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Abstract: Intergovernmental Organizations (IOs) such as the Asian Development Bank (ADB) were created by and for states. The ADB was established to further economic growth and cooperation in the Asia Pacific. At the behest of its powerful member states the ADB created an accountability mechanism in 1995. This mechanism was created to provide recourse to people that might be or are 'directly materially and adversely affected' by a development project financed by the ADB. As with the other Multilateral Development Banks (MDBs), the creation of such an 'external accountability mechanism' recognized a legally relevant relationship between an IO and private persons. This article investigates the operations of the ADB's accountability mechanism. Arguably, the ADB's accountability mechanism has brought some improvement to affected people through its mediation, compliance investigations and monitoring. Yet analysis of the mechanism also demonstrates that progress is hampered by a lack of access, transparency, Developing Member Country (DMC) resistance, staff obstruction and a lack of independence in the mechanism itself.

Policy implications:

- Continued state support of the external accountability mechanisms of the Multilateral Development Banks must rest on recognising the ability of the mechanism to improve the plight of project affected people while continuing to address its limitations.
- Any support of the Accountability Mechanism of the ADB must come with assurances to Developing Member Countries (DMCs) right to retain state sovereignty without overriding the outcomes of the mechanisms. Upholding the integrity of the mechanism is vital for its ability to operate effectively.
- Prospective claimants must identify whether making a claim to the Accountability Mechanism will advance their interests or whether other avenues of recourse and redress are necessary.
- The Asian Development Bank should prioritise its efforts to mainstream the Accountability process within the Bank to ensure staff support. This is crucial to the mechanism's role in improving the ADB's development effectiveness in the region.
- Periodic evidence based reviews of the mechanism are vital to the functioning of the mechanism and retaining its legitimacy. This should be based on both internal and independent assessments of the mechanism.

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Introduction

As with other Intergovernmental Organizations (IOs) the Asian Development Bank (ADB) was created by states to further economic growth and cooperation in the Asia Pacific. In 1995 the ADB created an accountability mechanism as demanded by its shareholders, principally powerful member states. This 'Inspection Function' aimed to provide recourse to people affected by a development project financed by the ADB (ADB, 1995, p. 9). The creation of such an 'external accountability mechanism' recognized a non-contractual relationship between an IO and private persons similar to other mechanisms established by the other Multilateral Development Banks (MDBs). This article investigates the history and practices of the ADB's accountability mechanism and argues that it has brought some improvement to affected people through its mediation, compliance investigations and monitoring. However analysis of the mechanism also demonstrates that progress is hampered by a lack of access, transparency, Developing Member Country (DMC) resistance, staff obstruction and a lack of independence in the mechanism itself.[1]

Section one provides a brief history of the ADB accountability mechanism beginning with the demand for such a mechanism; through to its first iteration as the Inspection Function from 1995 to 2002; to its current reformulated Accountability Mechanism (AM). In doing so the paper analyses the cases brought to the external accountability mechanism and their outcomes for Project Affected People (PAP). Reformulated as the Accountability Mechanism (AM) in 2003, the AM became a bifurcated process comprised of both a problem-solving function and compliance review, the first of the MDBs to do so. Section two documents the improvements made under the revised mechanism to provide recourse to PAP that have been or are affected by an ADB financed project. Section three then examines the limitations of the AM that flow from a lack of access, transparency, DMC resistance, staff obstruction and a lack of independence in the mechanism. Based on a detailed analysis of the AM's investigations over the last decade these sections identify when PAP were able to have their voices heard and when the process failed. This qualitative research uses thick description which enables scholars to identify "patterns of norms, institutions and power relations of particular salience in a given context" (see Macdonald this volume). This involved 35 in-

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depth interviews with ADB staff including former and current external accountability officers, former Executive Directors, former US officials and accountability activists between 2009 and 2014. This is backed by primary documents including official MDB publications, accountability mechanism annual and case reports, and documents such as letters, faxes and emails from the private archives of accountability activists and consultants that helped devise the mechanism. As the concluding section demonstrates, despite a 2012 review of the Accountability Mechanism weaknesses remain. The ADB's accountability mechanism demonstrates where some redress has been possible but where intergovernmental processes and the culture of the ADB serve as major impediments to effective 'external' accountability.

Accountability at the ADB

The ADB was created in 1966 to further economic growth and cooperation in the Asia Pacific. Deliberately modelled on the World Bank with its 'one dollar, one vote' system for its shareholder member states, the ADB provides a range of lending instruments to its regional DMCs such as loans for development projects and programs, technical assistance, equity investments and grants. This is similar to the African and Inter-American Development Banks (AfDB and IDB) and the European Bank for Reconstruction and Development (EBRD). While all of the Banks lend to sovereign states, the ADB is the most 'traditional' in terms of lending predominately for infrastructure projects such as transport, information, communications, technology, and energy (Kappagoda, 1995, p. 29). Indeed, according to one US Congressional estimate, every 80 cents in the dollar the ADB lends is for infrastructure.[i]

This is important because the MDBs have been identified as financing development projects that have a high negative impact on the natural environment and communities. Since the early 1980s non-government organizations (NGOs) have campaigned to demonstrate how multilateral development financing of large scale infrastructure projects can lead to harm including forcibly moving people off their lands; irreparably changing the natural environment; and threatening the livelihoods and cultural fabric of Indigenous Peoples (Clark et al., 2003). Much of this attention was focused on the World Bank; the ADB escaped such scrutiny except in specific cases such as the Theun Hinboun dam and the Nam Theun 2 project in Laos (Soutar, 2007; Singh, 2009).

For activists, the key was to prevent the ADB from negatively impacting the natural environment and on vulnerable communities, particularly at project sites. To rectify this, NGOs engaged in protests over the neoliberal approach to development (Oehlers, 2006) as well as demanding the ADB establish environmental and social policies. Taking the Bank by surprise, this opposition culminated in mass protests in 2000 at the Bank's Annual General Meeting in Chiang Mai, Thailand (Tadem, 2003). Propelled by the protest, donor member states pushed the ADB to formalize environmental and social 'safeguard' policies.

While the Bank demonstrated that it was responsive to the demands of people campaigning against the Bank, the institution of environmental and social policies were determined by its shareholder member states. The MDBs are relatively autonomous IOs; their presidents report to member states on its Board of Executive Directors on how they manage Bank staff and run their institutions. This process is one of *traditional* accountability, where the IO is held to account by its member states. Accountability can be understood as 'the condition of being held responsible and answerable for decisions and actions (or inactions) which affect others and which are usually undertaken on their behalf' (Byrne, 1990, p. xi cited in Jones, 1992, p. 73). Hence, the ADB is responsible and answerable to member states who provide the paid-in capital that underpins the Bank's financial base and politically support the institution. Until the late 1980s member states were primarily concerned with the MDBs' financial prudence.

There are a range of measures to ensure that the ADB follows member state directives. These 'vertical' accountability processes include oversight procedures such as ongoing, detailed management plans and monitoring and reporting requirements that track Bank actions. There are also 'horizontal' accountability procedures that include 'internal units that perform audits, inspections, evaluations, and investigations. These units are staffed by experts charged to find ways to avoid, identify, and solve the growing number of cases of mismanagement and fraud involving IO bureaucrats' (Grigorescu, 2008, p. 286). 'External' accountability, which is the focus of this article is focused on the ADB being answerable and responsible to those outside the organization or where the Bank is held accountable to those affected by its actions (Koenig-Archibugi, 2004, p. 236). Such an external accountability mechanism was created to provide recourse to the public in developing countries that were or are negatively affected by ADB financed projects. The World Bank was the first MDB to recognize a non-contractual relationship between an IO and private citizens in this way (Naude Fourie, 2009, p. 3).

Importantly, these external accountability mechanisms were established by the member state shareholders of the Bank and are part of the internal oversight procedures of the institution: they are located in the Bank, their staff draw salaries from the Bank and some staff are internally appointed to work in the mechanism by Bank Management (as opposed to external hires). Moreover, the Bank's member states approve the structure and function of the mechanism devised by Bank Management, and the accountability mechanism is responsible and answerable to both the affected publics according to its mandate and to the Bank's shareholders. As the following sections demonstrates, being both a *horizontal* and *external* accountability mechanism highlights the gaps and inconsistencies of providing recourse by MDBs to people affected by the projects they finance.

The Inspection Function (1995-2002)

The ADB followed the World Bank and the IDB in creating an 'external' accountability mechanism that would provide recourse to people 'directly, materially and adversely affected' by an ADB-financed project (ADB, 1995, p. 9). The Inspection Function was created in 1995 at the behest of donor member states who were increasingly concerned with the impact of MDB operations (Park, 2014). Concerns over the Bank's performance emerged as a result of an internal Taskforce on Improving Project Quality established in 1993. The Taskforce stated that ten of the 36 percent of projects evaluated since Bank began lending were unsuccessful. Like the World Bank the report also identified an approval culture in how the ADB operates, recommending more time be spent on assessing a project's development impact than approving loans (ADB, 1994, pp. 2-7, 49). Combined with NGO campaigns against specific ADB projects, donors were increasingly concerned as to how to ensure the quality of Bank operations.

The Inspection Function was part of a donor led platform of change to improve the ADB's effectiveness, transparency and accountability (McGill, 2001, p. 194). This immediately followed the high profile demands of the US to create the precedent setting World Bank Inspection Panel in 1993, which created a 'ripple effect' on the other MDBs because they have the same major shareholders (Suzuki and Nanwani, 2006, p. 177). Donors like the US used the ADB request for funds for its general capital increase and replenishment of the Asian Development Fund (ADF) to press for an Inspection Function (Bissell and Nanwani,

2009, p. 158). As a result, the Board of Executive Directors tasked the ADB to create an external accountability mechanism.

This Inspection Function differed substantially from the World Bank Inspection Panel (see Park, 2010) in terms of its independence. A three-member Panel of Experts would be chosen from a roster by the ADB president to investigate claims of harm from people affected by an ADB financed project. The Panel would report to a subcommittee of the Board of Executive Directors, called the Board Inspection Committee (BIC) comprised of both donor and developing member states. The BIC would initially review inspection requests and then recommend an inspection to the Board. If an inspection was warranted, the Panel of Experts would then undertake the investigation. The BIC would receive the Panel of Experts investigation report and present their recommendation regarding an outcome to the Board (ADB, 1995). The Board of Executive Directors would then determine the Bank's response to the investigation: as to whether they agreed that the Bank had not complied with its own policies leading to material and adverse effects, and what remedial actions the Bank would need to bring the Bank into compliance. The Inspection Function served the Board of Executive Directors; it was not independent in its ability to determine a claim's eligibility or to determine whether non-compliance had led to harm. Indeed the Panel was 'advisory not adjudicative' (ADB, 1995, p. 8). The lack of independence of the Inspection Function undermined its credibility as politics of the Board over-rode any objective assessment of ADB non-compliance leading to harm of PAP (Suzuki and Nanwani, 2006, pp. 208, 217).

Like other MDB external accountability mechanisms, the Inspection Function was designed not to interfere with ADB operations: loan disbursements would not be stopped or the project interrupted by a request to investigate claims that people have been or are likely to be directly materially and adversely affected by a project unless Management or the Board 'expressly directs otherwise.' Suspending disbursements would be an 'extraordinary step that would be authorized by the Board only in extreme circumstances' and would need the '*consent of the relevant borrower*' – a highly unlikely prospect (ADB, 1995, p. 13; emphasis added). This necessarily limits the ability of the accountability mechanism to provide remedies to PAP. For example, it precludes options that requestors may want including stopping the project altogether or substantially changing the project such as its location or design. Furthermore, a request may be submitted throughout the project design or implementation stages; the later the request for investigation the less recourse may be available as environmental damage may

not be rectifiable or a return to previous livelihoods may be impossible. In short, the external accountability mechanisms can only ameliorate the damage resulting from the project rather than stopping it. Owing to the widely recognized problems with the functioning of the Inspection Function it was overhauled in 2003.

From the Inspection Function to the Accountability Mechanism 2003-2012

During the only investigation under the Inspection Function (the Samut Prakarn case, detailed below) donor member states demanded that the process be reformulated. They did so as part of the seventh replenishment negotiations of the Asian Development Fund in 2000 (ADB, 2000, pp. 36-7). Donors demanded the ADB make the mechanism more accessible and transparent even before the full extent of the problems with the mechanism became evident (discussed next). The subsequent 2001-2003 review was considered the most 'transparent and participatory policy making process in the ADB's history' (Fukuda, 2003, p. 34) with external stakeholder consultations held around the world (van Putten, 2008, pp. 121-22).

In 2003, the Inspection Function became the substantially different Accountability Mechanism (AM). With external stakeholder support and backed by member states the new AM was designed to be a bifurcated system enabling mediation between communities and the Bank to solve problems at the project level and a subsequent investigation process to determine Bank policy compliance. If eligible, requestors seeking recourse through the AM would proceed to the Office of the Special Project Facilitator (OSPF) for mediation and if they so chose could then request an investigation by a second office, the Office of the Compliance Review Panel (OCRP) to determine whether the harm caused resulted from an act or omission of the Bank. Both the OSPF and the OCRP constitute the Accountability Mechanism.

The OSPF reports to the Bank's president as this is considered to be a last resort to solve a problem in a project by Bank Management although the office is independent of the Operations Departments. The OCRP on the other hand reports to a sub-committee of the ADB Board, called the Board Compliance Review Committee (BCRC, as the Panel of Experts did with the BIC). However the BCRC is limited in its mandate to determining the Compliance Review Panel's terms of reference for an investigation and for overseeing the monitoring the Panel does of Bank remedial actions to bring a project back into compliance.

The Compliance Review Panel (CRP) is a standing panel of three independent experts who determine whether a request is eligible and undertake investigations. This is more independent than the Inspection Function and is closer to the structure of the World Bank's Inspection Panel. As the sections detailed next demonstrate, the revised mechanism is an improvement over the Inspection Function in terms of its independence and ability to mediate and assess projects compliance and monitor Bank efforts to improve the plight of PAP. However, access to the mechanism as well as DMC resistance, staff obstruction and questions over the AM's independence continue to hamper its efforts to provide recourse to PAP.

The ADB's Ineffectual Attempts at External Accountability

Under the Inspection Function the ADB was ineffectual in providing external accountability as a result of DMC resistance, the claimant's inability to access the mechanism, and its lack of transparency. By 1998 two claims had been submitted, both in relation to the Korangi Waste Water Treatment Project in Pakistan but the BIC rejected them as ineligible for procedural reasons. This is because the claimants had not cited policy violations by the ADB (ADB, 2003a, p. 1). The ADB Board accepted a claim in relation to the Samut Prakan Waste Water Project in Thailand in 2001. Submitted by the Mayor and villagers of Klong Dam regarding effluence, toxins and corrupt practices, the Inspection Function investigation was unable to proceed. According to the Inspection Function policy, all field visits must be approved by DMCs (ADB, 1995). Thailand refused to allow the investigators in without assurance that they would be liable for 'any loss or damages claimed by the contractors as a result of the Panel's visit' (Wiertsema, cited in van Putten, 2008, p. 118). The Panel could not do so and therefore could not continue (ADB, 2003b, p. 9). Thailand was supported by other DMCs in defending its sovereign right to determine whether an investigation be allowed within its territory (Fukuda, 2003, p. 35).

Therefore the Panel of Experts was unable to conduct a field visit in its very first investigation of allegations of direct material and adverse affects on people in the project area resulting from ADB non-compliance. The Panel was reduced to preparing a desk report where it outlined that the ADB had violated six of its policies and part of a seventh (ADB, 2003b, pp. 1-2). Rejected by ADB Management, the BIC accepted the findings of the Panel and the matter was then discussed at the Board of Executive Directors. The ADB Board was

split with China, Thailand, India and Pakistan opposing the Panel report. The US argued that Thailand's actions undermined the Inspection Function's credibility (van Putten, 2008, p. 120) while the UK Alternate Director criticized the president and Bank Management for their defensiveness and for 'rejecting the findings of an independent panel' (Bello, 2002, p. 9). The Board ultimately approved the Inspection Function's recommendations for improving the project *but it did not endorse the findings that the ADB had violated its own policies* (Fukuda, 2003, p. 33). The UK Alternate Executive Director Frank Black resigned from the BIC in protest (ADB, 2002a). The Thai government suspended the project's construction a month after the release of the Inspection Function report and despite the investigation documenting how the problems might be addressed in 2004 the ADB loan was declared null and void with no capacity to ameliorate the environmental and social problems. The political ramifications ultimately stopped such improvements from being implemented – and stopped the community from having a working waste water plant. On the other hand, without the formal process the project would have continued with the resultant negative effects despite ongoing community opposition.

While the Inspection Function continued to accept claims it was clear that the process was not functioning as intended. Until 2003, the Inspection Function had received eight requests for inspection regarding four ADB financed projects (ADB, 2003a, p. 5). Yet it only deemed two claims eligible for inspection. The first eligible claim was Samut Prakarn, which led to a frustrated investigation and a stalemate at the Board of Executive Directors. The second request was narrowly accepted by the BIC with regard to the Chashma Right Bank Irrigation Project (Stage III) in Pakistan just before the mechanism was reconstituted in 2003. In 2004 Chashma was deemed non-compliant with its own policies leading to harm, requiring remedial action and extensive monitoring to ensure that it became policy compliant (ADB, 2012b). Further complaints in 2006 by the community over flooding and water payments were later ruled ineligible for mediation despite prima facie meeting procedural requirements.

The Inspection Function proved difficult for PAP to access with claims frequently being rejected, even though the Bank was discovered to be non-compliant leading to harm into three of the four projects where claims were submitted (Samut Prakarn, Chashma and the Sri Lankan Southern Transport Development Project, STDP). In all cases Management denied any policy violations leading to harm and the only attempt at a full inspection (Samut Prakarn) failed to mitigate environmental and social problems stemming from the project.

The Inspection Function process was not transparent in its decision-making: Four claims were rejected regarding the STDP despite later recognizing its substantial negative impacts on PAP under the reconstituted AM. The BIC merely stated that the first two STDP claims were rejected because of 'insufficient basis' and the third and fourth STDP claims were rejected because they were 'clearly ineligible' for not having 'presented reasonable evidence' of ADB non-compliance leading to harm (ADB, 2002b, pp. 12-13). Under the reconstituted AM a fifth claim was deemed eligible on the basis of harm stemming from ADB non-compliance (ADB, 2012b). As a result, it was widely recognized as needing to be reformulated.

Improvements to Accountability: The AM in Practice, 2003-2012

The reformulation of the external accountability mechanism demonstrate some stasis in the process (notably regarding access as discussed in the following section) but did improve the ability of the mechanism to provide recourse to PAP through mediation, compliance investigations and monitoring. In keeping with the sectoral operations of the Bank, the majority of requests for mediation come from infrastructure projects across the region with nearly half of the complaints from South Asia (OSPF, 2011, p. 19). Repeat requests for mediation came from a handful of projects.

[Insert here Table One: ADB Requests for Inspection 1995-2014]

Reviewing complaints submitted to both the Inspection Function and the AM reveal the same problems coming up repeatedly: lack of information disclosure about the project to communities, a lack of adequate resettlement, and claims that the ADB failed to follow its own environmental assessment procedures.

[Insert here Table Three: Policies Triggered by Claims to the ADB's External Accountability Mechanism 1995-2014]

These patterns highlight the central question as to whether the OSPF makes a difference to PAP. The mediation process is limited in its ability to provide remedies to people adversely affected by ADB-financed projects although it does provide them with recourse or the ability to air their grievances. Nonetheless, while communities may be stuck with a project, attempting mediation may make the situation less bad (ADB, 2008). In many cases the OSPF

has been able to ensure that PAP are adequately compensated and their conditions improved (OSPF, 2009). Accordingly, where claims have been eligible for mediation there is evidence of seven cases being successfully concluded, with two clear cases where it has not, but the overall results are unclear for the remaining mediation processes although the ADB notes some positive benefits arising (ADB, 2014). While the process is prolonged and tensions are high between requestors, the government, and the ADB, improvements are evident for complainants after mediation compared with conditions prior to the process *but not necessarily compared with conditions prior to the project* (see for example, ADB, 2012c, p. 3).

Having only received eight requests for compliance investigations between 2003 and March 2014 the CRP has less of a caseload than the OSPF with debates over whether this is the result of the ADB following its policies; or that the OCRP remains unknown; or that problem solving obviates the need for a compliance review (OCRP, 2008, p. 11). All investigations revealed ADB non-compliance across a range of policies (as per table three above), which Management denied. In all cases the CRP provided recommendations to make the projects policy compliant.

Most significantly, the CRP has been given a substantial power to monitor ADB operations to ensure that a project becomes policy compliant after an investigation. Monitoring was followed in three of the CRP's six investigations. Five years of monitoring ensured that 17 of the 19 recommendations made by the CRP were met in the Sri Lankan Southern Transport Development Project (STDP). This highly contested project went through the Inspection Function, the OSPF and the OCRP. The Sri Lankan government and PAP recognize that the compliance review process has led to positive results, including 'the creation of new legislation and procedures for land acquisition and compensation, and the institution of local grievance and conflict resolution mechanisms' at the project site (OCRP, 2011, pp. 5-6). The OCRP also monitored Chashma for five years to ensure compliance, noting that ADB efforts were slow. Ensuring full compliance with 24 and partial compliance of 4 of 29 CRP recommendations also took five years of monitoring. Benefits for PAP also included the creation of a complaint center at the project site (OCRP, 2007, p. 3). As a result, the AM process can improve the plight of PAP in some cases but limitations remain for upholding external accountability.

Ongoing Limitations to External Accountability: 2003-2014

Ongoing limitations of the AM include: a lack of access and satisfaction among claimants undertaking mediation, DMC resistance to the AM, staff obstruction and a lack of independence in the mechanism. Since the ADB relaunched its external accountability mechanism in 2003 the AM has received 48 claims (up to March 2014). Until 2012, these requests moved directly to the OSPF for mediation before being able to access the OCRP. During this time, the OCRP accepted eight projects for investigation (and was tasked additionally with monitoring Bank compliance with the recommendations from the Chashma Inspection Function investigation). Therefore it is evident that most requests for investigation do not go to compliance review.

In terms of accessibility, the AM has a high rate of rejecting requests for mediation, with the OSPF rejecting over 70 per cent of claims up to March 2014 (ADB, 2014). Being rejected for mediation does not necessarily mean that the claim is not valid (the Inspection Function rejected claims where direct material adverse affects were later recognized by the Bank). The acceptance rate for the new AM is on par with the Inspection Function although the Inspection Function had a much lower submission rate: one claim per year on average compared with the OSPF 4.7 claims per annum. In comparison the compliance function accepted 87.5 per cent of claims but it has a much lower number of applications (0.6 per cent per year). Until 2012 all of these compliance claims had already 'passed' OSPF eligibility. The OCRP's publicly available claims registry does not include those deemed ineligible (OCRP, 2008, p. 6) but analysis of all other CRP documents reveal that the 2004 Melamchi Water Supply Project in Nepal was the only claim rejected as a result of unsubstantiated claims.

The single most frequent reason for rejecting a request for mediation by the OSPF (nearly 40 percent of all claims) was because claimants had not previously taken their concerns to the Operations Department. This is a requirement for accessing the AM as a last resort. According to the first Special Project Facilitator,

> the OSPF found it desirable to prescreen requests even if they do not meet the stipulated requirements for filing of complaints, to stay engaged with the affected persons, and to work behind the scenes with the operations departments to resolve problems before they grow into full-blown complaints. A significant amount of time was also spent trying to anticipate and avert complaints. And, there were a few successes. Even ineligible complaints must be dealt with thoughtfully and convincingly, which requires significant

> effort. The complainants have to be treated with respect and have to be convinced that their complaints are ineligible and that they have to endeavour to resolve the issues with the assistance of the borrower and ADB's operations departments (OSPF, 2006, p. 5).

A further 14 percent of claims have been rejected for other 'procedural' reasons. These include: that the claims that fall outside its mandate such as procurement concerns; on the grounds that the project's financing is over 95 percent disbursed and so no longer eligible for mediation; that the project was not implemented; or that a prior complaint is already addressing new complainants concerns. NGOs such as Oxfam Australia question the advice being given to communities considering there is such a high rate of rejection on these grounds (2011, p. 9).

[Insert here Table Two: Eligibility Rates for Claims to the ADB External Accountability Mechanism 1995-2014]

The OSPF has also rejected requests for mediation for substantive reasons. Both the OSPF and OCRP may reject a claim because harm is not evident. The grey decision-making area is where the OSPF chooses not to engage in mediation arguing that the ADB has 'signalled its intention to comply' (ADB, 2014). The OSPF states that the claims are not eligible because the Operations Departments are currently attempting to address complainants' concerns and the OSPF considers that mediation would not be useful. It has made such a determination in four cases (8.5 percent). For example, one claim was rejected for mediation in May 2009 regarding the Pakistan National Trade Corridor Highway Investment Program three years after mediating a separate complaint for another part of the same project. The complaints were similar: that there was a lack of information provided about the project and its impacts as well as inadequate resettlement although the 2006 complaint regarded a separate loan for different component of the same large-scale project (the National Highway Development Sector Investment Program). In this large scale project it is clear that communities are not being adequately consulted, informed, and their rights upheld during the project cycle as per ADB's operational policies.

Under the pre-2012 rules, all claims must have undertaken mediation before instigating a compliance review. Of the eight claims investigated by the CRP between 2003 and March 2014 only two that moved from mediation to a compliance investigation indicated that

claimants were satisfied with the mediation process. The remaining four claimants expressed dissatisfaction with mediation, stating a bias favouring the ADB by the OSPF; the inability to provide claimants with the remedy they sought; and the time taken for mediation without any indication of an outcome (ADB, 2014; this excludes one currently being investigated and the rejected Nepal case). That only one quarter of those going through mediation were satisfied should raise alarm bells in terms of providing external accountability.

In terms of the AM's compliance investigations, DMC opposition has also interrupted CRP investigations such as the 2009 Fuzhou Environmental Improvement Project in China. This was deemed eligible for a compliance review but China refused to allow an in-country investigation. As with Samut Prakarn under the Inspection Function the issue of DMC sovereignty prevented the external accountability mechanism from operating. The CRP chose not to progress the investigation because it could not conduct an investigation without visiting the project site. The issue went to the Board where donor Executive Directors stridently disagreed with China's reasons not to allow an investigation but did not call for a formal Board vote, thus letting the issue drop (Park, 2014, pp. 14-16).

Another egregious case to come before both the OSPF and the OCRP was the Cambodia Railway Project which affected 19,617 people with 5,640 being relocated (Connell, 2013). The projects led to the forcible movement of people, inadequate compensation and relocation conditions, threats of coercion and allegations of human rights abuses. Despite claimants finding recourse through the OSPF, many other PAP remained outside the process. While the AM process was underway the ADB hired an Involuntary Resettlement expert to review the project (Dr. Michael Cernea who wrote the World Bank's policy on Involuntary Resettlement). His report was suppressed and its recommendations were made public only after concerted NGO pressure. The ADB chose not to release the report for fear of upsetting Cambodia. Meanwhile Cambodia requested that the CRP investigation be delayed for seven months for domestic political reasons. Eventually the CRP upheld requestors claims that the project was not policy compliant making six major recommendations for restitution (ADB, 2014). The ADB Board accepted three recommendations and modified the remaining three, a significant departure from established practice (CRP, 2013). Upholding state sovereignty remains a key concern for the ADB, which interferes with the AM's aim to provide recourse to affected people (Park, 2014).

Critics of the AM have also questioned the independence of the AM staff. The first and second Special Project Facilitators were career ADB staff appointed at the level of a Director General by the ADB with little regard for international legitimacy – despite this role requiring the trust of communities and NGOs. This undermined the AM's credibility (Park, 2014, p. 16). The new Special Project Facilitator was externally appointed and is assisted by ADB staff. NGOs continue to argue that the lack of involvement of civil society in appointing the Special Project Facilitator and the Compliance Review Panellists undermines the AM's independence (Oxfam Australia, 2011, p. 12). In the OCRP the Associate Secretary and administrative assistants are ADB staff, unlike the contracted CRP panellists. In the beginning the ADB even created a higher paid Secretary above the Associate Secretary; later this position was abolished but both positions have been staffed by Operations Department Director Generals which have according to NGOs 'at times attempted to exert undue influence on CRP processes' (Oxfam Australia, 2011, p. 13). This has 'led some stakeholders to see the Secretary as a representative of Management' (ADB, 2012b, p. 10). Although staffing has not been substantially changed, the AM was reviewed to improve recourse for PAP in 2012 in light of these issues.

Gaps and Inconsistencies: The 2012 AM Review

Despite the 2012 review of the Accountability Mechanism weaknesses remain. The ADB's accountability mechanism demonstrates where some redress has been possible but where intergovernmental processes and the culture of the ADB serve as major impediments to effective 'external' accountability. DMC resistance, staff obstruction, and the AM's independence continue to hamper the mechanism's effectiveness. In May 2010 the ADB president announced that the Board and Management together would review the AM. ADB Management therefore oversaw the review of a mechanism that investigates whether Management has complied with its own policies. As with the previous review, the process included worldwide stakeholder roundtables to solicit input. Most of the review's recommendations concerned making the AM easier to access for PAP, including eliminating the two-step process to allow people to choose to file a complaint directly to the OCRP (ADB, 2012b). In addition, the ADB created a Complaints Receiving Officer who would be a focal point for requests thus forwarding requests to the OSPF, the OCRP or send legitimate but ineligible complaints directly to the Operations Departments rather than require requestors to appeal again to another part of the ADB. The review also led to improving the

internal tracking of requests once they have entered the AM process; establishing aims to improve outreach and awareness of the AM; and creating aims to enhance learning and improve the culture of the ADB (ADB, 2012b).

However, DMC governments resisted external stakeholder calls that CRP investigations be a condition of all loan agreements arguing that 'the ADB has no basis to mandate site visits through loan agreements because the compliance review is about ADB's compliance with its own policies not about a borrower's breach of any obligations' (ADB, 2012b, p. 10). The final report suggests that ADB Management should try to use its good offices to help the CRP to obtain a site visit, but where DMCs refuse, that the CRP should nonetheless complete their investigation (ADB, 2012b). The review was still underway when the CRP closed the Fuzhou investigation without making a recommendation to the Board. This undermines the ability of the AM to verify claims and ensure due process. Moreover, DMC refusals to allow in-country investigations demonstrate that the Board will bow to state sovereignty.

The 2012 review noted that staff, Management and the Board view the AM as a 'tool to respond positively to public scrutiny and learn how the organization can do better' while hoping that '[F]urther positive interactions will change the perception of the compliance review from an adversarial process to a positive instrument for learning and development' (ADB, 2012b, p. 13). Donor member states are sympathetic to the AM noting its improvement as a result of the review (ADB, 2012a). Yet it is not clear that accountability is supported by senior Management (Park, 2014, p. 16) and the CRP continues to be heavily criticized internally.

The ADB previously noted that the Inspection Function had an 'adverse impact on staff morale throughout ADB' leading project staff to 'feel under attack' such that 'they may be afraid to take risks in the future' (ADB, 2002b, p. 35). After Samut Prakarn it seemed as though the inspection process could adversely affect staff careers, though staff involved in the project were later promoted. Nonetheless staff view the CRP negatively. ADB staff see the AM as interfering with the lending process such that 'ADB staff consistently derail the inspection process' (Fukuda, 2003, p. 34). For the ADB, it is considered a success if a complaint does not go to the OCRP. However, differences do exist among the regional Operations Departments and there are positive engagements in some CRP investigations.

Lastly, the review discussed whether Management not the CRP should devise remedial actions where the Bank has been found not to comply with its own policies (ADB, 2012b). This process was seen to cause confusion as remedial action plans have to be agreed upon between Management and the borrower. The STDP and Chashma investigations are the only two cases where monitoring has been completed and they demonstrate that the AM can hold the ADB to account to improve the plight of PAP. While the AM now comments on the remedial action plan devised by Management and the borrower, it has retained its ability to monitor Bank compliance, although the review now limits such monitoring to two to three rather than five years (ADB, 2012b, p. 26-27). This enables the AM to continue acting as a horizontal accountability unit within the ADB even if it is unable to effect change in the Bank's overall operational practices and organizational culture.

Within the AM itself, the implementation of dual offices in 2003 created 'competition, non-collaboration and even separate annual reports' (Oxfam Australia, 2011, p. 19). The 2012 review mandated that the separate offices work together and there has been a push for a greater working 'partnership' between both offices of the AM and Bank Management. Both offices contribute to improving the plight of PAP either through mediation or through monitoring to bring the Bank into compliance. Commentators have argued that the ADB's AM as one of the best external accountability mechanisms among the MDBs because of its bifurcated model and monitoring capacity while some staff argue that the accountability mechanisms 'tend to have limited competence to review the internal law of their parent institution' (Nanwani, 2010, p. 113) suggesting an inherent flaw in the AM selection process. The review further limited the capacity of the OCRP by making the Chair of the Compliance Review Panel, who undertakes investigations, the head of office administration. Compounding this, the BCRC now has oversight of the Panel's budget and gets to appraise CRP panellists' performance, providing less independence than previously (ADB, 2012b). Although the AM structure has substantially improved as an external accountability mechanism over the Inspection Function, problems clearly remain with ensuring the accountability of the Bank through horizontal processes.

Conclusion

Powerful member states demanded the ADB create an external accountability mechanism. This mechanism provides recourse to people that are or might be 'directly materially and

adversely affected' by a development project financed by the ADB. As with the other MDBs, the creation of such an 'external accountability mechanism' recognized a legally relevant relationship between an IO and private persons. However, the history of the ADB's external accountability mechanism, from its establishment, operations, reviews and reformulations demonstrate problems in the efficacy of external accountability mechanisms for these IOs. The Inspection Function and the AM both show how difficult it is to access these forms of redress mechanisms and the limited remedies available to project affected people. NGOs also question the extent to which the ADB's external accountability mechanism is independent from the Bank in holding its parent institution to account. Nonetheless the AM does show that it can improve the plight of affected people through mediation, compliance investigation and monitoring Bank actions. While these acts may not improve the conditions of PAP to pre-project levels, they can make a difference to vulnerable communities. Specific cases clearly demonstrate how the external accountability mechanism of the ADB may be stymied by DMC concerns over state sovereignty. Recent changes have attempted to make the AM more accessible but it continues to be hampered by Bank staff resistance and questions over its independence. The practice of the AM reveals the gaps and inconsistencies of providing recourse by the ADB to people affected by the projects it finances.

References

ADB (2014), *Accountability Mechanism*, Manila: ADB. Available from: http://www.adb.org/site/accountability-mechanism/main [Accessed 17 March 2014].

ADB (2012a), *Asian Development Fund XI Donors' Report: Empowering Asia's Most Vulnerable,* Manila: ADB.

ADB (2012b), *Review of the Accountability Mechanism Policy*, February 2012. Available from: http://beta.adb.org/documents/review-accountability-mechanism-policy-r-paper [Accessed 23 February 2012].

ABD (2012c), *Accountability Mechanism Annual Report*, Available from: http://www.adb.org/publications/series/compliance-review-panel-annual-reports. [Accessed 15 March 2014].

ADB (2008), *The Urban and Environmental Improvement Project: Learning from an Ineligible Complaint from Nepal*, ADB Accountability Mechanism, Manila: ADB. Available from: http://www.adb.org/sites/default/files/ueip-brochure.pdf [Accessed 17 March 2014].

ADB (2003a), *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism*. Available from: http://www.adb.org/Documents/Policies/ADB_Accountability_Mechanism/ADB_accountability_mechanism.pdf [Accessed 24 March 2011].

ADB (2003b), *Final Report of the Inspection Panel on the Samut Prakan Waste Management Project*, 14 December 2001, On File with Author.

ADB (2002a), *Annual Report of the Inspection Committee of the Board 2001-2002,* 12 September 2002. On File with Author.

ADB (2002b), *Review of the Inspection Function*, First Draft of Working Paper 3 May 2002. Manila: ADB.

ADB (2000), *ADF VII Donor's Report: Fighting Poverty in Asia,* Seventh Replenishment of the Asian Development Fund, November 2000, Manila: ADB.

ADB (1995), *Establishment of an Inspection Function*, Board of Executive Directors Report R225, November 1995. On File with Author.

ADB (1994), *Report on the Task Force on Improving Project Quality*, Asian Development Bank, Philippines.

Bello, W., (2002). 'Philippine Power Scandal Illustrates Flaws in ADB's Privatisation Strategy,' in *Creating Poverty: The ADB in Asia*, Focus on the Global South, Bangkok: Chulalongkorn University, pp. 27-38.

Bissell, R., and S. Nanwani, (2009), 'Multilateral Development Bank Accountability Mechanisms: Developments and Challenges,' *Central and European Journal of International and Security Studies* 3 (2), pp. 154-197.

Clark, D., Fox, J., and K. Treakle, (2003), *Demanding Accountability: Civil-Society Claims and the World Bank Inspection Panel*, Lanham, Rowman and Littlefield.

Connell, J., (2013), *The art of advocacy: negotiating development-induced displacement and resettlement in Cambodia*, unpublished paper.

CRP (2013), *Decision of the Board of Directors of the Asian Development Bank, 31 January 2014*. Available from: http://compliance.adb.org/dir0035p.nsf/attachments/Cambodia-FinalReport-13Jan2014_OSEC%20Submission.pdf/$FILE/Cambodia-FinalReport-13Jan2014_OSEC%20Submission.pdf [Accessed 17 March 2014].

CRP, (2004), *Southern Development Transport Project CRP Request: New Evidence, 2 December 2004*. Office of the Compliance Review Panel, ADB. Available from: http://ocrp.asiandevbank.org/dir0035p.nsf/attachments/STDPNewEvidence.pdf/$FILE/STDP-NewEvidence.pdf [Accessed 20 February 2014].

Fukuda, Kenji, (2003), 'Critical Analysis of the New Accountability Mechanism of the Asian Development Bank,' edited by Dorothy Guerrero, Focus Asien No. 16: *A Handbook on the Asian Development Bank: The ADB and its Operations in Asia and the Pacific Region,* Essen: Asienstiftung/Asienhaus, pp. 31-38.

Grigorescu, A., (2008), 'Horizontal Accountability in Intergovernmental Organizations,' *Ethics and International Affairs* 22 (3), pp. 285-308.

Jones, G.W., (1992), 'The search for local accountability,' in S. Leach (ed.), *Strengthening Local Government in the 1990s*, London: Longman, pp. 49-78.

Kappagoda, N., (1995). *The Asian Development Bank*. London: Intermediate Technology Publications.

Koenig-Archibugi, Mathias, (2004), 'Transnational Corporations and Public Accountability,' *Government and Opposition* 39 (2), pp. 234-59.

McGill, E., (2001), 'The Inspection Policy of the Asian Development Bank' in Gudmundur Alfredsson and Rolf Ring (eds) *The Inspection Panel of the World Bank: A Different Complaints Procedure*, Martinus Nijhoff Publishers, pp. 191-209.

Nanwani, S., (2010), 'Accountability Mechanisms of Multilateral Development Banks: Powers, Complications, Enhancements,' edited by Amanda Perry-Kessaris, *Law in the Pursuit of Development: Principles into Practice*, London and New York: Routledge, pp. 110-130.

Naude Fourie, A, (2009), *The World Bank Inspection Panel and Quasi-Judicial Oversight*, Utrecht: Eleven.

NGO Forum on the ADB, no date, *Holding ADB Accountable: A Look at the Present Accountability Mechanism*, Available from: http://forum-adb.org/docs/AM-briefer.pdf [Accessed 21 February 2014].

Oehlers, A., (2006), 'A Critique of ADB Policies Towards the Greater Mekong Sub-Region' *Journal of Contemporary Asia* 36 (4), pp. 464-78.

OSPF (2011), *Annual Report*, Manila: ADB. Available from: http://www.adb.org/site/accountability-mechanism/problem-solving-function/publications [Accessed March 2014].

OSPF (2009), *Annual Report*, Manila: ADB. Available from: http://www.adb.org/site/accountability-mechanism/problem-solving-function/publications [Accessed March 2014].

OSPF (2006), *Annual Report*, *Annual Report*, Manila: ADB. Available from: http://www.adb.org/site/accountability-mechanism/problem-solving-function/publications [Accessed March 2014].

OCRP (2011), *Annual Report*, Manila: ADB. Available from: http://www.adb.org/publications/series/compliance-review-panel-annual-reports [Accessed March 2014].

OCRP (2008), *Annual Report*, Manila: ADB. Available from: http://www.adb.org/publications/series/compliance-review-panel-annual-reports [Accessed March 2014]

OCRP (2007), *Annual Report*, Manila: ADB. Available from: http://www.adb.org/publications/series/compliance-review-panel-annual-reports [Accessed March 2014]

Oxfam Australia, (2011), *ADB Accountability Mechanism Review 2011: Oxfam Australia Submission to the ADB on Consultation Paper February 2011*, 1 April 2011, Melbourne: Oxfam Australia.

Park, S., (2014), ‘‘Institutional Isomorphism and the Asian Development Bank’s Accountability Mechanism: Something Old, Something New; Something Borrowed, Something Blue?’ *Pacific Review* 27 (2), pp. 1-23.

Park, S., (2010), ‘Designing Accountability, International Economic Organisations, and the World Bank’s Inspection Panel’ *Australian Journal of International Affairs* 64 (1), pp. 13-36.

Singh, S., (2009), ‘World Bank-directed development? Negotiating participation in the Nam Theun 2 Hydropower Project in Laos’ *Development and Change*, 40 (3), pp. 487–507.

Soutar, L., (2007) ‘Asian Development Bank-NGO Encounters and the Theun Hinboun Dam, Laos,’ in Barbara Rugendyke (ed), *NGOs as Advocates for Development in a Globalizing World*, London and New York: Routledge, pp. 200-223.

Suzuki, E., and S. Nanwani, (2006), 'Responsibility of International Organisations: The Accountability Mechanisms of Multilateral Development Banks,' *Michigan Journal of International Law* 27, pp. 177-255.

Tadem T., (2003). 'Thai Social Movements and the Anti-ADB Campaign' *Journal of Contemporary Asia*, 33 (3), pp. 377-98.

van Putten, M., (2008), *Policing the Banks: Accountability Mechanisms for the Financial Sector*, Montreal, Kingston and London: Magill-Queens University Press.

[i] Internal US House of Congress document outlining US policy objectives for the 2009 General Capital Increases of the Multilateral Development Banks. On file with author.