



To the AMP Review Secretariat,

As members of the Alliance for Climate Justice and Clean Energy (ACJCE), we are submitting these comments on the ongoing Review of the Accountability Mechanism Policy of 2012 and in particular the “External Review of the Accountability Mechanism (AM) for the Asian Development Bank (ADB)” to highlight what we believe are a number of key considerations that must be integrated into the Review and consultation process to ensure the highest levels of legitimacy and effectiveness.

The AM Review comes at a critical juncture, coinciding with the recently completed projects such as the Environmental Assessment Policy (EAP), the Environmental and Social Framework (ESF), the Energy Policy, and others in the pipeline. As ACJCE members, we have actively participated in all of these processes, providing both direct and indirect input, along with numerous in-person and virtual engagements with ADB project officers over the years. This engagement has been largely unsatisfactory with a number of procedural and substantive limitations apparent in these processes. It is hoped that the comments and engagements of the AM Review will be of a more robust and substantive process - we hope for this, even as we suggest that in its inception there are built in limitations and failings in its orientation and terms of reference (for example, the selection of the external consultant was made by the very management often subject to AM, to whom he initially reported, no community or CSO involvement or oversight was sought; similarly the cost-benefit report examines accountability under the auspice of ‘cost’, a flawed matrix by which violations are to be measured).

Our comments here, however, focus on a broader register to suggest the significant range of omissions in the scope of the Review. We argue **first** that it is failing to address contemporary concerns of *climate change and of climate justice*; **second** in light of these a number of corollaries follow: the need to *affirm the principles of accountability*; *widening the scope of accountability*; *improving inclusivity and participation*; *reforming the advisory function*; and in the spirit of accountability, *applying whatever new policies are developed to ongoing projects*.



## **Bringing Climate Justice to Accountability**

Throughout the review processes of the numerous oversight and frameworks mechanisms (ESF, EAP, Energy Policy & this AM Review) a discernible trend has emerged - to ignore the lessons of the past, and further to omit the legacy effects of projects, which are often only too real and material. Claims of this nature are often time-barred under the auspice of limitation periods, arbitrary at best. Climate change and concerns of climate justice repeatedly teach us that impacts of projects extend across time and space. AM processes must attend to the effects of what are incorrectly framed as 'legacy projects'. Established principles in law - across national and international jurisprudence - which attempt to speak to the extent of spatial and temporal impact upon communities, such as the *precautionary principle* and *intergenerational justice*, must find traction in AM's if they are to carry effect and maintain legitimacy.

In this instance a number of ADB projects can be instructive to demonstrate the importance of this reorientation. The Chashma Right Bank Canal in Pakistan (subject to an Inspection Claim) remains the cause of flooding across its geography over twenty years after its completion, most notably in 2022. The ADB has failed to attend to the concerns of communities subject to the CRBC and the ADB has failed to learn lessons from the Inspection Process, its incompleting mandate and the unremediated harms identified and which continue to devastate lives and livelihoods. The reasons for withdrawal from Inspection by the requestors in CRBC has never been explored and we find parallels to the Mundra Ultra Mega Project where the remedial action plan was rejected by complainants.

The suggestions by the External Review to tie accountability to finance periods whilst welcome, remains insufficient in spirit. Climate change affirms the entangled nature of impacts and damages, and the need towards precaution, whilst recognising that harms must be mediated regardless of their geographic or temporal expanse.

## **Implicating AM with Climate Justice Principles**

### *Affirming the Principles of Accountability*

The Review document outlines the accountability framework for upcoming ADB-financed projects, referencing key UN reports such as the *Guiding Principles on Business and Human*



*Rights and Remedy in Development Finance – Guidance and Practice.* These reports stress the essential characteristics for effective Independent Accountability Mechanisms (IAMs), including legitimacy, accessibility, independence, efficiency, and the capacity to provide quality remedies.

We believe the Accountability Review should prioritize justice—especially climate justice—ensuring fairness across all ADB operations, regardless of geographical or temporal limitations. While principles such as credibility, accessibility, efficiency, and effectiveness are important, the Review should go beyond these and emphasize equitable and sustainable remedies for affected communities. We believe the Accountability Review should prioritize justice—especially climate justice—ensuring fairness across all ADB operations. Given the complexity of climate science, when assessing ‘harm’ (or potential harm), the accountability framework should extend beyond the narrow logic of a specific project and integrate broader climatic considerations while investigating the climate claims.

Guided by such principles we believe the AM should be guided by international conventions such as the Paris Agreement, whereby the AM should be in a position to evaluate projects against agreed upon, and against emerging standards, and should be able to coordinate across the Bank’s operations to ensure consistency to these principles - proactively (*suo moto*) or in response to a complaint.

An illustrative example portends in the Jamshoro Coal Power Plant - funded by the ADB, whilst at the very same time the ADB enunciates the Energy Transition Mechanism (ETM) and identifies a geographically proximate coal plant (in Thar) as a viable candidate. Similarly in pushing the ESF to recognise that gas is not a transition fuel in line with the Paris Agreement.

*Considerations of Inclusivity and Participation: “The Project Affected Person”*

We believe it is crucial that the ADB remedy the inauspicious start of this AM Review which has failed to bring in communities and ‘Project Affected Persons’ at the preliminary stages, given the remit of the ‘External’ Review will provide the ground for the Formal Review that is to follow. One imagines given this is a concern around AM’s the accepted claims under the AM would be the bedrock of such a Review - the Inspection Requestors, the AM Complainants, would provide such a crucial ground of understanding of the limitations of present and past policies. We cannot understand why this remains the case and would



strongly urge the Formal Review to hold substantive discussions with these individuals and communities.

We cannot more strongly emphasise the importance of such engagements. It is telling that Pakistan is not on the list of venues for Stakeholder Consultation. This is particularly telling, given that Pakistan is one of the largest recipients of ADB funding and accounts for one of the highest numbers of filed complaints. **(ADB Report 2023?)** We hope that the Consultation processes aim to be substantive and not merely performative.

### *Widening the Scope & Strength of Accountability*

Whilst we have identified a number of welcome widening of the scope of accountability by the External Review (eg under Chapter 5: the time period for complaints to be filed to be tied to financial exposure, the removing of so called ‘good-faith-effort’ prerequisites for complaints) we still suggest that the mandate of accountability should include addressing harms that may not yet have occurred but are likely to arise in the coming decades. The interconnected nature of climate, environment, communities, and projects necessitates a flexible accountability framework that considers long-term impacts. We believe that the only conditions for invoking accountability should be: i) whether ADB provided support for the project and ii) whether the damages are attributable to the design of the project as prepared and approved by the ADB. Any other constraints would weaken the principles of an accountability process.

At the same time it is clear that the AM needs to maintain a significant independence to be effective - as such suggestions such as reporting directly to the Board, providing the AM the space and capacity for independent legal advice rather than relying upon the ADB’s General Counsel, are welcome. The hope that this independence will allow the AM to be more responsive to conditions of life in climate changed worlds.

### *Reforming the Advisory Function*

A notable feature of the proposed reform is the introduction of an Advisory function, which would provide strategic guidance and continuous learning to both the Bank and the AM teams to prevent the repetition of past mistakes. However, the Advisory’s functions should be clearly defined. Terms like "strategic guidance" and "pedagogy" are vague and fail to clarify its role. The Advisory’s scope should encompass both prospective and retrospective




projects, ensuring guidance on current and past projects. Additionally, the Advisory must be independent and empowered to propose necessary measures to the Board to achieve Climate Justice. This includes scrutinizing the formation of AM processes and suggesting reforms to ensure fairness, transparency, and accountability across all ADB projects.

We are concerned about the composition, powers, and functions of the proposed Advisory, which the Review does not sufficiently address. Similarly the Review suggests that the head of the Advisory should be appointed based on recommendations from a committee that includes multiple stakeholders, including civil society organizations (CSOs). However, this is not enough. The Review should explicitly detail the role and involvement of CSOs in the selection of the AM to ensure their meaningful input.




Any restructuring of AM (such as unifying the two AM offices) must keep responsiveness, accessibility and independence as the cornerstone of any proposal.

#### *Applicability of the New AM to Ongoing Projects*

The applicability of the new AM to ongoing projects is crucial and in line with the spirit of accountability. Many projects conceived almost a decade ago and which ostensibly fall under the 2012 AM framework are still in progress or have recently commenced operations. Applying outdated policies to these projects would be counterproductive, as they fail to address the socio-ecological realities prompting this review. The new policy must extend its applicability to all active projects and those in the pipeline to ensure its relevance and effectiveness.

S#	Organization Names	Logos
1	Indus Consortium for Humanitarian, Environmental And Development Initiatives	



2	Alternative Law Collective	
3	The Knowledge Forum	
4	Policy Research Institute for Equitable Development (PRIED)	
6	Lok Sujag	