

GUIDELINES FOR THE PROTECTION OF KEY STAKEHOLDERS¹ DURING THE ACCOUNTABILITY MECHANISM PROCESS

I. Background

1. The Accountability Mechanism (AM) Policy (2012) of the Asian Development Bank (ADB)² (the AM Policy) provides people adversely affected by ADB-assisted projects with an independent forum where they can voice their concerns and seek solutions to their problems. The forum also allows them to request a review of allegations of noncompliance by ADB with its operating policies and procedures. ADB makes every effort to prevent problems and ensure compliance from the outset, through its project design and implementation procedures. All terms used in these guidelines and in the AM Policy shall have the same meaning ascribed to those terms in the AM Policy.

2. Two separate redress mechanisms are available. **Problem solving**, under the leadership of the Special Project Facilitator (SPF) and with support from the Office of the SPF (OSPF), is aimed at finding satisfactory solutions to problems caused or likely to be caused by ADB-assisted projects, through informal and flexible methods. The SPF reports directly to the President of ADB. The OSPF is headed by the SPF and, for the purposes of these guidelines, is made up of national and administrative staff, as well as consultants who are recruited as needed.

3. **Compliance review**, led by the Compliance Review Panel (CRP) and supported by the Office of the CRP (OCRCP), looks into ADB's compliance with its operating policies and procedures in preparing and implementing ADB-assisted projects that affect or may affect local people directly, materially, and adversely. The CRP has one full-time member, who also chairs the CRP, and two part-time members. For the purposes of these guidelines, the OCRCP consists of the CRP's part-time members, as well as international, national, and administrative staff, all under the CRP chair, and may also include consultants who are recruited as needed. The CRP reports to the Board of Directors of ADB (the Board) through the Board Compliance Review Committee (BCRC), which guides the CRP in the performance of its compliance review function.

4. The BCRC consists of four regional and two non-regional members of the Board. The BCRC serves as the focal point for CRP's communication and dialogue with the Board.

II. Objective

5. These guidelines address the security concerns raised during the AM process by affected people or their representatives—individuals or nongovernment or civil society organizations (NGOs/CSOs) made vulnerable by their generally underprivileged socioeconomic status to threats of retaliation³ and other pressures from project owners or from unknown quarters.

¹ In this case, the complainants or affected people under ADB-assisted projects or their representatives. The AM Policy 2012, para. 150, footnote 43, indicates that the names of complainants can be kept confidential at their request; however, the identities of their representatives, such as NGOs/CSOs, should be disclosed for transparency.

² ADB. 2012. *Accountability Mechanism Policy 2012*. <http://www.adb.org/documents/accountability-mechanism-policy-2012>.

³ For the purposes of this guidance note, the term "retaliation" or "reprisal" refers to any detrimental act, whether direct or indirect, that is advocated, threatened, or actually taken against a person involved or planning to be involved in an AM process, and that is justifiably understood to be associated with that involvement. Those acts might include, for example, harassment, threats, violence, damage to property, discriminatory treatment, impairment or harm or

Prepared in accordance with the requirements and key principles of the AM Policy, these guidelines are meant to guide the OSPF, the OCRP, and the complaint receiving officer (CRO) how they can best protect confidential information about the complainants and their representatives, avoid reprisals from any quarter, and preserve the integrity of the AM process.

6. These guidelines (i) are intended to address the security and protection concerns of project-affected people and their representatives (e.g., NGOs/CSOs) through the AM process; (ii) will help ensure that affected people continue to seek redress from harm through the AM process, without fear of retaliation; and (iii) require the OSPF and the OCRP to identify potential risks, plan and adopt preventive measures against those risks, and respond appropriately to retaliation, all in close consultation with the affected people, as stated in para. 9 of these guidelines.

III. Guiding Principles

7. These guidelines are based on the experience of the OSPF and the OCRP, as well as the accountability mechanisms of other organizations, and were developed in consultation with the Office of the General Counsel and the BCRC. The OSPF and the OCRP are advised to take a flexible approach, suited to different situations but always guided by the core principles laid out in these guidelines and the AM Policy, to optimize the following results:

- (i) The complainants, as the project-affected people under an ADB-assisted project, are not worse off after making the complaint.
- (ii) The complainants are protected against threats or retaliation from anyone for making the complaint.
- (iii) The complainants are protected from undue pressure or coercion to withdraw the complaint.
- (iv) OSPF and OCRP personnel are protected against reprisal or threats of reprisal throughout the AM process.

8. The AM Policy acknowledges that complainants, their representatives, and other parties involved in the process, including witnesses, as well as OSPF and OCRP personnel, could face retaliation associated with a complaint being processed by the AM offices. It does not tolerate such retaliation or reprisal. The OSPF and the OCRP will therefore strive to minimize the risk of retaliation in the implementation of their functions, taking all possible steps within the limits of their ability to provide protection.

9. The AM offices will engage with the affected person or group of persons throughout the AM process to assess the risk of retaliation and agree on an appropriate response. These offices will always seek the informed consent of the affected person or group of persons before taking any action on their behalf in relation to perceived or actual threats or incidents.

IV. Methodology

10. The OSPF, the OCRP, and the CRO will make all possible efforts, given what they already know and the information available to them, to safeguard the interests and safety of the relevant stakeholders throughout the AM process. These guidelines will assist the OSPF and

threats to impair or harm the person, directly or indirectly, or the person's property, and the withholding of entitlements.

the OCRP in identifying potential risks, planning and adopting preventive measures against those risks, and responding appropriately to retaliation.

V. Precautionary Procedures Followed during the AM Process

11. The risk of retaliation and its likely severity will be assessed early and throughout the AM process. The assessment will be based on consultations with the affected parties and other sources related to the AM process such as media news, briefings by the operations departments and country offices, information provided by the complainants and their representatives, the complainants' vulnerabilities (due to religion, gender, ethnicity, or other affiliation), and consultations with ADB's security office (if needed).

12. Preventive measures identified by the OSPF or the OCRP on the basis of the risk assessment will be adopted by the OSPF, the OCRP, or the CRO as required. These measures include maintaining reasonable confidentiality, providing a safe work environment, exercising care in site visits and interviews, and protecting the information gathered.

13. Subject to the AM Policy, the following measures will be taken during the AM process to achieve the previously stated security objective of these guidelines:

- (i) The CRO will clarify with the complainants whether their names and contact information should be kept confidential and treat the information as such, pending clarification. If the complainants require confidentiality, the CRO will share the full copy of the complaint only with the OSPF or the OCRP, as chosen by the complainants, and redact the information and other contextual details before circulating the complaint to other relevant ADB departments and relevant offices. In case of doubt, the CRO will redact the information.
- (ii) Neither the OSPF or the OCRP will disclose confidential information to the other AM office, the BCRC, the Board, ADB operations departments, the borrower/client, the executing or implementing agencies, or the cofinancier(s) of the project involved.
- (iii) The OSPF or the OCRP will
 - (a) adopt measures suitable to the age, race, ethnicity, religion, disability status, gender, sexual orientation, and gender identity of the key stakeholders;
 - (b) be cautious and vigilant when gathering information, reach agreement with affected persons on how interactions should take place to reduce the risk of retaliation, and refrain from taking photographs of complainants who request confidentiality, and their representatives;
 - (c) avoid disclosing the identities of translators and interpreters, as well as drivers, to the borrower/clients and to the executing or implementing agencies, unless these same translators and interpreters are used during meetings with the borrower/clients and the executing or implementing agencies, and ensure that the translators and interpreters understand the need to keep the identities of key stakeholders confidential for their protection;⁴
 - (d) exercise reasonable caution and vigilance in gathering information and use the telephone and other alternative means of communication instead of personal meetings;
 - (e) arrange meetings on safe premises like AM meeting rooms or other facilities equipped with the necessary communication technology to ensure the

⁴ Included in the service contract of those translators and interpreters.

- confidentiality of discussions with ADB staff and with external stakeholders;
- (f) take reasonable care during site visits and fact finding, especially while taking photographs, using these in reports, and uploading the photographs to websites;
 - (g) verify with the complainants whether they feel safe during the AM process and talk or communicate with them and with other vulnerable stakeholders in a neutral, safe, and well-guarded place throughout the AM process, particularly if risk of threat and retaliation has been identified; and
 - (h) monitor closely potential threats and the likelihood of retaliation, considering available knowledge and information.

VI. Appropriate Response to Retaliation⁵

14. If there is evidence of retaliation or reprisal, the OSPF or the OCRP will agree on the appropriate course of action with the person or group concerned. If required or desired by the persons threatened with retaliation, the OSPF or the OCRP will bring the evidence of retaliation to the notice of the operations department and senior ADB management to initiate appropriate action, and with the BCRC to obtain the committee's guidance. The OSPF or the OCRP will continually follow up on this issue together with the person or group of persons threatened with retaliation.

⁵ The appropriate response will depend on the nature of retaliation and will be determined after a careful review of each case.