LEARN THE BASICS: DEFINITIONS, QUESTIONS, AND DISPUTE RESOLUTION VS. COMPLIANCE REVIEW

Start by understanding key definitions, essential questions to consider before you file a complaint, and explore the benefits and limitations of dispute resolution and compliance review to make informed decisions.

Key definitions

What is an international financial institution?

> An international financial institution is an organization that provides financial support (such as loans and grants) and technical support to projects worldwide. These institutions include **development banks, aid agencies, and commercial banks. They might support projects with governments ("public sector projects"), with corporations ("private sector projects"), or both.**
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> These institutions also include **national export promotion agencies** or **export credit agencies**, which are government-run organizations that give loans, grants and insurance to domestic corporations doing business abroad. The goal of this support is to promote domestic companies, and to contribute to development abroad.
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> For the purpose of this guide, we will call all of these institutions “banks”.

What are accountability mechanisms?

> Many banks have created accountability mechanisms to hear from communities impacted by the projects they have financed. **Accountability mechanisms** are offices connected to banks that can help fix issues stemming from projects funded by these banks. Accountability mechanisms usually fix these issues through dispute resolution (also known as mediation), or by investigating the bank and making sure the bank is following its own rules (also known as a compliance review). You can learn more about the difference between dispute resolution and compliance review below.
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> Not all banks have accountability mechanisms. While most development banks have them, only a limited number of commercial banks and export agencies have accountability mechanisms.
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> The independence and effectiveness of different accountability mechanisms can vary significantly. In our explanations of each mechanism, we will highlight their strengths and weaknesses.

What are other types of accountability mechanisms?

> When we talk about accountability mechanisms in this guide, we usually mean independent offices attached to international banks. However, it is important to note that some accountability mechanisms have different structures or functions. For example:
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> - **National contact points (NCPs)** are offices at the national level that promote and enforce rules set by the OECD for businesses operating in multiple countries. If a community has been harmed by the activities of a multinational company operating in, or headquartered in their country, they

can approach the national contact point of that country to file a complaint.

We have a dedicated section explaining how to use NCPs.

- **Management-led grievance mechanisms** are established and managed by banks themselves, without any independence from bank management. These mechanisms can be more efficient for resolving simple issues, but they lack the thoroughness, transparency, and independence of accountability mechanisms.

  We have included a few examples of management-led grievance mechanisms in this guide, but we advise caution when using them due to their lack of independence.
- **Project-level grievance mechanisms** are offices set up at the start of a project, controlled by companies, and used to report problems directly to the companies. These mechanisms sometimes have conflicts of interest, and may not be fair, independent or transparent.

  This guide does not cover how to use project-level grievance mechanisms.

Questions to ask yourself

1. Who is causing or contributing to the harm?

While a company may be the direct cause of harm, who are the groups that have invested in the project?

If the project you are complaining about has had an investment from a bank in this guide, you may be able to complain to that bank's accountability mechanism as described in this guide.

You may find the following resources helpful when completing research to identify investors in a project causing you harm:

- "Early Warning System": identifies internationally-financed projects that pose a high risk of harm.
- "Follow the Money" resource hub and guide: you can use this guide to help you figure out what groups have invested in the project causing you harm.
- "The Counter": a global helpdesk providing corporate research to expose and challenge companies causing environmental and social harm.

2. Who is the "community" affected by the project?

When thinking about a complaint strategy, is it important to reflect on: who is directly and indirectly affected by the project? How are they impacted (in different ways)? Complaint strategies will typically be more impactful when they represent a larger number of people or when they are sensitive to the different impacts on different parts of the community. Community organizing is an important part of building a robust complaint strategy.

3. What are your rights?

Communities that have been harmed have rights under domestic and international laws, as well as rights created by the policies that helped fund the project. To identify your rights, you can ask us for help, or you can approach local or international organizations that work in this field. OECD Watch and BankTrack, for example, both provide helpful summaries of the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, while Bank

Climate Advocates recently published a technical legal opinion about the climate obligations of international institutions. The Coalition for Human Rights in Development also publishes useful resources (from itself and its members) explaining the rights of defenders. On the individual bank pages of this Guide, we also summarize for you the relevant policies of each bank.

4. What are the advantages and disadvantages of using an accountability mechanism?

When they work well, accountability mechanisms provide a practical, community-centered way to raise concerns about harmful projects. In some cases, they can lead to the suspension or redesign of those projects, or to compensation for harm caused. However, it's important to recognize that they have significant limitations too. Here is a list of the most important benefits and limitations:

Benefits

- **Free and accessible**: Communities do not have to pay to file a complaint to an accountability mechanism, and it is not necessary to have a lawyer.
- **Independent**: Accountability mechanism staff are separate from the project developers, so they can offer a neutral perspective.
- **Community centered**: Accountability mechanisms give the affected community a chance to be heard at the highest level of the bank, and have their concerns considered in any solutions reached.
- **Non-legal process**: Accountability mechanisms are not courts. While they evaluate a bank's compliance with its policies (including relevant legal frameworks), they avoid many of the legal, technical, and practical barriers to litigation. There are no strict requirements for evidence. The process also can be quicker than going to court, but this is not always the case.
- **Potential solutions**: Accountability mechanisms can lead to negotiated outcomes like compensation, changes to the project, or other remedies. They can also provide important lessons for investors, leading to changes in policies and procedures to prevent harm in the future.

Limitations

- **Limited power**: Accountability mechanisms can't force companies or banks to act. Solutions ultimately depend on the bank's leadership and clients agreeing to take action. This does not always happen. In some cases, harm may be acknowledged but remain unremediated.
- **Slow process**: Even though accountability mechanisms are less formal than courts, the process can still take years to get results.
- **Limited scope**: Accountability mechanisms only apply to projects funded by certain banks or institutions, not all international investments.
- **Mixed results**: While some communities achieve real change through these processes, others feel that the complaint did not improve their situation.

5. What are realistic expectations for possible outcomes?

The answer is mixed—some communities have been able to achieve remarkable outcomes, but, statistically, such examples are far too rare.

We have reviewed the outcomes of nearly 2,300 complaints to accountability mechanisms and found that communities have been able to achieve transformative remedies, including direct compensation, improved labor practices, community health programs, environmental protection, and improved dialogue between project implementers and communities. Complaints have also had a

preventative and a global impact, catalyzing changes in investment policy and practice, as well as stopping harmful projects before they begin. However, these outcomes remain unacceptably rare. Only 15% of complaints filed resulted in any identifiable commitment to address a problem. Our research also found that having civil society support improves the likelihood of higher quality outcomes, so you may want to reach out to us, or other organizations, for support. You can explore our research here.

6. How much time and what resources are needed?

The entire complaint process can be time-consuming, and take one or more years. While there are no fees to use accountability mechanisms, a community will likely incur costs to organize meetings, transportation, etc.

Note that it may be possible to receive financial or other help from the accountability mechanism, or local or international NGOs.

7. What safety risks should you be aware of?

Retaliation can be a real danger. It is important that you and other community members consider the individual and collective risks that you face and plan for them. A non-profit organization that we have partnered with, Open Briefing, has a Holistic Security Protocol for Human Rights Defenders available in 27 languages, which may help you to avoid, mitigate, and manage digital, physical, and psychological security risks. If you are worried about your safety, we recommend that you reach out to the acountability mechanism you are considering filing a complaint to, even before filing that complaint, to share your concerns and discuss potential protective measures. While anonymous complaints are not permitted, you can request full or partial confidentiality for any sensitive information, including your identity (although confidentiality can rarely be 100% guaranteed). Many accountability mechanisms also have guidelines for addressing the risk of reprisals in complaint management. You can also reach out to our team for individualized advice on modifications to the complaint process that you can request to better protect your security.

8. What is community representation? Why is it important?

You will generally be asked by the bank to nominate ‘community representatives’ who will negotiate on behalf of your community. The group of people chosen as representatives can strengthen the community’s negotiation power and share the burden of advocacy. Communities should think about having a diverse group of representatives, a communication strategy between the representatives and the community, and conflict resolution processes in place.

9. Why is it important to include women, children and other marginalized groups in these processes? What should you consider?

It is important to include women as representatives to help guide the work and make sure that the complaint is comprehensive, and highlights issues that are specific to women and girls. During follow-up work, it is also important to include women in **decision-making** and ensure that the process of seeking accountability is **empowering** them.

When women share **stories of abuse**, concerns about their livelihoods, mental and physical health and safety, and other gender-related impacts of projects, it is essential to make sure that these stories are heard and recorded in formal complaints to accountability mechanisms.

It is important to respect womens **confidentiality, security and decision-making** about how and when their stories are shared.

10. Which tactics should you use in your campaign, and in what order?

Communities will often need many tactics working together, as each tactic is part of the overall campaign. The order in which you use these tactics depends on the specific case and circumstances. Some examples of tactics are:

- Filing complaints to accountability mechanisms, as discussed in this Guide.
- Getting support for your campaign from **local groups of people** who share your concerns.
- Asking **governments** to help by exerting pressure on the people or organizations responsible for the harm.
- Talking to the **people or organizations responsible for the harm** and seeing if you can work out a solution.
- Figure out **who makes decisions** at the bank. If the board of directors makes decisions, build relationships with directors to help influence their decisions; especially those relevant to your country or those with the highest voting powers.
- Talking to the **media** to share your story and get broader public involvement.
- Filing a lawsuit in a local, foreign or international court against the organizations involved in the harmful project. Depending on the rules of the particular accountability mechanism you are considering using, you may be able to pursue a complaint process and a lawsuit in parallel, or you may not. See our individual mechanism pages for more information.
- Talking to groups like the **UN Working Group** on Business and Human Rights or other **UN Special Rapporteurs**, who may provide assistance in cases of human rights abuses.

11. Why is it important to make a record of all the information about the harm experienced by the community?

Keeping a comprehensive record of all the information about the harm experienced by the community is very important for accountability reasons. Where possible:

- take pictures and videos of events or places
- take notes, and record interviews with those harmed
- take detailed notes of any meetings held with local officials or representatives of corporations or organizations, and
- keep records of all steps that have been taken to resolve your problem

This will provide you with evidence, a timelines and testimonies to support your complaint.

12. How can you access support and help during the accountability process?

If you need help with your strategy or have questions about any of the issues discussed here, we encourage you to fill out our advice request here: https://accountability.tools/helpdesk. This will help us better understand your situation and connect you with the most relevant advice and resources.

Depending on your needs, we may provide advice directly or refer you to experienced organizations that can support you in navigating the accountability mechanism process.

Dispute resolution vs. compliance review

Most accountability mechanisms offer two methods for addressing complaints: dispute resolution and compliance review.

DISPUTE RESOLUTION

Dispute resolution involves bringing the community, the company or government implementing the project, and/or the bank together in a facilitated discussion, to find solutions that everyone can agree on. This can involve dialogue, joint fact-finding, mediation, negotiation, and facilitation. It is a voluntary process, and any party can choose not to participate. If it is successful, it will result in an agreement that addresses the community's concerns, incorporating the community's own ideas for solutions. If a dispute resolution is not successful, or not wanted by one or more of the parties, the complaint will proceed to compliance review.

Benefits

- Communities can have a say in decision-making processes through direct negotiation with the company or government agency implementing the project.
- A professional mediator may help everyone find common ground, build better relationships, and resolve differences.
- You can ask for input into who the mediator is, to ensure the mediator is legitimate and trusted by all parties.
- Community representatives may be able to negotiate solutions, such as compensation, increased transparency, stakeholder engagement, and stronger environmental and social protection.
- The accountability mechanism will monitor the implementation of any agreement reached, providing public transparency on whether the commitments in the agreement will be accomplished.

Limitations

- Participation is voluntary, and the company or government agency implementing the project may choose not to participate.
- The process requires significant time and coordination from community representatives and unified demands from the affected community.
- Solutions need to be negotiated and agreed upon by all parties, which often requires compromises.
- Community representatives may need to limit their public messaging (including media) to comply with confidentiality obligations. This could affect broader campaign goals.

COMPLIANCE REVIEW

Compliance review is a fact-finding process conducted by the accountability mechanism. The accountability mechanism investigates whether the bank has complied with its environmental and social policies, and whether any non-compliance has harmed the community. It usually results in a

report with findings and recommendations for how the bank should comply with its policies. The bank itself, usually the Board of Directors, generally makes the final decision about what steps the bank will take.

Benefits

- The compliance process does not require agreement from all parties to be initiated.
- The accountability mechanism conducts an independent investigation, producing a detailed public report that may validate community concerns.
- Community members have an opportunity to share their experiences with the investigation team.
- Requires less time and resources for the community, in comparison to dispute resolution
- The public report may be a useful tool for broader campaign goals.
- Communities can continue engaging in other forms of advocacy, including strong public messaging. Confidentiality is not required during a compliance review.

Limitations

- There is a risk that the accountability mechanism or the bank’s Board of Directors may choose not to conduct an in-depth investigation.
- The process usually takes one year or longer to complete.
- The accountability mechanism lacks the power to force the bank to take corrective action, remedy or divest. Community representatives and their advisors may need to advocate directly to the Board of Directors for meaningful changes, which still offers no guarantee of desired outcomes.
- Communities have limited opportunities to shape the bank’s decisions on corrective actions; they are usually determined by the bank alone (although consultation may be required).

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