

ADB

A Guide to the Consultation Phase of the ADB Accountability Mechanism

Listening to Communities Affected by ADB-Assisted Projects



Asian Development Bank

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About ADB

The Asian Development Bank (ADB) is a multilateral development finance institution owned by 63 members, 45 from Asia and the Pacific and 18 from other parts of the globe. ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries reduce poverty and improve their living conditions and quality of life. ADB pursues a strategic agenda—sustainable economic growth, inclusive social development, and governance for effective policies and institutions—with three crosscutting themes: private sector development, regional cooperation, and environmental sustainability.

ADB's main instruments in providing help to its developing member countries are policy dialogues, loans, technical assistance, grants, guarantees, and equity investments. In 2003, ADB's total lending volume was US\$6.1 billion. Technical assistance, which is used for preparing and implementing projects, supporting advisory activities, and undertaking regional activities, amounted to US\$176.5 million. Grants totaling US\$454.3 million were also provided.

ADB's headquarters is in Manila. It has 24 offices around the world. ADB's staff numbers more than 2,000 employees from over 50 countries.

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A Guide to the Consultation Phase of the ADB Accountability Mechanism

Listening to Communities Affected by ADB-Assisted Projects

On 29 May 2003, the Asian Development Bank (ADB) approved a new mechanism to enhance its accountability in development assistance.

The Accountability Mechanism (the Mechanism), which is also part of ADB's continued efforts to improve its development effectiveness, replaced the Inspection Function that was established in December 1995.

The Mechanism is wider in scope than the Inspection Function and is aimed at simplifying the process by which people who may be materially and adversely affected by ADB-assisted projects can seek to resolve their problems. Whereas the Inspection Function applied only to public sector loan projects, the Mechanism will apply to both public and private sector loan projects. It will also allow for consensus-based problem solving.

This brochure has been designed as a simple guide to the Consultation Phase of the Mechanism: it is not a complete description of it. More detailed information may be obtained by contacting ADB at the addresses provided in this brochure and at the web site <http://www.adb.org/spf>. For a complete description of ADB's Accountability Mechanism, refer to the policy document available at http://www.adb.org/documents/policies/ADB_accountability_mechanism/.



Carolyn Dedolph

What is the Accountability Mechanism?

The Mechanism has two key components: a problem-solving role (the Consultation Phase) handled by the Special Project Facilitator (SPF) and an investigative role (the Compliance Review Phase) under the responsibility of the Compliance Review Panel (Panel).

- The SPF would facilitate consensus-based problem solving by seeking agreement among all parties concerned to identify matters in dispute, ways to resolve the problems, and the timeframe required.
- People who believe they have been materially and adversely affected by an ADB project could resort to the consultation process regardless of whether ADB's operational policies and procedures are violated, unlike an investigation by the Panel. *However, they must first endeavor in good faith to resolve their problems with the assistance of the ADB operational departments involved.*

- The SPF's role is limited to ADB-related issues on ADB-assisted projects. The SPF does not interfere in the internal matters of any developing member country (DMC) and does not mediate between the complainant and the local authorities.

Who Can File a Complaint?

- Any group of two or more people in the country where the ADB-assisted project is located. This may be an organization, association, society, or other group of individuals in the country concerned.
- A local representative duly appointed as the agent of the people adversely affected by a project.
- A nonlocal representative in exceptional cases where local representation cannot be found.
- Communities need to first file a complaint with the SPF. They can choose to file a complaint with the Panel if their requests are found ineligible or if they are not satisfied with the resolution of their complaints.

Contents of a Complaint

The complaint must specify the following:

- The complainant is, or is likely to be, directly affected materially and adversely by an ADB-assisted project



- The direct and material harm claimed is, or will be, the result of an act or omission of ADB in the course of formulating, processing, or implementing ADB-assisted projects
- A description of the rights and interests that have been, or are likely to be, directly affected materially and adversely by the ADB-assisted project
- Identification and contact information of the complainant (and any representative), and if there is a request that the complainant's identity be kept confidential, the reasons for such a request
- If there is any representative, identification of the people affected by the project and evidence of authority to represent them
- A brief description of the ADB-assisted project, including the name and location if available
- The desired outcome or remedies that the complainant believes ADB should provide or help obtain through the consultation phase
- A description of the complainant's good faith efforts to address the problems first to the operations department concerned
- An explanation of why any of the above information cannot be provided
- Any other relevant matters or facts with supporting documents



Shimer K. Sahni

What Matters Are Not Eligible for Complaints?

Any of these matters are excluded:

- Those not related to ADB's actions or omissions in the course of formulating, processing, or implementing ADB-assisted projects
- Decisions made by ADB or the project implementer regarding procurement of goods, services, and consulting services in ADB-assisted projects
- Allegations of fraud and corruption in ADB-assisted projects and by ADB staff
- ADB-assisted projects for which project completion reports have been issued
- Matters already considered under the previous Inspection Function or by the Panel (unless there is new evidence presented that was not known when the original complaint was received or unless the subsequent complaint can be readily consolidated with the earlier complaint)
- Adequacy or suitability of ADB's existing policies and procedures
- Matters that are frivolous, malicious, trivial, or generated to gain competitive advantage
- Matters that are within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or relate to ADB personnel matters
- Matters regarding ADB's nonoperational housekeeping, such as finance and administration

Snimar K. Sahni



Language

The working language of the Accountability Mechanism is English. Complaints will be accepted in any of the official or national languages of ADB's DMCs if the complainant is unable to provide an English translation. This will, however, entail additional time for translation.

How to File a Complaint

Complaints must be filed in writing and sent to the Special Project Facilitator by mail, facsimile, or electronic mail, or be hand delivered to the ADB headquarters or to any ADB resident/regional mission or representative office.

The Special Project Facilitator can be reached at

Special Project Facilitator

Asian Development Bank

6 ADB Avenue, Mandaluyong City 1550

Philippines

Tel: +632 632-4825, Fax: +632 636-2490

E-mail: spf@adb.org

Web site: <http://www.adb.org/spf>

Complaints may be submitted in English or in any of the official or national languages of ADB's DMCs if an English translation is not available.

The identity of complainants will be kept confidential if requested, but anonymous complaints will not be accepted.

Format

No specific format for a complaint is required. However, ADB has prepared a sample format that can be obtained from the SPF, the website <http://www.adb.org/spf>, and Appendix 1 of this booklet.

Steps in the Consultation Process

Step 1: Filing of the Complaint

The complaint is filed with the SPF or will be forwarded to the SPF if received by ADB Management or another department at ADB headquarters or by an ADB office. Refer to Appendix 2 for an overview of the steps of the consultation process.

Step 2: Registration and Acknowledgement of the Complaint (7 days from receipt of the complaint)

- The SPF will register the complaint in the registry of complaints and will send an acknowledgement to the complainant, with a copy to ADB Management.

- If the SPF determines that the complaint cannot be accepted because it is not within ADB's mandate, or he/she cannot assist with the problem, he/she will notify the complainant, with a copy to ADB Management.

Step 3: Determination of Eligibility of the Complaint (21 days from receipt of the complaint)

- The SPF will screen the complaint to determine eligibility.
- The determination of eligibility includes a desk-based review, and/or a site visit.
- If the SPF rejects the complaint, he/she will inform the complainant of the reason why the complaint is ineligible, and will also inform the complainant that a request for compliance review may be filed with the Office of the Compliance Review Panel (OCRCP) if the complainant so wishes.

Step 4: Review and Assessment of the Complaint (49 days from receipt of the complaint)

- If the complaint is accepted, the SPF will review and assess the complaint.



- The review will normally include site visits, interviews, and meetings with the complainant and the executing agency (EA), DMC government or the private project sponsor (PPS), as well as any other people the SPF believes would be useful.
- The SPF will obtain information from the operations department and, if necessary, will request advice and support.
- The SPF will review relevant documents and will field a fact-finding mission on his/her own initiative or participate, in consultation with the operations department, in a special project administration mission of the operations department.
- The SPF will complete the review and assessment, and will report his/her findings to the ADB President, with a copy to the ADB vice-president concerned.
- The SPF will also refer his/her findings to the operations department and the complainant. **(7 days from receipt of the SPF's findings)**
- The SPF will inform the complainant of one of two options: (i) the complainant can carry on with the consultation process and provide comments on the SPF's findings (as provided for in step 5); or (ii) the complainant can abandon the consultation process if the complainant finds the process not purposeful, and file a request for compliance review with OCRP if the complainant so wishes.
- The SPF will give the complainant 7 days from the receipt of the SPF's findings to respond to the SPF with the complainant's decision.

Step 5: Decision by the Complainant to Carry on with the Consultation Process or to File a Request for Compliance Review (14 days from the date of SPF's notification)

- Upon receipt of the complainant's decision to carry on with the consultation process and provide comments on the SPF's findings, the SPF will inform the operations department and the complainant that they have 14 days from the date of the SPF's notification to provide their comments on the SPF's findings.
- Upon receipt of the complainant's decision to file a request for compliance review, the SPF will close the complaint.



Srimmer K. Sahnai

Step 6: Comments on SPF's Findings by the Operations Department and the Complainant, and Recommendation by the SPF (7 days from receipt of comments from the operations department and the complainant)

Upon receipt of comments on the SPF's findings from both the operations department and the complainant, the SPF will take into account their comments, make a recommendation, and seek the ADB President's approval for either of the following actions:

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

Step 7: Implementation of the Course of Action in the Consultation Process

- The SPF will implement the course of action to be taken in the consultation process, in consultation with the complainant, the operations department concerned, and the EA/DMC government, or the PPS.
- 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) facilitating the establishment of a mediation mechanism.
- 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), subject to ADB's procedures, to the ADB President with a recommendation agreed to by the complainant, the operations department concerned, and the EA/DMC government, or the PPS. The SPF will issue a report incorporating the ADB President's decision on the recommendation and furnish it to the complainant, the EA/DMC government or the PPS, and the ADB Board of Directors for information.
- When the consultation process using the mediation mode is complete, the procedures agreed upon for mediation will be followed.
- If the SPF determines that no further consultation will be useful, he/she will submit a report to the ADB President which summarizes the complaint, outlines the steps taken to resolve the issues raised in the complaint, and makes 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 ADB Board for information. Upon submission to the Board, the final report will be made public.

The complainant may find the consultation process not useful after a course of action is identified. The complainant may then file a request for compliance review. If, however, the complainant finds the consultation process useful but has serious concerns regarding issues of compliance, there is the option to proceed with the process and to seek compliance review at the same time after informing the Special Project Facilitator.

Step 8: 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 the SPF determines that the implementation is not working. Termination of mediation is subject to the procedural rules of mediation.

Remedial Action

Remedial action or actions adopted through the consultation process will reflect agreement among the parties, subject to ADB’s procedures. Such actions will be specified in a written agreement or series of agreements made by the relevant stakeholders. Actions involving a major change in the project will require approval by ADB Management or the ADB Board according to ADB procedures.

Monitoring

- The SPF will monitor implementation of any agreement under the consultation process for a period of 3 years. However, the duration of such monitoring may vary at the discretion of the ADB President.
- The SPF will consult all parties concerned during the monitoring period as required.

Reporting

- The SPF will be required to report at various stages of the process.
- Such reporting will serve to inform the parties involved, and also serve as a basis in seeking the ADB President’s (or Board’s) approval for proposed actions.
- The SPF will maintain a regularly updated public registry to reflect the current status of each complaint undergoing the consultation process.
- The media will not interview the SPF at any stage of the consultation or monitoring process.
- Details of reporting requirements can be found in ADB’s operating procedures.

General

If deemed necessary, the SPF may adopt additional procedures for the consultation and monitoring process for private sector operations.

The number of calendar days shown for each step is indicative only. The SPF will do his/her best to stay within these timeframes. However, there will be instances when more time may be required.

There are safeguards in the policy on ADB's Accountability Mechanism in the event the SPF has potential conflicts of interest.

Compliance Review Panel

The Compliance Review Panel, which has its own procedures, may be contacted at the following address:

Compliance Review Panel
Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Philippines

Tel: +632 632-4149
Fax: +632 636-2088
E-mail: crp@adb.org

Appendix 1. Sample Complaint Letter

Date:

To: Special Project Facilitator
Asian Development Bank
6 ADB Avenue
Mandaluyong City 1550
Philippines

Tel: (63-2) 632-4825

Fax: (63-2) 636-2490

E-mail: spf@adb.org

Dear Special Project Facilitator,

We, *[name of group or representative of the affected group]*, whose names and addresses are attached, live in *[area and country]* present this complaint to the Special Project Facilitator. *[If the complaint is filed through a representative, provide the names of the project-affected people, their addresses, and evidence of authority to represent them.]*

1. We are, or are likely to be, directly affected materially and adversely by the ADB-assisted project *[add name and description of project, and country where project is located]*.
2. The direct and material harm is, or will be, the result of an act or omission by ADB in the course of the formulation, processing, or implementation of this project. The acts or omissions that we believe are the responsibility of ADB include the following: *[describe acts or omissions]*
3. Our rights and interests that have been, or are likely to be, directly affected materially and adversely by this project include the following: *[describe these rights and interests]*.
4. We seek the following outcome and remedies through the help of the Special Project Facilitator: *[describe the outcome and remedies that are sought by the complainant]*.
5. We have previously made a good faith effort to address our problems with the ADB operations department concerned in the following manner: *[list and attach correspondence, details of meetings, emails, and other communication]*.
6. We cannot provide the above information *[specify which]* because *[explain why any of the information cannot be provided]*.

7. We submit the following facts with supporting documents: *[list these matters or facts and attach any other supporting evidence that the complainant deems relevant]*.
8. We authorize the Special Project Facilitator to publicly release the information in this complaint. *[Yes] [No] [indicate Yes or No]*
9. We do not request that our identities be kept confidential.

[OR]

We request that our identities be kept confidential for the following reason(s):
[state reason(s)].

Signatures:

Names:

Addresses:

Other Contact Information:

Telephone

Fax

E-mail

Appendix 2. The Consultation Process

