

The Accountability Deficit: How the Asian Infrastructure Investment Bank's complaints mechanism falls short



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Cover photo: *Grievance Redress Mechanism at the AIIB-funded Bhola IPP gas power project in Bangladesh.*

Credit: Petra Kjell, Recourse

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ABBREVIATIONS

AM - Accountability Mechanism

AIIB - Asian Infrastructure Investment Bank

BWGED - Bangladeshi Working Group on External
Debt

CEIU - Compliance, Evaluation and Integrity Unit

CLEAN - Coastal Livelihood Environmental Action
Network

EBRD - European Bank for Reconstruction and De-
velopment

EIB - European Investment Bank

E&S - Environmental and Social

ESF - Environmental and Social Framework

ESP - Environmental and Social Policy

FI - Financial Intermediaries

IAM - Independent Accountability Mechanism

IPAM - Independent Project Accountability Mecha-
nism

IRM - Independent Review Mechanism

MDB - Multilateral Development Bank

PPM - Project-affected People's Mechanism

RofP - Rules of Procedure

WHY ACCOUNTABILITY MATTERS AT INTERNATIONAL FINANCIAL INSTITUTIONS

Millions of lives have been affected by development-funded projects in recent decades, for example by being displaced or deprived of their livelihoods.¹ The physical or economic displacement of people is considered one of the most serious impacts of development projects. While the World Bank estimated in 1994 that about 10 million people per year would have to be resettled by development projects, current estimates put the figure at 20 million people per year.²

Following the establishment of the World Bank's Inspection Panel in 1993, arguably one of the most far-reaching institutional reforms in response to civil society protests over large infrastructure projects in India and Brazil, Independent Accountability Mechanisms (IAM) have become a norm³ and have set up a network⁴ among multilateral and increasingly bilateral development banks over the past 30 years. Economic and physical displacement as a structural problem is reflected in the statistics of cases filed at IAMs. According to the *Accountability Console*, a database covering 1529 complaints (as of September 2021), almost one in four of the complaints recorded is related to displacement.⁵

Infrastructure investments, by their very nature, can have significant impacts on people and the environment, both beneficial and, for local communities in particular, harmful. Whether large-scale displacement for hydropower projects; pollution of rivers and fisheries from mines and power plants; or destruction of forests for road construction, vulnerable communities can find that their lives and livelihoods are irreversibly damaged by infrastructure projects, while the benefits flow elsewhere. Women, who carry primary responsibility for managing natural resources and caring for people and ecosystems, based on the current gender divi-

sion of labour, are particularly vulnerable to infrastructure investments' harmful impacts.

There is no reason to believe that this should be different for projects financed by the world's newest MDB, the Asian Infrastructure Investment Bank (AIIB), established in 2016, especially since infrastructure is the sector which triggers the most complaints in general as well as those related to displacement.⁶

After its inception in 2016, the AIIB began to develop its own accountability mechanism, in accordance with the bank's Articles of Agreement, which envisaged an oversight mechanism.⁷ After consultations with a range of stakeholders, the Project Affected People's Mechanism (PPM) was eventually approved in December 2018 and came into operation in February 2019. This means that in its first three years, the AIIB essentially operated without a functioning accountability mechanism. The AIIB adopted an Environmental and Social Policy (ESP) in 2016 which provides safeguards to prevent harm in its investments. But an essential partner to E&S standards is a means of holding the institution accountable to them, without which affected communities have no access to redress for harms suffered. The AIIB's CEIU points out that the PPM applies to AIIB projects that predate the PPM's establishment⁸; however, it remains a fact that an accountability mechanism was not available to affected communities in the first years of the bank's operation.

In the two and a half years since its establishment in February 2019, the AIIB's PPM has not received a single complaint. In response to this report, the AIIB's Compliance, Effectiveness and Integrity Unit (CEIU) sought to explain the lack of complaints as follows:

"it took a number of years after their establishment that the first complaint was received by IAMs of international financial institutions (IFIs) with relatively large and mature portfolios. Non-filing of any complaint to the PPM, therefore, should not be surpris-

ing given the young and small size of AIIB's portfolio. During the COVID-19 period, almost all IAMs reported a drop in the number of complaints. Furthermore, project implementation also slowed."⁹

The AIIB's portfolio comprises 142 projects as of end September 2021, across sectors such as energy, transport and urban infrastructure, worth a total of over US\$28 billion.

The PPM aims "to receive submissions from Project-affected people who believe they have been or are likely to be adversely affected by AIIB's failure to implement the ESP".¹⁰ Based on the submissions, the PPM's core intentions are to verify whether AIIB management has adhered to its own ESP, or to solve problems through the Dispute Resolution or Project Processing Queries (PPQ) function.

However, the work of IAMs should not be limited to compliance. Despite the expansion of IAMs, the number of people who are suffering harms as a result of development financed projects including displacement continues to increase.¹¹ Accordingly, lessons must be learned from complaints on an ongoing basis and trigger institutional changes within operational departments to ensure that negative impacts can be avoided in the future.¹² Otherwise, IAMs contribute to the legitimacy of interventions without structurally improving practices. The PPM Policy states that: "The PPM shall [...] systematically capture and share lessons learned to enhance effective implementation of the ESP." (PPM Policy 11.2)

Before a complaint reaches the institution, arguably one of the biggest obstacles besides lack of redress and institutional learning occurs: lack of accessibility. As long as an IAM is not easily accessible and understood by project affected people, people risk being negatively affected, again and again, without recourse to redress or justice.

Against this background, analysis of the

PPM's own guidelines is at best only one aspect of a comprehensive analysis of accountability at the AIIB. Analysis of the institutional conditions in which an IAM is embedded as well as the policy environment (including fundamentally important policies such as access to information and environmental and social safeguards – at AIIB called the Policy on Public Information¹³ and the ESP¹⁴) is crucial to understanding how a complaint mechanism functions. Further, IAMs differ in terms of the exercise of the mandates and policies that apply. Strong leadership within the grievance mechanism as well as the associated financial institution has a decisive influence on the effectiveness of an IAM. With regard to the institutional embedding of the PPM within the AIIB, a study by Korinna Horta for Urgewald from 2019 has lost none of its relevance.¹⁵ Horta highlighted the shortcomings related to public access to project related information as well as the conflict of interest of the head of the Compliance, Evaluation and Integrity Unit (CIEU), which houses the PPM. While the head oversees all functions of the CIEU, other institutions such as the World Bank have separate units and leadership in order to assure independence of the different functions. However, having the IAM under the same leadership as the integrity and/or the learning and evaluation functions is not unique to AIIB.

Despite the structural governance problems, this analysis will focus on the PPM itself. This paper will identify areas where the AIIB's PPM falls short of current good practice especially in terms of its accessibility. It will then attempt to explain the lack of complaints to date and establish links to empirical evidence. Based on these findings, this report will provide suggestions to improve the PPM policy, and related institutional policies and practices. As the AIIB's PPM policy committed the AIIB to review the PPM "within five years",¹⁶ this report aims to contribute to an evidence base for necessary reforms, both to the PPM and relevant AIIB policies and practices, to ensure the AIIB closes its current accountability gap.

THE ACCOUNTABILITY GAP: AN ANALYSIS OF AIIB'S PORTFOLIO

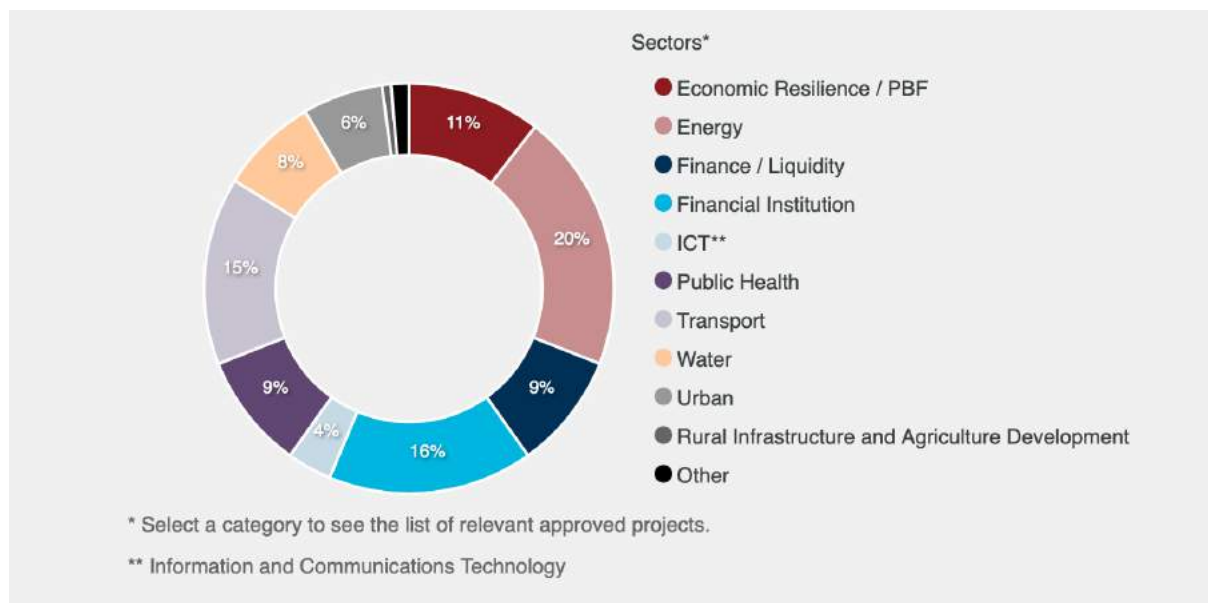
Overview of AIIB's portfolio

Since its establishment in 2016, to end September 2021, the AIIB has approved investments of \$28.2 billion, of which \$21.43 billion has been committed.¹⁷ In addition, under its

grant finance Project Preparation Special Fund, the AIIB has provided \$30.14 million. 67% of the AIIB's total portfolio is sovereign lending to governments, and the remaining 33% to the private sector – non-sovereign lending.

In terms of sectors it supports, the AIIB has published the following breakdown (note PBF stands for policy-based financing, or budget support).

Figure 1: Proportion of AIIB investments in different sectors as of September 2021



Source: AIIB website, September 2021 <https://www.aiib.org/en/projects/summary/index.html>

Research for this report looked into the 142 projects in the AIIB's portfolio, to determine which of them would in theory be eligible for a complaint to the PPM, under current policies. This database of potentially eligible projects aims to raise awareness and build capacity to increase accountability at the AIIB.

The following analysis will consider two questions:

- Regarding the projects which are potentially eligible for the PPM: what are the types of projects and their risk profile, and are there practical or policy issues that would prevent affected communities

- from being able to file a complaint?
- For those projects not eligible for the PPM: what reasons does the AIIB give? What then are the major obstacles facing communities in holding the AIIB accountable for its investments?

The findings make for disturbing reading. Given the sectors which the AIIB supports, and the potentially severe impacts infrastructure projects can have on communities and the environment, it would be natural to expect that the AIIB could be held accountable for any harms caused by its investments. However, this is the case for *fewer than half of AIIB's investments*.

Eligible projects in AIIB's portfolio

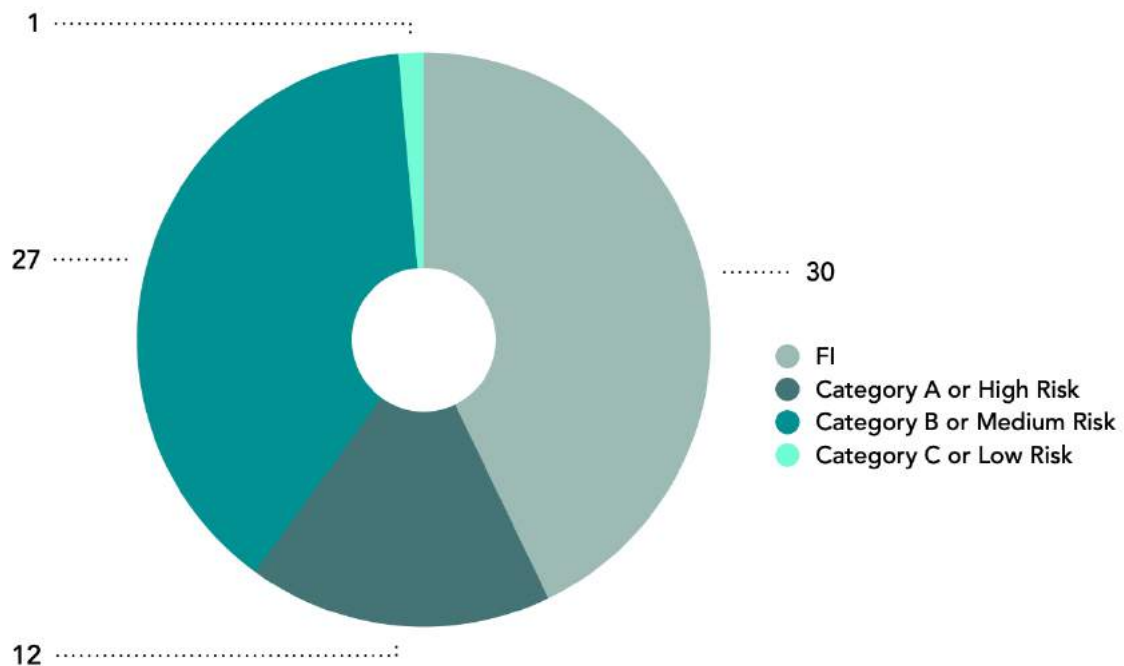
Out of a total of 142 projects financed by the AIIB to date¹⁸, only 70 are potentially eligible for the PPM – in other words, fewer than half. Potentially eligible projects are those which are not explicitly excluded from the PPM in AIIB project documents, for reasons explained in greater detail below. The total

value - \$13.162 billion - of those 70 projects is also less than half the total portfolio of \$28.2 billion. Of the 70 eligible projects, 53 are loans, 16 equity investments and one is from the Project Preparation Special Fund. The top 10 countries in which eligible projects are situated are: India with 15, Turkey with 8, non-specific 'multi-country' with 8, China with 7, Bangladesh with 6, and Indonesia, Sri Lanka, Oman and Uzbekistan with 3 each, followed by Russia with 2.

FIGURE 2. Top 10 countries in which eligible projects are situated

India	15
Turkey	8
Non-specific 'multi-country'	8
China	7
Bangladesh	6
Indonesia	3
Sri Lanka	3
Uzbekistan	3
Oman	3
Russia	2

FIGURE 3. Environmental and Social (E&S) Categorisation



In terms of environmental and social (E&S) categorisation, it is notable that the biggest proportion of projects – 30 out of 70 – are classified as FI. This denotes financial intermediary: where the AIIB invests in a fund or bank, which then on-lends to sub-clients or sub-projects. More on this later.

Of the remaining eligible projects, 12 are Category A - the highest risk, 27 Category B or medium risk, and one lower risk Category C. This means that of the 142 projects financed by the AIIB, and out of the 70 potentially eligible projects, only 12 of the highest risk projects directly financed by AIIB are potentially eligible for the PPM.

However, an analysis of all 70 projects in the 'potentially eligible' database reveals that, regardless of the AIIB's risk categorisation, at least 37 could potentially cause significant harms to affected communities or the environment, for example, causing displacement, backing fossil fuels or affecting labour rights. Sometimes, for example, while the AIIB may categorise a project as medium risk - or Category B - local communities may suffer severe impacts to their livelihoods; an example would be the Bhola IPP gas project in Bangladesh discussed in more detail below.

Eligible financial intermediary projects

For the 30 FI projects, there is both good and bad news. The good news is that many of them explicitly exclude support for projects which would cause significant harm. Many contain the following language:

"Activities included in AIIB's ESEL [exclusion list] and those involving high E&S risks and potential impacts ... will not be eligible for financing. The latter would include all Category A activities and selected Category B activities that present higher

E&S risks and impacts, such as (a) involuntary physical or economic resettlement; (b) risk of adverse impacts on Indigenous Peoples and/or vulnerable groups; (c) significant risks to or impacts on the environment, community health and safety, biodiversity and cultural resources; (d) significant retrenchment; or (e) occupational health and safety risks. Coal mining, coal transportation or coal-fired power plants, as well as infrastructure exclusively dedicated to support any of these activities will also be excluded."

Such exclusions are welcome and can help to ensure that more harmful projects are not financed by AIIB's clients. However, under the AIIB's environmental and social standards, there is a lower threshold for FI-supported projects than for those directly financed when it comes to transparency. Though AIIB improved the standards applying to FIs in its revised Environmental and Social Framework (ESF)¹⁹, coming into operation in October 2021, there is virtually no transparency for projects approved before this. Even under the new standards, there can still be a time-lag in disclosing which projects have been supported. For example, private equity funds must disclose the name, sector and location of companies within 12 months following financial closure. There is a strong commitment in the new ESF regarding high risk projects – that environmental and social impact documentation for Category A investments must be disclosed 60 days prior to their approval. This commitment – one of the strongest among multilateral development banks (MDBs) – is however weakened by a caveat, "The Bank's Management may decide, based on the specific nature and scope of the FI project and the environmental and social risks and impacts of the activity, that a longer or a shorter disclosure period is appropriate."²⁰

What matters here in terms of accountability is that if disclosure is delayed or obscured, affected communities have less chance of being able to find out that the AIIB is investing in the fund that backs the company that is building the project affecting them. This longer investment chain means that it is not only more difficult for communities to find out, but that this would then prevent them from knowing about and accessing the AIIB's accountability mechanism. So the fact that the majority of the projects potentially eligible for the PPM are FI investments is an important factor in explaining the total lack of complaints to date. One further, very significant factor: the new ESF only comes into operation from October 2021. This means that its provisions do not apply retrospectively to the 30 eligible FI projects the AIIB supported to date, leaving those projects subject to much weaker standards, including more limited disclosure requirements. It is yet to be seen whether the increased transparency in FI projects will increase the ability of communities to hold the AIIB accountable.

Eligible direct finance projects

What of the other, non-FI, potentially eligible projects? It is unlikely, given their risk profile, that no harms have occurred. One example serves to illustrate this: the Bhola IPP in Bangladesh. Despite significant impacts on local communities and the delicate environment in which this greenfield gas plant was constructed, the AIIB classified it Category B – or medium risk. As the Bangladeshi Working Group on External Debt (BWGED) together with the Coastal Livelihood Environmental Action Network (CLEAN) have documented, there have been numerous problems: from lack of information disclosure to inadequate land compensation, and from destruction of fisheries to impacts on betel leaf farmers' livelihoods.²¹ Many of these issues have particularly negative effects on women.²²

Possible factors preventing accessibility to the PPM

It is difficult to determine what reasons underlie the lack of complaints for the eligible projects, but a number of factors may be at play. A major factor is the significant policy barriers that will be explored later in this report. The AIIB's PPM certainly lags behind other international accountability mechanisms (IAMs) in terms of its accessibility, as demonstrated by the policy analysis later in this report

In terms of practical, rather than policy-based, obstacles to accessibility, first it is important to note that, as the AIIB is a 'lean' organisation, it has no presence in borrower countries, unlike for example the World Bank or Asian Development Bank, and therefore a lower profile – it is also younger and less well-known than more established MDBs. With no country offices there is minimal awareness in host countries of the bank's activities. Other MDBs, for example, the World Bank, often have local offices, a press officer, and a country-specific website. This creates a more of a public facing image and leads to increased local news coverage. Other MDBs post very visible logos on projects; however, even if AIIB did this, people would possibly not recognise the logo in any case – so there is no doubt a visibility and brand recognition barrier.

Second, if we look at the countries in which the most potentially eligible projects take place – India, Turkey, China, Bangladesh – there is a lack of political space and freedom of expression which have a chilling effect on communities' ability to speak out. The Compliance Advisor Ombudsman – the accountability mechanism of the International Finance Corporation – has the most complaints of any IAM by far. And yet there have been no complaints from China, just one from Bangladesh, four from Turkey (which all predate the current Erdogan rule), and several from India, the vast majority of which predate the Modi regime.²³

Finally, the PPM itself must bear some responsibility. It was established and its rules of procedure adopted *after* the bank was already operational and lending. There was then a gap between Board approval of the PPM in December 2018 and its launch in February 2019, after which the PPM established its own page on the AIIB website where CSOs and affected people could access information on the mechanism. Building the PPM presumably occupied the majority of staff resources, and proactive community and CSO outreach only began recently. Its existence and role is therefore not well known among affected communities. At present, the AIIB relies heavily on digital communication - whether for project documents, or information about the PPM; a factor which ignores the 'digital divide' between those able and unable to access the internet reliably and affordably. Though PPM staff have engaged in outreach visits, its website is live, and complaints forms have been made available in 13 languages,²⁴ more needs to be done to ensure communities know and feel they have the means to claim their rights. Stronger outreach examples from other IAMs are discussed later in the report.

In response to this report, the CEIU stated:

"Lack of the information access and awareness about the existence of IAM is a common challenge that all IAMs face. To mitigate this, we have reached out to CSOs and NGOs to ensure that they are aware of the PPM and its procedures so that they can facilitate Project-affected people to access the PPM even during the pandemic."²⁵

The CEIU also explained that the PPM had planned a series of face-to-face regional and country level civil society outreach events and since, "wherever there was an appetite for a virtual outreach meeting we conducted outreach events together with the IAMs of the World Bank, IFC, ADB, EBRD and EIB

(Cambodia, Turkey, Uzbekistan and Vietnam)." The CEIU also commits to reinstate face to face country and regional level outreach events when restrictions ease.

Projects not eligible for the AIIB's accountability mechanism

With regard to the majority of AIIB-funded projects which are not eligible for the PPM - 72 out of 142 - the key question is, why have they been ruled out? For the vast majority - 68 projects out of 72 non-eligible projects - the answer lies in the fact that AIIB has co-financed the projects with another MDB or development finance institution - such as the World Bank, International Finance Corporation (IFC), Asian Development Bank (ADB), European Investment Bank (EIB), or European Bank for Reconstruction and Development (EBRD). The PPM policy and the ESF indicate that when another MDB co-finances a project, and its standards apply, AIIB's ESF will not apply and so will not accept complaints to the PPM. In most cases where the AIIB co-finances, it is not the "lead financier", i.e. another bank has initiated the project, contributes a larger portion of the funding, and applies its E&S policies. In project after project, this language occurs in project documentation:

"[The safeguards of the co-financier MDB] will apply to the Project instead of AIIB's ESP. Pursuant to AIIB's agreement with the [MDB], AIIB will rely on the [MDB]'s independent accountability mechanism, the Accountability Mechanism, to handle complaints relating to ES issues that may arise under the Project. Consequently, in accordance with AIIB's Policy on the Project-affected People's Mechanism (PPM), submissions to the PPM under this Project will not be eligible for consideration by the PPM."²⁶

This exclusion will be considered in more depth later in the policy section of this paper. No other MDB has policies which rule that it cannot be held accountable for its own investments. When the PPM was established, several senior staff at other IAMs expressed strong views in private to Recourse about the risk of AIIB's PPM "driving a race to the bottom".

In response to this report, AIIB Management denies its approach is driving a race to the bottom, and argues instead that it is "an important innovation" that "is designed to simplify and facilitate the implementation of Projects and the submission by affected parties of ES related complaints."²⁷ The AIIB's CEIU explains that the "underlying rationale is that the IAM of the MDB whose E&S policies apply is in a better position to assess whether said policies have been complied with."²⁸ The CEIU also claims that other MDBs have welcomed the PPM's approach.

At least in terms of co-financed projects, the AIIB is an outlier, and excluding complaints for these projects puts the AIIB a step behind other MDBs. Keeping in mind that the majority of AIIB's overall portfolio consists of co-financed projects,²⁹ it is imperative that the AIIB bear responsibility for the social and environmental outcomes of those projects. Excluding communities affected by co-financed projects from access to the PPM is to deny them the opportunity to hold the AIIB accountable for its commitments in its Environmental and Social Policy.

It is common for co-financiers' IAMs to collaborate when receiving complaints from communities, or for them to carry out separate reviews and procedures—as in the case of the Tata Mundra Ultra Mega Power Project, which was considered by both the IFC's Compliance Advisor Ombudsman and the ADB's Compliance Review Panel.³⁰ Not only does the co-financing exclusion

deny communities the opportunity for redress from the AIIB, it also limits the AIIB's opportunity to learn from its mistakes – and importantly avoid repeating them. For communities, the impacts of this exclusion are detrimental. Not all IAMs have the same functions. Additionally, communities may have specific grievances about portions of the project financed by a particular institution and thus want to address their complaints to that institution's IAM. Complainants should have the option to choose the IAM that best fits their interests.

The AIIB's CEIU argues that the AIIB does remain accountable, in that it will work with cofinanciers "to respond to findings" and derive lessons for continuing improvement, and will also report to the AIIB Board on the outcomes of complaints handled by other IAMs.³¹

In response to this report, AIIB Management stated:

"Reliance on the co-financier's IAM with the co-financier's agreement is based on several important principles: (a) that the co-financier's IAM is best placed to consider questions of compliance with co-financier's ES policies; and (b) that a single venue for addressing ES complaints avoids potentially multiple contradictory findings by different IAMs. When the co-financier's IAM is not available for a co-financed Project, however, the affected parties may bring eligible complaints to the PPM."³²

This last sentence explains several exceptions and grey areas among the co-financed projects. In projects co-financed with the World Bank's private sector arm, the International Finance Corporation (IFC), the AIIB derogates from the co-financing exclusion explained above. One

example is a vaccine programme in China, financed recently by AIIB.³³ Though the IFC's Performance Standards (PS) will apply to the project, AIIB project documents state that communities will nevertheless be able to access the PPM. Another project approved this year, the ENEL 300 MW Solar Project in Rajasthan³⁴ follows the same pattern, as does the AIIB's 2020 \$100 million support to Vietnamese VP bank³⁵ and 2019's loan to Hero Future Energies in Rajasthan for a solar project.³⁶ Even more exceptional is the AIIB's 2019 financing of the Category A Upper Trishuli hydropower project in Nepal. Despite this project being co-financed with both the IFC and the ADB – and other development finance institutions – it is still eligible for the AIIB's PPM, even though AIIB's ESP is not being applied, but rather IFC's Performance Standards (PS).³⁷ There is no explanation given in project documents for these exceptions to the AIIB's policies on co-financing.

There is further muddying of the waters with AIIB's co-financing with the EBRD. In the case of AIIB's 2019 investment in Efeler Geothermal Plant in Turkey, it is clear that the EBRD is the lead co-financier (lending \$350 million to AIIB's \$100 million) and EBRD's standards apply. It is worth quoting the language used in full in the AIIB project documents³⁸, "Consequently, as permitted by the ESP, AIIB: (i) will apply the EBRD Policy and EBRD PRs [Performance Requirements] to this Project and (ii) will rely on EBRD's determination as to whether compliance with the EBRD Policy and EBRD PRs has been achieved under the Project." However, "The Bank will rely on its own Project-affected People's Mechanism (PPM), to handle submissions filed by PAPs [project affected people] with the PPM relating to environmental and social issues that may arise under the Project." In response to this report, the AIIB CEIU stated that in some cases, "AIIB is satisfied with the material consistency of the cofinancier's E&S policies, but there is no agreement with the cofinancier in place to rely on its IAM. This

is the situation, for example, with EBRD for the Efeler Geothermal Project in Turkey, considering that it predates the agreement with EBRD to rely on its IAM."³⁹

In the case of the AIIB's 2020 \$50 million financing for the Izmir metro project, again co-financed with the EBRD, the AIIB's project documents fail to make clear whether the PPM would apply:

"The Bank intends to rely on EBRD's independent accountability mechanism, the Independent Project Accountability Mechanism (IPAM), in lieu of the Bank's Project-affected People's Mechanism (PPM), to handle submissions by project-affected people relating to environmental and social issues that may arise under the Project. For this purpose, the Bank is currently discussing a framework agreement with the EBRD. Should the agreement not materialize within a reasonable time, the Bank would rely on the Bank's PPM to handle submissions brought to it relating to environmental and social issues under the Project."

In response to this report, AIIB Management explained the differing approach to co-financed projects as follows:

"under the Policy on the PPM, a prerequisite for reliance on another co-financier's IAM is the existence of an agreement with that co-financier on such reliance. The Bank has, over time, reached agreements (whether on a comprehensive basis governing all co-financings with that co-financier, or on a project-specific basis) with various co-financiers that would allow it to rely on the co-financier's IAM instead

of the PPM. However, in the absence of such agreement, the PPM would continue to govern the project concerned.

"This explains why, when co-financing with IFC, AIIB's PPM continues to govern, even though IFC's Performance Standards apply to the project. It also explains the evolution of the approach adopted when AIIB has co-financed with EBRD. In 2021, AIIB reach an agreement with EBRD on reliance on EBRD's IAM, and projects co-financed with EBRD since reaching that agreement are now governed by EBRD's IAM rather than the PPM."⁴⁰

This begs the question: if AIIB is willing to let its PPM apply even when the IFC or EBRD is lead co-financier and when their standards apply, why can it not let all co-financed projects be eligible for the PPM? Additionally, this inconsistent practice affects the predictability of the mechanism, with communities not always able to know clearly if the PPM will apply. IFC and AIIB standards have important differences - for example, while IFC guarantees Free, Prior and Informed Consent for indigenous peoples,⁴¹ AIIB weakens this to Free, Prior and Informed Consultation.⁴² It is unclear, in a project where IFC's standards prevail but AIIB's PPM is applicable, which standard would be used in any compliance investigation.

Co-financing is not the only exclusion which impacts communities' ability to file a complaint if they have suffered harm. In recent times, the AIIB has begun to expand its portfolio into capital markets. This type of project was not addressed in the bank's original

ESF. During the period that the previous version of the ESF was in force, this type of project received case-by-case approval from the board of directors to derogate from the ESF. The revised ESF⁴³ now includes this type of project, but formalised this exclusion, stating "Bank financings involving investments in a portfolio of publicly traded securities using ESG approaches are different from the types of operations that are covered by the ESP, in that they are governed by the terms of the publicly traded securities". In these types of projects, the normal AIIB safeguards do not apply, and instead each project uses a "specific ESG framework".

Because the ESP does not apply, and the PPM exists to hold AIIB accountable to its ESP, the AIIB policy states: "The Policy on the PPM would not apply to the operation."⁴⁴ One such example of a capital market project is the AIIB's April 2021 investment in the Asia Climate Bond Portfolio, where the ESP will not apply but rather a bespoke ESG Framework and Climate Change Assessment Framework. This rules out access to the PPM: "In view of the derogation from the application of AIIB's ESP, the Policy on the Project-Affected People's Mechanism (PPM) would not apply to this project."⁴⁵ Another example is the AIIB's \$54 million 2019 investment in the Singapore Infrastructure Private Capital Mobilization Platform⁴⁶, which rules out use of the PPM given "The ESP is designed for lending to new projects and is not 'fit for purpose' for application to the capital markets or debt and equity security instruments."

Though there are to date only four capital markets investments, together in value they total 4% of AIIB's portfolio. This is a growing area of the AIIB's portfolio, and concerns are increasing around the lack of accountability these potentially harmful investments might entail.

Capital Markets: An accountability blind-spot

In 2019, the AIIB launched a series of new operations aimed at attracting institutional investors to finance infrastructure development in Asia. These operations delegate portfolios to a third-party asset manager, which makes decisions about investments in securities (e.g. bonds) traded through capital markets. Rather than applying the Environmental and Social Framework, these projects use “ESG Frameworks” to guide these external asset managers. But ESG tools do not function as a risk assessment and management system, rather they help investors channel funds toward companies that rate well across a range of criteria and limit investment in those that do not. This is an inadequate substitute for comprehensive environmental and social safeguards that prevent harms from infrastructure development on the ground.⁴⁷

AIIB's capital market operations seek to achieve the bank's goal of mobilising private capital for infrastructure, a theme that has become increasingly central to the bank's mission.⁴⁸ By delegating such funds to third party asset managers, the bank seeks to advance its “lean, clean and green” strategy. However, while this approach is certainly lean, the bank has so far disclosed very limited information on the projects, including how the funds are managed, how the AIIB works with and conducts oversight of asset managers, and, crucially, what is actually in these portfolios. Although there are currently only four capital market projects, they account for over \$1.1 billion of AIIB funds, and seek to crowd in more funding from the private sector.

In its response to this report, AIIB Management explained its reason for excluding capital markets projects from eligibility for the PPM as follows:

“The 2021 ESP is designed to apply to Projects where the financing is governed by private, bilateral agreements between the Bank and the Client that require compliance with specific environmental and social undertakings. Bank financings involving investments in a portfolio of publicly traded securities using ESG approaches are different from the types of operations that are covered by the ESP, in that they are governed by the terms of the publicly traded securities; the environmental and social assessment of any potential investment is made on the basis of publicly available information; reporting is made to all securities holders in the same manner; and environmental and social performance is more suitably assessed at the corporate rather than asset level by measuring publicly available ESG information against widely acknowledged benchmarks.”⁴⁹

In terms of accountability for impacts, AIIB Management stated, “When assessing the ESG framework for each operation, the Bank considers the inclusion of mechanisms designed to address environmental and social concerns arising under the operation.”

However, with such limited disclosure of where these funds are going, and no access to the bank's grievance mechanism for potentially affected people, these projects continue to represent a major accountability blind-spot.

By Inclusive Development International

POLICY GAPS: HIGH HURDLES, LITTLE AUTONOMY AND MANY EXCLUSIONS

This section explores the significant policy barriers which might prevent affected people from filing a complaint with the PPM. It analyses the PPM Policy⁵⁰ and PPM's Rules of Procedures⁵¹ (RofP), with a focus on accessibility for affected people. The analysis makes use of the benchmark categories and guiding questions⁵² of the *Accountability Console*⁵³, which is the first database to capture all complaints submitted to IAMs to date as well as their associated policies, created by the expert group, Accountability Counsel. The PPM is not yet listed there, so this report uses selected criteria to assess the PPM Policy and RofP manually.⁵⁴

To assess the accessibility of the PPM, the report identifies 17 criteria, and answers 67 selected questions. The following section contains the answers to 22 questions⁵⁵ considered most relevant to explain the fact that no complaints have yet been submitted to the PPM.⁵⁶ A second step examines to what extent these can be considered a marked deviation with regard to good practices of other complaint mechanisms and provides good policy examples.

Unnecessary pre-conditions

When people are negatively affected by a project, they first need to know that an IAM is in place to address their concerns. Therefore, the ESF as well as the PPM Policy must mandatorily ensure that all parties involved take responsibility for ensuring that the existence and practices of the PPM are well known in the project areas. Moreover, the PPM must ensure that their practices are transparent and traceable.

In order to ensure transparency with regard to the PPM's activities to enable public scrutiny, the PPM should report on them in detail on an annual basis. An annual report was

originally foreseen in the 2018 "Draft AIIB Complaints Handling Mechanism for Phase II Public Consultation", but dropped from the final policy:

Par. 83: *"The PPM Secretariat will prepare an annual report, under the direction and guidance of the MD-CEIU, to describe PPM activities and learning during the preceding year. This report will be submitted to the Board, with a copy to the President, for information. It will be released to the public within 45 days after Board consideration and posted on the PPM website."*

In response to this report, the CEIU asserted that an Annual Report 2021 format has been "piloted" that covers all three functions of the CEIU, not solely the PPM, and that it will be produced and published in early 2022.⁵⁷

Another hurdle in the PPM Policy is that complainants are encouraged to resolve the issues first, with the local Grievance Redress Mechanism (GRM) and second, to bring the problem to the attention of AIIB Management. The PPM Policy states that a submission is considered ineligible if: "Requestors have not made good faith efforts to resolve the issues with the Project-level GRM and with Management or have not indicated to the satisfaction of the PPM why they have been unable to do so." (PPM Policy 5.1.8)

This represents an unnecessary hurdle and risk for those affected. To approach a project-level grievance mechanism should only be optional for affected people since local GRMs are not independent of operations.

Related to this, it is problematic that the PPM itself decides whether the reasons given by the complainants are sufficient to justify why they did not approach the other actors beforehand. It must be seriously questioned to what extent the PPM is capable of assessing local conditions which would be relevant to such an

assessment. There are many different reasons why affected people may not be able to approach AIIB Management or GRMs in order to resolve their grievances, such as fear of retaliation. Making it a requirement limits the accessibility of the PPM and might prevent people from filing a complaint.

However, the RoFP state that:

“Requestors are encouraged but not required to provide the following additional information: [...] (b) Any steps the Requestors have taken to resolve the issue (e.g., approaching the Client, the Project-level GRM, Management, government, judicial or law enforcement bodies) and the outcome;” (RoFP 6.1.2 b)

Thus, while the Procedures state that information regarding efforts to resolve issues with management or other stakeholders is not required, the Policy excludes complaint inquiries that fail to do so or cannot provide sufficient justification as to why they have not attempted to do so. This contradiction is confusing.

Another obstacle to accessibility is the PPM's requirement that at least two individuals must file for the complaint to be eligible (PPM Policy 3.1). This creates an unnecessary hurdle to lodging a complaint with the PPM. It is not clear why an individual should not file a complaint if he or she is negatively affected, and if this is potentially caused by a policy violation.

Restrictive time-frames and sequencing

Accessibility of the PPM is further limited by narrow time frames in which a complaint must be brought. This also applies to most of the other IAMs. However, the time frame for filing a complaint with the

PPM is very restrictive and complicated, for instance compared to UNDP's Social and Environmental Compliance Unit (SECU) which provides flexibility on whether compliance review will be conducted “before, after, in parallel with, or instead of grievance resolution.” (UNDP's SRM p. 18)

According to the PPM policy, a complaint is ineligible if it was filed before funding approval. However, the complaint will be forwarded to management so that it can be considered as the project moves forward (RoFP 6.4.5 f). It is unclear whether a later funding approval (PPM Policy 5.1.9) is sufficient to resubmit a complaint at a later date or whether new complaint aspects relating to policy violations are required. The Project Processing Query (PPQ), which intends to rapidly address concerns during the preparation phase of a project, can only be filed after AIIB publishes the Project Summary Information (PSI) on its website and before the project's approval. A Dispute Resolution request – which generally means mediation between the project developer and affected communities – can be filed after the PSI is published and also during project implementation (PPM Policy 4.2, 5.1.1; RoFP 6.5.4 f). However, a request for compliance review – which is an investigation into whether the AIIB has breached any requirements of its ESP - can only be submitted after funding approval. Requests for compliance review are also ineligible if there is already a PPQ or a Dispute Resolution Procedure in place (PPM Policy 5.1.5). Filing a new complaint requires new information or circumstances which were unknown at the time of filing (PPM Policy 5.1.9). The complexity alone gives reason to believe that many complaints will be deemed ineligible, and that people will choose not to file a complaint.

Complainants may decide which procedure – Project Processing Query, mediation or compliance - they would like to request (PPM Policy 6.3, RoFP 6.5.4 a), However, the sequencing as described above does not provide much flexibility and thus not many

choices. The ability to choose compliance at any time is especially important for addressing potential harms⁵⁸ and thus preventing them. Additionally, the option for an easily accessible compliance function at any stage would allow complainants to mitigate potential risks of retaliation.

Related to that, during PPO, affected people do have the option to file another case for a dispute resolution “if the issues in question turn out to be more complex than originally understood” (RofP 6.5.1). Again, it is unclear why the procedures only offer Dispute Resolution in such a case, instead of offering both, dispute resolution and compliance review. Affected people should have the power to choose the procedure they assume to be suitable to address the substance of their complaint. The procedures seem to prioritise

dispute resolution over compliance review. Even if the PPM has no mandate to investigate any other stakeholder than the AIIB Management, negative impacts are mostly related to actions of local authorities, the implementing agency, or the responsible ministry. Since dispute resolution requires that stakeholders sit down together to propose solutions and consider political situations in many AIIB project countries, this may not be an option for those negatively affected. Prioritising Dispute Resolution could therefore prevent affected people from submitting a complaint.

The PPM’s mandate is limited to reviewing compliance with the AIIB’s ESP, and the PPM explicitly cannot investigate borrower and company errors (PPM Policy 5.2.1). Complaints related to policies other than the ESP



Complaints box at the AIIB-funded Shwe Taung cement plant and coal mine, Myanmar. Credit: Kris Genovese.

are ineligible (PPM Policy 5.1.4). Linked to that, one of the biggest blind spots and limitations of all IAMs, including the PPM, is the fact that compliance with the environmental and social policies are not being investigated in relation to procurement-related misconduct. Complaints relating to procurement are ineligible and dealt with separately (PPM Policy 5.1.3, 5.1.4); however, identified misconduct in procurement processes could be regarded as early warning signals in the project cycle. If identified early enough and investigated in regard to potential social and environmental risks that might result, IAMs could become more effective in preventing harm.

Limited mandate

Another limitation of the PPM Policy is its provision regarding judicial proceedings that affected people might seek for in parallel to a request with the PPM. There is no reason why negatively affected people should not seek legal avenues to claim their rights - guaranteed under many countries' constitutions - in addition to using the PPM, a non-judicial mechanism. However, according to the PPM Policy, a request for compliance review would be declared ineligible:

"If at any point during the Compliance Review the PPM learns of arbitral or judicial proceedings involving substantive issues raised in the submission, the PPM shall assess the implications of such parallel processes and submit a recommendation to the Board of Directors on whether to continue with the Compliance Review. As an interim measure, the PPM may suspend the Compliance Review until the Board of Directors decides on the matter." (PPM Policy 6.8.5)

In this aspect, the PPM has a depoliticising effect by incentivising affected people to

choose one over the other possible avenue to make their voices heard, restricting the rights of negatively affected people. Moreover, it is not clear how a request would be handled in case affected people who are not part of the complainants of the PPM are seeking judicial proceedings.

The PPM Policy, as well as the ESP, require the use of an IAM of another MDB in case of co-financing, when the safeguards of the co-financing institution are applied instead of the AIIB ESP (ESP p. 36). As explained in the 'accountability gap' section above, this is the main reason why the majority of AIIB projects are currently ineligible for the PPM. The PPM Policy states that a submission shall be ineligible if:

"the Project is co-financed with another multilateral development bank (MDB) or bilateral development organization and AIIB has agreed to the application of the environmental and social policies and procedures and to rely on the Independent Accountability Mechanism (IAM) of such institution" (PPM Policy 5.1.6).

Not only does the exclusion of complaints in co-financed projects deny communities the opportunity for redress from the AIIB, but also prevents the PPM from "capturing and sharing learning to enhance effective implementation of the ESP in Projects financed by AIIB", as stated in the RofP (RofP, Att. 5, 3.1). If the AIIB really wants to learn from its mistakes, it must face them through its accountability mechanism. So far, problems related to the implementation of AIIB co-financed Projects have been mostly outsourced to the co-financing institution. However, the Procedures provide options for joint site visits of the PPM and the IAM of the co-financing institution:

"In cases where AIIB has not agreed to rely on the co-finan-

cier's IAM, the PPM coordinates closely with the co-financier's IAM in the handling of any submissions relating to the Project and jointly plans site visits with the co-financier's IAM." (RofP 10.3, 10.4)

The PPM Policy on co-financing as well as its inconsistent application fall far short when compared to other IAMs, among many other accountability loopholes. In its response to this report, the AIIB CEIU argued that "civil society" at regional outreach events welcomed the exclusion of cofinanced projects;⁵⁹ however, during consultation on the PPM in 2018, 14 non-governmental organisations specialising in accountability, urged the AIIB to drop this exclusion - a recommendation ignored by the bank.⁶⁰

Limited representation

Last but not least, representation is key to level the playing field between affected

people and financial institutions. The more complicated policies are, the more expert knowledge is needed to file a complaint. Moreover, these bureaucratic processes require resources that affected people might not have. Therefore, affected people often seek support and advice from non-governmental organisations (NGOs), who can sometimes even provide legal expertise in crafting complaints. It has been shown statistically that complaints filed with the support of national (183 filed cases) and especially international (93 filed cases) NGOs are significantly more likely to be declared eligible compared to those filed without CSO involvement (167 filed cases). While 62% of complaints without NGO involvement were found eligible, this number increases to 80% in cases with support of a domestic NGO. Complaints filed with support of an international NGO were found eligible in 87% of cases. In addition, it was shown that complaints with the support of NGOs more often achieve a substantive phase in the complaint process.⁶¹



Complaints and suggestions box at the AIIB-funded Myingyan gas power project, Myanmar. Credit: Recourse.

While it seems appropriate for the PPM to assure itself of the authority of those claiming to represent affected people (RofP 6.1.1 b), it is difficult to understand why the PPM demands that negatively affected people should be allowed to choose a representative based outside the country only in exceptional cases:

“They may authorize an in-country representative (Authorized Representative) to file a submission on their behalf. In exceptional situations, when in-country representation is unavailable, the Requestors may designate an individual or organization outside of the country as their Authorized Representative to file a submission.” (PPM Policy 3.1).

It is completely opaque how the PPM would decide whether in-country representation exists. Will a complaint be rejected if another local NGO could theoretically represent the affected? Against which criteria would such a decision be made? The PPM Policy is silent on whether a representative must explain why no one in the community can represent the complainants.

On this point, the PPM policy limits the rights of those affected by AIIB projects to choose their own representatives. Especially in countries with shrinking political space for civil society, this section of the policy can have a chilling effect on local communities if they feel they cannot turn to experienced NGOs that have accompanied similar cases in other countries. Note that no such restrictions are placed on the AIIB, which has at its disposal a team of lawyers to advise its engagement in PPM processes.

CONCLUSIONS AND RECOMMENDATIONS

It is clear that good policies alone are not enough to ensure that people are protected from negative impacts of MDB projects, such as those of the AIIB. The success of any policy lies in its application. Therefore, strong and clearly formulated policies should be considered as a minimum requirement for accountable institutions. In light of this report's policy analysis and empirical findings, the AIIB should address the following areas of policy and practice to improve both accessibility and accountability:

Removing pre-conditions for filing

Pre-conditions for affected parties to file a complaint should be removed as a matter of urgency. Policy sections referring to pre-conditions, even if not mandatory, need to be clarified in terms of their language. Particularly the language that encourages affected people to approach local GRMs and AIIB management before filing a complaint to the PPM (PPM Policy 5.1.8) could be misunderstood and prevent people from filing. The CAO provides a good policy example which maximises accessibility:

"There are no formal requirements for lodging a complaint with CAO.... In addition, the Complainant may wish to provide information on.... [w]hether anything has been done by the Complainant to attempt to resolve the problem, including any contact with IFC/MIGA staff, the Client, Sub-Client, or the host government, and what aspects remain unresolved." (CAO, paras. 33-34).

To improve accessibility, the PPM should also remove the requirement that a minimum of two people need to file a complaint. Moreover,

every person should have the right to choose her or his representative. As mentioned above, complainants benefit from the support of expert NGOs. Complicated policies and procedures are only one reason why domestic or international NGOs should be accepted. Thus, the restrictions in PPM Policy 3.1 need to be removed. The CAO provides a good example of unrestricted access:

"Any individual or group, or representative they authorize to act on their behalf, who believes they are or may be harmed by a Project or Sub-Project may lodge a complaint with CAO." (IFC's CAO, para. 30).

Broadening the scope of the PPM and enable lessons learned from practice

Access is key for IAMs to assist in preventing negative impacts. Therefore, IAMs should be equipped with the mandate for policy review from the very beginning of a considered project, even before it is approved by the Board. While the PPM Policy prohibits engagement before approval, the Green Climate Fund's (GCF's) Independent Redress Mechanism provides a good practice example, which should be taken into consideration:

"A grievance or complaint can be submitted to the IRM by a person or group of persons or community who has/have been or who may be affected by adverse impacts of a GCF funded project or programme.¹ [fn 1] GCF funded project or programme includes a project or programme being actively considered for funding by the GCF" (GCF's IRM, para. 20)

The empirical evidence regarding the eligibility of co-financed projects is concerning and leaves many questions unanswered. The current practice of handling co-financed

projects has the same effect as an exclusion. Since the majority of the AIIB's portfolio consists of co-financed projects with other IFIs, this represents a serious accountability loop-hole.

In cases of co-financing, collaborative investigations are common, where IAMs carry out separate reviews against their own procedures.⁶² The AIIB PPM deviates from this practice. Moreover, several cases described in this report illustrate that the application of this exclusion to date has been inconsistent and project documents have failed to make clear which IAM applies.

Therefore, the practical application must be evaluated, and the policy clarified. The current practice prevents the AIIB from learning from its own mistakes.⁶³ For the sake of institutional learning as well as to improve accessibility, the PPM Policy should prioritise collaborative and parallel investigations over the current exclusionary practice.

Accessibility could also be increased by extending the possible timeframes for filing a complaint and by providing more flexibility for the application of the available functions. A good example is provided by UNDP's Social and Environmental Compliance Unit (SECU):

*"When SECU advises the SRM [Stakeholder Response Mechanism] of the need for [a compliance] review, it is the responsibility of the receiving office to communicate to the requestor any planned action by the SECU to review compliance issues, **and to discuss with the requestor the possibility of conducting compliance review before, after, in parallel with, or instead of grievance resolution.**" (UNDP's SRM p. 18)*

Another major step forward would be to remove any exclusions related to judicial

proceedings that project affected people might seek for in parallel to a complaint with the PPM. IADB's MICI recently adopted a good policy example in this regard:

"As of July 1, 2021, clause 19 (d) of the MICI Policy, which excluded "particular issues or matters (...) under arbitral or judicial review in an IDB member country", will be rendered ineffective. [...] In this way, the existence of open judicial processes will no longer be one of the criteria used to examine whether a claim filed with the MICI is eligible or not." (IDB MICI: <https://www.iadb.org/en/node/30986>)

Creating transparency and traceability

Whereas the procedures state that compliance requests filed before approval will be listed in the PPM registry even though they are considered ineligible (RofP 6.4.5 f), the policy states that only submissions that meet eligibility criteria shall be listed (PPM Policy 6.4). Regardless of whether a complaint is eligible or not, publishing a register of complaints on the AIIB website can provide important information and lessons for people who want to use the PPM. A list of complaints that are not admissible would also increase the accountability of decisions relating to eligibility and the criteria used. Therefore, all submitted complaints should be listed in the case register database with this basic information and, if available, with references to resulting procedures outside the AIIB, such as complaint procedures with co-financed institutions. Accordingly, the PPM Policy should be edited as follows:

"Screening for Eligibility; Registration: The PPM shall determine whether the submission meets the eligibility criteria set out in

Section 5.1 and inform the Requestors, Management and the Board of Directors of its determination. If the [Whether or not] submissions meets such eligibility criteria, they shall be registered in the PPM registry.” (PPM Policy 6.4)

Improving outreach and raising awareness

Finally, the PPM must be known about before it can be used. A particular challenge for the AIIB is its decision not to have in-country presence, which means it is less visible and recognised than other banks such as the World Bank or ADB. Thus, the PPM would benefit from a stronger outreach commitment. One good example is provided by the ADB's Accountability Mechanism which provides three different outreach strategies: internal, national and project level. Referring to ADB's language: internally, outreach “should improve awareness and disseminate lessons to [...] staff through workshops, training courses, and orientation sessions.” (ADB's AM paras. 208 to 211).

According to ADB's Policy, IAM staff “should be included as part of regular staff training [...].” On the national level, the IAMs need to “hold regular dissemination activities [...]. They should distribute simple, pictorial-based and user-friendly descriptions of the mechanism. In each resident mission, a staff member should be designated as a focal person for handling grievances caused”. (ADB's AM paras. 208 to 211).

AIIB not having a country office need not preclude such a commitment: on every visit to a country, AIIB staff could conduct outreach activities to local NGOs and journalists and ensure named staff responsible for the PPM are advertised clearly.

One of the simplest ways to increase awareness about the availability of an IAM is to

advertise the involvement of the MDB and its IAM at the project site. This is, after all, where affected people will encounter impacts, so it should also be the site of tailored and appropriate information.

In its response to this report, AIIB Management stated that:

“the 2021 ESP provides that if the Project involves a large infrastructure investment financed directly by the Bank, the Bank may require the Client to post “appropriate Bank-approved signage at the Project site that is clearly visible and understandable to Project-affected communities and other relevant stakeholders, noting that the Project is being financed by the Bank.”⁶⁴

Two points of note in this response: the use of the word ‘may’ which makes clear this is not a mandatory requirement; and the application of this requirement only to direct finance (in other words not FI) and to ‘large infrastructure’ (for which there is no definition provided). Such a commitment is too restrictive to respond adequately to the project-level information recommendation.

At the project level, the ADB stipulates that, “Staff, working with the borrower, will disseminate information early in the project cycle about the Accountability Mechanism and its availability as a recourse in case other mechanisms for dealing with harmful project effects are not successful [...] Gender issues will be taken into consideration when designing the outreach strategy.” (ADB's AM paras. 208 to 211). The ESP has been strengthened with respect to making the PPM known:

“The Bank requires all Clients to inform Project-affected people about the availability of the PPM. Information on the availability of the PPM is provided in an accessible and

understandable manner in locally appropriate language(s), including on the Client's (or beneficiary's) Project-related website." (ESP, p. 35 Sec. 72).

We would recommend incorporating this requirement into lending contracts.

One of the most fundamental reviews of accountability ever undertaken – that of IFC by an independent panel appointed by the World Bank – made several recommendations to improve accessibility. The 2020 External Review of IFC/MIGA Accountability⁶⁵ recommends enhanced disclosure to promote accountability, saying that IFC/MIGA should ensure its client “provide information to affected communities both about the client's grievance mechanism and about the CAO [Compliance Advisor/Ombudsman IFC's accountability mechanism]” including for “FI sub-projects.” Such a commitment alone would not be sufficient, but must also be verified, the review concludes: “IFC/MIGA supervision should ensure that clients are meeting this responsibility, in part by surveying diverse community members regarding their awareness of the client's grievance mechanism and the existence and work of the CAO.”

Reviewing the PPM: An opportunity to close the accountability gap at the AIIB

AIIB staff, management, Board and shareholders should be concerned that not one complaint has yet been filed to its accountability mechanism. Given the high likelihood that at least some of its investments will cause significant harm to people or the environment, the AIIB should be asking serious questions about whether its PPM is fit

for purpose. In the end, quite apart from the moral imperative to minimise harm to project-affected people, it is in the AIIB's own best interest to learn from its mistakes and improve policy and practice accordingly.

The AIIB's commitment that the PPM will be reviewed within five years from its approval in December 2018 is welcome. The need for such a review is urgent and should not be left to the last minute at the end of 2023. The process of gathering evidence and analysing trends must begin now. This report is intended to contribute to such an evidence base. The AIIB must set itself to answer the most basic, vital questions: why are project-affected people not accessing the PPM? What steps must be taken to enhance AIIB accountability, both in terms of policy and practice?

As underlined in the introduction, the analysis of an IAM itself is only one aspect of a comprehensive analysis of accountability at MDBs. Therefore, the promised review should not be limited to the PPM but also address the institutional conditions and related policies in order to make sure that the AIIB can be held accountable effectively. Moreover, the PPM review must be open and transparent, involving not just other IAMs and MDBs, but NGOs who have experience with other IAMs, and project-affected people themselves. Given the problems facing the PPM, it should be a root and branch review, aiming to enhance not limit accountability, and seeking to provide effective solutions for those harmed by AIIB investments. The AIIB should consult not only on the PPM policy but on the scope of the review, its timeline and the plan for consultation. It is time for the AIIB to commit to addressing its accountability deficit.

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APPENDIX: OVERVIEW CRITERIA AND GUIDING QUESTIONS

Source: All criteria and guiding questions were retrieved from the database "Accountability Console". Accessible at: <https://accountabilityconsole.com/>

	Category	Does the policy require to...speaks to ... addresses...	yes, no, clarification needed	Reference
1	Public Access to the IAM/ Outreach	Is the IAM able to hold public meetings to inform people about the existence of the IAM?	Yes	PPM Policy par. 2.4, 11.2; RofP Att. 5, par. 2.1.4
2		Is information about the mechanism available at the institution's national or local offices?	In-country presence not available	
3		Does the website provide documents related to the IAM's operations?	Yes	Link
4		Does the policy require that information be distributed to project sponsors re the IAM?	Yes	RofP Att. 5, par. 2.1.2
5		Does the IAM publish guides for how it may be used?	Yes	Link
6		Does the IAM issue its own press releases and media communications?	No	
7		Does the IAM have an official website?	Yes	Link
8		Are guides or information about the IAM distributed in the institution's areas of project operation?	Yes	RofP Att. 5, par. 2.1.2 - 2.1.4
9		Are documents on the website available in multiple languages?	Yes, one guide on how to file	Link
10		Are annual reports published on the website?	No, foreseen for 2022	Management Response
11	Who may bring a complaint?	Must the complainant live in the country of the project at issue?	Yes	RofP p. 3
12		Must the complainant live in a project area?	Yes	RofP p. 3
13		May a representative file a complaint on behalf of the affected person?	Yes	PPM Policy 3.1
14		May an individual bring a complaint? / What is the minimum number of complainants?	No (two)	PPM Policy par. 3.1; RofP par. 3.1
15		For a non-local representative to bring a complaint, must there be a showing of no adequate local representation?	Yes	PPM Policy par. 3.1; RofP par. 3.2-3.3
16	When to bring the complaint?	Is there a time frame within which a complaint must be brought?	Yes	PPM Policy par. 4.1 - 4.2; RofP par. 4

17		May a complaint be brought after full disbursement of funds?	Yes	PPM Policy par. 4.2.1, 4.2.2
18		May a complaint be brought before a project is approved by the institution's Board?	Yes (DR), No (CR)	PPM Policy par. 4.2
19	Judicial and Parallel Proceedings	May past or ongoing judicial, non-judicial, or IAM proceedings affect accessibility to the IAM?	Yes	PPM Policy par. 5.1.6, 5.2.4, 5.2.5, 6.8.5; RofP par. 5.2.4, 6.7.3 j
20		May the IAM jointly address complaints regarding the same project with another IAM?	Clarification needed	PPM Policy par. 5.1.6; RofP par. 10.3
21	Form of complaint	Must the complaint be in writing?	Yes	PPM Policy par. 6.2; RofP par. 6.2.2, 6.3.1
22		Is a model or online form for the complaint provided by the mechanism?	Yes	RofP Att. 2
23	Language of the complaint	May the complaint be filed in any language?	No	PPM Policy par. 6.2; RofP par. 6.2.2
24		By default, will the IAM respond in the language of the request?	Yes	PPM Policy par. 6.2; RofP par. 6.2.4, 6.2.6
25	Preparation of the complaint	Will the IAM provide support in drafting or bringing a complaint?	Yes	RofP par. 6.1.3
26		Will staff from the IAM meet with potential complainants?	Yes	RofP par. 6.4.6 a, b
27	Delivery of the complaint	If sent by fax or email, must an original copy of the complaint be sent by mail?	No	RofP par. 6.3.1
28		May the complaint be delivered at the institution's regional office?	in-country presence not available	
29		May the complaint be delivered at the local/Country Office level?	in-country presence not available	
30		May the complaint be delivered by mail?	Yes	RofP par. 6.3.1
31		May the complaint be delivered in person?	Yes	RofP par. 6.3.1
32		May the complaint be delivered through email?	Yes	RofP par. 6.3.1
33	Confidentiality of complaints and their information	Are the parties' confidential documents protected from disclosure?	Yes	PPM Policy par. 8; RofP par. 9.1

34		Is the IAM bound by the institution's confidentiality/disclosure policies?	Yes	PPM Policy par. 8.1; RofP par. 8.1
35		Is there a timely opportunity to withdraw a complaint if it cannot be kept confidential?	clarification needed	
36		May complaints be filed anonymously?	No	PPM Policy par. 5.1.2; RofP par. 3.5, 5.1.2
37		May complaints be filed in a way that maintains confidentiality?	Yes	RofP par. 6.4.3 a-c
38		Must a request be made for confidentiality?	Yes	PPM Policy par. 9.1; RofP par. 6.4.3 a, b
39	Initial screening and response to a complaint	If the complaint is outside the IAM's scope, will it be referred to another department?	Yes	PPM Policy par. 6.1.1 (c); RofP par. 6.4.5 e, f
40		May the complainant submit a revised complaint later in the process?	Clarification needed	PPM Policy par. 5.1.9; RofP par. 6.4.5 f
41		Upon submission of the revised complaint, will the process begin again?	Clarification needed	
42		Will the IAM seek additional information if the complaint is incomplete?	Yes	RofP par. 6.4.4 a, b
43	Supplemental information and responses	May the IAM request additional information from the complainant?	Yes	RofP par. 6.4.4 a, b
44		May the IAM request and consider outside information?	Yes	RofP par. 6.4.4 a, b
45	Eligibility requirements	May a complaint request use of a specific function (compliance or dispute resolution)?	Yes	RofP par. 6.1.2 e
46		May the IAM waive a prior attempted resolution requirement if dangerous or futile?	Yes	PPM Policy par. 5.1.8; RofP par. 5.1.8;
47		Must a representative explain why no one in the community can represent the complainants?	Clarification needed	PPM Policy par. 3.1; RofP par. 3.2
48		Must a representative present written confirmation of authority of the complainants?	Yes	RofP par. 6.1.1 b
49		Must the claim suggest remedies?	No, but encouraged to present their view on solving issues	RofP par. 6.1.2 d
50		Must the complaint allege causal links between the institution's noncompliance and the harm?	No	RofP par. 6.7.2 b
51		Must the complaint allege material harm?	Yes	RofP par. 6.1.1 e

52		Must the complaint allege specific violations of the institution's policies and procedures?	Encouraged, not required	RofP par. 6.1.2 a
53		Must the complaint describe attempts to resolve concerns with other relevant parties as well?	Encouraged, not required	PPM Policy par. 5.1.8; RofP par. 6.1.2 b
54		Must the complaint describe the complainant's attempts to resolve its concerns with management/Bank staff before filing the complaint?	Encouraged, not required	PPM Policy par. 5.1.8; RofP par. 6.1.2 b
55	Project related scope and limitations of the IAM	May a complaint be brought against potential harm by an existing project?	Yes	RofP par. 2.1, 6.7.1
56		Must the complaint be brought for direct harm by the institution?	Yes (or material)	PPM Policy par. 5.2.1 - 5.2.3; RofP par. 6.1.1 e
57		Has the IAM the ability to process complaints relating to any other policies than the E&S?	No	PPM Policy par. 5.1.4
58	Decision-making authority during the IAM's Process	Does the IAM decide eligibility independent of institution staff?	Yes	PPM Policy par. 6.4; RofP par. 6.7.3
59		Does the IAM decide eligibility independent of the Board?	No	PPM Policy par. 6.4; RofP 6.7.3 d
60		Does the IAM decide eligibility independent of the President?	Yes	RofP par. 6.7.3
61	Determination of which function to use	Who determines eligibility to use the Compliance function?	PPM/Board	PPM Policy par. 6.8.3; RofP par. 6.7.3
62		Who determines eligibility to use the Dispute Resolution/Problem-Solving function?	PPM	PPM Policy par. 6.7; RofP par. 6.6
63	Refiling of Complaints/ Additional Complaints	Does the IAM's policy require new information to file a new complaint?	Yes	PPM Policy par. 5.1.9
64		Must the new information have been unknown or unavailable at the time of earlier filing?	Yes	PPM Policy par. 5.1.9
65		May rejected complaints be revised and refiled?	Clarification needed	See also 40, 41
66		May additional complaints be filed on the same case or project?	If new evidence is provided	RofP par. 5.1.9
67	Sequencing issues	May complainants directly request compliance review?	No	PPM Policy par. 4.2, 5.1.1; RofP par. 6.5.4 f

ENDNOTES

- 1 Schäfer 2019, Ziai 2019.
- 2 Cernea & Maldonado 2018: 4.
- 3 Hunter 2020; Mitzman 2013.
- 4 IAMnet: <http://lnadbg5.adb.org/ocrp002p.nsf>
- 5 Accountability Console Newsletter 09/2021: <https://accountabilityconsole.com/newsletter/articles/understanding-community-harm-displacement/>
- 6 Ibid.
- 7 See Article 26(iv) of the Articles of Agreement: <https://www.aiib.org/en/about-aiib/basic-documents/articles-of-agreement/index.html>
- 8 AIIB CEIU response to Recourse and Urgewald, 14 October 2021.
- 9 AIIB CEIU response to Recourse and Urgewald, 14 October 2021.
- 10 AIIB Policy on the Project Affected People's Mechanism, December 2018: https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-policy.pdf
- 11 Schäfer 2019.
- 12 Lloyd, Warren and Hammer 2008: 10.
- 13 Policy on Public Information (Sep 2018): <https://www.aiib.org/en/policies-strategies/public-information/policy/index.html>
- 14 Environmental and Social Framework (May 2021): https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf
- 15 Horta 2019.
- 16 AIIB Policy on the Project Affected People's Mechanism (Dec 2018): https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-policy.pdf para 11.4
- 17 All figures relating to investment date up to 24 September 2021, and are based on data provided on the AIIB's website. See: <https://www.aiib.org/en/projects/summary/index.html>
- 18 For the purposes of this report, to date means 30 September 2021.
- 19 See AIIB Environmental and Social Framework, 2021: https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf
- 20 See https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf para 21.3 for further detail.
- 21 See: <https://www.forum-adb.org/aiibsouthasia>.
- 22 Dangerous Distractions: Why the Asian Infrastructure Investment Bank must turn the tide on fossil fuels in Bangladesh <https://www.re-course.org/wp-content/uploads/2019/07/Dangerous-Distractions-July-2019-FINAL-1.pdf>
- 23 See http://www.cao-ombudsman.org/cases/default.aspx?region_id=2
- 24 See: <https://www.aiib.org/en/about-aiib/who-we-are/project-affected-peoples-mechanism/submission/index.html>
- 25 AIIB CEIU response to Recourse and Urgewald 14 October 2021.
- 26 See, for example, https://www.aiib.org/en/projects/details/2021/_download/Pakistan/AIIB-PSI-P000339-Balakot-Hydropower-Project-July-15-2021-After-approval.pdf
- 27 AIIB Management email to Recourse and Urgewald, 14 October 2021.
- 28 AIIB CEIU response to Recourse and Urgewald 14 October 2021.
- 29 Of the 72 ineligible projects, 68 are co-financed. The remaining four are capital markets projects, excluded by the new AIIB ESP's provisions. Of the total portfolio, 73 out of 142 projects approved as at end September 2021 - or 51.4% - are co-financed.
- 30 See: <http://lnadbg4.adb.org/dir0035p.nsf/alldocs/RDIA-9CQ3SS?OpenDocument> and http://www.cao-ombudsman.org/cases/case_detail.aspx?id=171
- 31 AIIB CEIU response to Recourse and Urgewald 14 October 2021.
- 32 AIIB Management email to Recourse and Urgewald, 14 October 2021.
- 33 See the FOSUN Covid 19 Vaccine Project https://www.aiib.org/en/projects/details/2021/_download/china/AIIB-P000534-Fosun-Vaccine-PSI-Approval-Clean.pdf
- 34 See https://www.aiib.org/en/projects/details/2021/_download/india/AIIB-PSI-P000473-India-Enel-Green-300MW-Solar-Rajasthan-After-approval.pdf

- 35 See https://www.aiib.org/en/projects/details/2020/approved/_download/vietnam/PSI-P000407-VP-Bank-COVID-19-Response-Facility-July-20-2020-After-approval.pdf
- 36 See https://www.aiib.org/en/projects/approved/2019/_download/india/summary/PSI-Rajasthan-250MW-Solar-Project-12062019.pdf
- 37 See https://www.aiib.org/en/projects/approved/2019/_download/nepal/Nepal-Upper-Trishuli-P00085-Sept-2019.pdf
- 38 See https://www.aiib.org/en/projects/approved/2019/_download/turkey/turkey-effeler-July-17-2019.pdf
- 39 AIIB CEIU response to Recourse and Urgewald 14 October 2021.
- 40 Email from AIIB Management to Recourse and Urgewald, 14 October 2021.
- 41 IFC Performance Standard 7 (2012) see: https://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/performance-standards/ps7
- 42 AIIB ESF (2021) Standard 3; see: https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf
- 43 See https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf para 12.
- 44 See https://www.aiib.org/en/policies-strategies/_download/environment-framework/AIIB-Revised-Environmental-and-Social-Framework-ESF-May-2021-final.pdf para 13.
- 45 https://www.aiib.org/en/projects/details/2019/approved/_download/multicountry/AIIB-PSI-Asia-Climate-Bond-Portfolio-2021-0426.pdf
- 46 See <https://www.aiib.org/en/projects/details/2019/approved/Singapore-Infrastructure-Private-Capital-Mobilization-Platform.html>
- 47 <https://chinadialogue.net/en/business/the-aiib-should-include-private-capital-in-its-environmental-framework/>
- 48 <https://www.aiib.org/en/news-events/media-center/blog/2021/Leveraging-Strong-Partnerships-to-Drive-ESG-investing-in-Asia-and-Beyond.html>
- 49 AIIB Management response to Recourse and Urgewald, 14 October 2021.
- 50 AIIB Policy on the Project Affected People's Mechanism (Dec 2018): https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-policy.pdf
- 51 Rules of Procedure of the Project-affected People's Mechanism (June 2019): https://www.aiib.org/en/policies-strategies/_download/project-affected/PPM-RofP.pdf
- 52 See Attachment 1: Overview of all categories and guiding questions.
- 53 Website Accountability Console: <https://accountabilityconsole.com/>
- 54 The PPM benchmarks will become available in December 2021.
- 55 Addressed questions are highlighted in grey in the appendix 1.
- 56 Appendix 1 contains an overview of the selected criteria and guiding questions. Those questions answered and discussed in this chapter are highlighted. All the other questions were answered with yes, no, or clarification needed with reference to the relevant document.
- 57 AIIB CEIU response to Recourse and Urgewald 14 October 2021.
- 58 IP-Case 119: Amaravati: <https://inspectionpanel.org/panel-cases/amaravati-sustainable-infrastructure-and-institutional-development-project-p159808>
- 59 AIIB CEIU response to Recourse and Urgewald, 14 October 2021.
- 60 Joint Submission: Comments on Second Phase of Draft Complaints Handling Mechanism, 26 March 2018, signed by 14 international and regional NGOs. See: <https://bankinformationcenter.org/en-us/update/comments-on-aiibs-draft-complaints-handling-mechanism/>
- 61 C. Daniel, K. Genovese, M. van Huijstee & S. Singh (eds) (2016): 40-42.
- 62 See: <http://lnadbg4.adb.org/dir0035p.nsf/alldocs/RDIA-9CQ3SS?OpenDocument> and http://www.cao-ombudsman.org/cases/case_detail.aspx?id=171).
- 63 In response to this report, the AIIB CEIU listed a number of learning opportunities and training it engages in which include Practitioner Dialogues with the IAMs of other MDBs, and 'early learning' assessments of projects underway; however, neither provides the same degree of institutional learning compliance cases can afford.
- 64 AIIB Management response to Recourse and Urgewald, 14 October 2021
- 65 <https://www.worldbank.org/en/about/leadership/brief/external-review-of-ifc-miga-es-accountability>

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