

RECOMMENDATIONS OF THE INDIGENOUS PEOPLES ADVISORY GROUP FOR REVIEW OF THE ACCOUNTABILITY MECHANISM POLICY OF THE ASIAN DEVELOPMENT BANK

We, members of Indigenous Peoples of Asia and the Pacific, Indigenous rights defenders, and representatives of Indigenous Peoples Organizations, having engaged in the ongoing review of the Accountability Mechanism (AM) Policy (2012) of the Asian Development Bank (ADB) through the Indigenous Peoples Advisory Group (IPAG) present the following preliminary recommendations for the Policy review.

Firstly, we appreciate the dedicated consultations undertaken with Indigenous Peoples' representatives for the Policy review through the IPAG, including our virtual sessions with the AM Policy Review secretariat as well as the in-person consultation with the joint Board and Management Working Group held on 27 June 2025 at the ADB Headquarters in Manila. The following recommendations are based on the discussions during the sessions and the consultation:

1. Awareness-raising efforts on ADB safeguards and accountability mechanism should commence from the earliest stages of project conception and planning, ensuring they are conducted in Indigenous languages, where possible, and with full cultural sensitivity. The revised AM Policy should include proactive **awareness raising** function for the AM.

More importantly, the ADB management and the borrower/client should be liable to ensure that the project affected communities know about ADB financing, the applicable Safeguards and the AM as an avenue for voicing concerns. That can be undertaken such as by installing public signages in local languages at construction sites and across the impact area of the project. Further, they should effectively engage Indigenous Peoples' communities and their representatives since the design of the project itself.

2. Requirement of **prior good faith effort** (GFE) is among the biggest hindrances to accessing the AM. Addressing the complaint to the ADB management at national or regional levels and the project implementing agency before it can be escalated to the AM often poses risks to the communities and their leaders/defenders. That exposes them to direct or indirect reprisals, including harassment and pressure, when their identities become known. That also usually causes delays in the communities' grievances being addressed independently and effectively.

The GFE requirement should be removed. Affected Indigenous Peoples' communities or others must retain the right to file complaints directly with the AM. We agree that there is merit in strengthening project level and management level grievance mechanisms. However, our experiences show that project level grievance mechanisms have been far from effective while ADB management often are also very close to the project implementing agency or the borrower/client to ensure independence in them handling complaints. **So, the AM should NOT be a mechanism of last resort.** The affected communities or persons should be able to file complaints to the AM whenever they feel appropriate.

3. The two functions of the AM should be retained and strengthened. Currently, they suffer from a structural flaw in **sequencing**, whereby complainants can opt for compliance review after problem solving (dispute resolution) but the reverse is not allowed. This limits the flexibility and overall effectiveness of the AM. The revised AM Policy should address this flaw so that affected Indigenous Peoples' communities or others can opt to first establish non-compliance of ADB policies and then engage in dispute resolution after the truth about wrongdoing has been established. This would be in line with principles of justice of Indigenous Peoples, whereby acknowledgement of wrongdoing should happen first. The complainants should be able to which function they wish to opt for at whichever point of the complaint process.

4. **Limited powers** of the AM deters Indigenous Peoples' communities from filing complaints. Often, Indigenous Peoples' communities affected by an ADB-assisted project seek suspension of the project itself. However, the AM lacks sufficient authority to recommend suspension of financing even temporarily and even when it finds the project non-compliant of ADB Safeguards/policies. Projects are allowed to continue during dispute resolution or compliance review, which escalate harms. On the other hand, complaint processes are dragged for years.

The revised Policy should thus firstly provide the AM **authority to recommend suspension of financing**, at least temporarily, to prevent further harms from a project during dispute resolution or compliance review. Such suspension is particularly important when there are reprisals against the complainants or communities' leaders/defenders.

Secondly, the AM should also be provided the **authority to recommend remedy** for the affected communities from the project implementing agency or the borrower/client as well as the ADB. This would also bring the AM and the ADB in line with the evolving standards of other multilateral development banks as well as align with the right to remedy of affected communities under the UN Guiding Principles on Business and Human Rights.

Thirdly, the revised Policy should also give the AM authority for taking up complaints **suo moto** based on credible reports of impacts from ADB-assisted projects. Such **self-initiation power** would particularly be important for the AM as most developing member countries of the ADB where its assisted projects are implemented have closed or shrinking civic space. So, it is often difficult or risky for affected Indigenous or other communities to file complaints.

Further, **problem solving function of the AM should be strengthened** to give the Office of the Special Project Facilitator (OSPF) powers to require parties to take necessary actions for dispute resolution within a defined timeframe. Repeated failures to respect such timeframe by the project implementing agency or the borrower/client should also be grounds for suspension of project financing. Or, if the complainants are dragging the process, the OSPF should be able to decide to end the process. However, while we see the merit to limit the timeframe of a dispute resolution process, the complainants should be able to decide if they wish to end the dispute resolution.

Similarly, during the dispute resolution, the affected Indigenous Peoples' communities should be free to decide on their representation. Their representatives can be from their communities in any number or from their supporting defenders and NGOs. To **address the power imbalance** between Indigenous communities and the project implementing agency or the borrower/client, the OSPF should allow for the complainants from the Indigenous or other communities to decide on their representation.

Finally, the AM should also be provided **advisory function** to provide advice on policies/policy reforms and technical aspects of projects.

5. Under the revised Policy, the AM should be required, in its processes, to respect the right to **Free, Prior and Informed Consent (FPIC)** of the project affected Indigenous communities, particularly for complaints related to land and resource rights of Indigenous Peoples. Adequate time and information must be provided for consultation within the communities before setting agenda, timing/location of meetings; hiring of consultants and facilitators; and in determining the outcomes of the meetings. Imposing meeting times and predetermined agendas without consultation marginalizes their participation and weakens trust in the process. For this, the AM processes should follow community or FPIC protocols of Indigenous communities where they exist.

Further, the AM processes must be **culturally appropriate and gender responsive**. They must respect or follow customary laws and practices of Indigenous Peoples or their customary justice institutions where they exist. They must support equitable participation with Indigenous communities to ensure participation of vulnerable members.

6. AM processes should be further simplified it is more **accessible and effective**. Many Indigenous communities in remote areas may face barriers such as limited access to technical support or lack of experience in preparing formal written complaints, particularly in the absence of supporting NGOs. So, they should be able to file complaints verbally or in other forms and through various channels. The current system is overly complex, creating barriers for communities to submit grievances independently without supporting NGOs.

7. The revised AM Policy should provide for **stronger coordination with other IAMs** when multiple IAMs of different multilateral development bank are involved to address complaints in case of **co-financed projects**. Such coordination should prevent duplicative processes for the complainants while following the highest standards of procedures among the IAMs.

8. The revised AM Policy must provide the AM to recommend **responsible exit** when the ADB withdraws assistance from a project. This should particularly be ensured to avoid risk of reprisals against complainants or communities' leaders/defenders, or to prevent implementation of the project based on outcomes from the earlier ADB assistance without respect for the rights of the affected Indigenous and other communities.

9. ADB should seriously look into the cases of **reprisals** resulting from raising concerns on ADB funded projects. The Accountability Mechanism should provide a safe and effective avenue for receiving the reporting and timely addressing of such cases of reprisals. Handling cases of reprisals emanating from ADB funded projects should be addressed even in post project scenarios.

We hope for your positive consideration to above initial recommendations from the Indigenous Peoples Advisory Group and its associated organizations for the AM Policy review so that the AM under the revised Policy can be truly community centered. We expect that these recommendations will be reflected in the revised draft of the AM Policy. Upon receiving the revised draft, we will come back with further comments during the forthcoming Phase 2 of the review. We finally call on that the Phase 2 of the review also involves additional dedicated consultations with Indigenous Peoples as part of a broad, public and meaningful consultative process, and that a Board-led process is continued in the drafting of the revised AM policy, which also effectively involves the AM itself as the offices in the AM have been the channels for Indigenous Peoples to raise concerns with the ABD-assisted projects.

Sincerely,

Indigenous Peoples Advisory Group

Including on behalf of its following members

Asia Indigenous Peoples Network on Extractive Industries and Energy (AIPNEE)

Right Energy Partnership with Indigenous Peoples (REP)

Indigenous Peoples Rights International (IPRI)

Center for Development Programs in the Cordillera (CDPC), Philippines

Community Empowerment and Social Justice Network (CEMSOJ), Nepal

Cordillera Peoples Alliance (CPA), Philippines

Jaringan Orang Asal SeMalaysia (JOAS), Malaysia

Lembaga Bantuan Hukum (LBH) ANGSAANA, Indonesia

Lembaga Bentang Alam Hijau (LemBAH), Indonesia