

SUPPLEMENTAL NOTES TO THE CHM SUBMISSION AS OF JULY 6, 2017

NGO Forum on ADB:
Concerns and Suggestions on AIIB's Accountability Mechanism



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AIIB's Complaints Handling Mechanism (CHM) must be defined with an overall mandate of preventing harm and ensuring institutional accountability. And with this, CHM has 3 main tasks that would include:

- Compliance Review: ensuring its independence and adherence not only to the Safeguards Policy but to all the other policies of the Bank including that of the Information Disclosure, Energy Strategy and any of its major sectoral strategies e.g. transboundary connectivity, transport, urban development, etc.
- Dispute Resolution: ensuring a resolution is reached for any of the complaints that have been submitted and/or attention has been sought from the Bank.
- Advisory: ensuring that any systemic and thematic mistakes are feed backed to the mechanism's system and corresponding changes are undertaken and institutionally adopted.
- **Ensure trust and confidence in the mechanism.**
 - It has to prove, show and commit to its independence; where such independence is clearly stated in a structural document. It has been noted that the corporate secretary (VP Alexander) and the general counsel sit in when CEIU Director General reports to the Board and this could directly affect its independence.
 - It is also important that CSOs and external stakeholders are the ones to nominate and select who will comprise the mechanism's director and other members.
- There should be a cooling off period or a pre-employment ban for those who have been involved in the mechanism (5 years is being practiced by ADB).
- **Ensure visibility and access to CHM.**
 - There should be visibility and access to the CHM for all projects that are funded; whether sovereign, non-sovereign, stand-alone or co-financed, and in all AIIB supported operations at its different stages of operation and activities.
 - Access to CHM should include all marginal groups, indigenous peoples, with special attention given to accessibility for women, people with disabilities (people living with physical disability, blindness and deafness).
- Open-ended liability and extent of the period when complaints are and can be eligible.
 - In a situation of a high-risk projects (CAT A, Big CAT B's) that have multiple interplay of political, social and environmental factors, complaint filing period should be extended of up to a post 5-year project period ensuring long term risk accountability.
 - Key and vital here are the categorization of projects and whether original risk assessments have been undertaken with due diligence.
- **Remedial actions.**
 - CHM should have the right to recommend remedial actions with the management implementing its recommendations. CHM

- should have a strict independent role in the remedial action and perform a strict monitoring role in the entire implementation phase. This has to be stated in the independent monitoring clause.
- CHM should have the power to stop any project with imminent harm and even suspend projects if and when harm is done.
 - **Internal reporting mechanism of the compliance review process.**
 - Where the first monitoring report from compliance review has come out, how will this be circulated, how will the management respond, what will be the Board's response mechanism, and what will be the public commenting period from the findings?
 - The CHM should entail detailed instructions addressing these concerns, ensuring that compliance review report is independent of management's influence and only contains the views of the CHM investigating team.
 - **Co-financing, how will the mechanism come to play if AIIB is not the lead financier and other policies are being used?**
 - When the project poses harm and the co-financing lead's mechanism proves inadequate and as such also opens the Bank to liabilities and risks, there should be detailed measures that are highlighted in the CHM to ensure compliance with AIIB's standards.
 - Clear guidelines need to be elaborated in cases of co-financed projects where complainants can trigger the CHM. There should be provisions for one complaint to trigger multiple mechanisms from different banks for co-financed projects.
 - **Financial Intermediaries.**
 - * The question is: To what extent does AIIB obligate FIs to comply and implement AIIB's ESF and to what extent are they being monitored. In case of violations how can AIIB CHM enforce FIs to commit to the implementation of the ESF and obligate FIs to have enough capacity to do the EIA/SIA (and/or bring projects back to compliance)
 - * For large projects like mining and hydro that operate for a long time where extensive investment is required, this is an ESF issue on FIs. Even at the design stage, contracting and procurement processes need to be tracked back and recommend highest standards to pre-empt problems coming to CHM.
 - AIIB still lacks the operational guidelines on ESF; there is a need for a more robust language on non-compliance and accountability of FIs. A strong language on AIIB's leverage over FIs need to be elaborated in the Operational Guidelines of the ESF.
 - **Remedial Fund.**
 - The remedial fund early on should be across the board on all projects including FIs. A portion of the loan agreement being held in trust by the Bank from the borrower

on ESF's due diligence and responsibility can be used as a remedial fund to leverage and ensure that sub projects are clearly visible.

- **Anonymity of complainant.**

- In a situation where a complainant requests for key project information that could expose the complainant and cause undue security risks and harm, request could be sent directly to the mechanism and mechanism should get this from management without exposing the complainant.

- **Country Safeguards Systems and Corporate Systems.**

- For country systems that would come into play where there is failure to deliver safeguards and safeguards that are not complied with that would have effects on the ground, CSOs are up against the borrowing government. The dispute capacity of CHM is going to be absolutely pivotal when safeguards that are supposed to be delivered using national systems are violated.
- If there is proven non-compliance, in the absence of an AIIB equivalency and there is a direct use, what is the mechanism's role in investigating the borrowing system? What are the next steps that the mechanism is going to take? What actions are there to push the borrower and comply with the ESF?
- The issue of country system puts the face of the bank and exposes only the mechanism of the banks. CSS is entirely on loan

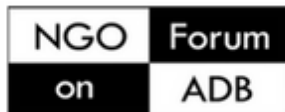
agreements, TAs, loans for capacity building and non-compliance are beyond the scope of the mechanism. As the policy guideline of ESF is yet to be released, these are the warning paragraphs for what the mechanism can do in cases of CSS non-compliance to AIIB ESF.

- **Policy review and updating.**

- CHM policy review and updating should be subject to consultation and conducted in a given and transparent timeline.

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*Quotes from Hamid Shariff, CEIU, June 3, 2017 during the video call with Forum.



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