6 February 2020

MS. ELISEA G. GOZUN Chair
Compliance Review Panel (CRP)
Asian Development Bank (ADB)

Dear CRP Chair Gozun,

We welcome your appointment to this critical post in the ADB. The NGO Forum on ADB ("Forum") is an Asian-led independent network of CSOs who advocate for accountability in development finance particularly in the ADB and AIIB. As part of the Forum’s over two decades of monitoring the ADB, the network has championed the rights and issues faced by project-affected persons (PAPs) adversely affected by ADB-funded projects. The Forum, in coordination with our member CSOs and communities, had sought redress using the Accountability Mechanism’s compliance review function in some of the complaints filed over the years. In 2019, the Forum was also a complainant in the Accelerating Infrastructure Investment Facility Project in India which unfortunately was deemed ineligible.

The CRP plays a crucial institutional role as the ADB’s compliance review function, investigating alleged non-compliance by the ADB with its own operational policies and procedures. As an avenue for PAPs to raise grievances over issues such as inadequate compensation, loss of livelihood, economic or physical displacement, and lack of meaningful consultation, the CRP is important to local communities. PAPs have often found their concerns go unaddressed by project implementers and Bank management, both of whom often have conflicting interests when handling project-related complaints. It is in this regard we believe the CRP has always played a role in ensuring the vital space for critical civil society voice and giving it due legitimacy at the ADB. We hope that under your leadership the CRP will remain independent from management influence and continue to ensure meaningful consultation with civil society throughout all levels of the CRP's operations, especially during complaint investigations and remedial action plan implementation.

NGO Forum on ADB and the CRP have built a relationship over the last decade, based on the foundation of factual information, trust and common agenda to help those seeking redress from ADB’s project impacts in the region. The Office of the Compliance Review Panel (OCRP) has also coordinated with NGO Forum on ADB in hosting several events such as the Independent Accountability Mechanism conference in 2016 in Manila, as well as hosting joint panel sessions at the ADB Annual Governors Meetings in 2017 and 2018 respectively. We hope we can continue these coordinated knowledge sharing efforts with CRP within your tenure as well as help enable the role

1) Nenskra Hydropower Project (December 2017); ii) Promoting Economic Use of Customary Land and Samoa Agribusiness Support Project (April 2016); iii) Greater Mekong Subregion: Rehabilitation of the Railway in Cambodia (August 2012 and September 2015); iv) Mundra Ultra Mega Power Project (October 2013); v) Visayas Base Load Power Development Project (May 2011)
of critical civil society voice.

The Forum, alongside other CSOs, also recognizes the leadership of the OCRP in attempting to make the mechanism more accessible and easier to comprehend e.g. developing the guide books targeted for specific users and a sourcebook. The OCRP also played a key role in undertaking the development of a regional accountability framework for financial intermediaries (FI). While there are a few structural issues, holistically the Accountability Mechanism Framework is still an innovative and a much needed institutional reform to start holding the FIs’ more accountable.

To this end, we believe that the CRP has a significant part to play to guarantee that the ADB is achieving positive development outcomes for all stakeholders. This can be reinforced by your steady leadership and guidance in ensuring that:

1. **CRP should have a proactive approach in order to protect ADB - project affected persons and complainants against any threat or instance of retaliation.** The scale and forms of threat, intimidation and attacks are unfortunately increasing in the context of projects undertaken in the name of “development.” The Forum recognizes the Guidelines for the Protection of Key Stakeholders During the Accountability Mechanism process. Nonetheless, we would want the ADB to be more ambitious. Effective protection of PAPs requires not only thorough implementation of the Accountability Mechanisms Guidelines but also an institution-wide commitment and policy. The CRP can play a facilitating role to ensure that a similar measure for all of the ADB is adopted to protect PAPs in all phases of the project cycle. This is also congruent with ADB’s commitment to ensure meaningful consultation to which voicing out dissent without fear of retaliation from implementing government agency and/or project developer is an integral part of.

2. **CRP should retain its independence and guard against any potential conflict of interest to protect its legitimacy.** Even the notion of perception of independence is critical to ensure that appropriate and timely redress is given to the complainants and ultimately to the community. Local communities will be reluctant to raise potential instances of non-compliance with the CRP if they perceive it as lacking independence. In the past, the Forum has raised concerns on the CRP’s engagement with the Office of the General Counsel and even with the role of the Board Compliance Review Committee (BCRC). We understand that the focus of the investigation is on alleged non-compliance and not the borrowing country, executing agency nor the private sector clients. However complaints in the past, noted risks of conflict of interest when a BCRC member

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2 https://www.adb.org/site/accountability-mechanism/publications
is also representing the constituency of the country where the project is located. While in principle the BCRC is sitting in that capacity and the focus of the investigation is on the ADB (and not the borrower), this kind of structure can result in undue influence and may affect the outcome of the investigation as well as the corresponding monitoring of the CRP. When the Accountability Mechanism policy is reviewed and/or updated, the CRP can weigh on this, pushing to add a clause that said BCRC member or chair shall recuse themselves from oversight of complaints that present a potential conflict of interest.

3. **CRP should give more emphasis on the quality and timeliness of redress provided as an indicator in gauging the “success” of implementation of the mechanism.** In the past, the ADB has pointed to the low number of complaints received as compared to the total number of approved projects annually as evidence of the Bank’s success in implementing projects. However, there is a striking increase in the number of admissible complaints (88) from 2016 - 2018 as compared to the same 3-year period from 2012 - 2015 (21), though these figures are relatively still a small number. More importantly, implementation effectiveness should also focus on important quantitative assessments of the complaints received, as the 2018 Joint Learning Report does. Taking the bar higher, it would be good if OCRP can also set parameters on how to gauge the qualitative aspects of the complaints received in its next 2019 - 2022 report i.e. how an “effective” project - level grievance mechanism is measured; whether ADB Management and operations have adopted necessary reforms both at institutional and implementation - level to cope with CRP’s findings on alleged non-compliance, etc. In addition, despite consistent efforts on outreach and materials published by OCRP, there is still a sense of limited awareness both on the existence of the policy and how it works. Can complainants first attempt to reach out to the mechanism be construed as an exercise of their “good faith efforts”? CRP should robustly incorporate the lessons it had seen and learned when the policy will be set for review.

The above mentioned points are some of our key concerns which we have raised with the ADB CRP over the years, and we wanted to flag them to you for your consideration. You may also be interested in the analysis on accountability and access to remedy through mechanisms at other development finance institutions (DFIs) in the report *Glass Half Full? The State of Accountability in Development Finance.* For an accountability system to function effectively for those who may be negatively affected by development projects, both the institution – its leadership and management – and its independent accountability mechanism must meet their respective responsibilities. The report evaluates the policies and practices of 11 DFIs and their corresponding mechanisms, including the ADB and the Accountability Mechanism. The full report and its annexes are available at [glass-half-full.org](http://glass-half-full.org).

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We look forward to further our engagement with your office as you embark on your new journey in ensuring accountability at ADB and providing space for project-affected communities.

We hope we can continue this dialogue further through our meeting next week, so that we may learn more of your vision regarding the CRP and the role of civil society.

Thank you.

Respectfully yours,

Mr. Rayyan Hassan
Executive Director
NGO Forum on ADB

Endorsed by the following organizations:

Accountability Counsel, USA
Aksi! for gender, social and ecological justice, Indonesia
Aniban ng Manggagawa sa Agrikultura (AMA), Philippines
Bangladesh Nari Progati Sangha (BNPS), Bangladesh
Bangladesh NGOs Network for Radio & Communication, Bangladesh
Bank Information Center, USA
Building and Wood Workers Asia Pacific,
Campaign for Sustainable Rural Livelihoods (CSRL), Bangladesh
Campaign for Sustainable Rural Livelihoods (CSRL), Bangladesh
Center for Bird lovers, Armenia
Centre for Environmental Justice, Sri Lanka
Centre for Human Rights and Development, Mongolia
Centre for Research on Multinational Corporations (SOMO), The Netherlands
CLEAN (Coastal Livelihood and Environmental Action Network), Bangladesh
CNV International, Netherlands, Indonesia Representative
Community Empowerment and Social Justice Network (CEMSO), Nepal
COMPPART Foundation for Justice and Peacebuilding, Nigeria
Development Observer NGO Coalition, Mongolia
Equitable Cambodia, Cambodia
FIAN Sri Lanka, Sri Lanka
Focus on the Global South,
Freedom from Debt Coalition, Philippines
Gender Action, USA
Green Advocates International, Liberia
Haribon Foundation for the Conservation of Natural Resources, Inc., Philippines
Indian Social Action Forum (INSAF), India
Indigenous Perspective, India
Indigenous Women Legal Awareness Group (INWOLAG), Nepal
Integrated Development Society Nepal (IDS- Nepal), Nepal
International Accountability Project, USA
International Rivers, USA
National Food Coalition, Philippines
NGO Forum Armenia, Armenia
Oyu Tolgoi Watch (OT Watch), Mongolia
Pakistan Fisher Folks (PFF), Pakistan
Participatory Research Action Network- PRAN- PRAN, Bangladesh
Peoples Development Institute, Philippines
 Philippine Rural Reconstruction Movement, Philippines
Programme on Women’s Economic, Social and Cultural Rights (PWESCR), India
Project Affected Peoples Association (PAPA), India
Recourse, The Netherlands
Rivers without Boundaries Coalition (RwB), Mongolia
Safety and Rights Society (SRS), Bangladesh
Sri Lanka Nature Group (SLNG), Sri Lanka
Ummeednoo, Pakistan
Urgewald, Germany
Witness Radio Organisation, Uganda
Youth Group on Protection of Environment (YGPE), Tajikistan

Cc:
Sustainable Development and Climate Change Department (SDCC)
NGO Center ADB