

# Office of the United Nations High Commissioner for Human Rights

## Submission 1:

### Recommendations for the future AIIB Complaints Handling Mechanism

31 May 2017

#### Introduction

1. The Office of the United Nations High Commissioner for Human Rights (OHCHR) welcomes the invitation by the Asian Infrastructure Investment Bank (AIIB) Independent Compliance, Effectiveness and Integrity Unit (CEUI) to submit recommendations on the design of the future AIIB Complaints Handling Mechanisms (CHM).

2. From OHCHR's perspective, an effective independent accountability mechanism is crucial to ensure the effective fulfilment of the AIIB's mandate to foster sustainable economic development,<sup>1</sup> by guaranteeing the environmental and social soundness and sustainability of the projects it finances.<sup>2</sup> In this regard, in OHCHR's view, it is critical that the CHM's terms of reference and procedures reflect international best practice and the lessons that have been learned by other Independent Accountability Mechanisms (IAMs).

3. In particular, OHCHR notes that the establishment of a robust and independent compliance function will be of crucial importance to improving feedback mechanisms, institutional learning, and guaranteeing the right to an effective remedy to individuals and communities whose rights may be adversely impacted as a result of the implementation of AIIB-financed projects. OHCHR notes, moreover, that a strong compliance mechanism will particularly be needed in light of the Bank's business model focused on infrastructure development. Investments in the infrastructure sector have generated more than half of all complaints to IAMs to date.<sup>3</sup>

4. OHCHR notes that the CHM will purportedly "allow people who feel they are harmed, or could be harmed, by an AIIB funded project to voice their concerns to AIIB regarding AIIB's non-compliance with its environmental and social safeguards, and seek help for resolution of related problems." This appears to be a broad mandate, although in line with the mandates of the IAMs of the World Bank, IFC and AfDB, OHCHR recommends that the term "safeguards" be clarified to include policies, standards, guidelines, procedures and conditions for the AIIB's involvement.

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<sup>1</sup> AIIB, Articles of Agreement, adopted on 29 June 2015, entered into force on 31 December 2016, art. 1.

<sup>2</sup> AIIB, Environmental and Social Framework (ESF) (February 2016), p. 2.

<sup>3</sup> See C. Daniel, K. Genovese, M. van Huijstee & S. Singh (Eds.) *Glass Half Full? The State of Accountability in Development Finance*. Amsterdam: SOMO (January 2016), (hereinafter, "*Glass Half Full?*"), p. 28, available at: [https://www.grievancemechanisms.org/resources/brochures/IAM\\_DEF\\_WEB.pdf](https://www.grievancemechanisms.org/resources/brochures/IAM_DEF_WEB.pdf)

## 1. General principles

5. The UN Guiding Principles on Business and Human Rights (UNGPs),<sup>4</sup> which were adopted by the UN Human Rights Council in 2011, clarify the complementary, but distinct, human rights responsibilities of States and private enterprises. The third pillar of these Guidelines outlines a set of effectiveness criteria to guide the design, revision and assessment of non-judicial grievance mechanisms. These internationally accepted standards constitute an authoritative normative framework to guide the design and assess the effectiveness of the CHM.

6. The Guiding Principles' effectiveness criteria and their implications for the design of the CHM are briefly outlined below.

### **Box 1. UN Guiding Principles on Business and Human Rights: Effectiveness criteria for non-judicial grievance mechanisms.**

In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- (a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable:** providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognized human rights;
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms.

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<sup>4</sup> UN Guiding Principles on Business and Human Rights, Implementing the United Nations "Protect, Respect and Remedy" Framework, A/HRC/17/31/Annex (2011) [hereinafter UNGPs], Principle 31.

## **A. Legitimacy**

7. As the commentary to the UNGPs notes, “Stakeholders for whose use a mechanism is intended must trust it if they are to choose to use it.”<sup>5</sup> Legitimacy is achieved by enabling trust from the stakeholder groups for whose use a redress mechanism is intended, and accountability for the fair conduct of grievance processes. OHCHR recommends that the CHM should have clear recruitment and appointment rules that remove scope for potential conflicts of interest, as elaborated further in Section 2 below. Credible mediation and fact finding efforts require staff to have knowledge about the local contexts where projects are undertaken, critical skills to recognize and address asymmetries of power, and sensitivity to cultural contexts. The functioning of the CHM should also be assessed following periodic independent evaluation processes. Ultimately, legitimacy is affected not only by the actions of the CHM, but also by the extent to which the AIIB’s management is required to propose remedial action to address all CHM findings of non-compliance. In OHCHR’s view, compliance needs to be taken seriously, and be seen to be taken seriously. In line with best practice, OHCHR recommends that the CHM should have the power to order the suspension of a project where there is risk of imminent harm or where, following a CHM investigation, Management fails to bring the project into compliance.

## **B. Accessibility**

8. Accessibility entails that the redress mechanism be known to all stakeholder groups for whose use it is intended, and provide adequate assistance for those who may face particular barriers to access. To meet this criterion, OHCHR recommends that the CHM should be publicized through public outreach campaigns, and through disclosure requirements included in the loan agreements with clients. Affected parties should be supported in accessing the mechanism, through the removal of linguistic, financial or other barriers.<sup>6</sup> Moreover, when designing the procedural and formal requirements governing the eligibility of complaints, the CHM should accommodate different levels of knowledge and technical capacities and thereby minimise the burdens on complainants.

## **C. Predictability**

9. OHCHR recommends that the CHM set forth clear and transparent procedures with indicative time frames for each stage, and specify the processes and types of outcomes available and the means of monitoring implementation. A commitment to respect the time frames for every stage of the procedure is a critical prerequisite to predictability.<sup>7</sup> The CHM’s rules of procedures should also be widely publicised.<sup>8</sup>

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<sup>5</sup> UNGPs, Principle 31, Commentary, para (a).

<sup>6</sup> Ibid, para (b).

<sup>7</sup> Ibid.

<sup>8</sup> Ibid., para (c).

#### **D. Equity**

10. Aggrieved parties should have access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms. Power asymmetries typically arise in disputes between financial institutions and local stakeholders, with the latter often lacking access to adequate information, technical capacities and resources. If unaddressed, power imbalances can undermine the achievement and perception of fair process.<sup>9</sup> It is critical, in this regard, that the CHM should aim to identify and reduce existing asymmetries at all stages of dispute resolution and/or compliance procedures. Strong transparency and independence guarantees and broad standing rules and admissibility criteria are among the prerequisites, as elaborated further below.

#### **E. Transparency**

11. Transparency is a basic human rights principle<sup>10</sup> and a foundation stone and prerequisite for accountability. The lack of public awareness of IAM's is one of the reasons why they are chronically under-utilised. Regular communication with affected parties is essential in order to build trust confidence in the complaint procedure.<sup>11</sup> In OHCHR's view, stakeholders should not only be made aware of their rights under Bank policies and procedures, but they should be informed about the progress of complaints before the CHM. OHCHR recommends that the CHM should be identified prominently on the website of the AIIB and that the link should be accessible from the homepage. Moreover, OHCHR recommends that borrowers should be required to disclose the existence of the CHM at the project site and in all publicly released documents about the projects. OHCHR also recommends that the CHM should publicly disclose information about its compliance review and mediation activities, the remediation measures proposed, and the results of its monitoring efforts. This should include a full case register and records of all CHM decisions on eligibility.

#### **F. Rights-compatibility**

12. Rights-compatibility requires that outcomes and remedies accord with internationally recognized human rights. Even though stakeholders' grievances may not always be framed in human rights terms or appear to raise specific human rights concerns, international human rights standards correspond directly to the subject matter of the ESF and provide important context and benchmarks to inform the CHM's assessment of compliance with safeguard policies.

13. As part as its overall commitment to social development and inclusion, the AIIB itself has pledged to support and encourage respect for human rights through the projects it finances.<sup>12</sup> The ESF's indigenous peoples standard explicitly includes the objective of realising the human rights of indigenous peoples, and the Exclusion List includes activities

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<sup>9</sup> Ibid, para (d).

<sup>10</sup> See OHCHR Submission 2: Submission 2: Comments on the Asian Infrastructure Investment Bank's Public Information Interim Policy, January 2016.

<sup>11</sup> UNGPs, Principle 31, Commentary, para (e).

<sup>12</sup> ESF, "Vision," p. 3 para. 8.

which may be unlawful under international agreements. The AIIB's private sector clients have a minimum responsibility to respect, and avoiding any acts or omissions which may violate, States' legally binding obligations under international human rights agreements.

14. Areas of most obvious overlap with international human rights agreements include ESF provisions dealing with vulnerable groups and discrimination, gender issues, land and natural resources,<sup>13</sup> labour and working conditions,<sup>14</sup> security,<sup>15</sup> involuntary resettlement,<sup>16</sup> and indigenous peoples.<sup>17</sup> However information about human rights risks (which is routinely generated by international and regional human rights mechanisms relevant to environmental and social risk assessment and management) is also relevant to context analysis, strategic environmental assessments, and assessments of the adequacy of information disclosure, stakeholder engagement, borrower frameworks, and of the Bank's due diligence in social and environmental risk assessment and mitigation measures.<sup>18</sup>

15. OHCHR recommends that the CHM should be equipped with the expertise and capacities necessary to recognize the human rights implications of the AIIB's and CHM's work and effectively integrate human rights risk information within the CHM's findings and recommendations, as other IAMs have done in the past.<sup>19</sup>

### **G. Continuous learning**

16. The criterion of continuous learning entails that the mechanism be designed in a way that allows it to draw upon lessons learned to improve policies and procedures and prevent future grievances. As indicated in the commentary to the UNGPs, the "[r]egular analysis of the frequency, patterns and causes of grievances can [help] identify and influence policies, procedures or practices that should be altered to prevent future harm."<sup>20</sup> In line with best practice (for example, the IFC/CAO), OHCHR recommends that the CHM be mandated to independently identify systemic issues and lessons learned.

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<sup>13</sup> See eg AIIB Environmental and Social Standard 1: Environmental and Social Assessment and Management (ESS 1), pp. 33-35.

<sup>14</sup> Ibid, pp. 35-37.

<sup>15</sup> Ibid, para 37.

<sup>16</sup> AIIB Environmental and Social Standard 2: Involuntary Resettlement (ESS 2).

<sup>17</sup> AIIB Environmental and Social Standard 3: Indigenous Peoples (ESS 3).

<sup>18</sup> See OHCHR, Review and Update of the World Bank's Safeguards Policies Comments and recommendations of UN/OHCHR in relation to the draft Environmental and Social Framework (15 March 2016), Annex III: "The Benefits of Integrating Human Rights Risk Information into the World Bank's Due Diligence." Available at: [https://consultations.worldbank.org/Data/hub/files/20160315\\_memorandum\\_ohchr\\_esf\\_with\\_annexes.pdf](https://consultations.worldbank.org/Data/hub/files/20160315_memorandum_ohchr_esf_with_annexes.pdf)

<sup>19</sup> See, e.g., Inspection Panel, Investigation Report: Chad-Cameroon Petroleum and Pipeline Project (Loan No. 4558-CD); Petroleum Sector Management Capacity Building Project (Credit No. 3373-CD), and Management and the Petroleum Economy (Credit No. 3316-CD) (2000), para 215; Investigation Report: Honduras: Land Administration Project (IDA Credit 3858-HO), Report No. 39933-HN (June 12, 2007), para 256; CAO Audit of IFC Investment in Corporación Dinant S.A. de C.V., Honduras, CAO Ref: C-I-R9-Y12-F161 (December 20, 2013), paras 38, 46-52.

<sup>20</sup> UNGPs, Principle 31, Commentary, para (g).

## 2. Governance and management structure

### A. Independence and impartiality

17. The CHM's legitimacy will rely, to a great extent, in its level of independence, both actual and perceived, within the Bank's overall structure. In this regard, and based on best international practice, OHCHR would recommend that the CHM's operating procedures clearly establish the principles of independence and impartiality of the mechanism, which should be formally independent from the AIIB's management structure and report directly to the Board.<sup>21</sup> The CHM's independence should further be reflected in its capacity to make decisions without prior approval of the Board in relation to key areas of its mandate, including the decisions to register a complaint, the eligibility of the complaint for problem solving and/or compliance review, and the identification and monitoring of remedial actions. These factors will be critical for the CHM's legitimacy, as well as its effectiveness, in OHCHR's view.

### B. Structure

18. The CHM's independence should be embedded in its structure and membership. The World Bank's Inspection Panel is composed of three members serving non-renewable terms, one of whom is elected by the other Panel members to serve as the full-time chair. Other mechanisms have one director and specialized staff for compliance investigations and dispute resolution processes, with the possibility of hiring consultants for additional, case-specific expertise. Guided by the experience of the World Bank's Inspection Panel, the IFC/CAO and ADB/CRP, a standing compliance panel of three principals with operational staff is in all likelihood the optimal structure. Member/principal rosters (such as used by the EBRD) should be avoided, in OHCHR's view, given the inconsistency in quality of decision-making to which this may give rise.

19. OHCHR also recommends that the CHM's operating procedures should clearly stipulate the selection criteria for CHM members/principals, which, in addition to professional competencies, should include considerations of personal integrity, diversity and independence from the Bank's Management.<sup>22</sup> As an additional guarantee of the CHM's independence and impartiality, a formal employment ban should be established to prevent CHM members/principals from being employed in AIIB's management following the end of their service on the mechanism.<sup>23</sup> OHCHR would also recommend that former AIIB staff

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<sup>21</sup> This is indeed the case of all IAMs, none of which report to the management of their respective financial institutions –with the single exception of the IFC-CAO. See Andria Naude Fourie, "Citizen-driven Accountability Mechanisms at Multilateral Development Banks. Literature Review" (October 2012), (hereinafter "Naude, "Citizen-driven Accountability Mechanisms"), p. 27, available at: [https://www.researchgate.net/publication/308890553\\_Review\\_of\\_Independent\\_Accountability\\_Mechanisms\\_at\\_Multilateral\\_Development\\_Banks](https://www.researchgate.net/publication/308890553_Review_of_Independent_Accountability_Mechanisms_at_Multilateral_Development_Banks)

<sup>22</sup> The Inspection Panel at the World Bank, Operating Procedures (April 2014) (hereinafter IP Operating Procedures), para 7 ("Members of the Panel are selected based on their ability to deal thoroughly and fairly with the Requests brought to them, their integrity and their independence from the Bank's Management, and their exposure to development issues and to living conditions in developing countries".)

<sup>23</sup> Ibid ("Members of the Panel may not be employed by the World Bank Group following the end of their service on the Panel.").

members, governors and directors be prevented from joining the CHM pending a specified “cooling-off” period or indefinitely.<sup>24</sup>

20. Following the practice of other banks including the EBRD and IFC, OHCHR recommends that civil society stakeholders be permitted and enabled to participate actively in the selection of candidates for the CHM.

### **C. Staffing**

21. In order to ensure the independence and effectiveness, and hence the legitimacy of the new mechanisms, it is vital that the CHM be provided with adequate human and financial resources.<sup>25</sup> OHCHR recommends that appropriate policies and procedures be put in place to ensure that the staff of the CHM’s secretariat retain functional independence from the CEUI, and that the mechanism staff report directly to the director of the mechanism or the chair of the panel. The head of the CHM should be responsible for hiring all CHM staff. Moreover, in line with the practice in the IFC and EBRD, professional staff members of the CHM should be prohibited from obtaining employment with the AIIB for 2-year or 3-year period following their engagement with the CHM. In addition, in OHCHR’s view, the CHM should retain the discretion and capacity to hire independent consultants relevant to the subject matter of their professional duties.

## **3. Separation of functions**

22. OHCHR understands that the CHM will have compliance review as well as mediation and advisory roles.<sup>26</sup> A dual compliance review/mediation mandate is now common to nearly all IAMs and in OHCHR’s view is essential for the effective implementation of MDB operational policies, for timely feedback loops from operations to policy, for institutional learning, and for effective grievance redress.<sup>27</sup>

23. Nevertheless, the CHM’s functions should be carefully delineated. While compliance review is a fact finding and investigative activity, the purpose of mediation is to achieve consensus-based solutions through flexible means. As such, they should be approached as two distinct procedures with separate institutional structures, as their effective realization

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<sup>24</sup> Ibid.

<sup>25</sup> See International Bank for Reconstruction and Development -- International Development Association Resolution No. IBRD 93-10, Resolution No. IDA 93-6 "The World Bank Inspection Panel" (September 22, 1993) para 11 (stating that the Panel “shall be given such budgetary resources as shall be sufficient to carry out its activities”); European Bank for Reconstruction and Development, Project Complaint Mechanism (PCM) Rules of Procedure (May 2014) (hereinafter EBRD PCM Rules), para 68 (“stating that the Bank will provide budgetary resources to the PCM sufficient to allow all of the activities permitted by [the] Rules to be carried out”).

<sup>26</sup> The compliance review function is signalled in ESP, para 64, wherein people “who believe they have been or are likely to be adversely affected by a failure of the Bank to implement the ESP may also submit complaints to the Bank’s oversight mechanism in accordance with the policies and procedures to be established by the Bank for such mechanism.” The mediation and advisory function is signalled in AIIB’s Call for Public Consultation for the Proposed Asian Infrastructure Investment Bank (AIIB) Complaints Handling Mechanism (27 April 2017), p. 1, where it is stated that the mechanism “should aim to proactively support compliance to prevent problems during project design and implementation, and respond rapidly to solve” problems.

<sup>27</sup> Naude, “Citizen-driven Accountability Mechanisms”, p. 17.

requires distinct skillsets, professional competencies and standards. Models vary across different IAMs, ranging from strict separation (such as in the case of the ADB, the AfDB and the IDB) to functional separation within common administrative and management arrangements (e.g. the IFC, IDB, EIB and EBRD).<sup>28</sup> In view of the experience in other IAMs, OHCHR recommends that the CHM should assign different staff members to the mediation and compliance review teams, respectively, guided by separate procedural rules.

24. Any artificial sequencing between dispute resolution and compliance functions should be avoided.<sup>29</sup> Guided by comparative experience, it is critical that complainants have the freedom to decide whether they want to undergo dispute resolution or compliance review.<sup>30</sup> The relationships between parties will not always be amenable to mediation or dispute resolution, hence it is important to respect complainants' wishes in this regard. Similarly, in OHCHR's view, complainants' choices should not be constrained by the availability of project level grievance mechanisms, given the highly variable quality, accessibility and effectiveness of such mechanisms in practice. OHCHR recommends that the CHM procedures guarantee that complainants are fully informed about all options available to them, and are free to express their preferences and choose the specific procedure to handle their complaint, and that this choice will be respected.

## 4. The compliance function

### A. Eligibility

25. In defining the CHM's operational procedures, OHCHR recommends that care should be taken to guarantee the principles of accessibility, predictability and equity as outlined above. Access to the CHM's grievance procedure should be open to one or more persons, or groups, who claim to be adversely affected by an AIIB-supported investment,<sup>31</sup> as well as representatives acting on their behalf and with their consent, including international representatives.<sup>32</sup>

26. Civil society organizations (CSOs) play a vital role in grievance redress processes.<sup>33</sup> According to recent estimates, CSOs have been involved in the filing of 48% of complaints in IAMs to date, usually with or on behalf of affected community members.<sup>34</sup> Evidence shows that complaints supported by CSOs have a strong likelihood of resulting in positive outcomes

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<sup>28</sup> Ibid, at 25-26.

<sup>29</sup> Ibid, at 44.

<sup>30</sup> See e.g. ADB AM Policy, para 153.

<sup>31</sup> See e.g. Asian Development Bank (ADB) Accountability Mechanism Policy (March 2012), para 138; African Development Bank (AfDB) Independent Review Mechanism Operating Rules and Procedures (January 2015), (hereinafter AfDB IRM Rules) para 4; IP Operating Procedures, para 12.

<sup>32</sup> See e.g. AfDB IRM Rules, para 4, EBRD PCM Rules, para 5; Inter-American Development Bank (IDB), Policy of the Independent Consultation and Investigation Mechanism (December 16, 2015) (hereinafter IDB ICIM Policy), para 13(b); International Financial Corporation (IFC) Compliance Advisor Ombudsman, Operational Guidelines (April 2007) (hereinafter IFC CAO Guidelines), para 2.2.2

<sup>33</sup> See, e.g. ibid; EBRD PCM Rules, paras 1-2; European Investment Bank (EIB), Complaints Mechanism Principles, Terms of Reference and Rules of Procedure (February 2010), paras 2-1-2.2.

<sup>34</sup> *Glass half full?*, op. cit., p. 26.

for affected persons.<sup>35</sup> OHCHR recommends that the CHM be required to respect and communicate with the complainant's choice of representative(s) and/or advisors.

27. In addition to individuals or groups allegedly impacted by the project, a number of IAMs allow also for complaints to be submitted by members of the Executive Boards or senior management of the respective MDB,<sup>36</sup> and equally importantly, for IAMs to be mandated to initiate their own compliance investigations. For example, the IFC/CAO Vice President can initiate a compliance review "based on project-specific or systemic concerns resulting from CAO Dispute Resolution and Compliance casework." The latter provision has had important positive impacts in practice and OHCHR recommends that the CHM be vested with similar authority.

### **B. Admissibility criteria and future harms**

28. OHCHR recommends that admissibility criteria be crafted flexibly, in line with that of the IFC/CAO, requiring only basic contact information, any requests for confidentiality of identity or other information included in the request, a description of the Bank-funded project, and "[a] statement of the way in which the complainant believes it has been, or is likely to be, affected by environmental and/or social impacts of the project." Under CAO guidelines, "CAO will deem the complaint eligible if: ... (2) The issues raised in the complaint pertain to CAO's mandate to address environmental and social impacts of IFC/MIGA projects....."<sup>37</sup> Affected parties should be allowed to lodge their complaints prior to the Bank's and/or Board's decision to approve financing for the project, in order that harms can be avoided as far as possible.

### **C. Scope of compliance investigations**

29. OHCHR recommends that the AIIB clarify the scope of compliance investigation criteria applicable to the CHM, guided by IFC/CAO best practice. In examining compliance, the CAO can look at IFC/MIGA policies, Performance Standards, guidelines, procedures, host country legal and regulatory requirements (including international legal obligations), and Environmental Health and Safety (EHS) provisions of the World Bank Group.<sup>38</sup> This can be supplemented by exclusion criteria identifying specific claims which fall outside the IAM's mandate (eg procurement).<sup>39</sup>

### **D. Monitoring**

30. In line with existing IAMs' policies, OHCHR recommends that the CHM should be mandated to monitor the implementation of AIIB management's remedial actions until all

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<sup>35</sup> Ibid at 40.

<sup>36</sup> See e.g. ADB AM Policy, para 139; AfDB IRM Procedures, para 4(d); IFC CAO Guidelines, para 2.2.5, IP Operating Procedures, para 10.

<sup>37</sup> IFC CAO Guidelines, para 2.2.1.

<sup>38</sup> Ibid, para.4.3.

<sup>39</sup> See e.g. AfDB IRM Rules, para 25; EIB CM Rules para 7.3; EBRD PCM Rules, para 24; IP Operating Procedures, paras 22-23.

instances of non-compliance have been rectified,<sup>40</sup> and should also be mandated to monitor the implementation of agreements reached through dispute resolution. Monitoring reports produced by the CHM in relation to specific cases should be made public, and claimants should be accorded the right to be consulted in relation to those reports.<sup>41</sup>

### **E. Co-financing**

31. The international infrastructure market is increasingly characterised by co-financing and blended finance. This is acknowledged in the AIIB's Articles of Agreement which explicitly include co-financing and participation in direct loans within the Bank's methods of operation.<sup>42</sup> In OHCHR's view, it is critical that the AIIB hold itself accountable to its own requirements in all projects, regardless of the involvement of other financiers. OHCHR recommends that the CHM's Operating Procedures detail the procedures to be followed in relation to complaints that are brought concurrently to the IAMs of other co-financing institutions, and outline methods of collaboration with other IAMs. The EBRD's Complaint Mechanism seems to offer the most developed model in this regard.<sup>43</sup>

## **5. Lessons learned**

32. In accordance with the effectiveness criteria outlined above, OHCHR would suggest that the CHM's operating procedures mandate the mechanism to produce lessons-learned reports to periodically inform the continuous improvement of practices and operational policies and procedures. Providing that it is appropriately mandated, constituted and resourced, the CHM will be uniquely placed to understand the determinants of both positive and negative impacts, and thereby make a valuable contribution to institutional learning and performance monitoring. In line with the practice of other IAMs, the CHM's lessons-learned could take the form of periodic reviews of the functioning of the mechanisms, as well as thematic reviews around specific topics.<sup>44</sup> Such reviews should be conducted in close consultation with external experts and relevant civil society stakeholders. OHCHR also recommends that AIIB Management be required to respond publicly to advisory recommendations.

## **6. Protection from reprisals**

33. The AIB's ESF stipulates that project level grievance mechanisms should include "provisions to protect complainants from retaliation and to remain anonymous, if requested" (ESP, para 63). The same protections are needed for individuals bringing cases before the CHM's complaint procedure. The identity of claimants should be protected both

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<sup>40</sup> IFC CAO Guidelines, parta 3.4.3. See also ADB AM Policy, para 192; EBRD PCM Rules, para 44.

<sup>41</sup> See e.g. ADB AM Policy, paras 185, 188; EBRD PCM Rules, para 37.

<sup>42</sup> AIIB Articles of Agreement, art 11(2)(i).

<sup>43</sup> See EBRD CM Rules, paras 16, 21(b), 22, 24(f).

<sup>44</sup> Naude Forie, "Citizen-driven Accountability Mechanisms", p. 52,

from the AIIB and from the Clients, when so requested, in line with the procedures of other IAMS.<sup>45</sup>

34. Moreover, with reprisals against human rights and environmental defenders increasing, including against complainants to the IAMS,<sup>46</sup> it is of crucial importance that the CHM develops protocol or policy on how to handle cases where aggrieved parties face intimidation, harassment or retaliation. The policy recently adopted by the World Bank’s Inspection Panel could serve as a model in this regard.<sup>47</sup>

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<sup>45</sup> See ADB AM Policy, para 151 (iii); AfDB IRM Rules, paras 7-8; EBRD PCM Rules, para 4; IDB ICIM Policy, para 15; IFC CAO Guidelines, para 2.2.2.

<sup>46</sup> See Human Rights Watch, At Your Own Risk: Reprisals against Critics of World Bank Group Projects (June 22, 2015) available at [https://www.hrw.org/sites/default/files/report\\_pdf/worldbank0615\\_4up.pdf](https://www.hrw.org/sites/default/files/report_pdf/worldbank0615_4up.pdf)

<sup>47</sup> Inspection Panel, Guidelines to Reduce Retaliation Risks and Respond to Retaliation during The Panel Process (30 March 2016), p. 1.