

Asian Development Bank (ADB), Accountability Mechanism Complaint Form

A. Choice of function - Problem Solving or Compliance Review (Choose one below)

☐ **Special Project Facilitator for problem solving** *(Assists people who are directly and materially harmed by specific problems caused, or is likely to be caused, by ADB-assisted projects through informal, flexible, and consensus-based methods with the consent and participation of all parties concerned)*

☒ **Compliance Review Panel for compliance review** *(Investigates alleged noncompliance by ADB with its operational policies and procedures in any ADB-assisted project in the course of the formulation, processing, or implementation of the project that directly, materially, and adversely affected or is likely to affect, local people, as well as monitors the implementation of remedial action relates to the harm or likely harm caused by non - compliance)*

B. Confidentiality

Do you want your identities to be kept confidential? ***Yes (Yes)**

C. Complainants *(Anonymous complaints will not be accepted. There must be at least two project- affected complainants.)*

Name and designation (Mr., Ms., Mrs.)	Signature	Position/Organization (If any)	Mailing Address	Telephone numbers (landline/mobile)	E-mail addresses
Information redacted- complainants request that their identities be kept confidential.					

Authorized Representative or Assistant (If any). (Information regarding the representatives, or persons assisting complainants in filing the complaint, will be disclosed, except when they are also complainants and they request confidentiality.)

Complaint Represented	Name and designation (Mr., Ms., Mrs.)	Signature	Position/Organization (If any)	Mailing Address	Telephone numbers (landline/mobile)	E-mail addresses
ADB- Funded Kiratpur- Nerchowk Four Lane Road Project Himachal Pradesh- India	Mr. Apolinar Tolentino- Regional Representative		Building and Wood Workers' International (BWI) Asia and Pacific	I. N°24 - 03, Third Floor, Jalan USJ 9/5T Subang Business Center, Subang Jaya - II. Selangor DarulEhsan SGR 47620, Malaysia	III. Phone +603802 21089 Mobile +60123734743:	info@bwint.org apolinar.tolentino@bwint.org
	Mr. Rayyan Hassan- Executive Director		NGO Forum on ADB	85-A Masikap Extension, Diliman, Quezon City, Philippines	Phone +632 436-1858 Mobile: +63 9175117002	rayyan@forum-adb.org secretariat@forum-adb.org

D. Project

Project name	Accelerating Infrastructure Investment Facility in India - Tranche 1: Kiratpur NerChowk Expressway Ltd
Project location	Himachal Pradesh, India

Brief description of the project	<p>The project comprises of the four-laning of Kiratpur to Ner-Chowk Section of NH-21 from the existing 73.200 Km to 186.500 Km (approximate design length 84.38 Km) on Design, Build, Finance, Operate and Transfer (DBFOT) basis in the States of Punjab & Himachal Pradesh as BOT (Toll) under NHDP phase-III. The work includes construction of 5 tunnels, 15 major bridges and 30 minor bridges.</p> <p>International Funding Institution: Asian Development Project (ADB)</p> <p>Total Work: 84 Km</p> <p>Contractor: Kiratpur Ner Chowk Expressway Limited (KNCEL), a wholly-owned subsidiary of the Infrastructure Leasing & Financial Services Transportation Network Limited (IL&FS), India Infrastructure Finance Company Limited (IIFCL), New Delhi</p> <p>Implementing Authority: National Highways Authority of India</p> <p>Total Loan from IIFCL/DFI: 29.03 USD Million</p> <p>Project Completion: Initially slated for completion by 2016 end, the project is delayed and is expected to be completed in December 2018. The concession is for 28 years, including the construction period. As per the latest news reports, there is no clarity on expected completion date and there are reports that work is proceeding at a much slower rate - in the recent Government meeting concluded on 14 May 2019 - concerns have been raised about the Kiratpur-Nerchowk project abandoned by the concessionaire and urging the National Highway Authority of India to speed up work on this highway (https://www.tribuneindia.com/news/himachal/secy-apprised-of-condition-of-highways/772957.html)</p>
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E. Complaint

<p>What direct and material harm has the ADB-assisted project caused to, or will likely cause to, the complainants?</p> <p>Direct and Material Harm (Non payment of Workers' wages)</p> <p>We are filing to you this complaint regarding the Kiratpur - Nerchowk Four Lane Road project in Himachal Pradesh, India, partially financed by the ADB's Accelerating Infrastructure Investment Facility in India. The BWI affiliate All Himachal PWD-IPH & Contractual Workers Union Himachal Pradesh (AHPWDIPHCWU) is a registered trade union with construction worker members. Similarly, Himachal Pradesh Building and Road Construction Workers Union (affiliated with CITU) has been actively pursuing justice for the workers on the site who are owed several months in back wages by the sub-contracted company – Infrastructure Leasing & Financial Services (IL&FS) – that has now been declared financially insolvent and bankrupt. Direct social harm as described by the workers are-</p> <ol style="list-style-type: none"> 1. Unpaid back wages – Attached (Annexure – 1) 2. Receiving no formal appointment letters thereby having no legal privileges and/or contractual protections, - Attached Affidavits/ Legal Undertakings of Workers (Annexure – 2,3 & 4) 3. Widespread overtime violations and forced weekend work – Attached (Annexure – 1)

4. No social security coverage (This was at the sub-contractor level, however some details are annexed – Annexure 1)
5. No specific facilities for women workers (Only material evidence available is Charter of Demands submitted by the union to the company – Annexure 5)
6. Sub-standard Occupational Health and Safety measures and poor on site first-aid facilities. (Detailed Article from Sub-Divisional Magistrate clearly exhibits negligence on behalf of the company and the NHAI attached – Annexure 6)

Working with the BWI, the union has consistently worked to exhaust all domestic remedies in addressing the above-mentioned issues. They began organizing workers along the Kiratpur road project since 2014, conducting worksite-level meetings and raising key issues with contractors and sub-contractors. They received no response to their legitimate attempts in early 2018 to initiate collective bargaining by submitting a Charter of Demands (File attached – Annexure 5) to IL&FS and three major sub-contractors, re-submitting the charter on 2nd August 2018. There were more than 116 workers reached to the union and cases filed with the Labour Department in District Bilaspur (15 cases) and Court of LD Civil Sundar Nagar, District Mandi, Himachal Pradesh (67 Workers' cases) of workers on unpaid wages and, benefits. Out of these, only 8 cases have been disposed off by the Labour Office District Bilaspur. The Union has informed us that these claims amount to millions of rupees (More than 17.4 Million Indian Rupees). *(See the Annexes for details of unpaid wages & labour complaints)*

In August 2018, **(information redacted)** and the BWI met with ADB officials, outlining the steps they had taken to address issues and demanding ADB to take action. A joint mission with the ADB India Resident Mission was planned to Himachal Pradesh during November 2018, however Government approval was not granted for the visit. In the meantime however, the financial crisis at IL&FS had become clear; defaulting on billions on loans, Government obtained approval from a Mumbai Insolvency & Bankruptcy Court to take over the ailing company. The Union again raised these issues in an October 2018 ADB workshop in Delhi. The Union has reported that the work on the site had now come to a complete standstill by July-August 2018. Few sub-contractors had continued to work in the hope that they will get paid from the company. However, slowly it started emerging that the IL&FS is in financial crisis and facing bankruptcy - then the work stopped completely.

It is our opinion that the conduct of IL&FS has been in violation of the rules laid out in the ADB Social Protection Strategy, which guarantees the core labor standards and minimum legal protections. That same strategy requires that all ADB-funded projects have a ground-level grievance mechanism, however there was no such facility at the Nerchowk-Kiratpur road project.

Non-compliance with ADB Operational Policies and Procedures

Operations Manual Bank Policies OM Section C3/BP

The said OM pertains to the incorporation of social dimensions into the ADB operations. Accordingly, an initial poverty and social analysis (IPSA) is required for all loan and grant-based investment projects and programs to identify social issues. The IPSA should (i) identify expected poverty and social impacts of the intervention as a contribution to results at the sector and country levels; (ii) identify

key social issues (such as participation, gender, involuntary resettlement, indigenous peoples, **labor**, affordability, and other risks and/or vulnerabilities) that need to be addressed during implementation of the project preparatory technical assistance (PPTA) and the ensuing project; (iii) identify plans and terms of reference to assist in project preparation; and (iv) identify and allocate resources for conducting social analysis during the feasibility study or due diligence (para. 6).

i. Social Protection Policy of 2001

- ii. (iii) **Passive labor market policies** include (a) unemployment insurance, (b) income support, and (c) an appropriate legislative framework that strikes a balance between economic efficiency and labor protection. An appropriate legislative framework will include provisions on issues such as minimum age, maximum hours and overtime, labor contracts, industrial relations, special protection appropriate for new mothers, and anti-discrimination provisions to protect women and minorities. Internationally recognized labor standards, when ratified, are also part of the legislative framework of a DMC. With regard to the Core Labor Standards, no explicit ratification is needed for them to be part of the legislative framework of a country. The Core Labor Standards consist of (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the abolition of all forms of forced or compulsory labor, (c) the elimination of discrimination in respect of employment and occupation, and (d) the elimination of child labor. All Asian and Pacific DMCs, by virtue of being member of the International Labour Organization (ILO), are held to respect, promote, and realize the fundamental Core Labor Standards (para 15).

iii. Social Protection Operational Plan 2014–2020,

- iv. ADB's Social Protection Strategy (2001) defines social protection as the set of policies and programs designed to reduce poverty and vulnerability by promoting labor markets functioning, diminishing people's exposure to risks, and enhancing their capacity to protect themselves against hazards and the interruption or loss of income. Social protection promotes inclusive growth by ensuring access to essential services by disadvantaged population groups, including widows, jobless workers, children in poor households, and persons with disabilities. It also helps to cushion the impact and social costs of natural disasters and economic crises. Social protection is generally understood to comprise three categories: social assistance, social insurance, and labor market programs. ADB's Social Protection Strategy also states that ADB will comply with the internationally recognized core labor standards (CLS) in its lending (Executive Summary, p.5).

Have the complainants made prior efforts to solve the problem(s) and issue(s) with the ADB operations department including Resident Mission concerned?

☒ **Yes, If YES, please provide the following: when, how, by whom, and with whom the efforts were made. Please describe any response the complainants may have received from or any actions taken by ADB.**

The Union and BWI have been engaging in the National Level legal framework as well as ADB officials, the details regarding the communication efforts are as follows:

- On 14th August 2018, **(information redacted)** and the BWI met with ADB officials at Manila and discussed about the issues and its solution at the Global Union Meeting with the ADB. Selected ADB representatives – Haidy S. Ear-Dupuy, Senior Social Development Specialist and Warren Evans, Special Project Facilitator were present.
- Number of Zoom meetings were organized with ADB officials on these issues alongwith email exchanges . Meetings were held on 4th February and 6th March with Dingding Tang and BWI officials including BWI AP Regional Representative (Annexure 10 and 11)
- *BWI-SA participated in the Regional Workshop on “Enhancing the Capacity of Financial Intermediaries (FIs) in the Management of Environmental and Social Risks as well as the Compliance Supervision and the Accountability” in New Delhi, India, on 31 October to 1 November 2018 and also raised the issue of Kiratpur Four Lane Project, Himachal Pradesh.*
- ADB South Asia Department proposed field audit of ADB-funded project in Himachal Pradesh on 11-15 November 2018, however permission was not granted by the Indian Government.
- On 28 Feb 2019, we have submitted letter to draw the attention Mr. Kenichi Yokoyama Country Director, the Indian Resident Mission on "Undermining Workers' Rights at the ADB-funded NHAI Kiratpur - Nerchowk Road Project" (*Attached copy of letter & response received Annexure 7 & 8*)

☐ **No**

F. Optional Information (The following information is not mandatory, but would be helpful in processing your complaint.)

1. What is the complainant's desired outcome or remedy for the complaint?

Immediate remedies be followed to pay the workers' unpaid/owed wages and claims to the tune of INR 17,450,741. In this process, it has been reported that some workers have run into debts and the compliance panel should investigate the issue as well. Additionally, strong safeguard mechanism or special fund be put in place by the ADB for covering failure in payment to workers or any such payment violations in case of bankruptcy as in the case of IL&FS in Kiratpur-Nerchowk Project in India.

2. Anything else you would like to Add?

Following documents are attached for your review as evidences:

- Workers' owed wages claim sheet (116 Workers - 34+67+15 workers) Annexure – 1
- Workers' Affidavits – Annexure 2,3 and 4
- Copy of Charter of Demands – Annexure 5
- Rescue and Emergency Management of a Man Made Disaster: Lesson Learnt from Cavedin Tihra Tunnel, Himachal Pradesh – Annexure 6
- Copy of the Letter sent to the ADB Resident Mission (28 Feb 2019 and response received – Annexure 7 and 8
- All IL&FS Staff Protest Letter to the Government – Annexure 9
- Zoom Meeting & Email Exchanges between ADB and BWI – Annexure 10, 11 and 12

Name of the person who completed this form: Apolinar Z. Tolentino

Signature:



Date: 26 June 2019

Please send the complaint by mail, fax, E-mail, or hand delivery, or through any ADB resident mission to the following:

Complaint Receiving Officer (CRO) ,Accountability Mechanism

ADB Headquarters ,6 ADB Avenue, Mandaluyong City 1550, Philippines

Telephone number: +63-2-6324444 local 70309 Fax: +63-2-6362086

E-mail: amcro@adb.org