management should respond by providing background information about the complaints, generating options for possible solutions in consultation with claimants, and be responsible for implementing problem solving through the option selected by the mechanism.	The extent to which Management will be involved in the consultation phase is under consideration.
9.	ADB operations already do problem-solving everyday. The problem solving design should not interfere with or circumvent the ongoing problem-solving efforts inside ADB.	The new mechanism provides for a two-step approach of consultation phase and compliance review phase. The consultation phase is to strengthen the existing system inside ADB.
10.	Both the ombudsman and the inspection panel should report to the Board.	ADB is considering two different options for the consultation phase: in one option, the office will report to the Board; and in the second option, the office will report to Management. ADB agrees that the compliance review panel should report to the Board.
11.	The whole mechanism should be called an ombudsman because this is an internationally recognized term. Both the problem solving and the compliance unit would be housed under the ombudsman; this would avoid the negative term of "inspection."	There is broad consensus that the term "inspection" has a negative connotation and there is a need to change the name of the new mechanism. Terms under consideration in the new mechanism include the compliance review panel, special project facilitator, and project counselor.
12.	Project evaluation should be separate from the ombudsman and inspection process.	Currently, OED conducts evaluations after the project is completed. This role does not overlap with inspection of ongoing projects.
13.	Some problems are better resolved at the staff level instead of an inspection.  There should be a problem-solving mechanism inside ADB Management.	There is ongoing troubleshooting as part of project planning and implementation. The consultation phase will address aspects of problem-solving at the staff level.
14.	Having two layers to the process will be time consuming and not cost-effective, particularly because most claims will not be resolved in the problem-solving phase.	The costs of a dual system are one of the potential disadvantages, and ADB is considering ways to reduce both direct and indirect costs.
15.	Problem-solving and compliance may not have the same objectives and hence, may not be compatible.  What is the relationship between the inspection function and the problem-solving function?	The two offices will be functionally separate, but they share the objectives of responding to the grievances of affected people, increasing project quality and enhancing ADB's development effectiveness.
16.	In addition to problem-solving and compliance, there should also be a monitoring mechanism and advisory function.	Currently, a role for monitoring is under consideration. ADB is not considering a formal advisory role for the accountability mechanism.
17.	Problem solving should be conducted by a senior level ombudsman in each DMC country. This would be coordinated by an ombudsman office at ADB headquarters. Requests would be sent to the in country office and could not be appealed in Manila. This function would be separate from the compliance unit.	This variant of the dual system is under consideration.

Comment		ADB Response
<b>W. General Comments on the Inspection Process</b>		
1.	There is a need to promote greater understanding and consensus between the donor and borrowing countries on inspection issues.	ADB agrees with this comment.
2.	The third draft of the working paper must be made public before any Board decision is made.	ADB has agreed to post on the web site for comments the Working Paper to be presented to the Board for discussion.

**INSTITUTIONAL SETUP OF THE NEW ACCOUNTABILITY MECHANISM**



## **MODES OF RESPONSE TO COMPLAINTS AND THE DISPUTE SETTLEMENT PROCEDURE**

### **A. Modes of Response to Complaints**

1. Problem solving may take various forms in terms of modes of response to complaints. Which mode of response is best suited to a particular problem depends on who the principal parties are to the problem giving rise to the complaint; the seriousness of social and environmental impacts complained of; what kind of remedies are being asked by the complainants; and the urgency required in fashioning appropriate mitigating measures.

2. Irrespective of whether the source of the problem complained of falls within the purview of ADB, the SPF will first adopt the "consultative dialogue" mode described below. If, however, the problem complained of primarily falls within the purview of the EA/DMC government or the PPS, the SPF may refer the complaint after the initial attempt at the consultative dialogue to the adoption of the good offices mode since ADB is not a direct party to the problem complained of, but is an interested party in the resolution of the problem. The SPF will be, in this case, in a position to facilitate the resolution of the dispute as a third party. Failing the good offices mode, the parties to the dispute may agree to submit the dispute to a more organized dispute settlement procedure like the mediation mode. The SPF will be in a position to assist in establishing the mediation mechanism acceptable to the parties to the dispute. These modes of response to complaints are described below:

#### **1. Consultative Dialogue**

3. The SPF will bring together the complainants for consultative dialogue with a view to generating adequate solutions between the parties. The SPF in coordination with the OD may invite representatives of the EA/DMC government concerned or the PPS to this consultative dialogue. This part of consultation will focus on the points raised and assessed in the initial investigation in order to create room for a possible mutually acceptable solution to develop between the parties themselves.

#### **2. Good Offices**

4. The SPF will employ good offices with a view to facilitating dialogue between the complainant and the EA/DMC government or the PPS for the purpose of determining whether a mutually acceptable solution can be found between themselves, rather than focusing on identifying fault or apportioning responsibility, and with a view to finding an adequate solution to the problem.

#### **3. Mediation**

5. Even though good offices and mediation are part of the informal dispute settlement procedures, mediation is more formal and structured than good offices, in that it involves third party mediators in an effort to resolve the dispute which is between the complainants, i.e., project-affected people, on the one hand, and the EA/DMC government or the PPS, as the case may be, on the other. With the consent of all parties to the dispute, the SPF will assist the parties to establish a mediation mechanism acceptable to all the parties to the dispute, who will select a mediator or mediators (mediator). The mediator will, in consultation with the parties to the dispute, determine a mediation procedure. The mediator may, with the consent of the

parties to the dispute, invite any ADB official or any interested party to submit to him/her their views in writing.

## **B. DISPUTE SETTLEMENT PROCEDURE**

6. The major objective of the consultation process as a means to resolve the problem is to reach a settlement on terms acceptable to the parties to the dispute.

7. The dispute settlement procedure on the modes of response is provided below.

### **1. Consultative Dialogue and Good Offices**

8. In the case of settlement through the consultative dialogue mode and the good offices mode, the SPF will prepare a settlement agreement indicating terms of agreement, including future actions such as remedial measures to be adopted by ADB and the EA/DMC government or the PPS.

### **2. Mediation**

9. In the case of mediation, the mediator will record any agreement reached and, failing agreement, his/her conclusions on all questions of fact or law relevant to the matter in dispute and such recommendations as he/she may deem appropriate for an amicable settlement. The report of the mediator, including its conclusions or recommendations, will not be binding upon the parties.

10. The mediation proceedings will be terminated when a settlement has been reached, when the parties have accepted, or one party has rejected the recommendations of the mediator's report or no response has received from either party within a period specified in the mediator's report.

11. With the consent of the parties, the mediator will furnish his/her report to the SPF.