

Accountability Mechanisms of Multilateral Development Banks and Fixing Problem Projects

University of Tokyo, Japan

19 October 2006

Main Topics

- 1. Accountability Mechanisms: The Setting**
- 2. Overview of Some Mechanisms**
- 3. Trends**
- 4. ADB Accountability Mechanism**
- 5. Challenges**

Accountability Mechanisms: The Setting

Multilateral development banks (MDBs)

- owned by member-states
- focused on economic growth or development in developing countries

MDBs include

- African Development Bank (AfDB)
- Asian Development Bank (ADB)
- European Bank for Reconstruction and Development (EBRD)
- Inter-American Development Bank (IDB)
- International Finance Corporation (IFC)
- Multilateral Investment Guarantee Agency (MIGA)
- World Bank

MDB operations: finance or assist projects which impact on people

Background:

- citizen-driven complaints of poorly-designed projects
- inadequate beneficiary participation in project planning and implementation
- ad hoc independent commissions to investigate projects
- internal findings in MDBs verifying "culture of approval" resulting in poor project design and execution
- civil society movement demanding access for independent and impartial hearing

Working definition of accountability mechanism:

an avenue for private individuals and groups to file claims against an institution to address their grievances in the institution's operations

Overview of Some Mechanisms

- World Bank Inspection Panel – 1993
- IDB Independent Investigation Mechanism – 1994
- ADB Inspection Function – 1995; replaced by New ADB Accountability Mechanism in 2003
- IFC/MIGA Compliance/Advisor Ombudsman (CAO) – 1999
- EBRD Independent Recourse Mechanism – 2003
- AfDB Independent Review Mechanism – 2004

Trends

- 1. Mandate of accountability mechanisms**
- 2. Scope**
- 3. Institutional arrangements**
- 4. Cut-off point for claims**
- 5. Involvement of claimants**

1. Mandate of accountability mechanisms

- externally-driven
- pure "inspection"; dual approach – problem-solving and compliance review; or multiple approach covering advice
- many mechanisms focus on dual approach, after ADB
 - EBRD's Independent Recourse Mechanism; AfDB's Independent Review Mechanism; and IDB's Proposal for Enhancements to the Independent Investigation Mechanism (Feb 2005)
 - other development institutions – Japan Bank for International Cooperation; Nippon Export and Investment Insurance, Japan; and Overseas Private Investment Corporation, USA

- "inspection" – pejorative and misleading
- provide monitoring of implementation of decisions or agreements; absent in previous systems

2. Scope

- complaints on problems caused by institution-assisted project
- compliance review on operational policies and procedures
 - broad to specific list of policies; or specific guidelines; or examining environmental and social impacts of project

3. Institutional arrangements

- entities independent of operations departments; Management
- entities reporting to Management or the Board of Directors
- roster of experts or permanent panel to investigate claims
- criteria in composition of experts or panel members: include borrowing countries
- committees of Board of Directors
- **ADB's experience with roster of experts:** did not work well; advantages of a permanent panel

4. Cut-off point for claims

- 95% disbursement rule
- issuance of project completion report
- up to completion of disbursement & after this event for noncompliance with monitoring provisions of guidelines

5. Involvement of claimants

- not shut them out of the equation
- lessen the long wait in the tunnel
- make filing of claims less cumbersome
 - allow emails and local languages
- get claimants' inputs **during** consultation and compliance review
- get claimants' inputs **during** monitoring
- give claimants a right to due process, e.g., comment on panel draft report and attaching their comments to the panel final report
- transparency and information disclosure

ADB Accountability Mechanism

- Review of inspection function policy in 2002/03 – need for review and findings: <http://www.adb.org/inspection/review.asp>
- New policy approved by Board of Directors (Board): "Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism", R79-03
- Mechanism has 2 separate, but related, phases: consultation/problem-solving and compliance review
- Next policy review
- Operations Manual (OM) Section L1
- Rationale and Principles
- Outreach
- Translation of information brochure – 15 languages

Consultation Phase

www.adb.org/spf

Purpose: assist project-affected people with problems caused by **ADB-assisted** projects through informal consensus-based methods

Focus: address problem, not identify blame

Scope: broader than compliance review

Claimant: files a complaint; a group of 2 or more people or with their authorized representative

Prerequisite: problems must first be addressed by ADB operations department (OD)

Implementation: by Special Project Facilitator (SPF)

SPF: appointed by & reports directly to the President; **independent of ODs**

SPF's role: confined to operational issues in ADB-assisted projects; does not interfere in developing member country's internal matters; does not mediate between complainant & local authorities; monitors implementation of agreements



Compliance Review Phase

www.compliance.adb.org

Purpose: provide a forum for project-affected people (and in special cases, any Board member) to file grievances on ADB operations

Focus: ADB's acts or omissions

Scope: investigate possible violations of [ADB's operational policies & procedures](#) that result or will result in direct, adverse & material harm to project-affected people; make recommendations to ensure project compliance

Claimant: files a request; a group of 2 or more people or with their authorized representative

Prerequisite: claimant must first go through consultation phase

Implementation: by Compliance Review Panel (CRP)

CRP: appointed by & reports directly to Board on all activities, except for specific activities to Board Compliance Review Committee (BCRC); [independent of ADB Management](#)

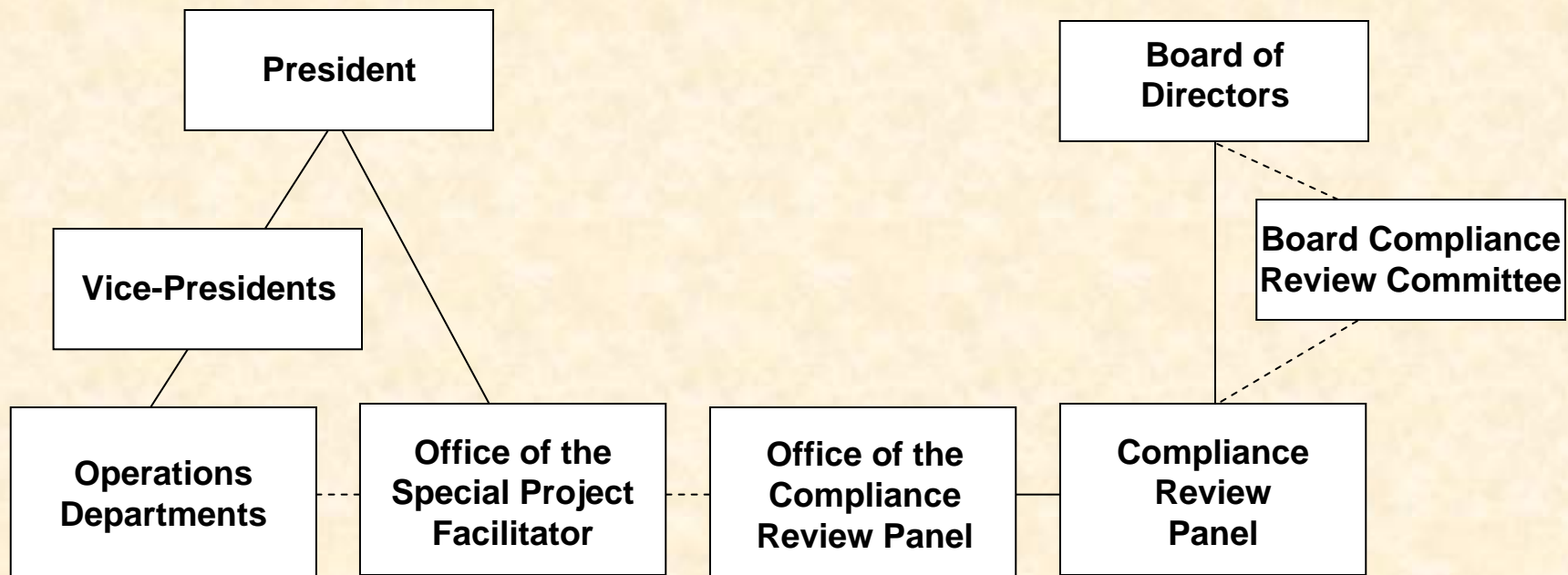
BCRC: 6-member standing Board committee; clears CRP's terms of reference for conducting compliance review; reviews CRP's draft monitoring reports

CRP's role: does not investigate the conduct of borrowing country, executing agency, borrower or private project sponsor; does not provide judicial-type remedies; monitors implementation of Board-approved remedial actions

ADB's operational policies and procedures:

- **Scope of compliance review** – Operations Manual (OM), Project Administration Instructions (PAIs), and New Business Processes (NBP); revised OMs refer to PAIs and NBP
- **Board decides** whether a particular policy is an operational policy subject to compliance review.
- **CRP determines** which part of operational policies and procedures is not complied with.

Institutional Setup of the ADB Accountability Mechanism



Some complaint exclusions

- claim filed after issuance of the project completion report
- non-operational housekeeping matters
- decisions on procurement matters including consulting services
- fraud or corruption in ADB-assisted projects and by ADB staff
- matters considered under previous Inspection Function or CRP unless new evidence is presented
- private sector projects with concept clearance before 29 May 2003

Claims received under the Mechanism

1. Melamchi Water Supply Project, Nepal (Melamchi Project)
2. Southern Transport Development Project, Sri Lanka (STDP)
3. Sixth Road Project, Philippines
4. Community Empowerment for Rural Development Project, Indonesia
5. Khulna-Jessore Rehabilitation Project, Bangladesh
6. Rural Electrification, Distribution & Transmission Project, Nepal
7. Chashma Right Bank Irrigation Project (Stage III), Pakistan

Claims under the Compliance Review Panel

1. **Melamchi Project:** ineligible
 2. **STDP:** eligible
- **Chashma Right Bank Irrigation Project (Stage III), Pakistan**
- Unique CRP monitoring mandate from the Board from previous inspection function

Melamchi Water Supply Project, Nepal

Project: An infrastructure project to improve the health and well-being of the people living in Kathmandu Valley by transferring water from Melamchi Valley through a water diversion scheme with the construction of a 26-km tunnel.

Requesters: 4 persons living in the area

Claims: ADB's failure to follow its policies on information disclosure, resettlement, water, environment, forestry, indigenous peoples, and poverty reduction strategy

Alleged harm suffered and will be suffered include:

- inappropriate or inadequate decisions affecting rights and interests of affected people in the absence of timely information disclosure
- displacement and lack of adequate compensation and resettlement in a timely manner

- loss of livelihoods due to shutting down of water mills and micro-hydro for local energy consumption
- destruction of community forests and irrigation canals
- damage to crops and livelihoods due to reduced flows
- displacement and other adverse effects without an Indigenous Peoples Development Plan for indigenous peoples and communities, including fisherfolk who rely on fishing and fish from the Melamchi River for survival

Finding by Panel: not eligible

- From evidence presented, difficult to link allegations of direct and material harm suffered or to be suffered by requesters to alleged ADB policy violations

Southern Transport Development Project, Sri Lanka

Project: the construction of a 128-km highway linking Colombo with Matara, the district capital of the south of Sri Lanka

Requesters: Joint Organization of Affected Communities in Colombo-Matara Highway/28 requesters as project affectees living in the area – confidentiality asked on names of 25 requesters

Claims: Change of highway trace for which required studies and consultations were not done. Adverse effects include loss of homes, loss of livelihoods, damage to the environment, and negative effects of resettlement

Investigation – CRP Draft Report; CRP Final Report (7 months from filing of claim)

Policy violations include: environmental considerations; involuntary resettlement; gender and development; benefit monitoring and evaluation; and incorporation of social dimensions

Some remedial actions – Project-specific and general – approved by Board

- assess environmental impacts of sections of highway different from the Combined Trace, and incorporate recommendations in Environmental Management Plan
- ADB review cofinancing arrangements with Japan Bank for International Cooperation to enhance policy compliance for entire project
- affected persons be compensated before they are moved
- assist in the Income Restoration Program and the establishment of household benchmarks in the Resettlement Implementation Plan (RIP)
- ensure that full project information especially essential elements of RIP be provided in an appropriate language to each affected household
- helping establish well-staffed monitoring of resettlement activities by an independent institution
- review cofinancing arrangements in selected projects to determine if arrangements have damaging effect on policy compliance for whole project & make recommendations to strengthen policy compliance for whole project

Monitoring – ongoing

Chashma Right Bank Irrigation Project (Stage III), Pakistan

Project: The third phase of a scheme to irrigate 230,000 hectares of semiarid barren land in the North-West Frontier Province and Punjab Province by by constructing a canal to divert water from the Indus River at the Chashma Barrage

Claim: ADB violated its operational policies and procedures resulting in material harm to project affectees which included:

- project-induced flooding and involuntary resettlement
- inadequate compensation for loss of land, other assets and livelihoods
- adverse impacts to farmers using traditional spate irrigation system from hill torrent flood waters
- design-related social and environmental problems
- lack of information sharing, consultation and participation of affected people.

Some remedial actions – Project-specific and general – approved by Board

- ADB discuss with the Government of Pakistan the possibility of extending Project completion date to address the most significant of the remaining problems in the Project.
- Remedial actions for the problems to be carried out in accordance with currently applicable ADB requirements, including
 - full participation of affected communities,
 - full compensation for any losses and restoration of livelihoods of communities that have been adversely affected,
 - assessment of environmental and social impacts of any new construction work or major changes in the water management regimes for the Project, and
 - monitoring and evaluation by an independent entity acceptable to all parties

- ADB discuss with the Government of Pakistan arrangements to ensure long-term funding for the Environmental Management Plan for the Project, so that a long term approach can be adopted and meaningful consultative processes be carried out
- ADB ensure that (a) sufficient human resources are available to ensure support for, and monitoring of, implementation of resettlement plans etc required under ADB safeguard policies and (b) ADB staff are aware of their duties and obligations in designing and implementing ADB-assisted projects pursuant to ADB's operational policies and procedures.

Monitoring – ongoing

Challenges

1. for accountability mechanisms
2. for MDBs
3. for civil society and project affectees
4. growing movement in international law on accountability and responsibility of international organizations
5. issues on accountability
6. issues on redress

1. for accountability mechanisms

- mechanisms easily criticized – need to maintain independence, credibility, and impartiality
- support needed from all stakeholders; mechanisms can be and are politicized
- satisfy demands for greater transparency, information disclosure and participation from civil society
- frame "appropriate" recommendations to address harm to project affectees
- give teeth to monitoring function to ensure remedial action is taken; learning curve for monitoring
- mechanisms are evolving; no perfect fit

2. for MDBs

- demonstrate accountability (and responsibility) for harm caused to project affectees
- beyond project compliance, generate lessons learnt to improve institution's development effectiveness
- politicization of process
- possible harmonization of accountability mechanisms to rationalize donor activities to make them cost effective as possible under [Paris Declaration on Aid Effectiveness](#) (March 2005)

3. for civil society and project affectees

- civil society's needs for information, transparency and accountability: civil society is not a monolithic group
- expand democratic space for civil society participation in decision-making process
- give claimants a right to due process, e.g., comment on panel draft report and attaching their comments to the panel final report
- provide claimants with the panel final report when it is provided to the board of directors for decision

4. growing movement in international law on accountability & responsibility of international organizations

Internationally-commissioned studies on accountability and responsibility:

- **International Law Association (ILA)**
 - Berlin Conference (2004) Report of the International Committee on the Accountability of International Organizations (ILA August 2004 Report); work completed after 8 years
 - Resolution No. 1/2004 of the 71st Conference of ILA in Berlin, August 2004
- **International Law Commission (ILC)**
 - presently carrying out work on Responsibility of International Organizations (IOs) and provisional adoption of draft articles
 - May 2002, included the topic "Responsibility of international organizations" in its program of work
 - Fourth report on responsibility of international organizations (ILC, 58th session, 2006)

ILA:

- "Accountability is a multifaceted phenomenon."

(page 5 of the ILA August 2004 Report)

- "...accountability of IO-s consist of three levels which are interrelated and mutually supportive:" *(page 5 of the ILA August Report 2004)*

First level – internal and external scrutiny irrespective of subsequent liability and responsibility

Second level – tortious liability for injurious consequences arising out of acts or omissions not involving a breach of any rule of international and/or institutional law

Third level – responsibility arising out of acts or omissions which do constitute a breach of a rule of international and/or institutional law

- **Section 4. Non-judicial remedial action against IOs**

4. IOs should establish, when appropriate, an inspection panel as a body to investigate complaints by two or more people sharing common interests or concerns, that their rights or interests are likely or have been adversely affected by the Organization's failure to comply with its own policies and procedures during the course of an operational activity.

5. An inspection panel may issue recommendations for remedial action to the Executive Head or to other competent organs of the IO.

8. Member States have a legal duty to cooperate with any of the above duly established mechanisms.

The establishment of non-judicial mechanisms is an inherent part of the accountability regime for IOs. [\(page 45 of the ILA August 2004 Report\)](#)

ILC:

- "The great variety of international organizations and the fact that available practice is limited makes the Commission's task difficult. There is the risk for the Commission of embarking on discussions that may seem mainly theoretical. However, the present topic is certainly not devoid of practical significance....Progress in the Commission's work should encourage States and international organizations to express further comments and disclose relevant practice". ([Third report on responsibility of international organizations – ILC, 57th session, 2005 \(A/CN.4/553\): para. 3](#))
- long way to go in completing work; ILC's state responsibility project took more than 20 years.

Views:

1. Some challenges already in place, e.g., establishment of accountability mechanisms and commissions of inquiry in MDBs.
2. At the minimum, any accountability mechanism gives aggrieved civil society a foot in the door.
3. Can accountability mechanisms go further? **Yes.**
 - **Reality check #1:** "the ultimate decision to raise and effectively implement accountability will always remain a political one, both in the hand of an IO, through a decision of its most representative organ, or by one of its counterparts".
(page 20 of the Taipei Conference (1998) Committee on Accountability of International Organizations Report)
 - **Reality check # 2:** limited effective remedies provided by an accountability mechanism; an internal governance tool focusing on institution's accountability.

5. issues on accountability

- hierarchy of clients; how best to address the spectrum and different needs of various stakeholders
- real question of accountability towards project-affected people has become sidelined or still remains to be effectively addressed
- need to address problem first because compliance issue is internal and will remain separate from the problem
- panel has authority to make recommendations; decision-maker is the Board of Directors

6. issues on redress

- absence of access to effective remedies due to MDBs' immunity from local jurisdiction
- if harm is created within the institution's purview, it should be in a position to address and redress it; application of [Factory at Chorzów case](#) (1928) P.C.I.J., on obligation to make full reparation
- not adjudicative; accountability mechanism as a tool to enhance internal governance and development effectiveness
- no judicial-type remedies
- devise alternative to allow settlement of private parties' claims through arbitration without jeopardizing MDBs' organizational effectiveness, e.g., MDBs' administrative tribunals

Reference:

Eisuke Suzuki and Suresh Nanwani, Responsibility of International Organizations: The Accountability Mechanisms of Multilateral Development Banks, *Michigan Journal of International Law*, Vol. 27, No. 1 (Fall 2005) at <http://www.forum-adb.org/PDF-Other/Suzuki%20&%20Nanwani%20article%20MJIL%2027-1.pdf>

Thank you.

The views expressed are the personal views of the presenters and do not necessarily reflect those of the Asian Development Bank.

Augustinus Rumansara
Chair, Compliance Review Panel
Email: arumansara@adb.org

& Suresh Nanwani
Associate Secretary, Compliance Review Panel
Email: snanwani@adb.org

10 October 2006
Copyright © 2006 Compliance Review Panel for
Asian Development Bank