

Good Governance or Bad Management

An Overview of the ADB's Decision Making Processes and Policies

FOCUS *on the
Global South*

Focus on the Global South

c/o CUSRI, Chulalongkorn University, Bangkok 10330, THAILAND

Tel : 662 218 7363/7364/7365/7383 • Fax : 662 255 9976

E-mail : admin@focusweb.org • Web page <http://www.focusweb.org>

May 2002

C o n t e n t s

- 3** **A Master-plan for Market Expansion:
The Asian Development Bank and Governance**
By : Shalmali Guttal
- 7** **Providing What Justice, and to Whom?:
The ADB's Access to Justice Programme for Pakistan**
By : A. Ercelawn and M. Nauman
- 17** **The ADB's Uncivil Engagements:
The Experiences of Chashma Affectees**
By : Mushtaq Gadi
- 22** **The Sri Lanka Southern Transport Development Project**
By : Heather and Cyril Mundy
- 25** **Hijacking Development in Madhya Pradesh**
By : Raghav Narsalay
- 30** **BOT, Governance and the ADB**
By : Andrew B. Wyatt
- 38** **The ADB - “Governing” The Pacific?**
By : Aziz Choudry
- 42** **The Citanduy River Diversion Project: Some Critical Thoughts**
By : Susi Pudjiastuti and P. Raja Siregar
- 47** **Disclosure, or Deception?: Multilateral Institutions
and Access to Information**
By : Shalmali Guttal
- 52** **Governance and the ADB: Complicity and Conflict of Interest**
By : Jenina Joy Chavez

A Master-plan for Market Expansion

The Asian Development Bank and Governance

By Shalmali Guttal*

In its 1999 policy on governance, the Asian Development Bank (ADB) states, “The term ‘governance’ means different things to different people.”ⁱ In relation to the ADB, this is certainly true. The ADB’s forays into good governance over the past few years clearly show that what governance means to the ADB is quite different from what it means to millions of people in the Asia and Pacific region, who are unfortunately under its financial (and governance!) umbrella.

For most people, precepts of good governance would imply publicly accountable systems of rights, entitlements, laws, rules, distribution and use of resources, decision making, and so on, that are based on universal principles of equality, equity, and justice, but which at the same time, allow for the cultural specificities of a society or nation. For the ADB, however, governance is about putting into place the required policy environments and structures in its Developing Member Countries (DMCs)—who are also its debtors—to ensure the success of ADB financed programmes.

By its own admission, the ADB’s approach to governance is “economic” rather than “political;” i.e., the Bank regards good governance from the perspective of “efficient management of public resources” and “sound development management.”ⁱⁱ Accordingly, good governance is about “effective management” of

the development process and encompasses the functioning and capability of the public sector, and the rules and institutions that provide a framework of conduct for government, public enterprises, private business and corporations. Although its policy states that “governance is about the institutional environment in which citizens interact among themselves and with government agencies/officials,”ⁱⁱⁱ the policy neither discussed, nor recognises a meaningful role for citizens in governance processes, frameworks and mechanisms.^{iv}

The ADB does, however, articulate in considerable detail what governments—as “economic development managers”—must do in the area of good governance. The ADB claims a “legitimate and direct interest in governance issues” because of its involvement in the economic development of its DMCs. Its framework for governance both, arises from and supports, its development ideology.

Getting it right

The ADB is a market fundamentalist in its economic and development approaches. Its poverty reduction strategy is based on unshakable beliefs in the wonders of rapid economic growth, financial liberalisation, privatisation, deregulation and increased market “openness.” By adding the phrase “pro-poor” to

*Shalmali Guttal is the Coordinator of the Micro-Macro Issues Linking Programme at Focus on the Global South (s.guttal@focusweb.org).

its usual range of operations, it seeks to justify its efforts towards private sector and market expansion. For example, the stated purpose of a conference in March 2002 on privatised infrastructure development was to: help disseminate information on “pro-poor infrastructure development by the private sector,” showcase lessons on “pro-poor contract design regulation and reform processes,” and discuss current thinking on “pro-poor reform policy in infrastructure development.” Appropriately, the conference was titled “Private Solutions for the Poor.” It is extremely unlikely though, that the poor themselves were present at the Conference.

The Bank’s governance policy—which is considered an integral component of its poverty reduction strategy—is in effect, a master plan of strategies, directions and actions that borrowing governments must follow in order to ensure the supremacy of market processes, structures and mechanisms in all aspects of social and commercial life. This is no secret and the ADB is makes its ideas on the correct place for government, the public sector and private enterprise in economic development quite clear:

“In a market-oriented economy, the government has the obligation to see that markets function efficiently and that the playing field is level for all participants.....Market regulation by the government should ensure that the operating rules do not discriminate between individual participants or interest groups.”^v

The ADB’s approach to governance poses serious threats to preserving autonomy and sovereignty in national policy making. While the Bank claims that its principal activity is project lending, it argues that weak implementation capacity and poor sectoral policy frameworks in borrowing countries can negatively impact technically sound and well-designed projects. Therefore—the Bank argues—it undertakes programme or policy based lending to complement its project financing activities. Such program loans cover a range of activities, from local and sectoral studies to developing plans and strategies for the reforms of entire sectors (for example, judicial, administrative, transportation, agriculture, education, etc.). According to the ADB:

“These efforts at helping DMCs ‘get policies right’ are now commonplace in the Bank, and have led it to take greater interest in

the capacity of borrowing governments for policy formulation and implementation. While the policy objective in a particular DMC sector might be clear enough, knowledge of the institutional framework and its capability will be helpful in the design of reform measures.”^{vi}

In other words, “good governance” provides the ADB with an effective and legitimate window through which it can institutionalise the reforms needed to firmly establish market capitalism among its DMCs. This involves writing new laws and regulations, developing new administrative and management systems, creating new positions and roles within government, institutionalising new decision making processes and in fact, doing whatever is required to ensure that the DMCs stay firmly on the path of market-led economic growth.

Hiding behind the Charter

The ADB’s charter prohibits it from “interference” in the political affairs of its members and from being influenced by the political character of its members. Under Article 1 of the Charter, the purpose of the Bank is to foster economic growth and cooperation in the region, and the Charter clearly gives primacy to “economic considerations” in the carrying out of the ADB’s purpose and functions. By its own admission, however, the term “economic considerations” has been “widely interpreted” and ADB programs extend to any area that is deemed to have “economic effects.” Accordingly, the Bank’s governance agenda too has extended into such diverse areas as the environment, education, health, judicial systems and women’s empowerment.

On the other hand, the ADB is not quite as willing to recognise the political consequences of restructuring national policy environments that form the core of its governance programmes. While it is true that social and environmental programmes have economic effects, all programmes, economic or social, also have political effects.

Numerous examples can be found in the region where the access and rights of people and communities to crucial resources and opportunities have either been severely restricted, or lost altogether as a direct consequence of ADB supported projects and programmes. Policy prescriptions such as

enhanced cost recovery for health, education and public utilities, water user fees in irrigation systems, the rationalisation (downsizing) of civil service sectors, creating “flexibility” in labour markets, and the privatisation of public sector enterprises, have resulted in the disempowerment and marginalisation of large numbers of people across the region. The ADB’s strategy of “pro-poor growth” has encouraged governments to freeze minimum wages and withhold the rights of workers to association, benefits and protections. In countries such as Pakistan, India, Thailand and the Philippines, protests against ADB projects and programmes have resulted in social unrest and divisions, and at times, even political harassment of those who protest.

Since the ADB’s framework of governance does not discuss the political dimensions of governance, it shows little interest in the fact that its own projects and programmes may violate the constitutional rights and democratic spaces of citizens. Too often, reform regimes imposed by the ADB have acted as barriers to the accountability of governments to their own citizens, and to the protection of broad based public interest. The transformation of public sectors to serve corporate and market interests in the guise of “efficient management of public resources” undermines the obligations of governments to provide appropriately and sufficiently for their citizens. It also creates new vulnerabilities, especially among those who are already income poor and politically marginalised. Not only has the ADB not accepted its culpability in these consequences, but also, it has consistently hidden behind the privileges that its Charter provides and assumed a politically neutral face.

The ADB has taken much of its content and operational strategy regarding good governance from its sibling institution, the World Bank. Inspired by the World Bank’s “global experience with project and adjustment lending,” the ADB feels confident in positioning good governance as “sound development management” necessary for “ensuring adequate returns and efficacy of the programmes and projects financed.”^{vii}

The World Bank’s Charter also prohibits it from engaging in political activities and directs that decision-making be based on economic considerations alone. But given the

emerging track record of poor management and project quality, negative project and programme impacts, and allegations of corruption in numerous World Bank financed initiatives, the World Bank is indeed a poor role model of governance for any multilateral institution.

Reconstructing the public domain

The ADB has identified four elements of good governance for its purposes: Accountability, Participation, Predictability and Transparency. All four elements are operationalised by policy and sectoral reform programmes that promote private sector needs over public interest priorities. For example, “The litmus test [for Accountability] is whether private actors in the economy have procedurally simple and swift recourse for redress of unfair actions or incompetence if the executive authority.” And, “Access to accurate and timely information about the economy and government policies can be vital for economic decision making by the private sector.”^{viii} Predictability is about developing legal frameworks, especially to support private sector development.

The ADB claims that its “bread-and-butter business” is assisting the public sector in DMCs. This assistance is geared primarily towards the reform of public enterprises, with a concomitant process of reconstructing an “appropriate” role for the State in a market-friendly economy. Maximising profits, minimising costs, preserving markets, market-friendly economic reforms, promoting market mechanisms in the provision of services, competitive operating environments, enhanced cost recovery, divestiture and privatisation, are the main concerns that guide the ADB’s assistance to the public sector, and the operationalisation of the ADB’s elements of good governance.

The ADB’s governance policy is vehicle for entrenching sectoral reform and reconstructing the public domain. It is also fundamentally contradictory. While the Bank claims to eschew involvement in political aspects of governance, its core mandate-promoting economic development-is a deeply political phenomenon. Economic development plans determine the distribution of a society’s wealth, opportunities and challenges, who gains and loses, and how power is realigned or

entrenched. It is both delusional and self-serving for the ADB to project that the political and economic dimensions of governance can be separated in policy and reality.

The ADB's policy on good governance offers no prescriptions for its own institutional governance. Accountability, Participation, Predictability and Transparency are the buzzwords for governments, but appear not to apply to the ADB's own conduct or operations. ADB insiders have revealed that the institution is increasingly plagued by poor and irresponsible performance by Bank staff and Management, and a lack of clarity about its own operational policies and procedures. Questions have been raised in meetings of the ADB's Board of Directors about the appropriateness of Bank conduct in formulating, processing and implementing projects. Controversies surrounding a number of ADB projects and programmes—from the Chashma Canal Project in Pakistan to reform programmes in the Pacific Island States—reveal that the ADB's commitment to good governance is at best a lie and at worst, antagonistic to nationally meaningful and accountable governance structures and mechanisms.

Evidently, there is a lot for the ADB to learn and acknowledge about the implications of its specific version of governance. The ADB is well advised to clean its own house and demonstrate its accountability to citizens and their governments before imposing its version of governance on the people of the region.

-
- i *Governance: Sound Development Management. Asian Development Bank, August, 1999. Page 3.*
 - ii *Ibid. Page 20.*
 - iii *Ibid. Page 3.*
 - iv *It could be argued that the ADB alludes to citizens in its language on private sector actors; however, the policy contains no meaningful discussion about a country's citizenry as a force discrete from economic actors.*
 - v *Governance: Sound Development Management. Asian Development Bank, August, 1999. Page 5.*
 - vi *Ibid. Page 16.*
 - vii *Ibid. Page 7.*
 - viii *Ibid. Pages 8-13.*

Providing What Justice, and to Whom?

The ADB's Access to Justice Programme for Pakistan

*By A. Ercelawn and M. Nauman**

The Asian Development Bank (ADB) proposes to assist Pakistan in improving governance through loans of \$350 million and a grant of \$0.9 million. These loans and grants include \$20.9 million for technical assistance, of which 4 million dollars will go for training, workshops and public awareness campaigns (i.e., slush funds and disguised kickbacks). The Government of Pakistan (GOP) will contribute \$25 million to a national Fund. Of this, a Legal Empowerment Fund can get up to \$5 million, which may be used by “approved” civil society groups for advocacy efforts, although not presumably against donor boondoggles.

The loan commenced in December 2001 and ends in December 2004. The Federal Ministry of Law, Justice and Human Rights, will be the executing agency through a special Programme Management Unit.

In view of the substantial addition to already unserviceable indebtedness, and/or because of a record of systematic plunder and squander in externally determined “assistance” programmes, all donor projects need sustained, critical watching. Such monitoring has become all the more necessary after the United States (US) has signalled to donors that Pakistan’s ruling elite must be generously rewarded.

In preparation for this project, over \$4 million have been, and are being spent through Technical Assistance (TA) grants since 1997 (TA 2979-PAK, 3015-PAK and TA 3433-PAK, 3640-PAK).

This paper provides an initial review of

the ADB Loan Document (RPP: PAK 32023) for the Access to Justice Programme (AJP). A request for full documentation has been made to the Minister for Law and Justice, Mr. Khalid Ranjha (the former Minister was Shahida Jamil).

In the meantime we rely on the document made available by Mr. Hamid Sharif at the ADB office¹

Supposedly, the request for donor assistance for a Justice programme came from the Federal Government, rather than being imposed upon Islamabad by the ADB. Is it then a mere coincidence that the text of the letter from the Finance Minister reads like the loan document? Or is because the same types of consultants drafted both documents?

The right rhetoric

The loan document states the rationale of the programme as follows:

“Vulnerability, justice, and entitlements are closely linked. Vulnerability is a function of insecurity of access to key sets of material, social, political, and environmental assets. Justice is a function of the relationship between institutions responsible for delivering entitlements (public goods and services) predictably, affordably, and accountably, and the ability of citizens to secure and sustain their access to key sets of assets. The pro-poor rationale of this Programme assumes that efforts to limit the vulnerability of the poor to the vagaries of systems of administrative, political,

*A. Ercelawn and M. Nauman are with the Creed Alliance in Pakistan (awarakhi@yahoo.com, darvesh@super.net.pk)

civil, and criminal justice are at least as important as macroeconomic performance in poverty reduction.”

This rationale requires recognition that law is about the power to regulate social and economic relationships. Hence, changing the balance of power is intimately related to promoting justice as the acknowledgement and realisation of rights. But the document compromises the notion of justice by defining the programme as a way to merely “influence the exercise of political, administrative and judicial power so as to improve the accessibility of public entitlements for all citizens, in particular the poor, women, and minorities.”

The ADB asserts that “poverty reflects social and political processes that are mediated through a range of institutions. “ But how about the economic arrangements enforced by the state? Or more generally, the creation of institutions that favour property over labour? Does it really matter that social and political processes would be made more benign without altering the institutions themselves?

The ADB’s analysis, however can only lead it to assert that “the vulnerable poor are especially affected by their relations with a dysfunctional and predatory local state” (original emphasis). It is such an anemic approach, or perhaps self-serving naiveté, that results in the absence of any efforts in the loan programme to support the mobilisation of the poor themselves for collective action in defence of their rights.

Just markets

“In addition, the present legal framework and the performance of judicial institutions significantly constrain market-based economic growth, and in particular hinder foreign direct investment as well as the growth of small and medium-sized enterprises.”

And, “...the informal legal system is insufficient for adequate market-based economic growth, and constrains significant foreign direct investment as well as the growth of small- and medium-sized enterprises.”

The attached Poverty Assessment is illuminating in this regard.

Serious business

The loan document claims that the “the AJP is to assist the Government to improve access to justice so as to, (i) provide security and ensure equal protection under the law to citizens, in particular the poor; (ii) secure and sustain entitlements and thereby reduce the poor’s vulnerability; (iii) strengthen the legitimacy of state institutions; and (iv) create conditions conducive to pro-poor growth, especially by fostering investor’s confidence.”

The Programme will contribute to these aims by supporting five inter-related governance objectives: “(i) providing a legal basis for judicial, policy, and administrative reforms; (ii) improving the efficiency, timeliness, and effectiveness in judicial and police services; (iii) supporting greater equity and accessibility in justice services for the vulnerable poor; (iv) improving predictability and consistency between fiscal and human resource allocation and the mandates of reformed judicial and police institutions at the federal, provincial and local government levels; and (v) ensuring greater transparency and accountability in the performance of the judiciary, the police and administrative justice institutions.”

Will the AJP then also permit financial support to groups endorsing or supporting the referendum for sustaining reforms with Chief of Army, General Musharraf as President?

Guiding rules

The AJP objectives are marked by the absence of explicit reference to the national constitution, or even international conventions, such as the UN Conventions on Social, Economic and Political Rights and the ILO Declaration of Principles. This is self-serving since the State and its financiers cannot be held accountable by objective, substantive benchmarks. Also worrying is the equation of law with justice in a country with a record of incomplete translation of the Constitution into laws, of laws that endorse exclusion and discrimination, and more generally, of laws that permit the State to not acknowledge and protect people’s rights.

What are we to make of the emphasis on securing assets? Are rights and justice to be thought of as little more than economic transactions? In which case, the prevailing

system of bargains between state agencies and the poor through local negotiations of property rights for life and livelihoods is already on the right track.

The first sentence and paragraph of the Introduction to the main Programme proposal is revealing in the narrowness of Bank conceptions of justice — “governance has emerged as Pakistan’s foremost development priority.” Not a word about participatory democracy is to be found in this section, as through progress on realising social and economic rights can happen without the fundamental right of association in all its meanings.

It is considerable number of pages later that issues of political justice are taken up in the loan document. This disjunction between priority and treatment is not accidental, since the project only pays lip-service to addressing the political implications - as institutions for collective voice and response — of promoting justice for the poor.

The language is revealing in defining the goal of the AJP as “an efficient, citizen-oriented judicial system” and uncomfortably resonant of the Bank’s aim of economic reforms towards an efficient and consumer-oriented system. To repeat, justice is about rights and people rather than laws and citizens. Until this distinction is accepted, dangerous confusion will persist about the nature of reforms needed to promote the realisation of rights through reforms in the justice system. Over the past half-century it should be more than obvious that the State acknowledges few rights and permits even fewer entitlements.

The shallowness of ADB’s analysis is also reflected in the statement that “the most serious constraints are found in the political culture, and in sanctions bearing on the judiciary, police and administration.” Of course these are important factors. But central to the plight of the poor are the inequitable and oppressive economic and social arrangements that underpin the Pakistani State, and which will surely worsen as the State embraces globalisation at the behest of Washington and Manila.

Negotiating, or managing contradictions?

Some degree of tension naturally prevails within and between the Programme rationale and Programme objectives. How are these to be resolved when promoting justice to the poor collides with making the country investor-friendly or market-friendly? What if environmental conservation implies a different growth model, one that is poor-friendly but not statistics friendly? In every sector, numerous illustrations can be given of serious adverse impacts upon the poor and the environment as a result of the drive for (naturally profitable) privatisation and of the obsession with infrastructure. What then of justice as commonly understood? Moreover, as the Kirthar case illustrates, “enforcement of environmental laws” becomes a travesty of justice when laws are modified in favour of foreign investors as a consequence of unrelenting pressure by the ADB and the World Bank for privatisation of the energy sector.

Accountability of “judiciary, the police and administrative justice institutions” is also included as an objective. It is then puzzling why virtually the same institutions have been made the implementing agencies. Set a thief to catch a thief?

Also notable is the absence of any reference to the obligations of a just state - a constitutional mandate in Pakistan — to eliminate the private oppression and exploitation of people that is engendered through denial of social, political and economic rights. As an extreme example there is bonded labour; more common is the denial of even a decent living wage. More broadly, we have the exclusion of women from ‘public space’ but inclusion as property rights of men.

“Concentration of power at the federal and provincial levels has limited broader participation which has led to overrepresentation of feudal and business interests.” How would balanced representation substantively affect justice for the poor? It seems that the ADB shares the frivolousness of those who believe and would have us believe that an enduring freedom to ‘do your own thing’ reflects substantive justice.

It is absurd to state that “no adverse social impact is anticipated” or that “no adverse environmental impact is anticipated,” from the

Programme when a key objective is to promote property rights in markets and of investors, i.e. to privilege capital over labour, rather than to nurture community and people.

Gender issues

Predictably, the project includes attention to gender aspects of injustice. But is this attention substantive? Consider the assertion that “in most aspects of their lives the poor rely on informal justice and dispute resolution forum that in some respects have been more effective than formal mechanisms.” Any serious observer would agree that jirgas and panchayats are quite effective, but only in oppressing women by exclusion of participation and blatant indifference to their rights.

Implementing agencies

The Federal Ministry of Law, Justice and Human Rights will be the executing agency for the loans and technical assistance, through a special Programme Management Unit. Implementing agencies will be the Federal Law Commission, Ombudsman, Judicial Academy, and the Ministry of Interior. Provincial implementation will be done by the Departments of Law, Home and Planning & Development, involving the Ombudsman, High Court, and Public Safety Commission.

The Ministry of Law, Justice and Human Rights is not renowned for even comprehending, let alone acting upon, rights. Their support to the dilution of the National Policy & Plan for Bonded Labour is the most recent illustration of odious conduct and wholly incompatible with the mandate of the ministry.

Also of note is that the Federal Ministry of Interior and the Provincial Home Department are central to implementation, despite their ignoble records of repression rather than justice. Similarly, the provincial Planning & Development Department is the co-ordination link, in spite of a public record of suppressing people’s rights through project boondoggles and displacements.

Since the Programme rationale includes economic and environmental rights, glaring also is the absence of any institutions directly involved with labour or environment, at either federal or provincial levels. This is not

accidental since implementation details show much of the project rationale to be mere rhetorical.

“A National Programme Review and Co-ordination Committee (NPRCC) will review and co-ordinate overall progress, and corresponding Provincial Programme Review Committees (PPRCs) will operate at the provincial level. The chairperson of NPRCC will be the secretary of MOL. NPRCC will comprise one representative of each of the provincial high courts, to be nominated by their respective chief justices; the secretaries of the ministries of Law, Finance, and the Interior; the director general/secretary of the National Public Safety Commission; the secretaries of the provincial law departments; one representative nominated by the Pakistan Bar Council; the director general of FJA: one representative of the Law Commission; one representative of the Federal ombudsman; and one representative of civil society nominated by the Federal law minister. Each PPRC will be headed by the chairperson of the P&D or the additional chief secretary (development) of the P&D. A PPRC will comprise the secretaries of departments of Law, Finance, and Home; the high court registrar; the provincial inspector general of police; the secretary of the provincial PSC; two representatives of subordinate courts to be nominated by the chief justice of the high court concerned; and one representative of civil society appointed by the governor. NPRCC and the PPRCs will be assisted by the outputs of the TA grant, which will focus on programme monitoring and evaluation. Under the TA, civil society participation will be encouraged together with public surveys.”

When the State is the problem, there is little point in packing implementation and oversight mechanisms with State functionaries. For example, the Environmental Protection Act, and the Bonded Labour Abolition Act do not function because the highest state officials will not allow it to be enforced. In fact, even the existence of widespread agricultural bonded labour is denied at the highest levels in the province of Sindh.

Furthermore, public debate and transparency are prerequisites of serious reforms. Does anyone really believe that these are likely to be fostered by the proposed implementation arrangements?

What benefits? To whom?

The Bank claims that “AJP will deliver benefits in three domains. Actions in the first domain, policy and legal provisions, will secure (i) greater judicial independence, transparency, and accountability; (ii) better citizen-state relations; and (iii) more durable public institutions responsible for the delivery of justice.”

These reforms in policy and law are likely to yield lukewarm benefits that will make little positive difference to the range of the rights of the poor.

“Actions in the domain of institutional performance will result in: (i) greater judicial independence, fostering the predictable, timely and impartial rule of law conducive to investor confidence; (ii) a dramatic decline in political interference in police services; (iii) enhanced institutional arrangements for holding public servants and officials accountable for violations of citizens’ rights and entitlements; and (iv) greater public engagement in planning and monitoring the performance of judicial and police service delivery.

Accountable to whom? Engagement by whom? The usual coterie of public representatives, uniformed or otherwise, give little reason for optimism that accountability to the poor for their rights can somehow be secured without direct, collective action by the poor themselves.

Combining claims in the first and second domains suggests that greater judicial independence is largely to be confined to promoting investor confidence. This is especially ominous in light of the frequent expressions of making labour and environmental laws as investor friendly, i.e. turning the entire country into an export processing zone where capital can operate with much impunity. Has anyone at the ADB bothered to think about the decades it would take even with high economic growth to wipe out existing income poverty?

The loan document further claims that: “Actions in the third domain, budget/expenditure management, will result in greater consistency between allocations of human and fiscal resources and institutional responsibilities for the delivery of justice at federal, provincial, and local government levels. The AJP will contribute to the Government’s

efforts to transform the performance of the judiciary and the police such that the citizenry will regard these institutions as the important for the assertion and protection of their rights, while the poor will feel confident to use them to reduce their vulnerability. While the benefits of the improved rule of law are indispensable to improve economic performance, the AJP will decrease vulnerability for the poor in substantial ways including (i) alleviating the vulnerability arising from everyday harassment, under performance, exclusion, and denial of basic rights by public officials; (ii) easing the vulnerability of informal sector activities to rent-seeking activities of officials responsible for licensing and regulating people’s access to economic and environmental assets; (iv) improving the accountability of public officials, and improving the accessibility and affordability of public goods and services on which the poor rely disproportionately.”

If realised, these claims are of revolutionary performance. Certainly a first reading of the document belies these claims.

What are we to make of the assertion, “The vulnerability of the poor is significantly exacerbated by their weak literacy in law and the inability to enforce the law.” Is this a question of inability, or design/intention? Or, that “it is apparent that patterns of adult literacy greatly affect the capacity of the poor to access the opportunities created by reformed public institutions.” What types of rights and services are we talking about? Since literacy is currently largely absent among the poor, whom then is the AJP really going to serve?

If the poor are admittedly non- or not fully literate, how and through which intermediaries would they benefit from the following programme actions? “Freedom of Information (FOI) law will be passed, and the public will be informed of its meaning and uses. Publication of laws efficiently through the official gazette will be reviewed, and web publication of all laws will be achieved during the AJP period. A law will also be enacted to ensure that all regulations and circulars having the effect of law will be published in the official gazette. The Ministry of Law (MOL) and the Department of Law (DOLs) will be assisted in the timely publication of the official gazettes, including publication on the web. In addition, to enhance the public’s understanding of the law,

simplified explanations of all new laws will be published in Urdu. Over the AJP period, simplified Urdu explanations of major enacted laws such as the Civil and Criminal Procedure codes and the Penal Code will be published.” Whether simple or complex, documents in and of themselves are irrelevant to those who are non-literate!

“To provide quick relief against unlawful imprisonment, a study on the law of habeas corpus will be initiated and recommendation implemented to increase access to justice in such cases.” Does unlawful include private imprisonment? There is no evidence that the AJP intends to deal with the current situation in Sindh, where the High Court has essentially denied the application of habeas corpus to bonded labour

Safeguards and risks

The loan document considers that,

“Three factors present particular risks to the reform process, each of which is only marginally within the capacity of the AJP to mitigate: (i) the fiscal crisis will make it extremely difficult for the Government to adequately and predictably resource the reforms over the next decade; (ii) implementing government commitments to reform will depend on corresponding constituencies being created among provinces and local governments and on the facilitation of broad coalitions and alliances with civil society; and (iii) the window of opportunity for reforms, through to October 2002, is vulnerable to uncertainty, within both Pakistan and the region. While the AJP design, in particular the TA loan, will assist in ameliorating risks relating to (ii) above, the other risks are beyond the capacity of the AJP to mitigate. Furthermore, the heightened sense of instability and uncertainty created by the present regional crisis will undoubtedly impact on the law, order, and security situation within Pakistan that it is the purpose of this programme to improve.”

Quite refreshing is the reminder that “the lessons from experience with conventional justice reform is it they must extend beyond the judicial domain. However well designed and run, judicial systems are unlikely to be well used by the poor.” But then there is a sudden shift in language towards a managerial approach -

“access to justice in private life, economic livelihoods, and public goods and services are profoundly affected by the administration and police as well as the judiciary.”

“Second, programmes in support of reforms can provide short-term incentives for policy reform, but they cannot supplant or precede prior domestic political commitments.” How then are the poor to be mobilised to press for such political change in the State?

“Third, reform programmes must assist governments to articulate these commitments into long-term budgetary arrangements that provide for independence of the judiciary and devolve spending powers to the appropriate administrative level of authority. Fourth, reform programmes must work with governments, civil society, and the private sector to define, embed, and extend institutional arrangements to articulate policies/laws and enabling resources.” But one would imagine that justice calls for creating new arrangements rather than merely defining or extending them. How are the poor to participate in these partnerships? What kind of justice would we have if profits are the sole incentives offered to the private sector to collaborate?

Coalitions and alliances of the poor with civil society are necessary (even if insufficient) for promoting justice. It is then rather odd that the Bank does not require the project design to be focussed on facilitating such coalitions and alliances. Is it any wonder that mobilisation of the poor does not figure anywhere in the document as a “safeguard” intrinsic to the realisation of the project objectives?

But then even the provision of justice is characterised by the ADB project as service delivery.

Accountability for what, and to whom?

The project will use part of the TA grant for “independent” monitoring. Since the programme is executed by the Ministry of Law and Justice, which itself deserves scrutiny, the process of monitoring is fatally compromised to begin with. Tragically, nothing seems to have been learnt from past projects such as the multi-billion Social Action Programme scandal, where monitoring consultants kept parroting task managers only to belatedly acknowledge that

there were serious problems in the Programme.

“Through the TA grant, ADB will help the PMU to establish monitoring procedures to meet three purposes: (i) monitor the progress of the implementation of the reforms; (ii) ensure independent audit procedures; and (iii) provide strategic information, based on lessons from experience, to manage the reforms. Monitoring will focus on three aspects of the reform: (i) Budgetary Commitments and Expenditure Performance. (ii) Implementation of Institutional Arrangements. (iii) Performance of the Access to Justice Development Fund.”

It is assumed, both arrogantly and dangerously, that public monitoring of the substance of the reforms is not required. If for example, the Government of Sindh decides to side with the Sindh High Court in persuading bonded tenants to seek relief in the dormant and inadequate provincial Tenancy Tribunals rather than in the Federal Bonded Labour Act, should we be delighted at this successful management of implementation of injustice?

“MOL, in co-operation with the Implementing Agencies and TA grant and loan consultants, and ADB will conduct evaluations by an independent authority jointly appointed by ADB and the Government at the end of year 3 of AJP implementation.” Not surprisingly, accountability remains confined between government and donors despite much rhetoric of good governance.

Whose designs?

It is a cruel joke to claim that a project addresses the needs of justice by the poor and then to exclude them in designing the project. This is the reality despite the claim that “reform proposals have been indigenously driven through multi-layered stakeholder participation.”

In view of its shallow moorings but enormous power, the ambition of the ADB is dangerous. “The AJP is the first phase of ADB’s long-term assistance to Pakistan for access to justice reform. Legal, judicial and police reforms, like any institutional change, are inherently complex and require time to change institutional culture, incentives, and behaviour. In this first phase, the AJP aims to integrate access to justice issues into the larger development debate in the country, set the

policy and legal framework for sustainable judicial and police reforms, and initiate a set of activities to address some of the most pressing issues in the sector.” When such activities are set by the ADB, they are likely to ensure everything but justice.

Bribery and co-optation

“An institutionalised and multipurpose legal empowerment fund (LEF) will be created, as an integral component of the AJDF, with its own governance structure that reflects civil society representation. The LEF will provide new options for Pakistan’s most vulnerable citizens and will allow for civil society initiatives and public-private partnerships to empower the vulnerable poor. The feasibility of establishing a public defender system will also be examined to provide legal support to the vulnerable poor.”

No word about public prosecutors to address the glaring deficiencies of the Federal Attorney General or the Advocate Generals at the provincial levels - perhaps because the lessons from Ombudsmen here and elsewhere is that success in achieving justice requires the sincere and vigorous mobilisation of new civil society associations.

“Civil society groups will be able to access the LEF to raise awareness about and provide assistance for enforcement of environmental rights.” Whose rights, and to what? Will the AJP finance peoples’ actions against the environmentally damaging expansion of commercial fisheries that the ADB itself or donors such as the European Union (EU) are supporting? As another illustration, can the LEF be used to put brakes on the Chashma canal project funded by the ADB? How will the LEF be constrained if the ADB funds expansion of the Karachi water supply before it first addresses problems of marine pollution?

Quite consistently, civil society is to be involved in oversight only through nominated representation at the federal and provincial levels.

“By engaging stakeholders (within state agencies and civil society) in the reform process and demonstrating to the public that a positive difference can be made in the delivery of justice through improved procedures, greater

transparency, automation, etc., these complementary activities will instil confidence in the reform process.” Since the document is silent on how such engagement will be fostered, one should safely assume business as usual in all its senses.

No role for the poor

The ADB considers that the programme’s “focus on accountability, sanctions and performance through legal empowerment will raise sensitive cultural, social, and political issues. According to this empowerment-oriented definition of access to justice, awareness and literacy involve building people’s appreciation of their rights and the law; their ability to act on legal knowledge or to assert their rights individually or collectively; and their capacity to mobilise for change. This approach will focus on disadvantaged populations who most need legal knowledge and ways to use it.”

But then how are the poor assisted by this Programme to act?

Protecting the environment

“Consistent with its institutional focus, the AJP is to support the enforcement of environmental laws through the establishment of environmental tribunals already provided for in the law, and by ensuring that any conflict of interest is removed by different persons heading environmental protection agencies (EPAs) and the provincial environment departments so that EPAs can effectively promote the public interest.”

How does the AJP intend to deal with gross environmental abuse such as changing laws to accelerate commercial exploitation of protected natural parks, as was done for Shell and Premier by the Sindh Government and its agencies in Kirthar Park? What does the AJP recommend that citizens do when the North-West Frontier Province (NWFP) government prevents the Forestry Commission from functioning as intended by law?

Where the money will go

The programme expects the Federal and provincial governments to spend over \$ 400 million as follows: Judicial Reform - \$149 m;

Police Reform - \$237 m; Fund - \$25 m.

Additional expenditures are to come from local government. The AJP loans and grants of \$350 million are to “defray” these outlays.

Administered by the Law Commission (for a lawful commission of 3%) the Access to Justice Development Fund (AJDF) will include a Judicial Development Fund (JDF) of \$16.7 million; the Legal Empowerment Fund (LEF) using between \$3.75 - 5 m; the Fund for Innovations in Legal Education (FILE) of \$1.75 - 3 m; the research and development fund of \$1.75 m; and the Federal Judicial Academy Fund of \$1.75 m. From the AJDF, \$ 2 million may be used to establish centres of legal education. Another subsidy to the rich?

The judicial reforms in the loan programme say absolutely nothing of real consequences to the poor. One would have expected the agenda to include reform of labour laws towards universality and towards better enforcement such as through a Minimum Wage Tribunal. Instead, the programme will provide dedicated full-time benches for commercial cases in the Lahore and Karachi High Courts.

In view of the emphasis on environmental justice, it is odd that judicial reforms include the setting up and actual functioning of the long-promised Environmental Tribunals only in Balochistan and the NWFP. Does the ADB really believe the Sindh and Punjab Governments that such tribunals are already operational in these provinces? Or is it considered too dangerous to establish tribunals in Sindh and Punjab?

The ADB promises among other benefits: “enhanced institutional arrangements for holding public servants and officials accountable for violations of citizens rights and entitlements; and greater public engagement in planning and monitoring performance of judicial and police service delivery.” The document fails to explain what these “enhanced” arrangements are to be and how they will be attained. These are not idle queries. Consider, for example, the current difficulties in acknowledgement of employment status faced by informal sector workers and sharecroppers, with the consequent depredation upon their rights to life and livelihood.

Similarly, the loan document does not discuss how meaningful public engagement will be carried out. Most likely, these engagements will involve elite negotiations with sham “public participation.”

Market-friendly rights

For purposes of the poverty analysis, the programme document looks at broad expected outputs “in terms of their anticipated impacts on the labour market, prices of goods and services, public expenditures, and access to public goods and services.” The attached tabular presentation is illuminating. Justice, did we hear anyone say?

In the Sindh Rural Development Project, the ADB proposed to buy the freedom of bonded labour from their creditor landlords, rather than insist upon compliance with the existing legislation that declares all such debts illegal and requires prosecution of the creditors. Perhaps this is what the ADB would call a “market solution” to injustice.

Role of the law

Since much is made of justice as adherence to law, it is useful to recall the odious role played by the ADB in funding, and continuing to fund — despite documented objections — projects and agencies who have blatantly and consistently flouted national laws on land acquisition. The unnecessary displacement of people and their livelihoods - in scale or timing — has been the hallmark of projects such as the Chotiari Reservoir in Sindh (under the National Drainage Programme); the Chashma Link Canal in Panjab; and the Ghazi-Barotha Hydropower project in Panjab and NWFP. It should be apparent from these and other examples - such as urban cleansing by eviction of squatters to provide space for shopping plazas - that for the poor, claims to resources are threatened most by the State.

It is perverse to term a programme that makes the world safer for capital and its interests, but tramples on all other moral orders, as promoting access to justice for the poor.

Beyond remedy

As a programme to advance justice by promoting people’s rights, this the ADB supported AJP is considered to be seriously flawed in design and implementation arrangements. An appropriate popular response needs to be carefully formulated after wide public discussions about the implications of the Programme.. Our past experience (e.g. with the Korangi Waste Water Project) is that it is illusory to expect the ADB and the Government

to substantively overhaul projects for which large loans have been approved and subsequent vested interests created within the Bank as well as in Pakistani society.

I hsharif@adb.org; www.adb.org/Documents/RRPS/PAK/rrp_32023.pdf.

POVERTY IMPACT ASSESSMENT (Appendix 4, AJP Loan Document)

Channel	Type of Effect		Macro	Impact on Non-Poor
	Direct (short-term)	Indirect (Medium-term)		
Labor Market	Minimal effect jobs in the judiciary and police through the creation of new positions.	Income losses for rent seekers facilitating services under current system. Employment generation in private sector as investment increases.	Improvement of business confidence.	Skilled and educated labor is expected to benefit from increased foreign investment that creates employment opportunities.
Prices	Service charges for legal fees are to be increased but consumers are willing to pay for better service especially if hidden changes are abolished.		Increased business efficiency of formal businesses is expected to lower prices of domestic goods and services.	
Public Expenditures	Despite budgetary constraints increase government expenditure for judiciary and police administration.	Other sector may receive relatively smaller budgetary allocation given budgetary constraints.	Overall fiscal deficit targets agreed upon with IMF will be maintained.	
Access to Public Goods and Services	Due to the tremendous backlog of cases and entrenched practices in the legal/justice system the significant immediate effect is not anticipated.	A significant improvement in the timeliness and quality of legal services is expected.	Spillover effect to improved delivery of public goods across as the efficiency and effectiveness of judicial and police services permeate throughout the public sector.	Impact relatively less on non-poor who have access to justice and police services through their position of power or financial strength.

The Asian Development Bank's Uncivil Engagements

The Experiences of Chashma Affectees¹

By Mushtaq Gadi*

The Asian Development Bank (ADB) makes frequent assertions about bettering the governance aspects of the development projects it finances. Participation, transparency and accountability are considered major mechanisms to improve overall project management and address adverse social and environmental impacts. A number of policies, albeit formal, legalistic and procedural in character, prescribe these elements as pre-requisites for attaining the goal of good governance in terms of project planning and implementation, programming and strategy development.

However, there is now significant accumulated evidence available to demonstrate that the ADB's claims do not match reality. Its written words seldom translate into deeds. Bank staff usually find it difficult to even ensure compliance with the ADB's own already weak and contested policies regarding project preparation, planning, implementation and monitoring. The Bank frequently finds that it has to negotiate decisions in deeply political institutional contexts, and thus needs to increase its political leverage and make strategic power alliances to protect its institutional interests. Unfortunately, project-affected communities who lack voice in decision-making and access to power alliances remain marginalized in this process.

The fact of non-compliance with its own policies has led Bank staff to engage in a set of

informal practices to address these contradictions. The public is tactfully denied access to relevant information. Decisions and agreements that are considered pragmatic are kept secret to avoid unpleasant and unpredictable consequences. Meetings with project-affected communities (affectees) and representative of civil society organizations (CSOs) are not generally recorded, and often, they are mis-represented. Participation is reduced to token representation. The risk of opposition and resistance by affectees and CSOs is deterred through prolonged, laborious and unclear engagements with Project and Bank staff, without any indications or assurances about the outcomes of these engagements. The success of these engagements depend largely on seductive and imaginative speech. General features of such engagements include promises, complaints about ADB's lack of leverage, criticism on dysfunctional national policies and laws, and sympathy for the suffering of the affectees by ADB and project staff. On the other hand, Bank staff always display uneasiness and reluctance when issues of rights and compliance with institutional policies are raised with them.

The policy violations based on informal practice coupled with the lack of effective mechanisms for internal accountability yield a variety of "uncivil" engagements by Bank staff with the project affectees. Although these

*Mushtaq Gadi is with the Sunghi Development Foundation in Pakistan (mushtaq_gadi@hotmail.com).

uncivil engagements are not recorded, they overwhelmingly determine the relationship of the Bank's staff with project affectees. More often than not, these engagements appear to be more of a game for Bank staff than a genuine recognition of the fundamental rights and responsibilities of the affectees.

The experiences of affectees and civil society organizations involved in the campaign of Chashma Right Bank Irrigation Projects (CRBIP) are a testimony to the uncivil engagements practiced by the ADB.

Information maneuvering

The formal engagement of Chashma affectees with the Bank was started in February 2001. The first demand from the Chashma affectees and NGOs was to allow full access to all project related information, and particularly to the report on resettlement surveys and the environmental management plan. However, Bank staff refused to share any of this information and pleaded that the Bank's new policy on information disclosure does not apply in the case of CRBIP since the Project was approved in 1992. Similar answers were given with regard to compliance with the Bank's Policy on Involuntary Resettlement.

Surprisingly, after almost two years, the Project Management Consultants handed over the resettlement survey report and action plan to representatives of the affectees during the Chashma Stakeholders' Workshop held in March 2002. After going through the report, surprise was replaced with utter shock.

The document was extremely revealing. We learned that the resettlement survey and plan was prepared in accordance with the guidelines for incorporation of social dimensions in Bank Operations². These guidelines make it compulsory to consult with the affectees and concerned NGOs. Moreover, consultations with the affectees and NGOs was also included in the terms of reference for the resettlement survey and plan. It was further revealed that the ADB had asked the consultants to take into account the Bank's Policy on Involuntary Resettlement when preparing the resettlement plan for Chashma affectees. Bank guidelines mandate that irrigation projects which cause involuntary displacement should include resettlement components and be given high ranking in terms

of environmental impacts. Most shamefully, the report on resettlement survey and plan was prepared in the same month when the engagement of Chashma affectees was started with the Bank. The affectees were kept in the dark and denied their right to know about these plans (the right to know is accepted in the Bank's own guidelines). This was clear violation of the Bank's own policies.

Apparently, the violation of the affectees' right to know was necessary in order to conceal a series of policy violations in other areas. In fact, the Bank was not fully prepared to follow its own guidelines and policies. It was therefore thought better to conceal Project related information as long as agreement between the Bank and WAPDA was not reached. The agreement was negotiated three months later when the WAPDA refused to implement the resettlement plan. Consequently, a second document was prepared in May 2001 which stated clearly that the affectees should either accept nominal cash compensation or construction of flood protection embankment. Again, the second document was also not shared with the affectees.

Consultation: choose between forced eviction or life imprisonment

"Flood protection bund is a sub-jail for us. Our women, children and elderly people face problem for toilet. In our village, we are 170 persons at present; naturally we will grow and be in need of more houses soon; but the premises is too small to build a single room; imagine living within 18-20 feet high embankments at 50 degree temperature. The protection bund could be breached any time and we would be buried inside the bund. You people would be responsible for our death".

The above are the views of an affectee, expressed during the Chashma Stakeholders' Workshop.

"We can not do anything to solve your problem. We don't have the funds for resettlement. Moreover, the law does not permit us to provide resettlement for affectees. It is up to you whether you want to live there or migrate to the other areas."

"We admit that there is a severe problem of flooding in the riverine belt caused by the

project. We are also ready to extend the distributaries and flood carrier channels up to the Indus River. However, the local community will have to cooperate with the WAPDA and should provide the land to the government free of cost”.

The above are the views of the project director expressed during the Chashma Stakeholders’ Workshop

The life of more than thirty thousand people living in the west side of Chashma Right Bank Irrigation Canal is under the severe threat of project induced flooding. A number of mighty hill-torrents from the west side hit the canal and created flooding because of failure in getting safe and timely passage.

The first social survey and resettlement plan for the villages facing the threat of project induced flooding was prepared in February 2001. The resettlement survey and plan was meant to consult with the affectees about the option of resettlement or construction of flood protection embankments around the endangered villages. All villages except one opted for resettlement in the east side of the canal. The survey report indicates that the opinion in the villages that opted for flood protection embankment was also divided. However, these consultations proved to be symbolic, and views of the affected communities were totally disregarded in the decision-making process. Consultation with the affectees was one sided and there was no institutional mechanism to involve the affectees in decision-making processes.

In May 2001, the decision was made against the implementation of resettlement plan. It was agreed between the WAPDA and Bank to either pay the nominal cash compensation or provide flood protection embankments to these villages. This was the same month when the Bank showed its readiness to send a special review mission followed by a stakeholders’ workshop in response to the concerns of Chashma affectees and NGOs. During the negotiation, the Chashma affectees and NGOs demanded once again access to the resettlement survey and other project-related documents. The demand was rejected on the basis of policy restrictions. In fact, it was considered incorrect to share this information before making the final decision.

The entire situation was a two-pronged strategy jointly formulated by the Bank and WAPDA. On one hand, Bank staff continued to engage the affectees and NGOs in consultations without sharing vital project information or disclosing decisions that had already been agreed on. Bank staff pretended that they were serious in their intentions to follow their policies and guidelines. On the other hand, WAPDA carried on coercive operations against the affectees to compel them to choose between forced eviction and the construction of flood protection embankments. The strategy was indeed a fine combination of tactical thinking and use of force.

Last year, the implementing agencies and local police tried to forcefully evict the affected villagers. They were asked to accept the payment for only houses. It was said that the compensation for land would be paid later, after the completion of legal processes. However, the villagers are still living in their ancestral places despite the fact that they would be under the threat of flooding during the monsoon in the current year.

The people in the village who opted for flood protection embankments feel that they are now living in a jail. Imprisoned by the high embankments, they can now only view the sky or stars. There is no facility for the drainage of rainwater-which is enough to flood the entire village. New construction in the village is impossible because of the closed embankment. Mobility has been seriously constrained. It is particularly difficult for the elderly to walk up and cross the embankment. Most importantly, these earthen embankments provide minimum protection. They can be breached any time by the force of floodwaters.

Making the impossible happen: Inaccurate data, changes project design, flooding and displacement

When the project was started in 1992, it was claimed that there would be no displacement. Four years later, it revealed that nine villages would be displaced due to the project induced flooding. The figure went up to twelve villages when the resettlement survey and plan was prepared in February 2002. The figures on displacement continue to rise. In a recent document, the WAPDA indicated that

about twenty-three villages would be under the threat of flooding. However, the affectees are convinced that this recent assessment is still not realistic. Rather, the number will continue to increase because of fundamental structural flaws in the project design are being deliberately ignored.

The reason why the Bank, WAPDA and foreign engineering consultants failed to assess the flooding and subsequent displacement accurately is interesting. The project is an impossible endeavor that was made to look possible on paper through hyper-scientific and engineering imagination, using inaccurate data about peak flood flows and rate of silt deposition. In addition to divergent local views, information and figures of other national and international agencies also contradict the estimates made by the project's engineering consultants.

Most interestingly, one of the major aims of the project is to protect local communities from the risk of seasonal floodwaters by the various hill-torrents. Almost half of the project budget was allocated to construct flood protection structures. Indeed, this objective was misplaced. Local communities have never considered the water of hill-torrents as floodwaters. Rather, they have used this water for irrigation purposes for generations. A very sophisticated hydraulic system was developed by the local communities to control and use this seasonal water for irrigation purposes. The Chashma project failed to achieve this objective and instead, created a situation in which a large number of local people are facing the severe threat of project induced flooding.

The Bank and its consultants have not only used wrong data, but also used misplaced objectives to justify the project. The planning and preparation of the project were based more on the will to profit, than the need to address local problems.

Multi-stakeholder dialogue: Imposing consensus

Multi-stakeholder dialogues and consensus building are two preferential terms in the Bank's discourse on engagement with society. The Bank benefits from this discourse in many ways. Compliance with its policies is made conditional to consensus building among

stakeholders. Efforts towards multi-stakeholder dialogues and consensus building help the Bank to buy time to speed up the process of project completion. Most importantly, the rules of stakeholder dialogues and consensus building processes are purposefully structured to impose decisions that have already been made on the vulnerable affectees.

Our experiences of a recently held Chashma Stakeholders' Dialogue are ample proof of the sophisticated manipulative skills and methodical tactics of Bank staff in imposing decisions on affectees. In response to the affectees' demand for an independent project review, the ADB agreed to send an internal special review mission. Based on the affectees' concerns about the independence of the review process, the Bank suggested involving external consultants to document stakeholders' concerns and facilitate the dialogue on conflictual issues. The process took almost seven months to culminate into the stakeholders' workshop. During the workshop, the WAPDA refused to agree with the major demands from the affectees regarding resettlement, just compensation for loss of livelihoods, full access to information, etc. The delegation from the ADB refused to comment on compliance with Bank policies in relation to these issues. The affectees also came to know that "consensus" was already reached and agreed upon between two powerful stakeholders. This led the affectees to boycott the workshop. The entire process proved to be an important learning experience for the affectees, who trusted the Bank and entered into the stakeholder dialogue with the hope to achieve something from the promised "win-win" solutions.

Report on the Chashma stakeholders' workshop: Secondary displacement

The affectees were shocked when they received the report on the stakeholders' workshop. There was no reporting on the areas where major disagreements had occurred. The views and opinions of affectees on issues critical to them were not considered worth documenting in the report. The report on one-day field visit was entirely missing. The Chashma affectees considered this technique a kind of secondary displacement in which the views and opinion of

affectees were systemically displaced from the discourse and text. Despite several protest letters against this attitude, the consultants hired by the ADB refused to report on the areas of disagreement and to include the views of affectees in the main report. Clearly, displacing the voices of affected peoples from mainstream discourse is essential for powerful institutions such as the ADB to ensure that they control knowledge about development.

Conclusion: Rethinking engagement

Civil society organizations and peoples' movements have serious concerns about the approach and practices of International Financial Institutions (IFIs) on governance and rights. They are becoming increasingly convinced that the policies of these institutions on information disclosure and structures of decision-making are not able to ensure compliance with universally recognized, fundamental human rights. On the other hand, these institutions claim to evolve "constructive engagements" with key stakeholders to create an enabling environment for resolving the problems and addressing the concerns of affectees.

Like many other cases, the experiences of Chashma affectees show that the rhetoric of constructive engagement has never become a reality in actual practice. Rather, a set of standard, informal practices and strategies are devised to impose consensus on politically marginalized groups of local affectees. Instead of constructive engagement, a variety of uncivil engagements are developed and used to achieve the IFIs' own institutional objectives.

There is serious need to document experiences of such uncivil engagements in different projects to facilitate future dialogue and strategy development among projected affected peoples and supportive CSOs. Equally urgent is the need within civil society to debate the issue of engagement with institutions such as the ADB and other IFIs from the perspectives of good governance and rights.

financing for the project was provided by the ADB in 1999. Major concerns of affectees are project induced flooding and subsequent displacement of more than thirty thousand people, irreparable disruptions of local livelihoods, massive losses of productive assets including land, trees, houses and other structures, and adverse environmental impacts. This paper will focus on the governance related aspects of the project.

- 2 *Guidelines for the incorporation of social dimensions in Bank's operations were approved in 1991 and hence applicable in this project.*

1 *The project referred to in this paper is the third stage of the Chashma Right Bank Irrigation Project (CRBIP) which started in 1992. Additional*

The Sri Lanka Southern Transport Development Project

*By Heather and Cyril Mundy**

We have been told that in the Charter of the ADB it is clearly laid down that the Bank should ensure it is a socially minded lender. However, we are seeing the complete opposite of this in Sri Lanka, in the Southern Transport Development Project that is supported by the Asian Development Bank (ADB).

The Sri Lankan road system is very poor and there is certainly the need for a network of fast roads to improve communication and movement of freight. The first is a link between the capital Colombo and Matara, a deprived area in the South of the island. Funding for this link is being provided by the ADB and the Japan Bank for International Cooperation (JBIC).

In line with the ADB policy, a highway was designed which minimised the destruction of houses and ensured the road had the best balance of income and costs, both social and financial. This design was handed over to the executing agency the Road Development Authority (RDA) to manage the environmental clearance and come up with a detailed design. In the process of doing so the RDA changed the route of the proposed highway link. The RDA acted in secret, and partly staged a cover up exercise. The change of the proposed route was concealed from the public and possibly the ADB as well. The RDA design seems to be a result of

political and financial influence. The ADB failed to monitor the RDA as a result, none of the “Elements of Good Governance” as given by ADB in their Operations manual OM Section 54/BP were practised by the RDA.

All the ADB documentation, the Report and Recommendation of the President to the Board of Directors on a Proposed Loan (RRP), Summary Environmental Impact Assessment (SEIA) all refer to the originally designed route. None of the variations of the RDA have been covered by any of the above studies. The changes in the route causes significant social disruption, for instance in one village alone 138 houses out of five hundred houses will be destroyed. Most of these houses are parts of extended families. The splitting of these close family ties by moving people elsewhere is very disruptive to the community. Moreover, there are no places to resettle the families, so large compensation have been promised to silence the critics. The promise of compensation is untenable— Under ADB guidelines people displaced have to be provided with alternatives which provide an equal or better standard of living. Many of the people in the village are farmers and will not be provided with alternative lands to cultivate. They are too old to be retrained. The people have been promised only 1/8th of an acre in compensation, at present most of the villagers have productive

*ggama@mail.ewisl.net

home gardens and vegetable plots in addition to their paddy fields. The promised land will not be able to sustain them in the same way. There is also an obligation to re-locate people within the administrative divisions that they now live in. This impossible as there is not sufficient land for this in the local area. Children's schooling will be disrupted and family ties severed. In areas where compensation was paid, early on, it was derisory, recent values that have been offered in some areas are also very low.

After our pleas to the RDA and the Government of Sri Lanka (GOSL) fell on deaf ears for many months, we sent a petition in July 2001 signed by 188 families representing 745 people to the JBIC and the ADB. The ADB did not even acknowledge it. In December 2001 we were told that the Resident Mission had sent it to Manila, who have not acknowledged it up to now! We were not aware that this project was being run by Manila and feel the Resident Mission concealed this fact from us. Not much of "Transparency" by the ADB!

The ADB were advised in detail of the changes and results of these changes on the people by various groups along the route. The ADB were pressured to ask the RDA for clarifications. The RDA's clarifications were clearly unsatisfactory and falsified. For instance the RDA claimed that they conducted 4000 meetings with people affected in one year, which means the RDA should have conducted 12 meetings day every single day of the year, including weekends, holidays!! The ADB accepted the clarifications given by the RDA and referred the RDA's letter to the complainants, with a covering letter stating ADB's acceptance of RDA' clarifications. Further letters were sent by societies in the villages of Gelanigama and Akmeemana to the ADB asserting the RDA's responses were not factual. The ADB Management's lengthy reply reiterated the ADB's acceptance of the RDA's clarifications.

In December 2001 the ADB sent a team of representatives to meet the people, this was in response to a inspection request made by the affected people. The ADB representatives met the people and in their discussions the team had indicated their displeasure over RDA's handling of the project. However, when the minutes of this meeting were received from the ADB office,

the organisations realised that some of the comments of the people and of the representatives were conspicuous by their absence. When the local organization Gelanigama asked the ADB to include the statements, the request was denied. The idea of getting an inspection request to investigate the project is in itself a very uphill task. The details required for the Inspection request is often hard to obtain, moreover, the manual and guidelines for such a request are in English and couched in legal jargon, which makes it extremely difficult for non-english speaking farmers to comprehend and adequately address.

We did our best and sent in a request with all the details we could find. We have not received any information from the inspection administration or the ADB management. To make matters worse, the ADB claimed the whole issue is sub-judiceⁱ and therefore cannot be discussed. However, the investigation is not a legal case and therefore, by virtue which, all evidence and information should be considered. It is clear therefore, that the ADB is not willing to hear evidence that could expose the flaws of the project. The ADB's claim to transparency, accountability and good governance seem to have vanished into thin air.

The RDA is now in a race to beat the Inspection Committee. Get the project to a point where the Inspection Panel, if there is one, can do nothing. All the land acquisition is to be done before the Board ratifies the Inspection Committee's decision. The route then becomes a fait accompli!

The ADB Management is happy to help the RDA, it asks for extensions for its reply. The Inspection Committee also gets extensions for itself. The ADB Directors will not respond to letters, they will not even meet the complainants to understand the problem and delay the RDA.

The indications on the Panel request so far are that the RDA continues to misguide the ADB and Management, who in their turn are content to pass them on. The Management Response to the Inspection Request cannot be seen or verified by the affected people. Perhaps we will see it after the Board has made its decision on the Inspection Panel.

The decision is due mid April 2002. It is surprising, that having written the first complaint in July 2001, it takes the ADB more than a year to make a decision?

Other affected groups have sent in their Inspection Requests, ten in all. One organisation may receive a decision in early May, the others have been pigeon-holed by the Inspection Committee waiting for them to review the request 'as soon as practicable' which has been more than four months.

All the good words about transparency and good governance come to naught if the Management and the Board cannot show these themselves. They certainly have not been interested in trying to get the GOSL to follow them.

i In a legal case the matters under review by the court cannot be talked about outside Court with those concerned as this would possibly affect justice being done. For this reason discussions of legal matters are considered 'sub judice' and cannot be discussed.

Hijacking Development in Madhya Pradeshⁱ

By Raghav Narsalay*

Introduction

Since the beginning of the nineteen-nineties, the Asian Development Bank (ADB), has played a central role in deepening neoliberal ideology at the sub-national level by strategically extending what are known as ‘policy loans’ to national and sub-national entities in India. By adeptly using political processes at the sub-national and national levels, the ADB, with active support from different state-level governments, has carved out a role for itself in pushing policy reforms, especially in the states of Madhya Pradesh, Gujarat and Kerala.ⁱⁱ

Given this evolving role of the ADB in the Indian context, it is critical to analyse how the ADB uses its macroeconomic framework to push the macroeconomic and sectoral reforms at the sub-national level. Also important would be to review as to whether the ADB becomes an agent to facilitate the political objectives of the State and elite local private interests and vice versa.

The Macroeconomic Framework of the ADB - some critical issues

To quote from the ADB’s Country Assistance Plan (2000-2002):

“ADB’s current country operational strategy (COS) for India is designed to support efforts to achieve higher growth and employment generation by improving the supply side efficiency of the economy. This is done

mainly through support for efforts to reduce bottlenecks in key infrastructure sectors, including measures to improve policy, institutional and regulatory frameworks and through support for financial sector reform and capital market development.”

The above paragraph shows that the ADB wants to generate employment and growth in India by reducing bottlenecks in key infrastructure sectors. Is this approach particularly India-specific? Not at all. In fact, the ADB has been implementing this strategy in almost all the countries where it is operational. Which then raises the question, why is the ADB keen in pushing such a strategy everywhere?

ADB furthering interest of the State at the cost of people’s interest

For the ADB, creation of key infrastructure is about building dams, huge electricity generation plants, ports and other forms of large infrastructure. Creation of such inflexible, hard projects helps not only the ADB, but also helps the State to promote a false, development-friendly image before its people. Furthermore, actualization of these projects creates a space for the State and the ADB to add new contours to the definitions of ‘national pride’ and ‘national security’. The State and the political and economic elite are then in a position to use these notions to roll out projects that may snatch away the rights of local communities over their natural resources and livelihood opportunities under the garb of

* Raghav Narsalay is a Research Associate with Focus on the Global South, India (focusweb@mantraonline.com and focusind@yahoo.com)

servicing and safeguarding the larger public interest. Rolling out such projects then provides an opportunity for the State to seek external funds and for the ADB to lend, and oils the machinery that furthers private and institutional interests.

Constructing linkages between the creation of infrastructure projects and generation of employment also provides a rationale for the ADB to argue that the generation of employment and increase in economic growth reduce poverty (which is not necessarily true). And thus, the ADB claims the right to be functional in the area of poverty reduction. Like the World Bank, the ADB then claims to have an expertise in designing and promoting economic reforms that purportedly lead to greater poverty reduction in the Asia Pacific region.

Through its self-proclaimed expertise in the area of poverty reduction, the ADB gets a license to automatically demand much greater and well-defined policy space from the national and sub-national governments in the sphere of economic reforms, encompassing areas such as education, health, sanitation and other essential services. Many a times, it gets much more than the demanded space. This happens mainly because the State also finds it politically worthwhile to accept costly ADB financing to help the State to defuse the intensity of its immediate political concerns at the national and international levels. In sum, by accepting ADB funds, the State, at the national level, can keep pushing the neoliberal reform process by showing that it is not abdicating its responsibility of providing the required financial resources to enhance the quality of basic services. And at the international level, the State can continue to build a pro-reform image.

Furthering the private interests of developed countries

There is also another reason why the ADB is keen on pushing such a strategy across the Asia-Pacific region. By showing linkages between key infrastructure development and economic growth, the ADB and its major developed country donors generate definitive demands for goods and services provided by large international suppliers (from the donor countries) not only in the area of technical assistance, but also in the procurement of expensive goods and services required to

construct such infrastructure projects. For example, by instituting processes such as international competitive bidding for purchases above certain amounts, the ADB effectively distorts the level playing field for domestic producers and service providers from host countries.

In addition, similarities between the reform approaches of the ADB and other bilateral aid agencies at different levels allow these institutions to complement each others' efforts in deepening the neoliberal framework of reforms at the macroeconomic, as well as at sectoral levels.

The ADB's agenda for Madhya Pradesh - is it at all a developmental one?

An examination of the macroeconomic framework of the ADB vis-à-vis developmental concerns of its host countries clearly shows how the ADB creates an incentive structure for the State and other private interests to collaborate with it in the garb of furthering public interest. It would therefore not be surprising to see this happening in the state of Madhya Pradesh as well.

Mapping the process

In 1997, Madhya Pradesh was shortlisted as the second state for ADB assistance (the first state was Gujarat). During December 1997, the Bank cleared two packages in the area of technical assistance, viz. "Support for the Government of Madhya Pradesh Public Finance Reform and Institutional Strengthening"ⁱⁱⁱ and "Strengthening Local Government in Madhya Pradesh"^{iv}.

Technical Assistance included 'teach-ins' for officials working with public institutions and the State Government on the benefits of undertaking a public sector reform programme. As expected, these teach-ins concentrated on convincing the officials about the usefulness of the ADB-strategy for the state of Madhya Pradesh and making them adopt the necessary language that would guarantee an ADB loan under the rubric of 'poverty reduction'.

These observations are verified from tone and language of the letter written by the Chief Secretary of the Madhya Pradesh Government in August 1999 to the then Finance Secretary of

the Government of India requesting him to “forward this letter to the Bank for the purpose of seeking Bank financial assistance for the Program”^v. The letter clearly reveals the fact that the Government of Madhya Pradesh had not entered into any critical consultation with people before putting forward such a proposition to the ADB.

Although the ADB boasts about its governance policy, it completely overlooked this fact and in fact found it fit to come out with the ‘Report and Recommendation of the President to the Board of Directors on a Proposed Loan and Technical Assistance Grant to India for the Madhya Pradesh Public Resource Management’^{vi} in November 1999.

Problems with the ADB President’s Report

It would have been surprising if there were no striking glitches in the Bank President’s Report, which is based on a process that did not involve peoples’ participation in any stage of its formulation. Following are some of the shortcomings regarding the President’s Report:

1. The document is marred with inconsistencies right from the beginning. For e.g., the “Objective and Scope” and the “Classification” of a project are important to understand the basic categorization of an ADB loan. Consistency in language describing the “Objective and Scope” and “Classification” in ADB documents provides understanding on whether a loan would prioritize social concerns over economic imperatives. But this consistency is absent in the President’s Report. In the Report, while the “Objective and Scope” prioritize social sector reform over economic growth, economic growth becomes the primary objective and human development becomes the secondary objective in the section on “Classification.” It is hardly surprising that these inconsistencies are reflected (and used by the ADB to its own benefit) in the implementation of the public sector reform package.

2. The President’s Report mentions that, “Reconnaissance, consultation and fact-finding missions were fielded between December 1997 and April 1998.” However, reports from a number of local organisations, social movements and trade unions in the state indicate that the consultation process carried out by ADB staff was limited to government staff and actors

from the private sector.

3. The Report mentions that the ADB is trying to learn from the sub-national experiences of other organisations like the World Bank.^{vii} But this does not seem to be the case, especially since this document was released three years after the initiation of the Structural Adjustment Programme (SAP) by the World Bank in the state of Andhra Pradesh. Research conducted by Focus on the Global South and the Centre for Environment Concerns in Hyderabad clearly shows how the World Bank initiative— which is similar to the one being pushed by the ADB in Madhya Pradesh— has actually deepened the cycle of indebtedness in Andhra Pradesh.

4. If the State Government continues to take loans from bilateral and multilateral donors to finance its social sectors but is unable to raise revenue through taxes, then its chances of falling into a debt trap are extremely high. The President’s Report does not discuss this issue and therefore, it does not discuss strategies by which the State can address such risks.

Based on the above shortcomings and the process by which the Report was formulated, one can conclude that the President’s Report is anti-people. Furthermore, the language and the inconsistencies within the document imply that the ADB is deliberately promoting confusion about the unfolding economic reform process in India.

The ADB’s entry into the power sector of Madhya Pradesh

The President’s Report (the document discussed in the section above) clearly makes crucial links between the reform of public finances and power sector reform. Although the Report mentions that this particular observation is based on the lessons drawn from Gujarat, these links have also been highlighted in the letter sent by the Chief Secretary, Government of Madhya Pradesh to the Finance Secretary, Government of India. This letter also reflects the interests of the State Government in toeing the ADB line regarding the power sector reform programme.

What are the objectives of the power sector reform programme?

Overall objectives of the reform include:

1. Achieving commercial efficiency and improving viability of the sector;
2. Increasing operational efficiency through enhanced competition, managerial autonomy and higher accountability; and
3. Creating an enabling environment for private sector participation.

Some problems with power sector reforms Transparency and Financial viability being put at stake

Once again it is important to note that the programme of power sector reform has been formulated in a very secretive manner. There has been no public debate to discuss the nature of reforms that the power sector actually requires. The concerned trade unions have never been invited for discussing the relevance and the need of such a package before its formulation. In spite of carrying out its plans in such a manner the ADB continues to talk about good governance initiatives that have been introduced as a part of this exercise.

The energy sector policies that the Madhya Pradesh Government is promulgating on the advice of the ADB have not only legitimized prohibitively expensive power production by private corporations, but have also given tacit support to financing private power projects that are anti-people. For example, the Power Finance Corporation, which has received funds amounting Rs. 15 bn. (around US\$ 350 mn.)^{viii} from the ADB and the World Bank will give a foreign currency loan worth about Rs. 11 bn. (around US\$ 200 mn.) to a private power generation project—the Maheshwar Power Project in the Narmada Valley— to produce power at the rate of Rs. 7 to Rs. 10 per KWH. This is several times higher than the power that is supplied by the Madhya Pradesh Electricity Board (MPEB).

Furthermore, the Energy Reforms Bill that has been passed in Madhya Pradesh at the instance of the ADB has meant that marginal farmers (farmers having land less than 1.22 hectare) have stopped receiving electricity at concessional rates, which was promised to them by the State. For many poor families, this has meant the loss of the only (single point) electricity connection in their households. The

State Government is undertaking these actions in connivance with the ADB under the name of rectifying commercial losses but is relegating the welfare dimensions associated with electricity distribution to the background. The Madhya Pradesh Electricity Board (MPEB), which actually distributes the generated electricity to households, is taking such draconian measures even when it knows that small and marginal farmers and poor households are not responsible for the commercial losses of the MPEB.

How have mass movements and other social formations acted?

In the past two years, civil society organisations and mass movements in India have realised that ADB is also playing a key role in entrenching neoliberal policies at the national and the sub-national levels. As a result, a number of organisations and movements have started to critically analyse the documents and actions of the ADB at all levels.

Specifically in the case of Madhya Pradesh, mass movements and other social formations have already started critically evaluating and mobilising against the process of reforms institutionalised by the State and supported by the ADB. On January 17, 2001, nearly 150 people from people's organisations were jailed while marching on the streets of Bhopal (Capital city of Madhya Pradesh) to protest against the anti-people policies of the ADB and the World Bank.^{ix}

Especially in the area of power sector reforms, movements in Madhya Pradesh are particularly angered by the fact that the ADB is not concerned that the money that it has lent to Power Finance Corporation is being channeled to the controversial Maheshwar Hydel Power Project (the Maheshwar Power Project has been severely criticised not only by peoples' movements but also by expert teams for its demographic and socioeconomic non-viability).^x

Awareness campaigns are being organised at the local level to make people understand how the State Government, in coordination with the ADB, is unfolding a reform programme that would only end up deepening their debt burden.

In conclusion

In summary, one can conclude that ADB has deliberately continued with the same set of errors that it has committed in other parts of the world. The ADB is assisting and endorsing state reform packages and private sector development that are anti-poor, and serve the interests of local elite and transnational players at the cost of local labour, capacity, resources and industry. The ADB's operations in the state of Madhya Pradesh confirm its unwavering commitment to support for hard and inflexible infrastructure development, no matter what its cost to the people.

The ADB has cleverly used the language of poverty reduction to gain entry into the social sectors of various states. It continues to work closely with the State and local elites to institutionalise economic reforms that serve the economic and political interests of a small coterie. By serving the short-term political interests of State Governments, the ADB has created an incentive structure within developmental processes that institutionalizes white-collar corruption and poor governance. And finally, under the name of poverty reduction, ADB supported reform programmes are steadily pushing people into a debt trap.

However, civil society and social movements in India are getting increasingly vigilant about the role being played by the ADB in deepening neoliberal ideologies at the national and sub-national levels. The primary task before them now is to mobilise the people to mount a unified challenge to the policies and operations of the ADB.

i Madhya Pradesh is a state of the Indian republic. It was formed in 1956 and is in the centre of India. It is the country's largest state, covering more than 4,00,000 square kms. As per the ADB documents the state covers around 13.5 per cent of India's total geographic area. The ADB documents also state that more than one third of the state's 77 million people belong to socially and economically disadvantaged groups consisting of scheduled tribes and scheduled castes, the highest proportion in India. The state has the poorest per capita income of Rs. 7,500 (around US\$ 150) per annum amongst all the states in India.

- ii Madhya Pradesh, Gujarat and Kerala are three states in India*
- iii TA No. 2943-IND worth US\$ 780,000*
- iv TA No. 2944-IND worth US\$ 700,000*
- v Letter from K. S. Sharma, Chief Secretary, Government of Madhya Pradesh to P. G. Mankad, Finance Secretary, Government of India, Dy. No: L-10544, Date: 29/8/1999*
- vi RRP: IND 29051*
- vii The World Bank in 1996 initiated a structural adjustment programme at the sub-national level in the Indian State of Andhra Pradesh. This was the first time that the World Bank had decided to get into structural lending at the sub-national level in the Indian context.*
- viii 1US\$ = INR 49*
- ix For more on this kindly refer to: www.destroyimf.org/news/bhopaldemojailed.html*
- x For more on this kindly refer to, "Maheshwar Hydroelectric Project: Resettlement and Rehabilitation" (June 2000); An independent review conducted for the Ministry of Economic Cooperation and Development (BMZ), Government of Germany; Printed by the Narmada Bachao Andolan*

BOTs, Governance and the ADB

*By Andrew B. Wyatt**

“The demand for private capital has increased considerably in the Region, influenced by the financing needs of large infrastructure development programs ... ADB is in a unique position to assist in mobilising international private capital for its DMCs. It has considerable regional experience accumulated over decades and, through policy dialogue with member governments, has assisted in the formulation of policies designed to encourage private initiatives.” (Asian Development Bank, 2000b:1)

“In addition, ADB will develop sectoral templates for appropriate risk-sharing arrangements that would allow the private sector to earn reasonable rates of return ...” (Asian Development Bank, 2000a : 15)

A key area of ADB policy advice has been in the development of and support for private infrastructure. Through consistent support for numerous Technical Assistance studies, forums such as the GMS Subregional Electric Power Forum, and workshop series such as the Workshop on Economic Cooperation in Central Asia, the ADB’s policy advice reaches decision makers, planners and implementers from ministerial level all the way down to the technocrats. As such the ADB has considerable power to influence and shape policy and direction of developments such as foreign private capital flows and private infrastructure.

The ADB defines governance as “the manner in which power is exercised in the

management of a country’s economic and social resources for development”. Whilst the ADB’s focus in this definition is that of its Developing Member Country (DMC) government’s performance, I contend that the DMC’s are not the sole determinate of DMC economic and social development performance. This is readily apparent since the ADB wields considerable power to shape and direct policy. In terms of governance, the ADB should therefore also be under scrutiny in terms of the policy and strategy advice it gives.

In this paper I wish to critically examine the ADB’s continuing promotion of private infrastructure development support, one of two primary areas of the ADB’s Private Sector Operations (PSO), despite increasing evidence that the ADB’s advice in private infrastructure development is leading to unsustainable and highly risky developments for its DMCs. In particular, continuing ADB support for and mobilisation of project finance into infrastructure through project delivery systems such as Build-Operate-Transfer (BOT) and Build-Own-Operate (BOO) and related mobilising mechanisms such as Partial Risk Guarantees (PRG) which the ADB has recently reviewed and expanded (Asian Development Bank, 2000c) are of considerable concern.

All this, despite the cautionary words of independent private sector analysts and stakeholders such as Kent Rowley (1997, pg.22), a partner and head of project finance at Freshfields,

**Andrew Wyatt is a Senior Research Associate at the Australian Mekong Resource Centre in Sidney, Australia (A.Wyatt@geography.usyd.edu.au)*

“It is often assumed that the use of financing techniques such as BOT and BOO in Asian private infrastructure programmes relieves the host country from the liabilities associated with financing, building and operating infrastructure projects. This is a misconception. The reality is that many of the risks of the project remain with the host government under the support contracts they enter into.”

Another industry insider, Levy, points out, “Most of the public/private infrastructure partnerships created in the 1970s and 1980s have yet to yield the hard evidence of a series of successfully completed projects since few of the typically 20 to 40 year concession agreements are near maturity.” (Levy, 1996: ix)

Levy’s observation is in stark contrast to the ADB’s premature claims for the success of BOT type investments in infrastructure (see for example, Asian Development Bank, 2000a) and indeed, Rowey’s words on the cusp of the Asian financial crisis were to prove prophetic in demonstrating the enormous risks that the ADB’s DMC early adopter’s took.

Key issues in project financing and BOTs

Project financing utilising limited or non-recourse financing in BOT type investments is a highly complex business that many DMC politicians and government bureaucracies have had difficulties in coming to terms with. It is simple enough from the viewpoint that the harnessing of private capital flows into much needed physical infrastructure is meant to avoid increasing public debt in the face of a crisis in public funding globally. This rationale has been the single most enticing feature of BOT type investments. But all is not as it seems.

The limited or non-recourse nature of the project financing insulates parent companies who are investing in the project from the project risks and makes financiers extremely nervous about the risks that will come into play since they have no recourse to the parent balance sheets should things go bust. As a result, financiers and developers spend considerable effort to ‘correctly’ allocate risks, shift it onto a party least capable in analysing the consequences, or to insulate from risk through

government provided guarantees.

As capacity and understanding has built within the DMCs over the last decade, there has been resistance against a number of aspects of project financing in infrastructure as greater awareness was gained of the compromises DMC governments have had to agree to. For this very reason, in Vietnam where BOT type investments and project financing has been legislated for since 1993, not a single power sector project had reached financial closure by 2000, and only 3 water sector projects had received investment licences. However, in many DMC’s, within technocrats and politicians overseeing these developments there is a sense of “what else can we do?” Certainly, there are no other viable options being presented by the ADB and its multilateral partners such as the World Bank.

Here I will focus on a couple of areas that I contend are leading the DMCs into highly unsustainable and risky developments.

In its seminal study of energy sector development in the Greater Mekong Subregion (GMS) in 1995, ‘Subregional Energy Sector Study for the Greater Mekong Subregion’, the ADB pointed out to its DMC governments that “To facilitate project financing, the capacity charge will normally have to be denominated in a hard currency” and “investors will often insist on provisions such a high capacity charge or a substantial minimum take provision, making it clear that the utility will be required to take electricity over the full useful life of the power station” (Asian Development Bank, 1995a : 607-611). These conditions are not restricted to the energy sector but are also called for in sectors such as water supply and transportation where the investors obtain a profitable return on their investments from the revenue stream the project will generate, eg. water tariffs and motorway tolls.

Hard currency, usually in US dollars are usually demanded in order to pay back levels of debt that may reach as high as 80% of project cost denominated in same currency. Investors and their bankers therefore avoid the risk of currency fluctuations. The minimum off-take provisions are often known in the industry as “take-or-pay” guarantees. These are guarantees that governments have to enter into ostensibly to minimise network and regulatory risks that are under the control of the government, but in effect where a large element of the investors’

market risk is also covered.

The consequences of these aspects of project financing in private infrastructure have been devastating where project financing in BOT type infrastructure has been widely adopted.

BOTs, contingent liabilities and debt: The Philippines disaster

In the late 1980's and early 1990's under a power supply crisis, the Philippines government became the first country in Asia to enact a law specifically for the BOT process in 1987. By early 1995, 19 BOT power plant projects had come online and by 2002, there were over 45 contracts in place (Domingo, 2002). In almost all of these contracts, the Philippines government power utility the National Power Corporation (NAPOCOR), had guaranteed payments in US dollars and provided take-or-pay commitments in its Power Purchase Agreements (PPA) with the Independent Power Producers (IPPs), most of whom were owned by foreign power companies. Without the guarantees, no investor would invest.

It proved to be a fatal strategy! The Asian financial crisis in 1997 left the Philippines government bearing the risks of power purchase agreements denominated in US dollars and the devaluation of their currencies during the crisis raised government purchasing costs and increased retail prices. Compounding the situation, the slow down in the economy and lowered energy demand left NAPOCOR in a situation where it was paying for electricity purchases that it could not use.

David Husband (1999 : 105), Chairman and Principal of Global Economics Ltd., observed; "... developing countries that have had some success in attracting BOT/build-own-operate-transfer (BOOT) infrastructure investments, such as the Philippines, must be regretting the terms. While the Philippine Government fast-tracked BOOT power projects in the early 1990s to overcome crippling "brownouts," it did so basically by assuming the entire foreign exchange risk. Foreign exchange-denominated payments of \$600 million in 1997 will rise to more than \$1 billion in the next few years. Given that the peso fell by about 60 percent against the dollar in the months

following the start of the Asian currency crisis in July 1997, the domestic revenue implications for the Government of these payments have risen by 60 percent."

According to Fernando Roxas (1999: 150), Group Manager of NAPOCOR, by 1999 NAPOCOR was "... paying about P60 million (US\$1.5 million) a month to the Department of Finance for the provision of these guarantees covering the BOT projects."

These payments were directed to the private IPPs, but served to compound NAPOCOR's exposure to its US dollar debts that had been under control before the financial crisis and have dragged the corporation - which even the ADB had admitted was under good financial management between 1992 and 1997 (Bello, 2001) - to its knees. With total debts of US\$6 billion (Landingin, 2002), NAPOCOR is trying to raise US\$1.65 billion in foreign borrowings just to service debt which matures this year (Batino, 2002).

The whole debacle leading to the indebtedness of NAPOCOR also instigated the ADB to push for the restructuring of the Philippine power sector through the unbundling and privatisation of NAPOCOR (see for example, Bello, 2001; Landingin, 2002; Williamson, 2001).

Before the extent of NAPOCOR's crisis became apparent, the ADB repetitively rolled out the Philippine model of energy sector liberalisation through BOT type investments as a prime example of how successfully private sector capital could be brought into infrastructure investment (see for example, Asian Development Bank, 1995b; Asian Development Bank, 1997; Asian Development Bank, 1999b). Despite the experience of the Philippines, and that of Indonesia which has had a mirror experience, the ADB in its blind faith in the benefits of liberalising private capital flows and privatisation, continues to provide private sector loans for infrastructure projects despite the knowledge that government guarantees demanded by the private sector, such as take-or-pay guarantees, would lead to situations where the government would not be able to recoup costs.

The beginnings of a BOT fiasco in Vietnam?

One such recent example appears in Ho Chi Minh City (HCMC), Vietnam, a city of 6 million people, but where the government owned HCMC Water Supply Company (HWSC) has only 300,000 connections. Here the ADB has supported the development and co-financing for the largest BOT water supply project in Vietnam, the US\$154 million Thu Duc Water Supply plant. The project will increase HCMC's water supply by almost a third of present capacity. It was a non-competitive negotiated bid by a multinational consortium led by one of the largest multinational water companies in the world, Suez of France who holds a 70% share in the project. A 25 year concession was granted in 1997 and the project company reached financial closure in August 2001 with the ADB providing US\$106 million worth of co-finance together with four other financial institutions, including US\$31 million loan from the ADB's ordinary capital resources (Asian Development Bank, 2001a).

In fact the city of HCMC to date has contracted 3 BOT water supply plants including Thu Duc. The other 2 plants are; the US\$38 million Binh An water plant, owned and operated by a consortium of Malaysian companies with IFC finance consisting of a loan of US\$12.5 million and a syndicated loan of up to US\$12.5 million for the account of commercial banks and financial institutions (International Finance Corporation, 1999); and the Grand Imperial which received an investment licence in 1999 but whose present status remains unclear. All three projects have demanded and received government take-or-pay guarantees that would insulate the private investors from market risk. Binh An was the first to begin production in 1999 while Thu Duc is scheduled for commissioning in 2004.

However there are questions over whether the city is able to fully utilise the water it has contracted to take-or-pay from these 3 three projects. Partly this has to do with the lack of distribution capacity, which is not yet in place. Although the responsibility for distribution remains within the government's hands, it is apparent that the ADB's and IFC's due diligence process of ensuring the viability of these projects has not extended to the government's capacity to fully utilise private

sector production. In so doing, the ADB (and IFC) demonstrate a lack of accountability to its DMC governments. According to ADB's own researchers (McIntosh and Yniguez, 2000), the situation at Binh An is such that the government owned HWSC is forced to pay the BOT contractors for water it cannot sell to consumers. According to deputy minister for construction, Nguyen Tan Van, water off-take commitments at Binh An costs HWSC more than VND8 billion a month, yet its revenue from Binh An's production is just VND3 billion a month (Ngoc An, 2001). Furthermore, as a result of the implementation of these BOT projects, tariffs set by the HWSC are also set to rise from VND1300 m³ in 2000 to VND9, 400 m³ by the time Thu Duc comes on line in 2004 (ibid). It is certain that consumers will not see any reduction in water pricing any time soon. Because the take-or-pay guarantees and the water tariffs that the government enters into with the BOT companies are locked into contract for the 20-25 year life of the concessions, there are no competitive pressures on the BOT companies to reduce water pricing.

It is apparent that despite the disastrous experience of BOT in the Philippines, the ADB continues to support non-competitive projects and mechanisms that actually raise utility prices and which leaves considerable risk with governments. One might argue that the HCMC government had to ensure the on-time completion of the distribution networks and that this was a risk that it had control of, but questions must be asked as to why the IFC initially, and then the ADB concluded financing when the city was not yet in a position to fully utilise new capacity. The result has been that the major beneficiaries have been the multinational companies investing in the projects and their financiers, both of whom are guaranteed a revenue stream no matter what transpires, whilst the government is left with liabilities that are adding to greater levels of borrowings.

Development strategy, BOTs and the ADB: Lao export hydropower at a dead-end?

The role of the ADB as a player in development strategy has come under increasing criticism in the Lao PDR in recent years. In the Lao PDR, the ADB together with the World

Bank has been at the forefront in advising the Laotian government on policy and strategy for the development of a Laotian export hydropower industry, but which under the ADB's GMS program also doubles as regional infrastructure. Since the inception of the GMS in the early 1990's, the ADB has provided regional governments with the vision of an interconnected electricity grid that would allow the development of a regional energy trading system (Asian Development Bank, 1995a). The hub of this regional energy trading system would be Thailand where demand exceeded supply in the years before the Asian financial crisis. To direct and support the development, the ADB continues to support various forums the most important of which is the yearly Subregional Electric Power Forum, involving ministerial and expert level delegations. Ostensibly these forums allow technocrats to exchange information, and to receive policy advice and strategy from the ADB and other resource persons from the World Bank and international authorities such as the Tennessee Valley Authority of the USA with regards to energy development cooperation and direction. Ministerial delegations then rubber-stamp decisions and agreements.

One of these development strategies first flagged in the ADB's 1995 Subregional Energy Sector Study, has been the development of a competitive trading system for electricity in the GMS. Since then the World Bank, who actively participates in the GMS Subregional Electric Power Forum, has carried out its own studies to promote the development of a competitive electricity market in the GMS (World Bank, 1999) as has the ADB through its 'Study on the Regional Indicative Master Plan on Power Interconnection in the GMS'. Norconsult, a Norwegian engineering and management consulting company heavily involved in regional hydro feasibility and environmental studies carried out the latter. Both these studies promoted the establishment of a Thai electricity trading pool.

By October 1999, at the Third Meeting of the Experts Group on Power Interconnection and Trade, the Thai's announced their own study on the establishment of the electricity trading pool would be completed by year-end. This was of concern to the Laotians who were at that meeting and they requested further information

(Asian Development Bank, 1999a). By 2001, at the Sixth Meeting of the GMS Experts Group on Power Interconnection and Trade, the Laotian's were growing increasingly desperate about the development of the Thai electricity trading pool. The Lao representative, Houmphone Boulyaphol, Director General, Department of Electricity, Ministry of Industry and Handicrafts, commented out of concern that "... in Lao PDR, a number of projects were on hold due to uncertainties in financing and uncertainties in the status of PPAs under a power pool system" (Asian Development Bank, 2001b).

The Laotians had good reason to be concerned. For almost a decade now, the Lao government, with advice from the ADB and World Bank had pinned their hopes on the development of a Laotian hydropower export industry as a key development strategy to pull Laos out of poverty. But public funds were not available to finance such large investments, so with assistance and advice from the ADB and the World Bank, Laos turned to the BOT form of investment. The ADB sponsored a demonstration project, the US\$280 million Theun Hinboun hydropower project. The World Bank followed soon after with what it hoped would also be a demonstration project, the massive US\$1.2 billion Nam Theun 2 hydropower project.

In 1994, the Theun Hinboun project was established as a joint-venture BOT concession between the Lao government electricity company Electricity du Lao (EdL) holding 60 percent equity and the sponsors and private sector partners, Nordic Hydropower (20 percent) - a joint-venture company owned by the utilities of Norway (Statkraft) and Sweden (Vatenfall AB) - and MDX Lao of Thailand, a subsidiary of GMS Power, one of Thailand's leading IPP developers (20 percent). The project moved quickly to financial closure with a 1995 power purchase agreement (PPA) with the Thai government electricity utility, the Electricity Generating Authority of Thailand (EGAT). Under the terms of the off-take agreement, EGAT committed itself to purchase 95 percent of the output on a take-or-pay basis. The base rate tariff is 4.3¢/kWh (1994) escalated at 3 percent a year for the four-year construction period, and at 1 percent a year for ten years thereafter. The price would be renegotiated at

the end of the ten-year period. The project came into operation in 1998.

By contrast, despite development of the two projects beginning at about the same time, the large predicted social and environmental impacts, international opposition, and the Asian financial crisis delayed the Nam Theun 2. The project is currently finalising the PPA with EGAT, which would then allow it to move to financial closure.

However, the Lao PDR currently has 14 other priority private hydro projects lined up for PPA negotiations with EGAT. Of these, two projects, Nam Ngum 2 and Nam Ngum 3 together with the Nam Theun 2 project are listed as priorities under the first tranche of a non-binding Memorandum of Understanding (MOU) signed between Thailand and Laos for the export of 1600 MW of electricity to Thailand by year 2007 (Worley and Lahmeyer International, 2000). Under the GMS program the ADB had been supporting the development of Nam Ngum 2 and 3 through the provision of a TA for a 500kV transmission line system that would enable power to be delivered to Thailand (ibid). It also received a request for financing from the developers of both these projects.

Despite this, it is clear now that Nam Theun 2 will be the last private power producer to enter into a PPA. As a result of the development of the Thai electricity pool, which is slated for implementation in 2003, EGAT is refusing to enter into any further PPAs that would require take-or-pay conditions as well as long term fixed tariffs. Negotiations over the PPA for Nam Theun 2 dragged on for 3 years over this issue until EGAT was finally forced to negotiate the PPA consisting of a much-reduced take-or-pay period and tariff after political level intervention. EGAT's concern here has been that the Lao PPAs were uncompetitive, and that EGAT and Thai consumers would eventually be subsidising the private producers in Laos.

Under these conditions, it is highly likely that the Lao BOT export hydropower program is at an end even if regional energy demand should pick up. The establishment of a competitive Thai electricity market is being further reinforced by the increasing availability of cheaper alternative sources of energy such as natural gas from Myanmar and Malaysia, and investments in efficient gas turbine technology with much lower up-front investment costs and

project development cycles. It is now becoming apparent that the only way Lao export hydropower projects with the intention of selling into a competitive Thai market will proceed is under what is known as mercantile financing. However it is highly unlikely that financiers would finance these high-risk mercantile projects. First of all, there is no precedent for the financing of mercantile projects in developing countries such as Laos with a relatively high political risk profile. The ADB's and World Bank's partial risk guarantees are specifically structured for project financing and no equivalent mechanism exists for mercantile financing. Secondly, mercantile projects do not sell electricity based on take-or-pay guarantees or fixed tariffs, rather they are required to dispatch electricity on a daily basis and at daily prices¹. On this basis, knowledge of particular market conditions must be well established in order for financiers to judge if debt repayments can be made. This is hardly the case since a Thai electricity market does not yet even exist, let alone have a track record.

In Laos, private investors with sunk costs in BOT hydropower project development left without a PPA and therefore unable to obtain financing for their projects are fuming. Mid-level government bureaucrats are beginning to question the wisdom of a development strategy that led Laos to invest a huge amount of financial and human resources into the BOT export hydropower program, with just 2 completed operational projects² to show for a decade of export hydropower development. On this front, the ADB has been extremely quiet, shelving plans to support the implementation of the 500 kV transmission line for Nam Ngum 2 and 3. It has recently been requested to consider co-financing for the Nam Theun 2 project and it remains to be seen if it will again provide support for a BOT export hydropower project in Laos that the Thai's see as uncompetitive, and which in all likelihood, will be the last export BOT hydropower project in Laos.

Rethinking ADB governance

Governance must be analysed in much broader terms if it is to be effective in delivering sound management of social and economic development that benefits the ADB's DMCs. The ADB must turn its focus on governance

onto itself and its powerful role as a policy broker or driver of development policy and strategy.

In the case of private infrastructure development presented here, it needs to move out of its mindset of liberalising private capital flows and rhetorical claims of the benefits of privatisation and in particular, private infrastructure in the form of BOT projects. The ADB must be accountable for the policy advice it provides and the development strategies that it develops for its DMCs, much of it lacking in transparency. In its development strategies, there is often no consideration of independent research or options. It must take heed of the warnings of independent analysts and researchers without a vested interest in the building of a BOT industry and critically examine its premature calls of success in BOT. The claims of success are clearly based on the narrow definition of achieving financial closure and commissioning new projects. It fails to analyse the longer-term consequences of BOT investments to the DMCs and their publics that take between 20 and 35 years to run the course of its concession.

The case of BOT private infrastructure clearly demonstrates the short-term nature of its strategies and lack of accountability in terms of longer-term development goals of its DMCs such as debt and risk management. For example, very little research and policy analysis has been carried out by the ADB on the long-term contingent liabilities of the various BOT type guarantees that governments take on which this paper has just touched upon. These are critical issues that concern the economic and social sustainability of the ADB's DMCs, which the ADB continues to ignore. World Bank researchers have recently begun to explore the costs of such liabilities. In one of the first attempts to account for the contingent liabilities of government guarantees in private infrastructure the World Bank found that the call on guarantees can potentially create major budgetary shortfalls and follow-on consequences for future generations. Of three private infrastructure projects in Colombia, the World Bank estimated that expected government losses from government guarantees could amount to as much as US\$93.2 million (Lewis and Mody 1998). Clearly the Philippines is now another such case where there is ample evidence

of the huge public costs of the contingent liabilities inherent to BOT projects in a developing country context.

It is also clear from the case of private hydro in the Lao PDR that regional private infrastructure in the form of BOT projects are in contradiction with moves toward the competitive energy market developments in the GMS that the ADB itself has been promoting as a part of the GMS's longer term regional infrastructure development strategy. Having invested considerable financial and human resources into the development and support of BOT in the Lao PDR, the ADB and its DMC, the Lao PDR, finds many of these investments stranded, leaving investors and government officials alike privately furious at the dead-end which the industry now faces.

The case of BOT developments in the selected DMCs presented in this paper demonstrates the ADB's considerable allocative power and ability to influence and direct a DMC's economic and social resources for development without recourse to critical independent analysts. It has done so and continues to do so with little accountability for the unfolding disaster of BOT investments in its DMCs. Its own governance credentials must be on the line!

References

- Asian Development Bank, 1995a, Subregional Energy Sector Study for the Greater Mekong Subregion, Final Report, Asian Development Bank, Manilla.
- _____, 1995b, Subregional Energy Sector Study for the Greater Mekong Subregion, Final Report, Part II, Asian Development Bank, Manilla.
- _____, 1997, Emerging Asia : changes and challenges. Asian Development Bank, Manilla.
- _____, 1999a, Proceedings from the Third Meeting of the Experts Group on Power Interconnection and Trade, GMS. Asian Development Bank, Manilla.
- _____, 1999b, Second Workshop on Economic Cooperation in Central Asia: Challenges and Opportunities in Energy. Asian Development Bank, Manilla.

- _____, 2000a, Private Sector Development Strategy: Promoting the Private Sector to Support Growth and Reduce Poverty. Asian Development Bank, Manilla.
- _____, 2000b, Private Sector Operations: Strategy, Policies, Modalities and Procedures. Asian Development Bank, Manilla.
- _____, 2000c, Review of the Partial Risk Guarantee. Asian Development Bank, Manilla.
- _____, 2001a, Private firm will improve drinking water in Vietnam commercial capital, ADB News Release, No. 082/01, No. 7 Aug, 2001.
- _____, 2001b, Proceedings of the Sixth Meeting of the Experts Group on Power Interconnection and Trade, GMS. Asian Development Bank, Manilla.
- Batino, C. S., 2002, Napocor loan requirements to hit \$1.65B , Philippine Daily Inquirer; April 17, 2002.
- Bello, W., 2001, Privatizing power in the Philippines: Cure worse than the disease. Focus on the Global South, Bangkok.
- Domingo, R. W., 2002, Napocor reviews 12 IPP deals, but no action yet , Philippine Daily Inquirer; April 18, 2002.
- Husband, D., 1999, GMS and the Energy Sector, in Asian Development Bank, Second Workshop on Economic Cooperation in Central Asia: Challenges and Opportunities in Energy, Asian Development Bank, Manilla.
- International Finance Corporation, 1999, IFC invests US\$25 million in first private water treatment facility in Vietnam, IFC Press Release , No. 99/01.
- Landingin, R., 2002, Philippines on roadshow for Napocor deal , Financial Times, Feb 14, 2002.
- Levy, S. M., 1996, Build, Operate, Transfer: Paving the way for Tomorrow's Infrastructure. John Wiley and Sons Inc., New York.
- McIntosh, A.C. and Yniguez, C.E., 2000, Privatization of Water Supplies in Ten Asian Cities, Manilla: Asian Development Bank.
- Ngoc An, 2001, Warnings sounded over HCM City plans to sell water supply projects, VNS News: [Http:// Vietnamnews.Vnagency. Com.Vn/2001-03/19/Stories/08.Htm](http://Vietnamnews.Vnagency.Com.Vn/2001-03/19/Stories/08.Htm), 20 March, 2001.
- Rowey, K., 1997, Project Pitfalls, Financial Times, December 9 1997: 22.
- Roxas, F.Y., 1999, BOT in the Philippines, in Asian Development Bank, Second Workshop on Economic Cooperation in Central Asia: Challenges and Opportunities in Energy, Asian Development Bank, Manilla.
- Williamson, H., 2001, Manila seeks final draft on energy reform , Financial Times, May 25, 2001.
- World Bank, 1999, Power Trade Strategy for the Greater Mekong Subregion: Report No. 1 9067-EAP. World Bank.
- Worley and Lahmeyer International, 2000, Hydropower Development Strategy for Lao PDR: Draft Final Report, Volume A, January 2000, Vientiane: Worley and Lahmeyer International.

1 *A likely Thai model would be based on daily dispatch contracts*

2 *Theun Hinboun and Houay Ho. The government is in fact reported to be losing money on the Hoauy Ho project after debt repayments are taken into account (Worley and Lahmeyer International, 2000)*

The ADB - “Governing” The Pacific?

By Aziz Choudry*

“Good Governance” and the holding of multi-party elections are added conditions imposed by the donors and creditors, yet the very nature of the economic reforms, precludes a genuine democratisation.... Structural adjustment promotes bogus institutions and a fake parliamentary democracy, which in turn supports the process of economic restructuring. ‘Michel Chossudovsky, Professor of Economics, University of Ottawa, April 2000

“Small island nations are vulnerable and are practically of no consequence when it comes to combating the adverse effects of globalisation and what is emerging is a new order of colonialism. The uneven distribution of wealth and power points to the potential loss of sovereignty by national governments as the control of their respective economies becomes more subject to global forces such as multinational companies and the pressures of the select global brotherhood”. Sani Lakatani, Prime Minister of Niue, January 2001.

The Asian Development Bank (ADB), in adopting a policy on governance in October 1995, claims to be the first international financial institution to have a board-approved official position on “good governance”.

“Good governance” is a serious contender for a prize for the best example of Orwellian doublespeak. It has nothing to do with democratization, humanitarianism or support for peoples’ rights. It is a euphemism for a limited state designed to service the market and undermine popular mandates. It is explicitly linked to the kinds of structural adjustment

measures promoted by the Asian Development Bank - measures for which there is little popular support and which are rapidly increasing economic inequalities.

It is a mystery as to where the ADB claims to derive any authority to determine what is good or bad governance. However, it is very clear what the ADB means by “good governance”.

The ADB’s concept of ‘good governance’ “focuses essentially on the ingredients for effective management”. Its policy document, *Governance: Sound Development Management* says “the common features that stand out in respect of the high-performing economies are stability in broad policy directions, flexibility in responding to market signals, and discipline in sticking with measures necessary for meeting long-term objectives despite short-term difficulties, all hallmarks of sound development management, i.e., good governance.”

Building upon the World Bank’s approach, the ADB has identified four basic elements of good governance: accountability (of the public sector for delivering specific results), predictability (of legal frameworks for private sector development), transparency and participation (of key stakeholders).

Jane Kelsey, Professor of Law at University of Auckland, defines ‘good governance’ as “shorthand for a limited government” whose role is “to facilitate markets, Western-style rule of law, individual liberty, private property rights, and passive forms of electoral democracy.”

*Aziz Choudry is the editor of *GATT Watchdog* in Aotearoa, New Zealand (azizch@spl.at)

The Asian Development Bank operates in 12 Pacific Developing Member Countries (PDMCs). These are the Cook Islands, Fiji Islands, Kiribati, Federated States of Micronesia, Republic of the Marshall Islands, Nauru, Papua New Guinea (PNG), Samoa, Solomon Islands, Tuvalu, Tonga and Vanuatu. It also has operations in East Timor, which is not yet formally an ADB member country.

Annually the ADB approves between US\$100 million and \$150 million in loans and \$15 million in technical assistance grants for the Pacific region. It has also influenced the direction of the Pacific Islands Forum (formerly the South Pacific Forum). This body represents 14 Pacific Island governments (Australia and New Zealand are also members), and plays a key political role in getting assent and commitment on economic, financial and trade policy measures. The Forum has increasingly focused on promoting the economic agenda already being pushed by the ADB, the World Bank/IMF, APEC and the WTO.

At the first South Pacific Forum Economic Ministers Meeting (FEMM) in Cairns in July 1997, the structural adjustment model was formally adopted in an action plan which covered economic reform, public accountability, investment and tariff policies, and multilateral trade issues. The FEMM stated that “private sector development is central to ensuring sustained economic growth, and that governments should provide a policy environment to encourage this.” The theme for the August 1998 South Pacific Forum Leaders meeting was “From Reform To Growth: The Private Sector and Investment as the Keys to Prosperity.”

In its 1999 report, *Pursuing Economic Reform in the Pacific*, the ADB praised the FEMM Action Plan for being based on “market friendly policies widely accepted as economically sensible, albeit politically difficult to implement.”

In its 2001 strategy document, *A Pacific Strategy for the New Millennium*, the ADB lists its areas of emphasis relating to governance in the initial phase of the reform programmes since 1995. These are: supporting legislative reform of the role of parliament and the public sector; strengthening good governance institutions; introducing fiscal discipline and output focused budgeting; downsizing the civil service and

strengthening its professionalism; promoting more open and growth-orientated economic policies and; encouraging privatisation and a larger role for the private sector.

It states: “A core good governance agenda of economic policy, public sector and governance reform has already been agreed to broadly. The Pacific countries have already agreed in principle to this agenda through the Pacific Islands Forum. ADB has appropriately fostered and supported this agenda, which forms the basis of most of the reform programmes currently being financed by ADB in 10 of the 12 PMDCs”.

The ADB co-sponsored the first Pacific Regional Conference on Governance for Parliamentarians in Nadi, Fiji, in March 2000. The Pacific Islands Forum has also adopted eight principles of public accountability developed at the 1997 FEMM, and the October 2000 Biketawa Declaration on good governance.

The economic reforms, trade and investment liberalization, with their “good governance” focus are also being advanced in the region by bilateral aid donors such as the European Union, Australia (AusAID) and New Zealand (NZODA).

There is increasing coordination among the various multilateral and bilateral donors to the region. Australia in particular makes a significant contribution to the ADB’s Asian Development Fund. The World Bank also lends about \$50 million annually to the Pacific (Fiji Islands, PNG, Samoa, Solomon Islands, Tonga, and Vanuatu), with governance one of its focuses. AusAID argues that aid plays a vital role in encouraging ‘good governance and in promoting sound economic policies’. This entails across-the-board intervention to promote ‘the competent management of a country’s resources in a manner that is open, transparent, accountable, equitable and responsive to people’s needs and which enables all people to contribute to and benefit from development’.

Sydney-based AIDWATCH notes that AusAID’s direct and indirect expenditure on promoting ‘good governance’ in recent years has exceeded the estimated total direct and indirect expenditure on health, and the total for infrastructure. As members of the Pacific Islands Forum, and with extensive trade, investment and economic interests in the Pacific Islands, Australia and New Zealand play key

roles in maintaining pressure on the region to implement the reforms.

As well as being a key element of the structural adjustment programme, good governance - or rather the lack of it has been frequently used as a convenient explanation for economic crises and a way to blame governments rather than the policies set by the reform programmes.

Another excuse is lack of local “ownership” of the reform agenda. Introducing the ADB’s new Pacific strategy at last year’s ADB Annual Meeting in Hawaii, Basudev Dahal, Director of ADB’s Office of Pacific Operations said: “The challenge is to deepen the commitment of government and civil society to the reform programme”.

Predictably, the ADB speaks of consulting more widely with “civil society” and working to “strengthen the interface and collaboration” between Pacific member governments and NGOs/civil society groups. “[W]ider NGO involvement and consequent stronger ownership of Pacific developing member country governments’ development strategies and reform agenda has become a priority”. The ADB now emphasizes “poverty reduction” and “good governance”. It will tailor its activities towards “country-specific strategies” in the Pacific. The buzzwords might have changed over the years. But the economic fundamentals that underpin its programme remain unchallenged.

Indeed the “new” Pacific strategy offers more of the same. “Emphasis will continue on implementing fiscal discipline, strengthening revenue management, promoting an export orientation, and encouraging private investment.” It promises to promote “privatization of state-owned enterprises, private sector participation in infrastructure development, liberalization of investment and trade regimes, and greater competition.”

While its economic reform programmes have meant cuts to public services like health and education, the ADB envisions a greater role for NGOs in service delivery - not in setting the agenda. Through engaging selected NGOs in “dialogue” and “consultations” the ADB seeks to legitimize its economic reforms.

To be critical of the “good governance” agenda of multilateral financial institutions is not to ignore issues of corruption and conflict

that exist in some countries in the region. To advance the argument that a solution to these problems can be tackled by accepting the ADB’s “good governance” misunderstands the concept. Throughout the Pacific local communities and movements like the Tongan Human Rights and Democracy Movement are organizing to challenge domestic problems in government, and issues of democratic rights.

The ADB claims that “with the adoption of a strong governance reform agenda by the new Government in late 1999, and supported by multilateral and bilateral development institutions, PNG has quickly managed to substantially reverse its fast-declining economic performance, and subsequently improve its access to international finance.”

Yet it was precisely the structural adjustment programmes, privatizations, and sale of state assets driven by the ADB, IMF, World Bank and backed by the Australian government which sparked last year’s mobilizations against them in Papua New Guinea. Last June four young Papua New Guineans were shot dead by riot police and many more injured after an anti-privatisation rally in Port Moresby, the capital. Where was the ADB’s celebrated “strong governance reform agenda” then?

Despite all of the good governance sloganeering by the ADB and other vehicles pushing the neoliberal agenda in the region, Pacific peoples have little or no input into the development of macroeconomic policies affecting them, promoted with little empirical or independent research on whether or not they are appropriate or desirable for the recipient country.

What consultations there have been with communities and NGOs on the economic reforms have been little more than cosmetic exercises. In February 2002, the Pacific Network on Globalisation (PANG), a network of NGOs and individuals concerned with globalisation and the Pacific, challenged Pacific Island governments about the lack of public consultation or parliamentary debate over two regional trade agreements which had been opened for signature at the Pacific Islands Forum Leaders Summit in Nauru last August.

Communal ownership of land, the existence of the subsistence economy (some 85% of people are engaged in the subsistence economy in PNG, 80% in Vanuatu, and 55% in

the Federated States of Micronesia (FSM)) and strong communitarian values are celebrated as strengths against the onslaught of corporate globalisation by its critics in the Pacific. The ADB regards traditional values, the subsistence economy, and especially traditional forms of land tenure throughout the Pacific as little more than impediments to private sector investment and growth.

According to its 1999 Reforms in the Pacific - an assessment of the ADB's assistance for reform programmes in the Pacific, its reforms had led to the slashing of public sector employment - by 57% in the Cook Islands between March 1996-October 1998, by 37% in FSM between 1996-January 1999, and 33% in the Marshall Islands between October 1995-March 1999.

Social services spending cuts and the introduction of user-pays have seen the decline of health services, especially in rural areas, and imposed barriers to the affordability of education. Unemployment, especially for youth, has worsened as the private sector in Pacific Island countries cannot absorb the available labour. Public sector "rightsizing" has been accompanied by a sudden increase in the numbers of consultants.

At a Public Service International Oceania regional conference in Auckland in March 2002, delegates of public sector unions from throughout the Pacific said that radical restructuring of the state sector had had disastrous effects. Most said that as a consequence of privatization, deregulation and globalisation, living standards had lowered, and employment rights had been eroded through individual contracts. As a result of job losses through restructuring, emigration has soared in several Pacific Island countries.

Convenor of PSI Oceania, Paul Slape, of the Australian Services Union, said:

"In many smaller Pacific nations, government has been the main employer. Without the private infrastructure in place, restructuring is simply leading to high unemployment and the erosion of labour standards. It is undermining communities and breaking down social cohesion."

Pacific peoples have long histories of struggle against colonialism. Director of the Pacific Concerns Resource Centre, Motarilavo Hilda Lini, from Vanuatu, says that while all

Pacific countries are governed by Western systems of governance, indigenous models of governance are still highly relevant today.

"Governance in the indigenous concept is linked to a belief system that supervises and monitors peaceful co-existence of everyone and everything that share the multi-dimensional natural world that we live in....Individual rights and freedom are practiced within the parameters of collectivity. Any disturbance to peace is frowned upon and collective responsibility for peace restoration is a crucial task....Truth and justice are prerequisites for good governance, social security, economic self-reliance and political stability," she told ABC Radio in Australia in January.

A joint church/NGO submission to Fiji's 1999 national budget asked "are we trying to make Fiji into something it was never meant to be - a poor copy of large nations, reliant on an economic model in which we will always be dependent or losers? In our current system some may profit but most are excluded or exploited. We believe that this system is not made for us."

The Citanduy River Diversion Project

Some Critical Thoughts

*By Susi Pudjiastuti and P. Raja Siregar**

The Asian Development Bank (ADB) is providing financing to the Government of Indonesia for the Citanduy River Diversion Project. The supposed aim of the Project is to preserve the Segara Anakan Lagoon which has a unique and rich marine eco-system. However, the process by which the Project has been formulated and negotiated raises serious questions about the ADB's real motives in supporting and promoting the Project.

The Segara Anakan is a large Lagoon on the south coast of the island of Java in Indonesia. It is situated on the north side of the Nusa Kambangan island, between Cilacap in Central Java and Pangandaran in West Java.

The Lagoon is connected to the Indian Ocean via the Western Outlet and smaller connections such as tidal Channels towards Cilacap. Two large rivers: the Citanduy and Cikonde supply the majority of the fresh water to the Lagoon. A small amount of fresh water is also supplied by smaller rivers.

Since the first mapping of the Lagoon in the early 1900s, its surface area has continuously declined. The main reason for this is high levels of upland erosion. The fresh water supplying rivers carry large amounts of sediment and silt into the Lagoon. Other important contributing factors are land reclamation and flood control measures.

The Segara Anakan has long been the focus of many studies, proposals and projects involving Government agencies, international institutions and Consultants. Over the years, a variety of proposals have been made for the

future use and management of the Segara Anakan (ECI, page 3). The latest plans-based on two studies (ECI 1994 and BBV 2000)-will ostensibly save the Segara Anakan from being totally filled with sediment from the contributing rivers by undertaking major engineering interventions. The Project is being financed and technically supported by the ADB.

This paper shows the problems and inconsistencies contained in the proposed engineering interventions and argues for a major review of the threats that Segara Anakan faces.

The plan and justification.

The two latest studies about the Segara Anakan were done by the ECI in 1994, and as a follow-up by Binnie Black and Veach (BBV) in 2000. Both arrived at the conclusion that the Segara Anakan is filling-up because of the sediment brought in by large rivers. They also conclude that there has to be a dredging program and ultimately, the diversion of the Citanduy and Cikonde rivers. Even in reaching these conclusions, both reports contradict themselves and omit facts recorded in other sources. They also do not properly address many potential problems. The diversion of the Citanduy river is planned for early 2002 without an initial trial programme of dredging, which was considered a vital part of the plan.

In the ECI plan, the justification for the diversions of the rivers is that the Citanduy and Cikonde carry among them almost 100% of the sediment load that is now deposited in the

**Susi Pudjiastuti is an independent business woman in Indonesia (astuti@bdg.centrin.net.id); P. Raja Siregar is with WALHI in Indonesia (radja@walhi.or.id)*

Segara Anakan. By diverting these rivers a large proportion of this sediment can be deposited in the sea. The economic justification for this course of action consists mainly of three elements: the benefit to off-coast fisheries; a proposed aquaculture project; and, improved drainage for agriculture areas surrounding the Segara Anakan. It is argued that if the project is not implemented, these benefits cannot be realized. for the following reasons :

- As the Segara Anakan fills in, many marine species which use the mangrove and Lagoon area as nurseries will be reduced in numbers and thus affect the coastal and Lagoon fisheries negatively. If the Lagoon is preserved, the fisheries can be kept at the present level and even improved.
- The increased salinity of the Segara Anakan makes a large aquaculture project inside the area feasible.
- Direct diversion of the large rivers will improve drainage and decrease flooding upriver.

It has to be noted that the report concludes with the fact that if any one of these three benefits cannot be gained fully, the project loses the economic viability. A special focus of the project seems to be the aquaculture component. The ADB claims that it is supporting the Project in order to reduce sedimentation in the Segara Anakan Lagoon and that the Project is categorised as an environmental project. However the Project has a component focussed on aquaculture by opening 200 hectares (ha) to shrimp ponds.

The ECI report provided the following timetable of activities: from 1994 to 1999, initial annual dredging were to be performed in the Lagoon, to restore and preserve the shape and size of the Lagoon. After this dredging phase (five years) it was to be determined if the environmental requirements and implications of dredging could be addressed. In 1998 and 1999 the Citanduy diversion was to be constructed, but only after it was proved that the mangrove forests could be managed satisfactorily and the dredging program met all the necessary requirements. After that the Cikonde diversion would be made. After all these interventions, the Report estimates that salinity will be high enough to start the 200 ha aquaculture project.

Uptill now, no work has been done on dredging. It appears that now work shall start directly on the Citanduy diversion, without the

initial dredging stage.

There are serious doubts about the positive environmental and economic effects of this project as it is planned and proceeding today. These doubts justify an independent and comprehensive review of the Project goals, justifications and implementation means.

Environmental impacts

There is no doubt that the Project will have a major environmental impact on the Segara Anakan Lagoon and it's surroundings. There is concern that these changes will lead to the destruction of the Lagoon environment as is today. Many indications of major negative impact can found in the ECI and BBV reports :

1. Nutrients

Other than sediments, the large rivers also contribute freshwater and nutrients to the Lagoon. Both freshwater and nutrients are needed for the Lagoon to function as it does now. The Citanduy alone carries about 75% of freshwater and nutrients into the Lagoon.

The ECI Report mentions on page 9: "It is possible to save the Lagoon from the incessant sedimentation and at the same time to destroy its productivity as it now exists. The irony is that the sediment filling the Lagoon is accompanied by the nutrients that make the Lagoon so productive." However, the Report also attempts to argue that even without the Citanduy input, the nutrients would be sufficient for the Lagoon: "... much of the nutrients requirements of the biotic system of Segara Anakan is stored within the system itself " and that freshwater input " merely contribute readily available nitrogen and phosphorus, currently exceeding requirements" (page 19). The truth of these claims is questionable since even nutrients already in the system will one day be exhausted if no there is no regular re-supply! In addition, the Report mentions that there is no observation of effects on mangroves that would indicate excess amounts if nutrients available (page 33).

2. Salinity

With both rivers diverted, the salinity in the Lagoon will rise considerably. At the moment water in the Lagoon can be considered brackish at most times with salinity in most part of the Lagoon at no more than 20 ppt in that

wet season, and no more than 10-15 ppt in the dry season (BBV, page 42). After diversion, the salinity will double or even triple in places, rendering the Lagoon a seawater area. It may also be that the salinity will rise to even higher levels because of increased water temperatures and subsequent evaporation.

The possible negative impacts of this increased salinity on the Lagoon and its habitants is not directly mentioned in the reports. However there are some notable items mentioned which need further clarification to be able to assess the environmental and economic impacts of increased salinity

On page 25, the ECI Report mentions interactions of species inside the Lagoon. It goes on to say that “for instance, many types of shrimp have evolved optimal growth rate at lower salinity levels at certain stages in their life, making them dependent on the inner creek.” This could mean that one of the consequences of the river diversion is that many of the shrimp species now present in the Lagoon will not be able to live there any more. This will have negative impacts in both, the environmental and economic sense.

The report discussed extensively laboratory results which suggest that “late juvenile stages of certain shrimp species cannot tolerate very low salinities, whereas young juveniles demonstrate larger tolerances.” It would be interesting to know if this affects commercially valuable shrimp species as well.

Also in the ECI Report (pages 18 and 20), there is mention of growth reduction in the mangroves under high salinity conditions. The type of mangroves that grow well in these conditions will also change, in effect, changing the entire ecosystem of the Lagoon. The BBV Report even mentions tested flow scenarios for a “No mangrove scenario, in case that the mangrove loss around Segara Anakan results in the loss of storage volume that presently exists” (page 20).

Further, the ECI Report mentions (page 33) that one of the indirect uses of the Segara Anakan is the prevention of saline water intrusion, by maintaining a fresh water wedge on top of the salt water on the coast. It goes on to say that “increased penetration of saline water (...) may cause far-reaching socio-economic and ecological impacts.”

Of course, the increased salinity is a very

welcome condition for the proposed aquaculture component. This component seems to be extremely important to the ECI consultants since they write in many parts of their report (pages 48, 54, 94, 96, 101, 107 and 109) that without the aquaculture component, the entire project will not be feasible from the perspective of Internal Rates of Return (IRR). The plan is to develop a concentrated site with a maximum of 200 ha of brackish water ponds since a greater area “is judged to have a negative impact on the other functions and services of the Lagoon mangrove complex” (page 48). However, to improve the outcome of the economic analysis, this area could be increased by up to 70 percent (page 101).

The report also mentions the following: “Aquaculture, especially for tiger shrimp, has failed in other parts of Indonesia. Special skills are needed to manage tiger shrimp ponds. It is planned to provide the necessary resources so that failure is avoided in the Segara Anakan” (page 109). This is very correct! Almost all black tiger shrimp farming in Indonesia has failed because of intensive cultures and subsequent overuse and overstocking have resulted in diseases. Pollution has made many ponds unusable for many years to come! Furthermore, these failed ponds mostly had direct access to the open sea whereas the Segara Anakan ponds will contribute to pollution in the Lagoon and eventually poison themselves. Small shrimp pond projects on the south coast work well if they are managed according to traditional methods, but there is no reason to believe that a large 200 ha site in the Segara Anakan would be operated and managed in an environmentally friendly and sustainable manner! It must also be stressed that the EU is getting extremely strict on medications that are permissible in shrimp farming.

Economic sense

To evaluate the economic sense of the diversion project, the assumptions guiding the project and providing the economic rationale need to be evaluated.

A big question of concern is the urgency with which the river diversion stage, with its associated costs-is being implemented. Dredging and management requirements mentioned in the ECI Report have not yet been

implemented (page 106). In addition, according to estimates in the ECI report, the Lagoon should at the present time already be filled completely (page 14, surface prediction for the year 2000). However, the Lagoon still exists, even if smaller in size than in 1992.

An indication of what is happening comes from the BBV Report where it is mentioned that already almost 93 percent of all sediment carried by the rivers flow out to sea, and due to a changed Lagoon size and coastal shape this amount of sediment may be increasing. Until an equilibrium state is reached (BBV Report, pages 45 and 1), the actual sediment deposition is 500.000 m³ per year (1999) as opposed to 1.000.000 m³ estimated by ECI in 1994 (BBV, page 7). If in fact it is true that there is an equilibrium stage that has almost been reached at this time, there may be time to think about other measures to protect the Lagoon than an expensive engineering intervention.

If a reduction in fish catches in and outside the Lagoon is taken as an indication that the Lagoon is losing its productivity as it becomes smaller, it must be pointed out that much more productivity loss in fisheries can be attributed to the use of destructive fishing gear by lagoon and offshore fishermen. This is described in detail in the 1990 report on “Coastal Resources Management Project” by the ASEAN-US cooperative Program on Marine Sciences (pages, 20, 28). Another important factor is the rapid destruction of mangrove forests around the Lagoon by human activity (ASEAN page 19, ECI Report page 21 and 30).

The assumed economic benefits of the Project through aquaculture must be related to environmental issues. As it is unlikely that the black tiger farming will be successful in the long term, this should not be counted as a project benefits. In addition, marine farm prices have collapsed following the September 2001 WTO attacks and European Union import restrictions. The ECI Report (page 102) mentions that a 10 percent fall in both farmed and captured fish prices will push the IRR below the required 12 percent. Certainly these prices have fallen much more than 10 percent and are expected to remain low.

In looking at offshore fisheries data, it is questionable to use pre-1980 data of 5.000 tons of shrimp and 15.000 tons of fin-fish catches as

a base for calculations (ECI Report, page 53). Since the trawl ban was implemented in 1980, catches have diminished significantly (ECI Report, page 47) and now average about 7.500 tons of fin-fish and 2.000 tons of shrimp. The use of the pre-1980 data casts doubts on the neutrality of the ECI report in its assessment.

Also needed is an evaluation of the effectiveness of much cheaper methods to preserve the Lagoon, some of which have fewer long-term impacts on the environment. The ASEAN report mentions only agitation dredging and enhanced flushing as methods to preserve the size of the Lagoon (ASEAN, page 44). The BBV report also mentions that the Cikonde diversion alone would already have a large effect on the sediment deposits in the Lagoon, without having to construct the much more expensive and environmentally destructive Citanduy diversion project.

Without doubt, an extremely environmentally friendly alternative would be to spend money on preventing the rivers from carrying such large amounts of silt in the first place, which means an effective upriver erosion control program. The ECI report (page 108) devotes a single paragraph to recommend a feasibility study about upland erosion control, but states this is not feasible basin-wide. But how would they know this without the necessary feasibility study?

Local participation

Diverting the Citanduy rivers will generate result in a large proportion of sediment being carried out to the coastal area in Cilacap, West Java, where villagers and fisherfolk live. This will affect their environment and livelihoods. Therefore fisherfolk in Cilacap are opposing the project.

The ADB has discussed the project with local people in Cilacap who would be eligible to will receive some benefits. However, no broad based public consultations and discussions have been carried out anywhere. The fisher folk in Pangandaran, West Java, who will also be affected sedimentation from the river's diversion have not been consulted at all. At present, they are also opposing the Project.

The Project will require the appropriation of land that is in the route of the river diversion. Affected land owners and users are supposed to

be compensated by the Project for loss of land. The project has finished the study phase and is in the process of preparation and implementation. However, implementation has currently stopped because of disagreements over land compensation. The owner of 130 ha of land in Cilacap, whose land will be directly in the new route of the river, has refused the compensation price offered by the Project.

Meanwhile, villagers in the Segara Anakan area have been informed by ADB consultants that diverting the river is the best option to reduce sedimentation in the Lagoon. The fact that fisher folk in Cilacap refused the Project has created potential for conflict among villages in the two areas and villages in Segara Anakan consider those villagers in Cilacap to be jealous of the benefits of the Project in the Lagoon area.

Alternatives to consider

The following proposals are made:

- A study must be conducted by an independent and neutral entity, supported and accepted by all parties. Current data should be gathered and an assessment made on all possible solutions to Segara Anakan problem.
- Upland erosion control should be considered seriously, as it not only saves the Segara Anakan Lagoon, but also benefits the entire upland watershed areas of the Citanduy and Cikonde rivers. Financing should be made available for these measures..
- Until the erosion control has had positive effects on the filling of the Segara Anakan Lagoon, maintenance dredging (either conventional or agitation) can be performed to maintain the size of the Lagoon, or to even enlarge the Lagoon back to a suitable size.
- The encroachment of commercial farming and aquaculture on the mangrove and Lagoon areas must be stopped.
- Fisheries in the Lagoon must be regulated and destructive fishing gears outlawed. No-catch zones, seasonal restrictions, and minimum net mesh sizes should be considered. This must go hand-in-hand with education measures for the fisher folks and increased Marine Research of the Lagoon and offshore fisheries.
- The Lagoon should be designated a nature reserve so that disturbances from human

activities are reduced and the nursery function of the Lagoon can thrive. Together with Nusa Kambangan, the Segara Anakan could form a unique and valuable nature reserve for the Southern Java coast. This would eventually be beneficial to local people and communities as a productive fish and shrimp nursery, bird habitat and refuge, and an attraction for visitors from other places.

There is a serious question why the ADB and the Government of Indonesia have chosen to divert the flow of the Citanduy river to reduce sedimentation, instead of considering another option that has proved to be successful, namely forest rehabilitation. Forest rehabilitation in upland areas, which had already been completed up to 50 percent, has significantly reduced sedimentation in Segara Anakan. Despite its success, forest rehabilitation was eventually discontinued because of corruption and mismanagement.

Benefits from the Project will not go to the local communities or those living up or downstream from Lagoon area. The real beneficiaries of the Project will be the consultants, project executors (local and national government officials, commercial shrimp businessmen, and the ADB itself.

Disclosure, or Deception?

Multilateral Institutions and Access to Information

By Shalmali Guttal*

Multilateral institutions such as the Asian Development Bank (ADB) and the World Bank pride themselves on their information disclosure policies, and hold them up as evidence of their commitment to transparency and accountability. The discussion on information disclosure, however, needs to be located in the larger context of rights and governance. Today, the public's right to know is considered indisputable by most proponents of democracy, and articulated in the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights. Most of us would agree that meaningful public participation in democratic processes requires informed discussion and debate. Unless a public is fully empowered with all the relevant and required knowledge, its participation in a given situation is cosmetic at best.

By Governance, I refer to a comprehensive and transparent system of rules, processes, and procedures that ensure the protection of peoples' rights to knowledge and decision-making, and accountability and responsibility for decisions made and actions taken. Policy decisions have economic, social and political consequences, and it is crucial to examine whether those who bear the greatest costs of decisions have been involved in making these decisions.

In this context, both the ADB and the World Bank fail in their practices on information disclosure and access to information. Both institutions are completely unaccountable to the public, highly non-transparent in their policy formulation and decision-making, and

irresponsible in their stated commitment to promote public participation, and equitable and fair access to information.

The politics of information disclosure

Access to information is primarily a political issue, and embedded in power relations and the exercise of power. It involves not simply the ability to access information that exists, but also, the generation of information that would influence the ability of the public to participate in making decisions that shape the future directions of their societies and countries. The capacity to generate information and to enshrine this information in social and institutional memory as "knowledge" is indeed a powerful one. Both the World Bank and the ADB have these capacities and have used it to their full advantage in the name of information disclosure.

The information disclosure policies of both institutions are comparable in some fundamental shortcomings.

1. Irrelevance to decision-making

The most obvious flaw in the information disclosure policies of the World Bank and the ADB is that they have little to do with influencing key policy decisions made by the institutions. It does not matter how much paper or how many megabytes they make available; the most important decisions in both institutions are made according to the economic and political interests of their more powerful

* Shalmali Guttal is the Coordinator of the Micro-Macro Issues Linking Programme at Focus on the Global South (s.guttal@focuseb.org). This paper is based on her presentation at the Conference, "Access to Information" held in Hua Hin, Thailand, from March 4-6, 2002

members and not according to broad based public interest.

Equally important here is the issue of how decisions within these institutions are made. Again, public debates or public interest priorities have little meaning here. It is widely acknowledged that a significant reason for why developing countries have been disadvantaged by multilateral institutions is that they have been marginalised from the formal decision-making systems of these institutions.

In the World Bank, formal decision-making power is based on the size of capital subscriptions. Here, the United States (US), with a 17.6 percent voting power has the formal clout to veto decisions that it does not favour. The only contender on the horizon to the US's power in the World Bank is Japan, whose capital share and voting power the US has been able to limit to eight percent. Formal power is further supplemented by informal mechanisms. The World Bank President is always a US citizen and the Bank's location in Washington DC has helped to ensure that (US approved) US citizens account for a quarter of senior management and higher-level professional staff. According to a US Congressional Research Service analysis, the advantage of the World Bank and multilateral development banks to the US (and other rich lenders) is that they are able to demand performance standards of their borrowers that the US and other lenders may be reluctant to impose on a bilateral basis.

What Japan has lost in the World Bank, it has claimed in the ADB. According a number of ADB insiders, the ADB operates by the rules of "Japanese culture." Decision-making is "consensus-driven" (in the Japanese way) and takes place through informal discussions in hallways among select members of senior management and the Board. The ADB too has specific key senior positions reserved for the nationals of its more powerful capital subscribers. Sole and final authority on all decisions rests with the President of the ADB who is also the Chairman of the ADB's Board of Directors-and most important, is Japanese. Although members of the Board are expected to consult with the national capitals they represent for major policy decisions, senior management have no such cumbersome requirements. Their primary concern is to ensure that no policy or issue goes to the Board unless they are confident

that it will receive majority approval from the Board. And if this approval is not possible through informal "consensus-building," senior management is likely to delay the process by bringing additional steps into the formal decision-making process.

In sum, decision-making in the ADB and the World Bank is controlled by exclusive, closed circles of top leadership and senior management, and guided by multiple levels of self-interest. The present information disclosure policies of the two institutions are not going to change this situation.

2. Selective disclosure

Another fundamental flaw in the information disclosure policies of the two institutions is that they only disclose what is convenient to them and advance their institutional interests. What is more important than the information they disclose is what they do not disclose.

The World Bank's recently revised information disclosure policy continues to focus on providing people with information about decisions already taken, rather than making available the information needed for the public to participate in decision making. In the new policy, key documents such as tranche release memoranda, the Bank President's reports, drafts of Country Assistance Strategies (CAS) for most countries, and the draft and final documents for most structural adjustment lending will not be made available to the public. The Bank's Board was apparently divided on the question of transparency in structural adjustment lending and these divisions are reflected in the complicated agreement that was eventually reached. Final versions of some documents for low-income borrowers will be made available, while documents pertaining to middle-income borrowers will be left to the "discretion" of borrowing governments to disclose.

According to the Bank Information Centre (BIC), a US based policy research organisation that has monitored the World Bank's information disclosure process exhaustively, under the new policy the World Bank has essentially abdicated responsibility for its own transparency by pushing such disclosure decisions onto borrowing governments. It has thus clearly chosen to deny the public its right to access key documents regarding structural

adjustment lending.

Also under the new policy, the World Bank's Board of Directors will continue to govern in total secrecy. Again according to BIC, the Board has yet to acknowledge that the public has a right to know how they are being represented within the Bank. Almost no progress has been made regarding disclosing information about project lending. While the World Bank claims that it is interested in including project-affected communities in decision-making, it refuses to make important documents about project design and implementation, and financing agreements available to the public until after decisions have already been made.

The ADB on its part proudly touts its website, and the number of reports it has published and made available on the website as evidence of its commitment to information disclosure. However, according to a source close to the ADB, what is not on paper is the real issue. What is available on the website or in published form is not pertinent to the ADB's decision-making processes. Too many decisions are made through closed, informal discussions that should in actuality be open to the public. Much of this information and access to such discussions are also not equally shared within the ADB itself; delegates from poorer and thus less powerful countries are as likely to be kept out of the loop as the general public in the ADB borrowing countries.

ADB secrecy is amply demonstrated in case of the Samut Prakarn Wastewater Management Project in Thailand. Despite repeated requests by project-affected communities and members of the Thai Senate, the ADB did not disclose the project profile, procurement documents or even initial environmental and social impact assessments of the project. Project-affected communities and supporting non-governmental organisations presented substantial data to the Bank about the potential negative impacts of the project. They also pointed out how the project violated both Thai laws, and many of the ADB's own operational policies (such as Anticorruption, Governance, Confidentiality and Disclosure of Information, and Environmental Assessment Requirements). However, the ADB continued to maintain that it saw no evidence of wrongdoing or negative impacts, but at the same time, it did

not disclose the information on which its own assessment was based.

By October, 2001, the Samut Prakarn project went into the ADB's inspection process, which itself was racked with non-transparency, conflict of interest and antagonism between the Bank's senior management and staff, Inspection Committee, Inspection Panel, and the Thai Government. An inspection report was submitted by the Inspection Panel team to the ADB without the Panel having visited the project site or having direct consultations with project-affected communities. Even so, the inspection report finds that the ADB violated a number of its important policies and procedures. The project should have been re-appraised at a much earlier stage, before a supplementary financing loan for the project was made. But it took the ADB several months to make this and other related documents available to the general public. The Requestors of the inspection (the affected communities in Samut Prakarn) were not contacted by the ADB management about the inspection report until several months after the report was submitted to the ADB. To date, what the ADB has made public is a summary of its conclusions about the Inspection Committee's recommendations. The nature of deliberations within ADB Board regarding its responsibility and culpability, however, remain secret.

In the meantime, project construction continues and affected communities cannot expect any compensation from the ADB for lost livelihoods and a degraded environment. The position and response of the ADB in the Samut Prakarn Wastewater Management project is not simply a violation of its own information disclosure policy; it is a fundamental betrayal of the public's right to know. And this is one instance of the ADB's commitment to information disclosure that the public is watching very closely.

3. Dubious quality

Given the high degree of secrecy that governs the information disclosure policies of the World Bank and the ADB, it is difficult to trust the quality and integrity of the information that it does disclose.

The recent draft water resources sector strategy prepared by World Bank staff was found wanting by members of the World Bank's Board. Quite a few World Bank financed

infrastructure projects have been marked with scandals of corruption and bribery, which occurred even as senior Bank staff reported that all was well. One of the Bank's own internal reports in 1999 indicated that the Bank has tolerated corruption, legitimised false statistics and was complacent about the state of human rights in many of its borrowing countries. The Bank's close involvement with the Suharto regime in Indonesia—to which it funneled US \$ 30 billion in 30 years—has been well documented. Bank management was found violating its own rules on environment and resettlement in the China Western Poverty Project. The Meltzer Commission report released in February 2000 found that the failure of Bank projects is 65-70 percent in the poorest countries and 55-60 percent in all countries. In sum, the Commission concluded that the World Bank was irrelevant to the achievement of its stated mission of global poverty alleviation. Not surprisingly, none of this information was made available to the public by the Bank itself.

The information provided by the ADB about its own policies is out of date with developments within the institution. For example, long pending reviews of its Information Disclosure Policy and the Inspection Policy have yet to be conducted. Preliminary problems with both policies thus far have been kept secret, as have debates between senior management and the Board about the quality of ADB programmes and projects. The ADB's lawyers have advised Board members to not make public statements about the possibility or state of project inspection processes (as in the case of Thailand and Sri Lanka). The Operational Manual for ADB Staff has not been updated for at least five years. Operational policies and procedures that should have been reviewed years ago are still unchanged, while other policies approved five years ago have still not been included in the Manual—at least not in the version that is publicly available. There is thus a great deal of confusion among Bank staff as to which policies they should follow—those on paper (but outdated), or those agreed on by the Board (but not yet included in the operations manual).

Given that the information disclosure practices of the ADB and the World Bank do not provide complete, accurate, and reliable information to the public, nor do they facilitate

public participation in the development of their respective policies and programmes, what purpose do they serve? I would conjecture that the primary aim of these practices is to keep the public occupied with sometimes interesting, but largely irrelevant information while the Banks get on with business as usual. This is not information disclosure in any meaningful sense, but rather, this is deception.

Struggling with governance

There is ample evidence to show that neither the ADB, nor the World Bank are sufficiently competent to sermonise to the world about transparency, accountability, good governance and participation.

In order to bolster its image, the World Bank attempted to engage the public in at least two global initiatives, the Structural Adjustment Programme Review Initiative (SAPRI) and the World Commission on Dams (WCD). In both these initiatives, the public—which included many long-time critics of the Bank—entered into what they hoped would be good faith processes of research and dialogue with a variety of opposing interest groups. And despite challenges and compromises, they stayed with the programmes. The World Bank, on the other hand, started to back-peddle as soon as it became clear that the two reviews were generating information that contradicted its self-created scorecards of success in structural adjustment programmes and support for large dams. In the case of SAPRI, the Bank produced its own report, which ignored the findings of the research that its own staff was involved in. And by so doing, it effectively closed off any substantive or meaningful discussion with the public about structural adjustment. In the case of the WCD, the Bank more or less rejected the Commission's findings and is taking refuge behind opposition to the report by some country governments as an excuse to not implement the WCD recommendations.

In the meantime, the World Bank continues to impose structural adjustment through a new programme—the Poverty Reduction Strategy Papers (PRSP), which the Bank claims are nationally owned and participatory. However, investigations into the PRSP process by civil society groups reveal that PRSPs are plagued with the same flaws of

policy and conditionality imposition, inaccessibility of information and absence of any serious learning from past Bank imposed reform programmes. In the same vein, the Bank has entered into yet another global review process, this time of mining and extractive industry. But here, the Bank does show some institutional learning. The process is far more closed and exclusive than the WCD, and the Bank is attempting to exercise greater control than before over the review structure and process. Sources close to the World Bank have indicated that the Bank may be on a path towards “downward harmonisation” of project and programme standards in an attempt to ensure that it does not lose its infrastructure and borrowing clientele.

The ADB has its own problems of internal governance and non-transparency. The Samut Prakarn Wastewater Management Project inspection process has opened a can of worms within the ADB, highlighting problems of poor leadership, staff confusion, and lack of responsibility and accountability. The inspection process has revealed the inconsistencies between the ADB’s stated policies, what is recorded on paper and actual implementation. A particularly alarming internal by-product of the inspection process appears to be a rush within the ADB to update the staff operations manual towards protection from future inspection processes. According to sources close to the ADB, the Bank may try to arbitrarily decide which of their policies and which parts of their policies are subject to inspection, and which are not. In the future, project managers are likely to be in a bind about whether they should focus their efforts on faithfully meeting project objectives, or on implementing the “inspectable” policies and thereby protecting themselves from the risks of future inspection processes.

Like the World Bank, the ADB may also be moving towards a general lowering of programme and project standards by arbitrarily deciding which of its policies and procedures are “inspectable” and which are simply “good practice.” And whatever is deemed “inspectable” would still be shielded from external accountability by the ADB’s immunity to local and national laws, as guaranteed by its charter. Most likely, these trends will be accompanied by a lot more irrelevant

information disclosed through paper and megabytes, even as decision-making and democratic oversight in the ADB and the World Bank become increasingly remote to the public.

Secrecy in public information disclosure policy is a violation of the social and political compacts between a people and their government. Governments are—at least in theory—expected to be accountable to their citizens for the decisions they make. Multilateral institutions—which are public institutions—argue that they are directly responsible to the governments that constitute their clientele, and not to the general public. However, the policies and practices of these institutions have severe and long-term consequences that are not borne by governments alone, but by the populations in the client countries. And the less directly accountable a public institution is to the public, the more open and transparent it needs to be in order to uphold its stated commitments to democracy, good governance and social responsibility.

Experience to date shows that the ADB and World Bank have failed in this regard. They are in no position to preach the values of openness, transparency and accountability to anyone until they can fundamentally restructure internal and external governance in their own houses.

Selected References:

Asian Development Bank: www.adb.org

Aubugre, Charles: *Still Sapping the Poor: A Critique of IMF Poverty Reduction Strategies*. ISODEC, June, 2000.

Bank Information Centre: *The Ongoing Struggle for World Bank Transparency-The Outcome of the Information Disclosure Policy Review*. November, 2001.

Bank Information Centre: *The Asian Development Bank’s Inspection Function*. February, 2002.

Bank Information Centre: *Testing ADB Accountability: The Case of the Samut Prakarn Wastewater Management Project in Thailand*. February, 2002.

Bello, Walden: *Prospects for Good Governance: The View from the South*. Focus on the Global South, October, 2001.

The Bretton Woods Project: website.

The Halifax Initiative: *Halifax Initiative Submission to Consultation on Draft Information Disclosure Policy*.

The World Bank: website

Governance and the ADB

Complicity and Conflict of Interest

*By Jenina Joy Chavez**

When crisis struck East Asia in 1997, the international financial institutions (IFIs) and multilateral development banks (MDBs) scampered everywhere to look for an explanation. That is, everywhere but into themselves. Not surprisingly, the most viable apology turned out to be governance, or rather the lack of it. Governments were corrupt and nontransparent, rules were unclear and discriminatory, private companies were irresponsible and overextended - the system was not functioning the way it should. It mattered little that the system gave such incentives for overextended “irresponsible” behavior of both government and the private sector, nor that the rules were designed in the way most expedient and politically convenient. After all, the system was sponsored by the IFIs and the MDBs themselves, and anytime at their beck and call, it should be “all systems go”.

More than anything, it was governments that received the ire of the good governance gurus. They alleged that corruption pervaded governments, and this spelled doom for countries during the crisis and made it difficult to implement the necessary response. For former United States Treasury Secretary Robert E. Rubin, the situation was so bad that he urged the IFIs “to cut off assistance when corruption undermines the viability and effectiveness of their reform programs” because “scarce resources should not be wasted in countries that are not prepared to confront and combat corruption seriously”.¹

Thus began the march of good governance as the most important new pillar in international development discourse, second only to poverty reduction. Governance-related

reforms (civil service and judicial reform, regulatory and market governance), in some cases compiled in a comprehensive governance masterplan or action plan, became one of the hottest initiatives coming from the IFIs/MDBs.

One would not have begrudged the IFIs/MDBs their claim of the moral high ground had institutional memory been short. Fortunately such was not the case. Most everybody remembers that the IFIs/MDBs definitely hugged the policy limelight during the darkest and most repressive era of East Asia. They have, for instance, stayed on and shored up the Suharto regime in Indonesia, even at a time when civil society was already appealing for their withdrawal of support. The World Bank and the International Monetary Fund had been known to manipulate certain country data to justify their loan programs in the past. And the U.S. Congress appointed International Financial Advisory Commission (also known as the Meltzer Commission) reported in early 2000 that more than half of World Bank projects were failures.

The most damning revelation came with the collapse of American electricity equipment and supply giant, Enron Corporation. Enron registered the biggest bankruptcy in U.S. history to date, leaving on its trail more than US\$140 billion in debts. Not only did the most powerful country in the world fail to arrest the situation before it exploded, it was also revealed that Enron thrived with its financial support. According to the Institute for Policy Studies (IPS), a U.S.-based progressive policy think tank, “since 1992, at least 21 agencies, representing the U.S. government, multilateral development banks, and other national

**Jenina Joy Chavez is a senior research associate at Focus on the Global South, Manila (J.Chavez@focusweb.org)*

governments, helped leverage Enron's global reach by approving \$7.219 billion in public financing toward 38 projects in 29 countries².

Closer to home, the governance discourse has also been actively promoted by the Asian Development Bank. The ADB has been cited by the same IPS report as having "supported (Enron's) Batangas Power Plant with a \$26.4 million loan"³. Official ADB documents show that the loan was approved in 1993 from the Bank's Ordinary Capital Resources, and that the Bank also made an equity investment to the plant in the amount of US\$3 million⁴.

The irony of Enron is not so much that it went bankrupt. But that, being a private corporation, it was subject to less nagging over governance issues than governments were. The irony is that the private sector has long been pitted against the public sector, hailed as the better of the two, and in the 1990s been the recipient of much direct support from the MDBs.

As the ADB says, not as it does

The ADB prides itself for being the first to have a Board-approved governance policy. This policy has four core elements - accountability, participation, predictability and transparency. The governance activities the Bank supports in developing members countries (DMCs) revolve around the following objectives: to (1) strengthen governance in public sector management; (2) improve public enterprise management and public-private interface; (3) improve public expenditure management; (4) support public administration reform; (5) enhance participation; (6) decentralise government services; and (7) reform the legal system.⁵

However, the ADB does not always practice what it preaches. Internally, the ADB is very centralised and hires personnel based on criteria other than merit. A Department for International Development (DFID, UK) study pushed for institutional and management reform within the ADB. DFID claims that "the Bank remains a highly centralised organisation with most decisions taken at its headquarters in Manila", that "in-country offices are...restricted to project implementation, logistical support and liaison with the host government" and lack "

policy responsibility", a situation that challenges the

"traditional merit of a Regional Development Bank being closer to its borrowing members countries"⁶ DFID further sees the operation of "a quota system for professional staff (i.e., the number of staff of a particular nationality depends on the size of that country's shareholdings)" and the reservation of certain posts for particular countries, an anomaly.⁷ This quota system is responsible for having the most senior management posts occupied by Japanese and American nationals. The Presidency, the Treasury and Budget portfolios are reserved for the Japanese, while the Americans take charge of the General Counsel's Office.

How the ADB handles projects and programs in DMCs is itself not a source of good examples. Projects with implications on resettlement almost always fail to incorporate meaningful participation (versus mere consultation) with affected communities. Relevant information are not made available on time, if at all. Although one wonders whether the production and/or possession of conclusive pieces of evidence (whether positive or negative) is really more important to the Bank than actually having a project or program implemented come what may.

The latest scandal to prick the ADB's governance veil was the Samut Prakarn Wastewater Management Project. First brought to public attention in Chiang Mai in 2000, Samut Prakarn was the first Inspection case brought before the Bank. Being the first, one would think that the Bank would put its best foot forward. Instead, a Board nervous about the deluge of potential Inspection requests, and a total lack of political will on the part of the Bank, caused the Bank to repeatedly ignore or outright violate its own governance guidelines and proceeded with a poorly managed Inspection process. Still, the Inspection Committee found various violations of Bank policies, including participation, in the Samut Prakarn case⁸.

The project, however, is continuing. The Inspection Report is likely to gather dust. And civil society's worst fear is coming true: the Bank has started turning down new requests for inspection.

Conflict of interest

It should not be hard to see why it is difficult for the ADB to apply its own governance yardstick onto itself. There are just too many elements of the governance principle that threaten the very foundations of the Bank. When an institution's professional judgment is compromised or appears being compromised by considerations other than those openly covered in the assessment process, a situation of conflict of interest arises. In the case of the ADB, the considerations need not be personal or financial, but values that the institution feels the need to protect. This includes financial viability, positive public projection, shareholders interest, and survival.

The Bank should be measured against an expanded standard of conflict of interest because it is a public institution, one that has tremendous influence not only over how projects are done but also over what policies are implemented in the DMCs. Financial resources have long been a weapon of coercion. Because of this, the ADB should be placed under very strict scrutiny.

Conflict of interest may be explicit or implicit. It may surprise some people to know that in many instances, the conflicts of interest involving the Bank are more explicit than the Bank itself cares to recognise.

Self-promotion

Self-promotion is the selective use and disclosure of information and dispensation of policy based on their potential contribution to the Bank's image. For the purpose of scrutinizing the Bank, self-promotion can also mean the use of official position to ensure that only positive things about the Bank or its projects are publicised officially, or to ensure that criticisms in official documents are held at bay. The ultimate objective for self-promotion is to show that the Bank is doing everything right all the time.

The ADB is guilty of self-promotion for only hiring consultants who are to make positive or favorable recommendations on controversial projects. By extension, the Bank is self-promoting when it ignores important information that negates its own consultants' reports, or withholds negative findings even of the consultants that the ADB itself hires. For instance, in 1993 it can be said to have committed self-promotion when it

commissioned a large hydropower consultancy firm, Norconsult International, to assess the energy potential for the Greater Mekong Subregion (which at the time everybody knew the ADB was grooming as a hydropower hub). Not surprisingly, the report that was produced read like a dam catalogue.⁹ But when consultants manage to come up with compromising results, as in the case of independent fisheries expert Terry Warren, the ADB manages to pretend no such reports exist. Terry Warren confirmed that the Theun-Hinboun hydropower project is responsible for negative impacts, including the loss of fisheries, riverbank erosion and damage to drinking water supply.¹⁰

It is also self-promotion when the ADB explicitly states in consultancy terms of reference (TOR) that certain projects must be identified for implementation even before there is conclusive assessment that will support such projects. Such was the case with the TOR for the US\$2.5 million Basin Hydropower Development Plan in the Xe Kong, Se San and Nam Theun river basins in Cambodia, Laos and Vietnam, where it was stipulated that the study should identify at least six hydropower projects for early implementation.¹¹

Finally, it is self-promotion to extend funds for "constituency building", or the process of convincing DMC citizens about the virtue of Bank-financed projects or programs, usually done through massive media campaigns. This practice was first tried out by the World Bank¹² and is being tried by the ADB in some of its sector restructuring projects.

Private sector operations

The ADB recorded its first private sector investment facility approval in December 1983. It was a less than one million dollar equity investment to the Korea Development Investment Corporation. Direct support for private sector projects used to be done through the Bank's non-sovereign window, but are now carried out by the Private Sector Operations Department (PSOD).¹³ As of December 2001, the ADB has approved a combined total of US\$2.66 billion in private sector investment facility, including direct equity, underwriting, loans and risk guarantees¹⁴.

The recent attention the ADB drums up for its private sector operations and the spate of

private sector lending from its Private Sector Group has led to accusations of conflict of interest on the part of the ADB. The conflict arises because other groups within the Bank promote privatisation programs in DMCs. Uncannily, the biggest private sector loans approved by the ADB in recent years have been connected to the buying up/operation of assets/utilities that have been privatised under ADB programs. While the ADB itself acknowledges that there is a potential for conflict of interest, they are quick to claim that this is not a real problem since the Private Sector Group has no real influence over the Policy and Strategy Department of the Bank.¹⁵

Far from the ADB's claim that the conflict of interest in this case can be avoided by full disclosure or by assurances that different departments do not confer with each other, the broader development objective of assisting a DMC still "appears compromised". Having these two groups, clearly with disparate functions and motivations, in a single institution is problematic and in itself constitutes conflict of interest.

The Bank's Private Sector Strategy, which aims to leverage private sector investment in DMCs, does not help at all. The strategy admits that DMCs have development needs far beyond what the ADB can finance.¹⁶ This is a crucial question to the ADB's ability to spearhead development in the region and an implicit declaration that private sector partners are necessary for its continued relevance.

If the argument is that assisting private sector groups helps client governments by promoting production, why not channel the assistance through government instead? The private sector can still be the ultimate beneficiary. The argument that the government will be inefficient in directing support (through credit, for instance) becomes tired. And anyway, given its questionable governance performance, who's to say that the ADB will be better? At least the government has sovereign power to make private corporations pay compensation for damage they cause. When has the ADB ever run after erring contractors?

Even in its private sector operations (PSO), the ADB calls on government to be involved in certain occasions. Private sector loans no longer require government guarantees. The ADB usually covers these guarantees

themselves. However, if a guarantee exceeds a specified limit (US\$50M or 25% of project cost for partial risk guarantee, and US\$100M or 50% of project cost for political risk guarantee), the ADB requires a counter-guarantee from the host government.¹⁷

Finally, when the Bank has both government and private sector clients in a DMC, and where the Bank has Resident Mission offices, statements by Resident Mission members remotely referring to the private sector client's dealings with the host government can be considered meddling and an occasion for conflict of interest. Similarly, if the Bank is silent on the design of a privatisation program or its regulatory instrument, especially when such silence means undue advantage may be captured by the private sector client once the program or instrument is approved, it is liable for conflict of interest.

These are not hypothetical occasions. The experience of the Philippines around the metropolitan water utility privatisation (where the ADB is also arranging a private sector loan to one of the winning concessionaires) is a stark reminder that the Bank can be a "persuasive" power when its interests are on the line. The Bank uncritically and insensitively made comments about how it would be difficult for them to arrange the loan facility for their private sector client if the Philippine Government does not grant their petition for automatic currency exchange adjustment.¹⁸

On the other hand, the Bank may choose not to be explicit about not-so-perfect conditions that may hold in technical and impact assessment, as long as broad opening up or privatisation objective is met. For instance, a Technical Assistance activity attached to the restructuring of a major public utility might be a study on pricing and regulatory practice in a "competitive environment". The study would be fine, except that in the real world a competitive environment remains a pipe dream. Yet the ADB will not place the emphasis on how the competitive environment can be achieved, nor would it reassess its role in the restructuring if its design were found to be less-than-competition friendly. Such was the experience with the ADB around the Power Restructuring Program.

Policy Conditionality

The conflict of interest in the ADB's PSO becomes more pronounced when viewed in the context of broad-based policy conditionality that the Bank imposes on its DMCs. The ADB has been giving policy-based lending since 1978. However, it was after the programs' second review in 1987 that policy-based lending became more stringent.

In policy- or program-based lending, loans are usually released in three tranches, with each tranche release conditioned on the achievement of certain benchmarks or the performance of specified conditions. For example, the second tranche of a power restructuring program loan may be conditioned upon among other things the passage of a power sector restructuring law (such as in the case of the Philippines). And third tranche will be released upon the approval of a privatisation program for the national power company (also as in the case of the Philippines). Tranche release conditions may number from as few as one or two to as many as a dozen or more.

Even without the PSO, the use of policy conditionality is already a big governance problem. What if DMCs would like to experiment beyond the economic orthodoxy? Should not programs be evaluated on their individual merits and based on specific country contexts? Quite obviously, with the PSO, policy conditionality makes a clear case for conflict of interest.

Beyond governance

The ADB's poor performance record on governance reeks of doublespeak. It invents new policies to exhibit a seeming freshness, but clings on to outdated structures. It co-opts progressive language to project dynamism, but fortifies its support of old models. It packages itself as working for the benefit of its client governments, while becoming more and more beholden to the interest of its private sector clients.

This doublespeak highlights the opportunism of the Bank who wants the cloak of security provided by a multilateral public character, but nevertheless diminishes the public institutions that make it possible.

- 1 Robert E. Rubin, *Remarks delivered at the conference Global Forum on Fighting Corruption: Safeguarding Integrity Among Justice and Security Officials, February 24, 1999. Available on the internet: http://www.fas.org/irp/news/1999/02/99022403_clt.htm*
- 2 *Enron's Pawns: How Public Institutions Bankrolled Enron's Globalization Game. Sustainable Energy and Economy Network, Institute for Policy Studies, March 22, 2002. Available on the web: <http://www.seen.org/PDFs/pawns.PDF>*
- 3 *Ibid.*
- 4 *Asian Development Bank. December 2001. Loan, Technical Assistance and Private Sector Operations Approvals.*
- 5 *Asian Development Bank. 2000. Promoting Good Governance: ADB's Medium-Term Agenda and Action Plan*
- 6 *Department for International Development. 2000. Working in Partnership with the Asian Development Bank*
- 7 *Ibid.*
- 8 *Final Report of the Inspection Panel on the Samut Prakarn Wastewater Management Project, 14 December 2001. Summary of Key Points prepared by Shalmali Guttal, March 2002.*
- 9 *International Rivers Network. The Asian Development Bank: Financing Destructive Development in the Greater Mekong Subregion. <http://www.irn.org>*
- 10 *Joy Chavez, "Will the ADB Pass the Reality Test?," Focus on Trade No. 63, ADB Special Part II, May 2001.*
- 11 *IRN, Ibid.*
- 12 *<http://www.challenglobalization.org/>*
- 13 *Asian Development Bank. 2002. Private Sector Operations: Catalyzing Investment Across Asia and the Pacific.*
- 14 *Asian Development Bank. December 2001. Loan, Technical Assistance and Private Sector Operations Approvals.*
- 15 *Jenina Joy Chavez. 2001. Taking Stock of the Motives and Interests in ADB's Private Sector Operations, in Profiting from Poverty: The ADB, Private Sector and Development in Asia.*
- 16 *Asian Development Bank. 2000. Private Sector Development Strategy*
- 17 *Asian Development Bank. 2001. A Guide to ADB's Official and Commercial Cofinancing Operations*
- 18 *Jenina Joy Chavez, Ibid.*