

NGO Forum on ADB Comments: Safeguard Compliance and Accountability Mechanism Framework for Investments Supported by Financial Intermediaries

In Forum's experience there are several fundamental problems in ensuring FI Accountability to Safeguards –

- a) Project cycle bound timely release of project information in a meaningful manner for local peoples
- b) FIs need to ensure that environmental and social due diligence is implemented at the highest standards by their clients
- c) On issues of non-compliance an independent and responsive redress mechanism has to be in place to ensure remedy for affected peoples.

Keeping these three principles in mind the following comments have been made to the AMF-

In the introductory section of the AMF, the lack of implementation of Equator Principles has been cited as a clear gap in FI accountability. We would recommend that the shift from guidelines for FIs to binding requirements should be emphasized in this section to strengthen the conceptual framework for this AMF.

In line with comments from Accountability Counsel, we re-echo the need for learning to be upfront in this document for the AMF (Section 12, pg 4). For the AMF to work effectively it has to be able to learn from each case and make the necessary reforms to strengthen implementation. The issue of lessons learned and feedback loops built into the AMF system to help reform the structure will be critical to bringing diverse types of FI's to compliance.

On the issue of FI Sub-project categorization (pg.8) there is a need to ensure that a comprehensive ESIA is conducted to ensure the 'Big B' Category projects are deemed Category A. This is a potential risk especially for Infrastructure Funds, examples can be drawn from the Emerging Asia Fund of the AIIB and IFC, which has been tapped by Summit Power Group to retrofit several coal plants and build 4 new power generation facilities, which are fossil fuel based. The impacts from these projects will be long term and immediate and will require comprehensive ESIA's to ensure Safeguards are implemented. FIs and their parent funding institutions such as commercial banks and multilateral banks should have a strict monitoring role over their clients on environmental and social due diligence. The current practice of client-led safeguarding and self-reporting is no longer a viable model to ensure that AMF objectives are reached, thus we

strongly recommend that monitoring and evaluation roles by FIs and their parent financial institutional investors should have an overseeing function. This is maybe done through further elaborating on a governance framework for FIs and their FI Clients, with detailed monitoring requirements in place.

We are noticing for both ADB and AIIB projects that the Grievance Redress Mechanisms are often not effective at the local level. For MDBs it has been a real challenge to ensure that local GRMs have worked effectively; this will be a bigger challenge for an FI client to ensure. In this case, we recommend that project level GRMs should be –

- a) Meaningfully accessible for local communities
- b) Ensure complainants protection from backlash and retaliation
- c) Ensure remedial response

The paper recognizes the shortcomings of GRMs - "However, GRMs are often poorly designed or implemented, and thus create mistrust and conflict between communities and the project executing agency. Finally, it must be noted that project-level GRM is not a substitute for an accountability mechanism at the institutional (financial intermediary) level, because the GRM cannot determine whether the financial intermediary has complied with its own environmental and social policies, standards, and procedures."

Thus it has to be explicitly stated that accessing local GRMs should not be made a pre-requisite for local communities to trigger the Accountability Mechanism for an FI project.

As mentioned earlier the fundamental problem with FI non-compliance to Safeguards is the lack of Time Bound Disclosure of project information to local people. At present local communities have no way of assessing whether FI subprojects are indeed FIs and what policies and mechanisms are entailed in their operations. From a community perspective, the following information has to be provided pre-project approval –

1. Area and scale of the project
2. Clear description of project cycle, construction, environmental and social impacts
3. Clear assessment of project benefits sharing, compensations and allocations
4. Clear understanding on rights, privileges and redress mechanisms for communities in cases of violations.

All of this information must be provided in a manner which commensurates local language needs and ensuring that poor and vulnerable groups such as women, children and people with disabilities are made aware of all project related information.

This is where the governance structure of this AMF will prove to be critical to ensure that Clients are complying with the disclosure needs at the local level. Provisions should also

be made upstream in the project cycle to ensure that information disclosure needs are all met before a project is approved for implementation. The Forum re-echos Accountability Counsels recommendation on following the best practice example from the Green Climate Fund - which works with FIs, or accredited entities –

The GCF has adopted a high degree of disclosure in line with international best practice, including time-bound disclosure of crucial project information – such as environmental and social impact assessments – ahead of approval. The degree and timing of disclosure are calibrated according to the risk profile of the investment: with more and better disclosure for the highest risk (Category A). The following excerpts from its 2016 Information Disclosure Policy describe the degree of disclosure:

“Environmental and social reports. With respect to the project and program funding proposals that have an environmental or social impact, the Accredited Entities (AE’s) shall disclose and announce to the public and, via the Secretariat, to the Board and Active Observers:

(a) in case of Category A projects, the Environmental and Social Impacts Assessment (ESIA) and an Environmental and Social Management Plan (ESMP) at least 120 days in advance of the AE’s or GCF’s Board decision, whichever is earlier;

“(b) in the case of Category I-1 programs, the Environmental and Social Management System (ESMS)² at least 120 days in advance of the AE’s or GCF’s Board decision, whichever is earlier;

“(c) in the case of Category B projects, the ESIA³ and an Environmental and Social Management Plan (ESMP)⁴ at least 30 days in advance of the AE’s or GCF’s Board decision, whichever is earlier; and

“(d) in the case of Category I-2 programs, the ESMS at least 30 days in advance of the AE’s or GCF’s Board decision, whichever is earlier.”

The Forum recognizes the independence embedded in the structure proposed in this AMF and would make the following recommendations on the mechanism proposed-

- a) In submission of a complaint there should be a provision for complaints to be filed by international and regional representatives as authorized representatives for local and in-country representatives who are unable to step forward due to security risk and conflict scenarios.
- b) In cases where the IRM has proved that there have been issues on non-compliance, then all consultations between the client and the community MUST have the IRM present to ensure power equity in information exchange. This has to be an integral part of ensuring that a complaint process and remedial action are done objectively.

In its entirety this AMF is an innovative and needed effort in holding FIs accountable.
We hope that the above-mentioned recommendations be taken into consideration.

Best regards,



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