

The ADB
and
Policy (Mis)governance
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ABBREVIATIONS

ADB	Asian Development Bank
ADF	Asian Development Fund (ADB)
AGM	Annual Governors' Meeting
ASEAN	Association of Southeast Asian Nations
BIC	Board Inspection Committee (ADB)
BME	Benefit Monitoring and Evaluation
BOO	Build Own Operate
BOT	Build Operate Transfer
CKEIP	Chong Kneas Environmental Improvement Project
COPE	Committee on Public Enterprises (Sri Lankan Parliament)
CPI	Corruption Perception Index (Transparency International)
CRBIP	Chashma Right Bank Irrigation Project (Pakistan)
CRP	Compliance Review Panel (CRP)
DMC	Developing Member Country
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
EIRP	Emergency Infrastructure Rehabilitation Project (ADB/Timor)
EPIRA	Electric Power Industry Reform Act (Philippines)
ERC	Enterprise Reforms Committee (India)
ESS	Employment Separation Scheme (Kerala)
ETTA	East Timor Transition Authority
GMS	Greater Mekong Subregion
GoI	Government of India
GRSC	Grievance Redress and Settlement Committee (ADB)
IDA	International Development Association (World Bank)
IDB	Inter-American Development Bank
IFI	International Financial Institution
IMF	International Monetary Fund
IMTL	Microfinance Institute of Timor Leste
INT	Department of Institutional Integrity (World Bank)
IPP	Independent Power Producer
IUCN	World Conservation Union
IWRM	Integrated Water Resource Management
JBIC	Japan Bank for International Cooperation
KCEMUDP	Karnataka Coastal Environmental Management and Urban Development Project
KSCARB	Kerala State Cooperative Agricultural and Rural Development Bank
KUID	Karnataka Urban Infrastructure Development
KUDCEM	Karnataka Urban Development and Coastal Environment Management
KUIDFC	Karnataka Urban Infrastructure Development and Finance Corporation
LIBOR	London Inter Bank Offer Rate
MDB	Multilateral Development Bank
MfDR	Managing for Development Results (ADB)
MGP	Modernising Government Programme and Fiscal Reforms (India)
MRC	Mekong River Commission
NEDECO	Netherlands Engineering Consultants
NPC	National Power Corporation (Philippines)
OAG	Office of the Auditor General (ADB)
OED	Operations Evaluations Department (OED)
OM	Operations Manual
PBA	Performance Based Allocation
PCD	Pollution Control Department (Thai Government)

PCP	Public Communications Policy (ADB)
PIU	Project Implementation Unit (Karnataka)
PRS	Poverty Reduction Strategy
PSALM	Power Sector Assets and Liabilities Management Corporation (Philippines)
PSD	Private Sector Development
RDA	Road Development Agency (Sri Lanka)
RMU	Results Management Unit (ADB)
SARD	South Asia Regional Department (ADB)
SID	Special Investigation Department (Thai Government)
SLPE	State Level Public Enterprise (India)
SPF	Special Project Facilitator (ADB)
STDP	Sri Lanka Southern Transport Development Project
SPWMP	Samut Prakarn Wastewater Management Project
TA	Technical Assistance
TFET	Trust Fund for East Timor
TOR	Terms of Reference
TSBR	Tonle Sap Biosphere Reserve
UNAMET	United Nations Assistance Mission in East Timor
UNDP	United Nations Development Program
UNTAET	United Nations Transitional Authority in East Timor
UNOPS	United Nations Office of Project Services
VRS	Voluntary Retirement Scheme
WB	World Bank
WCD	World Commission on Dams
WSSRP 1	Water Supply and Sanitation Rehabilitation Project

Failure to Deliver

The ADB's Policies, Projects and Governance

SHALMALI GUTTAL

The Asian Development Bank (ADB) is the second largest source of development finance in the Asia-Pacific region, next to the World Bank Group. It provides loans (at concessional and near market rates), partial risk guarantees, equity investments and technical assistance (TA) grants to governments and private enterprises in its Developing Member Countries (DMCs). Every year, the ADB moves huge amounts of money across the Asia-Pacific region in a bid to foster economic growth and trade integration among countries in the region.

As a multilateral development bank (MDB), the ADB provides financing and TA grants to governments and private sector enterprises in a range of sectors from agriculture, rural development, transport and energy, to water, health, education, law and public finance. Since early this year, it has also moved into post-tsunami rehabilitation and reconstruction in India, Indonesia and Sri Lanka. The ADB's approach to development is based on the belief that rapid economic growth is the best path to development; that free and open markets are the most efficient allocators of resources and opportunities; and that the private sector is the best avenue for delivering goods and services. The appropriate role of government is to shift from "owner-producer" to "facilitator-regulator," and to create an "enabling environment for private sector participation" in all areas of economic activity. All of ADB's policies, projects and programmes reflect this ideology. In 2003, the ADB approved loans totaling US\$ 6.1 billion, compared with loans and equity investments of US\$ 5.7 billion in 2002. Also in 2003, the ADB approved a total of 315 technical assistance (TA) projects amounting to US\$ 177 million, compared with 324 TAs valued at US\$ 179 million in the previous year.¹ In 2004, ADB lending operations stood at US\$ 5.3 billion, which was used for 80 loans for 64 projects in the public and private sectors. The average loan size in 2004 was US\$ 66 million compared to US\$ 72 million in 2003. In this, the transport and communications sector received the largest share of lending at US\$ 2 billion followed by energy at US\$ 761.8 million, and law, economic management and public policy at US\$ 584.4 million. There was also US\$ 807.2 million in approved assistance for the private sector - a 49 percent increase over 2003 - while technical assistance grants were approved for US\$ 196.6 million. The largest borrowers in 2004 were the People's Republic of China and India, each receiving US\$ 1.3 billion, or about 24 percent of the total lending. The other top borrowers were Pakistan (US\$ 709 million) and the Philippines (US\$ 446 million).²

In February 2005, the ADB established an Asian Tsunami Fund (ATF). Earlier this month, the ADB approved a US\$ 300-million emergency assistance grant -

¹ www.adb.org/About/FAQ/funding.asp

² Asian Development Bank Annual Report 2004.

ADB's biggest ever single grant - from the ATF for Indonesia's tsunami-related rehabilitation and reconstruction efforts. It also plans to reallocate about US\$ 65 million in surplus funds from ongoing projects to tsunami-related assistance and expand the scope of projects already being processed to cover tsunami-affected areas.³ In India, the ADB has approved a US\$ 200 million loan and grant assistance package towards post-tsunami rehabilitation and reconstruction. This comprises of a US \$100 million grant from the ATF and a US\$ 100 million loan from the ADB's ordinary capital resources.⁴ In Sri Lanka, the ADB has approved a US\$ 197 million grant and loan package for two projects for tsunami related reconstruction that will also cover conflict-affected areas of Sri Lanka. The grant is from the ATF and the loan from the ADB's concessionary financing arm.⁵

Given its expanding areas of operations and increasing economic and policy influence in the Asia Pacific region, it is worth taking a look at the ADB's track record in project performance, policy and programme impacts, and governance, and assessing whether the institution is capable of delivering benefits to the people and communities of the region.

STRUGGLING WITH POVERTY REDUCTION

In its first twenty odd years of operation, the ADB was better known for project-based lending, mostly for large physical infrastructure projects such as roads, highways, dams, power plants, ports, water and sewage treatment plants, etc. By the end of the 1980s, the ADB expanded to policy-based lending, which requires borrowing governments to put in place systemic reforms in their economic, financial, social and environment sectors, much like the World Bank's structural adjustment programmes. Since then, ADB loan agreements are routinely accompanied by policy matrices that outline the policy measures or conditionalities that a borrowing government must agree to in order to get a loan. These include: passing laws and

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www.adb.org/Documents/News/2005/nr2005068.asp

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www.adb.org/Documents/News/2005/nr2005065.asp

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www.adb.org/Documents/News/2005/nr2005064.asp

regulations that favour private sector involvement in key economic sectors and services (such as energy, transport, water and urban basic services); market-friendly restructuring and reforms in all sectors for which loans are sought (for example, banking and finance, agriculture, energy, water, justice, etc.); corporatisation and privatisation of public enterprises and utilities which in turn demand measures such as market rates for the costs of services and utility tariffs, full cost recovery through user fees, the elimination of cross-subsidies, etc.; creating a “flexible” labour force (which means workers can be hired and fired at will, minimum wages are kept low, etc.); commercialisation of agricultural production; and trade and investment liberalisation. In sum, ADB policy reforms are designed to catapult a borrowing country’s economy into an unprotected, unregulated market system in order to facilitate rapid economic growth.

In the aftermath of the Asian economic crisis, the ADB joined the International Monetary Fund (IMF), the World Bank and bilateral donors in claiming that the crisis was brought about primarily by “crony capitalism” and non-transparent, inefficient and corrupt government and corporate practices in the crisis affected countries. The Asian crisis provided the MDBs and bilateral donors with a convenient opportunity to expand their demands for policy reforms into national judicial, legal and regulatory systems under the banner of “good governance.”

In 1999, in step with the World Bank and the IMF, the ADB announced its Poverty Reduction Strategy (PRS) and proclaimed that from hereon, poverty reduction would be the “overarching objective” of all its projects, programmes, and TAs. The strategic “pillars” of the PRS are pro-poor sustainable economic growth, social development, and good governance. These elements would be operationalised through a strategy that involves poverty analyses, country strategies based on logical frameworks, new tools, instruments and targets, monitoring mechanisms, stake-holder participation, partnerships with Non-Governmental Organisations (NGOs), poverty partnership agreements (another term for loan agreements) with governments, and most important, a sharply increased role of the private sector in all development projects and

programmes.⁶ In addition to the three strategic pillars, the PRS also has five thematic priorities: private sector development, environment, gender equity, regional cooperation and capacity building.

But despite its elaborate framework, many pages of matrices and schematic diagrams, and impressive lexicon of descriptions and definitions, the PRS has been unable to move away from its narrow focus on rapid economic growth. Demands for policy and sectoral reforms and good governance now come in the name of poverty reduction. In its early articulation of the PRS the ADB stated, “Pro-poor growth interventions will seek to address impediments to broad-based economic growth. Policy-based lending will be used to correct policy and institutional weaknesses.”⁷

ADB insiders admit that a major bottleneck in implementing the PRS are its own staff, who are clueless about how to reduce poverty and are either reluctant or unable to move beyond the standard growth paradigm. Country programme staff are also unable to show positive links between the macroeconomic policies and sectoral reforms they favour and poverty reduction; often, the poverty reduction components of projects/programmes involve sudden infusions of capital into local areas through micro-credit projects, agricultural loans, etc. As it is, the ADB suffers from “goal congestion”⁸ where new goals are constantly heaped on old ones with little thought, analyses, or strategy for meeting them. Faced with an overload of goals and expectations, the default for confused ADB staff then is to stay with the business they know best: pushing loans.

PROMOTING THE PRIVATE OVER THE PUBLIC

Private sector development is at the heart of all ADB operations. The ADB’s Private Sector Development Strategy (PSD) empowers it to promote private capital investment in the region, provide and guarantee loans to the private sector, mitigate private sector risks, invest in

⁶ *Fighting Poverty in Asia and the Pacific: The Poverty Reduction Strategy*. Asian Development Bank. November, 1999.

⁷ *Ibid.* Page 20.

⁸ *ADB 2000: Senior Officials and Internal Documents Paint Institution in Confusion*. Walden Bello in *Creating Poverty, The ADB in Asia*, Focus on the Global South, May, 2000.

equity, and facilitate financing to private enterprises operating in its DMCs. Most of its private sector operations have been in infrastructure development, with some investments in the financial sector and capital markets (such as in commercial and national development banks and financing for small and medium enterprises). PSD operations are gradually expanding into social sectors as well, such as health, education, water and environmental management.

Financing for private sector operations comes through direct financing from the ADB's private sector window and complimentary financing with bilateral and commercial co-financers. The ADB provides a range of financial "products" to the private sector independent of its agreements with borrowing governments.⁹ In an interview with the *Financial Times* in 2004, Robert Bestani, head of the ADB's private sector department said that, "We've finally figured out what our product is, how to package it and how to sell it." The "product", which Mr. Bestani said was "flying off the shelves," includes traditional infrastructure projects as well as a range of new financial services to develop emerging capital markets and financial systems. According to Mr. Bestani, what his department can offer above all are risk mitigation and development of an economy's private sector.¹⁰

Central to the ADB's mission of mobilizing private capital for development is the promotion of public-private partnerships between governments and private companies under Build-Own-Operate (BOO) and Build-Own-Transfer (BOT) arrangements in which the ADB provides loans for government equity and partial credit and risk guarantees to private investors. Partial risk guarantees cover sovereign and political risk and generally require counter-guarantees from the host government. Governments also have to guarantee the purchase of a specified amount of output from the project, often in hard currency. The ADB claims that its financing and risk mitigation schemes have provided significant "comfort" to commercial lenders and investors in public-private partnerships. Governments and the public in borrowing countries, however,

⁹ See, the ADB website for information on ADB financing facilities and products for the private sector.

¹⁰ *Reformers flex their muscles*. Victor Mallet, *Financial Times*, February 27, 2004.

receive no such comfort. They are left with foreign exchange risks, heavy debt repayment burdens, rising utility costs and poorer quality services.

The ADB demands that borrowing governments "create an enabling environment for private sector participation" by enacting laws that permit BOT, BOO and similar schemes; putting in place private sector-friendly legal and regulatory frameworks; and preparing private sector friendly projects. The PSD strategy supports the eventual privatization of key public sectors and enterprises. As the ADB aggressively pushes for privatization of a public enterprise such as a state power utility, it also provides financing to private companies who have an interest in the privatised utilities/assets, thus ensuring the transfer of public assets and wealth into private hands.¹¹ The ADB seems unconcerned about conflicts of interest in these dual roles, nor does it recognize that it encourages moral hazard by assuring financial returns and mitigating risks for private investors.

This is clearly evident in the ADB's push for restructuring of the electricity/power sectors, as in Indonesia, Philippines, India and Pakistan. Restructuring involves unbundling the three main components of the power sector: generation, transmission and distribution. The next step is corporatisation, i.e. each of the unbundled utilities functions as a private company would in its pricing and operations, even as it is still owned by the state and supported by public money. The final step would be the outright sale of the utility to a private company.

The ADB's rationale for aggressive private sector promotion is that the private sector ostensibly relieves the financial pressure on poorly resourced and inefficient public sectors and enables governments to redirect resources freed up from utility and infrastructure costs towards spending in social sectors. Also, "...since well designed private sector projects within sound regulatory environments typically operate more efficiently than public sector projects,"¹²

¹¹ *Taking Stock of the Motives and Interests in ADB's Private Sector Operations*. Jenina Joy Chavez-Malaluan in *Profiting from Poverty, The ADB, Private Sector and Development in Asia*. Focus on the Global South, April 2001.

¹² *Private Sector Operations. Strategic Directions and Review*, Page 12. Asian Development Bank, August, 2001.

they often result in lowered prices, improved quality, increased access to goods and services for the poor, and even accelerated economic growth.¹³ However, experiences across the Asia-Pacific of ADB-supported private sector projects show the opposite.

In India, the ADB has approved loans totalling US\$ 350 million to help restructure the power sector in the state of Madhya Pradesh. The Madhya Pradesh state government and state electricity board are to provide US\$ 118.9 million equivalent in local currency. Restructuring started in 2000-2001, and by 2002, electricity tariffs were up by 20 percent. By 2003-2004, tariffs further increased by 150 percent. And in 2005, more tariff increases are expected for different categories of users. Exacerbating the situation are pronouncements by the State Electricity Board that they will put an end to subsidies that benefit farmers and low-income groups. Rising electricity costs will severely limit the abilities of farmers—majority of who work on small-hold family plots—to pump water into their fields and use other machinery as needed, thus hitting at the very heart of their livelihoods. These reforms will exacerbate the agricultural crisis already present in the country (which has already resulted in numerous farmers committing suicide) and increase the long-term costs of social and economic mitigation. Contrary to the ADB's claims, power sector restructuring has sharply increased the state government's debt burden and inhibited the government's ability to spend on basic social services. Reforms are making electricity unaffordable for low-income communities and threaten to further impoverish those who are most economically vulnerable in society.

In the early nineties in the Philippines, the ADB repeatedly raised the example of the National Power Corporation (NPC) as a model of energy sector liberalization through BOT-type investments. What the ADB conveniently ignored was NPC's exposure to foreign exchange risk since it had guaranteed payments and made Power Purchase Agreements to (mostly foreign-owned) private companies in US dollars. The Asian financial crisis left NPC with multiple disasters of a huge foreign debt burden, devaluated currency, and increasing retail prices which resulted in greatly decreased energy demand. The

¹³ *Private Sector Operations. Strategic Directions and Review.* Asian Development Bank, August, 2001.

ADB's response to this crisis in 1998 was to aggressively push the Philippines Government to unbundle and privatise NPC, which in turn was marked by a massive corruption scandal in mid-2000 and huge social unrest.¹⁴ The winners in this case were private companies who walked away with a disproportionate share of profits while economic risks were transferred to consumers who had neither the benefits of state subsidies nor legal recourse.

Similar examples of faulty policy advice by the ADB can be found in other power and water sector projects in Vietnam, the Lao PDR, Cambodia, Philippines, Indonesia, India and Pakistan. The ADB's rush towards sectoral restructuring and privatization is based on flimsy data, and sketchy and incomplete analysis. Despite disastrous experiences with past BOT projects, the ADB continues to provide private sector loans for infrastructure projects that actually raise utility prices and place considerable risks on governments who have no way to recoup their costs except by raising tariffs and levies on their own citizens and dismantling cross-subsidies for those who are economically marginalized or vulnerable. Far from freeing up resources to redirect to social sector spending, every government that has entered into an ADB designed public-private partnership is now faced with increased debt and financial liabilities, and no legal recourse.

GOVERNANCE: DOUBLE STANDARDS AND HYPOCRISY

The ADB has identified four elements of "good governance" for its operations: 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 of the

¹⁴ *BOTs, Governance and the ADB.* Andrew B. Wyatt in *Good Governance or Bad Management, An Overview of the ADB's Decision Making Processes and Policies.* Focus on the Global South, May, 2002. See also, *Privatising Power in the Philippines: Cure Worse than the Disease.* Walden Bello in *Profiting from Poverty, The ADB, Private Sector and Development in Asia.* Focus on the Global South, April 2001.

executive authority.”¹⁵ And, “Access to accurate and timely information about the economy and government policies can be vital for economic decision making by the private sector.”¹⁶ Predictability is—predictably—all 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 the DMCs. With regard to good governance, this assistance is geared primarily towards the reform of public sectors/enterprises and the reconstruction of the public domain with an “appropriate” role for the State in a market-friendly economy. The main concerns that guide ADB assistance to the public sector in operationalising “good governance” are: maximising profits and minimising costs for the private sector, preserving markets, promoting market-friendly policy reforms and market mechanisms in services provision, creating competitive operating environments, enhancing cost recovery, divestiture and privatization

Although the ADB claims to eschew involvement in the political aspects of governance, its core mandate—promoting economic development and growth—is deeply political. Economic development determines the distribution of a society’s wealth and opportunities, who gains and loses, and how power is realigned or entrenched. It is thus 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.

Since the ADB’s good governance policies do not discuss the political dimensions of governance, it shows little interest in the fact that its own projects and programmes can 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. The transformation of public sectors to serve corporate and market interests in the guise of “efficient management of public resources” undermines the ability of states to meet their obligations to their citizens.

Strangely enough, the ADB’s policy on good governance offers no prescriptions for its own institutional governance.

¹⁵ *Governance: Sound Development Management*. Asian Development Bank, August, 1999. Pages 8-13.
¹⁶ *Ibid.*

Accountability, Participation, Predictability and Transparency are the buzzwords for governments, but appear not to apply to the ADB’s own conduct or operations. The ADB is protected by its founding Charter from judicial proceedings under national laws and against financial liability for material harm resulting from its projects and programmes.¹⁷

ADB insiders have revealed that the institution is increasingly plagued by poor and irresponsible performance by Bank staff and Management, a lack of clarity among staff about operational policies and procedures, and a noticeable absence of disciplinary processes within the institution. Questions have been raised in meetings of the ADB’s Board of Directors about the appropriateness of Bank staff conduct in formulating, processing, and implementing projects. Controversies surrounding a number of ADB projects and programmes – from the Chashma Right Bank Irrigation Project in Pakistan to reform programmes in the Pacific Island States—reveal that the ADB’s commitment to “good governance” is antagonistic to nationally meaningful and accountable governance structures and mechanisms.

This is evident in the ADB-financed Karnataka Urban Development and Coastal Environment Management (KUDCEM) and Karnataka Urban Infrastructure Development (KUID) projects in the state of Karnataka in India. In order to ensure efficient and independent (i.e. free from “political interference”) implementation of the projects, the ADB demanded that a special Project Implementation Unit (PIU) be set up. Thus was established the Karnataka Urban Infrastructure Development and Finance Corporation Limited (KUIDFC), which works directly with the ADB in all aspects of project development, financing and implementation. KUIDFC officials, who are mid- to senior level bureaucrats in the Indian Administrative Service, claim that they have no control over project design and components, over procurement policies, and even over identification of international consultants since these are determined by the ADB. In the words of a senior KUIDFC official who requested not to be named, “Since the ADB provides the money, they make most of

¹⁷ See Article 48, *Status, Immunities, Exemptions and Privileges*, in the ADB’s Charter, at www.adb.org

these decisions. We are just implementers.” At the same time, democratically elected councillors in the towns where project implementation has started claim that they were not consulted by either ADB or KUIDFC officials on any aspect of the project, and the project was not discussed in city council meetings before project agreements were signed. When they raised concerns about project costs, quality or management, councillors were told by KUIDFC officials that if they complain, the officials will ensure that no other projects come to their towns. According to Ms. Vidya Pandit, a councillor of Sirsi town, “The ADB project has resulted in the bureaucratisation of development where democratically elected officials have no voice.”¹⁸

INFORMATION DISCLOSURE

Particularly contentious in the ADB’s operations are its approach to information disclosure and the near-absence of public participation in policy formulation, and project and programme development, monitoring, and evaluation. By any acceptable international standard, the ADB is completely unaccountable to the public, non-transparent in its decision-making and policy, project and programme formulation, and irresponsible in its stated commitment to promote public participation and access to information. The ADB’s information disclosure practices are characterized by their irrelevance to decision-making, the selective nature of what is chosen to be disclosed to the public, and the dubious quality of whatever information is eventually disclosed. The most important policy and operational decisions in the ADB are made according to its institutional and political interests, and not according to what is good for the public.

In response to widespread criticism about its poor information disclosure practices and lack of public participation in decision making about its projects, the ADB proclaimed in late 2003 that it was revamping its information disclosure policies with a draft Public Communications Policy (PCP). The ADB posted the PCP on its website for comments and organised a series of consultation workshops across the region to solicit inputs from “key stakeholders.”

¹⁸ Personal conversation with author on June 24, 2004

The draft PCP was uniformly criticized by civil society groups and project-affected communities as inadequate since it limited the scope of public participation in project/ programme formulation to what the ADB chose to selectively disclose. It also failed to demonstrate how the views of various “stakeholders” would actually change the manner in which the ADB conducts business. Particularly objectionable was the ADB’s refusal to disclose information about its contracts and agreements with the private sector under the cover of “commercial confidentiality.” Critics argued that since most private sector operations supported by the ADB are bolstered by public finance, the public has the right to know about the arrangements being promoted between the public and private sectors.

The consultation workshops were also criticized by civil society and project-affected communities as poorly planned and run. The workshops were not open to the public. Participation in each workshop was restricted to a handful of civil society groups who were identified by the ADB under no logical or justifiable criteria. Invitations to the workshops arrived too close to the workshop dates; documents were not made available well in advance or in local language; and the time allotted for discussions was dismally short. Enraged civil society groups staged a walk-out of the consultation workshop held in July 2004 in the southern Indian city of Bangalore on the grounds that the ADB was not serious in its commitment to information disclosure, accountability, transparency, and public participation. A statement by a broad coalition of South Asian civil society groups in November 2004 stated that the changes in the draft PCP were cosmetic and more oriented to boosting the ADB’s image rather than to deepen its commitment to transparency and accountability.¹⁹

A leaked copy of the most recent draft of the PCP (the PCP R-Paper) which will be submitted to the ADB Board of Executive Directors for approval on April 22—and which, ironically is not available to the public—is actually a step backward in information disclosure practice. Many important concerns and demands made by civil society organizations and project-affected communities during the consultation process over the past year have been ignored. Most important among the concerns that were ignored is

¹⁹ These statements can be obtained by writing to the author at s.guttal@focusweb.org

the exclusion of project communities as one of the principle targets of the PCP. In an inexplicable twist of logic, the ADB's *public* communications policy states that the policy does not directly target the public in developing member countries and aims instead to strengthen partnerships with those who have "business links to the ADB."

REPEATED FAILURES TO DELIVER BENEFITS

Project performance evaluations and audits inside the ADB are conducted by its Operations Evaluations Department (OED) and, according to the ADB website, "emphasize the 3Is: Integrity, Independence and Impartiality."²⁰ When reporting evaluation results for projects and programmes, the OED rates them according to the following categories: 1) Highly successful, generally successful or successful; 2) Partly successful, and; 3) Unsuccessful. The OED report for 2003 states that although project and portfolio performance in 2002-2003 showed significantly better performance than in 1999-2001, "this result is marred by emerging evidence that the project performance report (PPR) is not identifying all projects that should be rated as problem or potential problem projects—only 1 percent of projects was identified as problem projects in 2003."²¹ (italics added by author)

An analysis conducted by Stephanie Fried, Shannon Lawrence and Regina Gregory of the ADB's audit reports for projects in Pakistan, Sri Lanka and Indonesia, three of the ADB's largest borrowers, shows that by using the standard of project sustainability as an indicator, over 70 percent of ADB supported projects in these countries are not likely to provide long term social and economic benefits to the countries and targeted beneficiaries.²²

In 2000, the OED found that half of all projects rated "successful" by the ADB in 1999 were found to be of questionable sustainability. According to Fried et al,

²⁰ www.adb.org/Evaluation

²¹ *Annual Report on Loan and Technical Assistance Portfolio Performance for the Period Ending 31 December, 2003*. Asian Development Bank, Operations Evaluation Department, June, 2004.

²² *The Asian Development Bank: In its own Words, An Analysis of Project Audit Reports for Indonesia, Pakistan, and Sri Lanka*. Stephanie Gorson Fried, Ph.D and Shannon Lawrence, Environmental Defense with Regina Gregory, ADB Watch. July, 2003.

the ADB's "partly successful" label appears to be a euphemism for "largely unsuccessful" or "troubled," and the "unsuccessful" projects category appears to mean "abysmal failure" and often indicates project related damage to the environment, economic structure and/or human health. The data studied across the three countries include projects in such diverse sectors as transport, agriculture, irrigation, water, health, energy and finance/credit. The main problems associated with the projects examined were poor project preparation and structures; design flaws; poor or non-existent record keeping; absence of Benefit Monitoring and Evaluation (BME) and baseline data; lack of consultation with project affected peoples, users and intended beneficiaries; lack of community participation in project preparation; cost and time overruns; operation and maintenance deficiencies; sub-standard construction; and failure to mitigate severe environmental and social impacts.

In the case of Indonesia, such projects included those with large unmonitored resettlement components, projects where record keeping was virtually abandoned and, those that were so poorly structured that rapid deterioration of project infrastructure was inevitable. In Pakistan, ADB projects display a "disturbing pattern of systematic failure on the part of the Bank" (Fried et al, 2003), and adverse project impacts on social equity and income equality have fostered ethnic tensions. In Sri Lanka, as much as 78 percent of ADB-supported projects may be considered unsustainable or failures—the equivalent of US \$ 1.2 billion of Sri Lanka's debt to the ADB.²³

One of the most notorious examples of ADB project failure is the Samut Prakarn Wastewater Management Project (SPWMP) in Thailand. Located at the head of the Gulf of Thailand, the SPWMP was intended to treat wastewater from factories and households located far away from the treatment plant. The project was developed without local participation or site-specific environmental, social and economic impact assessments. Data gathered by local residents and independent researchers showed flaws in the project

²³ *The Asian Development Bank: In its own Words, An Analysis of Project Audit Reports for Indonesia, Pakistan, and Sri Lanka*. Stephanie Gorson Fried, Ph.D and Shannon Lawrence, Environmental Defense with Regina Gregory, ADB Watch. July, 2003.

design and threats of serious environmental contamination since the plant would release toxic sludge and heavy water into local canals and fishing waters. The data also showed that the project violated Thai laws and justified allegations of corruption, collusion, conflict of interest and even malpractice in the project approval and development processes. This information was repeatedly presented to ADB project staff and managers and even to the ADB President, but the ADB maintained that it saw no evidence of wrongdoing or negative impacts.

Eventually, the SPWMP went through the ADB's official inspection channels in 2001. It was the first project to undergo inspection under the ADB's Inspection Function and soon revealed fundamental flaws in the inspection process as well as the ADB's internal governance structure. The Inspection Panel found that the ADB was not complying with many of its most important policies and procedures, and that the project should have been completely re-appraised at a much earlier stage, well before a supplementary financing loan for the project was made. It did not, however, stop the project. The project was finally halted by the Thai Government in February, 2003, following findings of deep rooted corruption and flawed engineering by the National Counter-Corruption Committee and a special Senate Committee.

A similar scenario has played out in Pakistan since 2001 with the third stage of the Chashma Right Bank Irrigation Project (CRBIP), which threatens the lives and livelihoods of more than 30,000 rural people through project-induced flooding and displacement. Although ADB operational policies require that a suitable resettlement plan that incorporates social development plans be prepared by the project developers in consultation with affected communities, no such plan was in evidence. On the contrary, ADB project staff colluded with local/national bureaucrats and did not provide the affected communities with any information about the project until much later in the project's life-cycle. This project also went into the ADB's inspection process but with far less favourable outcomes than the SPWMP. In 2004, local communities initiated a peoples' tribunal (titled the *Lok Sath*) to provide a platform for affected peoples to share their testimonies and build wider

societal support for the demands of project affected peoples.²⁴

In the state of Karnataka in India, the ADB has provided financing for the Karnataka Urban Development and Coastal Environment Management (KUDCEM) Project which covers 10 towns and which ostensibly builds on the "success" of a similar project—the Karnataka Urban Infrastructure Development (KUID) project—already implemented in 4 towns in another region of the state. In all 14 towns, the project is characterised by design flaws, poor quality construction, prolonged delays in completion, non-disclosure of important project information to the public, non-transparent and non-participatory decision-making, and a refusal to subject project implementation to public scrutiny and supervision. Project managers coerced local municipal authorities into accepting terms and conditions that they are unable to justify to the public. In order to repay the project loans, Municipal Councils are required to hike land taxes and user fees on services covered by the projects. A particularly contentious issue is the ADB's insistence that key operations of the project be contracted out to foreign consulting companies and out-of-state private contractors, whose performance is not assessed by independent third party inspectors, and whose high consultancy fees add to overall debt burden created by the project.

According to Harsha D'Souza from the NGO Task Force on the ADB Loan Project in Mangalore, one of the first target towns of the project, the KUDCEM project is characterized by a complete lack of transparency and was developed without any local input. "No-one knows what procedures were followed by the ADB in the allotment of contracts, fixing of rates for contract work, or the role of third party inspection agencies. The project is out of the purview of the Karnataka Transparency Act 2000, so we can't ask for information and get it. KUIFDC [the government implementing agency] and ADB are not bothered to see that the benefits of the project go to the

²⁴ *The ADB's Uncivil Engagements: The Experience of Chashma Affectees.* Mushtaq Gadi in *Good Governance or Bad Management, An Overview of the ADB's Decision Making Processes and Policies.* Focus on the Global South, May, 2002. See also the Chashma project website: www.chashma-struggles.net

people. They say that once a decision is taken, it can't be changed," D'Souza said.²⁵

The lack of involvement of local, democratically bodies in the formulation of the KUID and KUDCEM project has been cited as a serious problem in every one of the 14 towns where the projects have been implemented. According to Vidya Dinker, also from the NGO Task Force, the Mangalore City Corporation was not even aware that project financing came as a loan. Municipal Commissioners in at least two towns (Mangalore and Puttur) reportedly signed project agreements that had blank spaces where figures for project costs should have been written. "No-one at the state and local levels has thought about the social and economic impacts of this project. This huge infrastructure being put up through the project is expensive and at our cost, it is a huge burden to tax-payers. We are going to have a city corporation that will be down in debt as never before. How will they pump in enough money to see that the infrastructure works efficiently in addition to paying back the loan?"²⁶

Independent reports from citizen's groups, researchers, peoples' movements and civil society organizations show that the Asia-Pacific region is scarred by ADB-supported projects that are poorly designed, implemented and managed; that block public participation in development planning and the public's right to information about projects and programmes; and that weaken local and national governance through undemocratic, non-transparent and non-consultative methods of operation. ADB-supported infrastructure projects have repeatedly displaced hundreds of thousands of people across the region with little or no compensation and have resulted in negative environmental and social impacts that the ADB has shied away from mitigating. It is hardly surprising then that the ADB has been charged by people's movements, civil society organizations and researchers across the region with creating "development refugees."²⁷

Numerous examples can be found where the access 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, 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 protection. 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.

Equally worrying is the ADB's unwillingness to assume responsibility for project, programme, and policy failures. The ADB conveniently uses local and national governments as cover. Since all its projects, programmes, and policies are in one way or another built into national and sub-national development plans, the ADB claims that decision making is in the hands of governments and that problems of poor project design and management, flawed policies, corruption, and project failure are symptoms of systemic flaws in national capacity and governance.

WHAT TO DO WITH THE ADB?

A politically balanced and accountable regional institution that is open to new thinking and ideas rather than wedded to the doctrinaire principles of a narrow economic growth paradigm can serve as an effective counterbalance, if not a total replacement, for a global institution such as the World Bank which imposes one-size-fits-all policy prescriptions that have proven disastrous to developing countries. The Asia-Pacific region is diverse in geography, climate, culture, society, politics, natural resource distribution, human capability and economic opportunity. The different countries in the region have, during specific periods in their past, pursued distinct strategies of national development, some of which (such as the miracle tiger economies of Southeast Asia and the mixed economies of China, India and Vietnam) offer important lessons that can be adapted to other countries in the region. While it is

²⁵ Personal conversation with author on April 18, 2005.

²⁶ Ibid

²⁷ See *Peoples' Challenge to the Asian Development Bank*, a statement prepared and presented to the ADB President by civil society groups during the ADB's Annual General Meeting in Honolulu, Hawaii on May 9, 2001.

true that there is a lot of impoverishment in the region, there is also a great deal of wealth, intellectual capacity, human creativity and opportunities for learning from past successes and mistakes. Local communities across the region have tackled poverty, hunger, natural disasters and environmental challenges through sustainable, cost-effective and replicable strategies. The region needs an institution that is committed to facilitating development finance without tying the region to policy conditionality; that is open to change in the face of emerging realities; that supports the participation of local and national communities in development planning; and that is accountable to the public that it claims to serve. It does not need the ADB.

Given the ADB's track record in project performance, decision-making and governance structures, it is clearly institutionally incapable of becoming an alternative to the World Bank. Governments in the Asia-Pacific region are said to like the ADB better than the World Bank because the ADB is supposedly more flexible and more sensitive to Asian governments' realities than the World Bank. Also, there is arguably greater potential for governments in the region to influence the operations of the ADB than of the World Bank. However, this affinity is likely to be short-lived. The US already has capital shares in the ADB equal to those of Japan, the ADB's largest Asian shareholder. US influence in the ADB is growing and becoming more visible and obvious by the day as its policies, operations, and governance structures increasingly mirror the World Bank and as Washington Consensus 'yes-men' and 'yes-women' continue to fill its technical and management ranks. Worried about the influence of borrowing governments in the ADB, the US Government—backed by some other western countries—has indicated that unless the ADB becomes more conciliatory and responsive to US interests, it will slow down its financial contributions to the ADB.

The capture by neo-liberal planners and politicians of the ADB's policy making, operations planning, and governance structures make it doubtful that the institution can be remoulded to suit the needs of the Asia-Pacific region. But it cannot be let off the hook either. At the very minimum, the ADB must undergo some fundamental changes in order to minimize the current damage

that it is wreaking across the region. These could include:

- Alter the ADB's charter so that it is stripped of the high degree of immunity that it currently enjoys; the ADB must be accountable and legally liable to national laws for wrong-doing, faulty policy advice, badly designed projects and programmes, corruption and collusion, etc. We can also think about possibilities to make the ADB liable in an international framework (such as the International Court of Justice) for cross-border or regional misconduct. The ADB must pay for the damage it causes; it cannot be allowed to get away scott-free as it does now.
- Re-haul the governance systems and structures in the ADB. Decision-making has to become broad based, open and accountable; the public (not just governments) must be able to participate in shaping development projects and programmes, etc.
- ADB staff must pay taxes in the countries they are based proportionate to their incomes and perks. (It might also be a good idea to revise ADB staff's pay-scales while we are at it.)
- The ADB must completely separate its private sector and public sector operations. It must not be allowed to transfer public and common-pool wealth into private hands, nor to heap risks and liabilities on the public sectors and provide "comfort" to the private sector. Perhaps we need independent regulatory mechanisms in each country that guard against the conflicts of interest and moral hazard that seem to currently be the norm in ADB private sector operations.
- Financing must be separated from policy conditionalities.
- Demand that all ADB staff go through a period of "immersion" in the subject and geographic areas they work in. (It is possible that staff just might become more subdued in their enthusiasm for sectoral restructuring and reforms if they have practical, hands-on experience of the impacts of these reforms.
- Establish a regional watchdog agency that is supported by governments in

the region to assess the quality and effectiveness of the ADB's operations. This agency should be able to censure and penalize the ADB for poor performance, misconduct and faulty policies and practices.

- The ADB must be freed from the grips and interests of non-regional actors such as the USA, Canada and the EU. While Asian governments have not displayed particularly progressive stances in the ADB either, citizens within the region would likely be able to exercise a greater measure of influence on their own governments than on those from outside the region.

None of these ideas are intended to reform the ADB. Rather, they are intended to shrink the institution's reach and check its power while peoples and communities in the Asia Pacific region build and put into practice alternative models of development and alternative forms of governance to those imposed by the ADB and the World Bank.■

Private Power Failure

NEPOMUCENO MALALUAN AND JENINA JOY CHAVEZ

Beginning in the 1990s, the fundamental restructuring of the electric power sector swept developing countries. From a structure dominated by the public sector, an increasing space for the private sector in financing, operation, and ownership was cleared. By 1998, out of 115 developing countries analyzed, 44% had commercialized or corporatised their state utility, 33% enacted an energy law that would permit unbundling or privatisation, 40% had allowed the entry of Independent Power Producers (IPPs), and 21% had taken steps to privatize assets.¹ These structural changes facilitated robust global corporate interest in the privatisation of the electricity sector. Between 1990 and 1999, 649 electricity projects with private participation, involving US\$155 billion in investments, reached financial closure in developing countries.²

¹ R.W. Bacon, R.W. and J. Besant-Jones. Global Electric Power Reform, Privatization and Liberalization of the Electric Power Industry in Developing Countries. Energy and Mining Sector Board Discussion Series, Paper No. 2. The World Bank (June 2002)

² World Bank, Private Participation in Infrastructure Database, http://www.worldbank.org/html/privatesector/ppi/ppi_database.htm

The Philippines was a frontrunner in power industry restructuring. State-owned National Power Corporation (NPC) started a process of reversal towards the 1990s. It entered into supply contracts with IPPs in quick succession, with 43 IPP contracts for a total of 9,173 MW generation capacity approved in ten years. The bigger bulk of this – 32 contracts for 6,438 MW capacity— was approved during the administration of President Fidel Ramos from 1992 to 1998. The privatisation process reached new heights when President Gloria Macapagal-Arroyo signed into law on 8 June 2001 Republic Act 9136, or the “Electric Power Industry Reform Act (EPIRA) of 2001”. The law provides for the unbundling, deregulation and full privatisation of the industry.

The World Bank and the Asian Development Bank played key roles in the privatisation of the Philippine electricity industry. Through sector studies, technical assistance, and loan conditions, these institutions engineered the reform process, supporting changes in the legal framework that would facilitate greater private sector participation and ultimately the full privatisation of the industry.

Such operation implements the ADB and the World Bank’s Private Sector Development (PSD) strategy. In 1993, the World Bank adopted a “commitment lending” policy in the electricity sector, which meant that assistance is given only to countries that pursue institutional and structural reforms conforming to the World Bank’s agenda of unbundling and privatisation of all new power generation and distribution investments.¹ This policy agenda is shared by the ADB which, in accordance with its 1995 Energy Policy, promoted private investment in the sector, and gave preferential allocation of ADB resources to developing member countries willing to restructure their energy sector to attract private investments.² In 2000, the ADB outlined its modes of support for PSD, to include: (a) indirect financing of private enterprises through government-guaranteed loans to development finance

¹ World Bank, *Power for Development: A Review of the World Bank Group’s Experience with Private Participation in the Electricity Sector*, 2003.

² Asian Development Bank, *Energy 2000: Review of the Energy Policy of the Asian Development Bank*, 2000.

institutions; (b) other modes of public sector assistance contributing significantly to PSD, e.g., policy dialogue, technical assistance, and project and program loans to help create conducive environment for the private sector; and (c) direct private sector operations (PSO) to provide assistance to private enterprises through direct financing, credit enhancements, and risk mitigation instruments.³

Sixteen years after reintroducing private sector participation⁴, the Philippine electricity industry is a big mess. Public interest has been compromised, and the ADB/World Bank privatisation model has much to answer for.

WHAT EFFICIENCIES?

Apart from the obvious intent to assist global business interest in opening up developing countries to foreign investments, the ADB/WB conviction is that greater private sector participation is consistent with public interest. On a general plane, the development of a strong private sector is seen as crucial to long-term rapid growth, in turn a necessary condition for sustained poverty reduction. On specific sector performance, privatisation is seen as crucial in minimizing or eliminating fiscal drain and improving supply efficiencies, access, quality of service, and the financial performance of utilities.

Instead of posting improved financial performance, however, the restructured state corporation continues to haemorrhage financially. The passage of the EPIRA did not stop the NPC’s losses from growing. From a deficit of PhP8.2 billion in 2001, the NPC’s deficit has surged to PhP21.7 billion in 2002 and PhP81.4 billion in 2003, and is expected to post a PhP91.3 billion deficit in 2004.⁵ Next to the National Government, the NPC is the biggest contributor to the country’s consolidated public sector deficit, and thus accounts for much of the current fiscal crisis.

Filipino economists, particularly those

³ Asian Development Bank, *Private Sector Development Strategy*, March 2000.

⁴ Mainly in generation, and now moving into the transmission sub-sector. Historically, private participation is allowed in distribution.

⁵ Rosario Manasan, 2003, *Analysis of the President’s Budget for 2004: Looking for the Complete (Fiscal) Picture*, PIDS Discussion Paper Series No. 2003-17, December 2003.

from the University of the Philippines School of Economics, blame inadequate tariff adjustments (supposedly done to pander to “populist” demands) for the financial plight of the NPC.⁶ This simplistic analysis unfortunately glosses over the problems of private sector participation during the IPP boom.

The IPP contracts were purported to reduce costs, increase access to best-practice technology, and shift key risks to the private sector. Far from these obtaining, the new private capacity thru the IPPs turned out to be very expensive. Even on contract signing date, many of the IPPs already had rates higher than NPC generation cost for similar plants. Costs continued to escalate from the start of IPP operations. This was due to the lopsided price risk structures that were unduly favourable to the private sector. It was the NPC, and ultimately the consumers, who assumed the fuel price risk and exchange rate risk of these projects.

Generous off-take guarantees, covering even peaking plants, were also given based on overly optimistic electricity demand forecast. When the country faced an oversupply of electricity after signing with dozens of IPPs, the burden shouldered by consumers grew. Based on government’s estimates, the NPC paid over PhP60 billion in 2001 net present value to IPPs for undispached power during the start of IPP cooperation periods until 2001. The oversupply was not simple excusable projection error. The risk structure and World Bank/ADB support had much to do with the business decisions at that time.

There were also indications of corruption in the approval of IPP contracts. A report by the Philippine Center for Investigative Journalism alleges that no less than former President Ramos “personally pushed for the speedy approval of some of the most expensive power deals and justified signing more contracts” despite warning of impending oversupply. It further claims that “individuals linked to Ramos lobbied for the approval of some IPP contracts, which came with numerous other deals, including lucrative legal, technical and financial consultancies that were given to individuals and companies close to the former

⁶ Emmanuel S. de Dios et al., “The Deepening Crisis: The Real Score on Deficits and the Public Debt”, August 2004.

president.”⁷

Because of these, even with the effective tariff subsidy arising from the inadequate adjustments, Philippine electricity rates are fifth highest in the Asian region.

The Philippine Government had the opportunity to mitigate the problem and come up with a more equitable resolution of the issue thru a review of the NPC power contracts. The EPIRA incorporated such requirement for contract review as a concession to public interest advocates, but it was not seriously implemented. The Inter-Agency Committee on the Review of 35 NPC-IPP Contracts confined itself to a very conservative framework, starting from the conclusive premise that the contracts were all entered into with the requisite regularity. The review committee limited its objective to reducing the cost of electricity “while respecting the validity of commercial contracts and honoring obligations to the private sector”.⁸

Given the self-limiting framework of the review, as expected the renegotiation of the contracts did not yield substantial results. The renegotiated terms were confined to minimal reduction in allowed capacity nomination (particularly where the IPPs are allowed to nominate more than 100 percent of contracted capacity) and settlement of certain unpaid claims against the NPC. The Power Sector Assets and Liabilities Management Corporation (PSALM) estimates that the renegotiated terms yielded savings of US\$994 million in net present value. This translates to an average reduction of PhP0.0908/kWh in NPC obligation to IPPs up to 2011, of which PhP0.0268 may be deducted from stranded costs eligible for inclusion in the universal charge.⁹ The IPP review and renegotiation

⁷ Luz Rimban and Sheila Samonte-Pesayco of the Philippine Center for Investigative Journalism came out with a series of article documenting the allegations of corruption. See, for instance, “Trail of Power Mess Leads to Ramos”, “Ramos OK’d Most Expensive IPPs”, “Ramos Friends Got Best IPP Deals” and “IMPSA is a Showcase of All that is Wrong with IPPs”, all released on 5 August 2002.

⁸ Inter-Agency Committee on the Review of 35 NPC – Independent Power Producers (IPP) Contracts: Final Report, 5 July 200.

⁹ Letter of the Power Sector Assets and Liabilities Management Corporation (PSALM) President Edgardo M. Del Fonso to Rep. Loretta Ann P. Rosales providing a summary of

exercise hardly made a dent in overcapacity and overprice payments to IPPs.

UNDEMOCRATIC

The IPP boom went largely unchallenged by public interest advocates. It was only when the negative impact of the IPPs in pricing became pronounced that they started to look deeper into the issue. Because the issue is quite technical and specialized, and the contracts and operations data were not readily available, it took some time to tackle the issue in greater detail.

The failure of public interest advocates to intervene in the IPP episode owes much to the lack of public space in the IPP project approval process. The principal movers in the approval and implementation process are the NPC and the distribution utilities, and the executive agencies. The NPC and the utilities are corporate entities that enjoy autonomy in their operations. The approval process of the executive agencies provides limited mechanism for public participation, and involves mainly the issuance of the environmental compliance certificate where public participation tends to be more localized and project-site specific. There is no mechanism for public participation in looking at contracts.

Foreclosure of public participation is not exclusive to domestic processes. Processes of international financial institutions (IFIs), notably those of the World Bank and the ADB, marginalize public participation as much. For instance, the World Bank on-line technical paper on a case-by-case approach to privatisation identified the following steps in privatisation: (1) identification of privatisation candidates; (2) feasibility study; (3) privatisation plan; (4) legislation or executive order; (5) sale.¹⁰ The process is designed to be unaccountable, placing particular importance on autonomy in institutional design. Autonomy is the extent to which “an institution is insulated from outside interference, and thus from the veto power held by politicians or social groups.” It locates the privatisation program at the most powerful centre of government to be able to overcome opposition and manage

savings of IPP contracts that were renegotiated, 15 July 2003.

¹⁰ Welch, Dick and Olivier Fremond. *The Case-by-Case Approach to Privatization: Techniques and Examples*. World Bank Technical Paper No. 403 (1998).

political issues effectively. By implication, the process is designed to be non-transparent. The public only figures in step three after the policy issues have been resolved and the legislation or executive order has been prepared. The public does come in not from a consultative frame, but as part of a communication plan to build public support. In this process, the public will only have a chance to participate when the policy involves legislation that requires public hearing. Even here, the opposition is regarded as a problem to be managed.

The lending operation is the main coercive instrument used by the ADB and the World Bank to push their private sector development agenda. They influence the country's commitment to the reform process by a “carrot-and-stick” lending structure. Lending for institutional reform is bundled with lending for investments in the sector. Targets in the institutional reform loan will be part of the conditions for release of tranches not only of the institutional loan itself but also of loans for sector investment. Once a government adopts a policy of allowing greater private sector participation in the sector, the ADB and the World Bank mobilize their machinery, network and financial resources to assist in policy implementation. They provide equity and debt, syndicate debt financing, design IPP contract structures, provide insurance mechanisms, and bring together project financiers, developers, and sponsors.

In the Philippines, the coercive nature of the ADB and the World Bank lending practices was witnessed in the passage of the EPIRA, shutting out what could have been an opportunity to insert public interest attributes to the bill. When President Arroyo assumed the presidency, she announced the deferment of the passage of the bill to the next Congress. The deferment would have provided more time for greater public scrutiny of the bill, as more facts are revealed and analysis of public interest advocates improve. But President Arroyo retracted her earlier decision after the ADB and the World Bank exerted pressure to have the bill passed immediately. Both institutions indicated that they are seriously considering placing the NPC in technical default of its debt to them if the bill was not passed before Congress adjourned. Passage of the EPIRA was also tied to the release of US\$750

million in loans from the ADB and US\$200 million from the Japan Bank for International Cooperation.

SHOW ME THE MONEY

For all the IFIs' pushing, and despite already extremely attractive contractual provisions available to them, foreign private sector interest has ironically waned. The World Bank group's lending and guarantee operations in the power sector has dropped drastically from its peak in 1996, reflecting the drying up of private capital flows to the sector. A 2002 World Bank survey of 50 firms in the power sector showed that 52% were retreating, and only 3 firms continued to be interested in investing in power.¹¹ Total investment in infrastructure projects with private sector participation has been declining for three consecutive years beginning 2001. A slight increase in electricity investment in 2003 failed in comparison to peak investment levels in 1997. (See table below.) This sudden lack of private sector interest left power industries, legally restructured for privatisation, holding the proverbial empty bag.

In the Philippines, for instance, it was expected that at least seventy percent (70%) of total generating assets and IPP contracts of NPC shall have been privatised not later than three years from the effectivity of EPIRA, or not later than June 2004. This was to trigger the other provisions of the EPIRA to take place. However, as of March 2004, only a 3.5 MW plant was sold. The first big ticket power plant sale happened only in December 2004 with the sale of the 600 MW Masinloc coal-fired power plant for US\$561.74 million to YNN Pacific Consortium, Inc., a joint venture between Filipino-owned YNN Holdings and Australian Great Pacific Financial Group.¹²

Filipino energy officials' ecstasy over the sale of Masinloc aside, the prognosis is not good for the NPC's ability to sell further assets. Based on expressed investor interest, Masinloc is the most attractive generation

asset. Yet even Masinloc had to settle for only two bid submissions, despite more numerous earlier indications. Still, some members of the Philippine Senate have raised questions over the Masinloc bidding, particularly the limited paid up capital and the absence of any track record in power operation of the winning bidder.

Aside from the global slowdown in private investment in power, the NPC assets are also a hard sell. Given the uncertainty in the implementation of the privatisation program, the ultimate concern is whether, given these developments, privatisation can lead to the vaunted competitive supply market. Also, in the meantime that no private sector is keen to touch Philippine power, the NPC, under EPIRA, has lost its legal mandate to install new capacity. The private sector is not moving, and the government has tied its hands. All that the pro-privatisation economists can think of to remedy the situation is to raise electricity rates, hoping that this could rekindle private sector interest.

The private sector fundamentalists fail to deliver, and consumers are called upon to save the day once again.

REBUILDING THE PUBLIC SECTOR

The lack of private sector interest in power in recent years should be seen as an opportunity to pause and reassess policy in the power sector, particularly with respect to the role of the public and the private sectors. Total reliance on the private sector, as espoused by the ADB and the World Bank, does not provide a neat and sure-fire solution to the problems of state utilities. In many instances, they can complicate and create new problems, even as old ones are not necessarily resolved.

While private sector participation will continue to play a role in the provision of critical public utilities, the public will be better protected if the public sector retains substantial responsibility.

For the Philippines, there is urgent need to overhaul the IFI-sponsored EPIRA. For one, there is clear need to give back to NPC the power to continue to operate as a generation company, subject to the same safeguards against abuse of market power.

¹¹ World Bank, *Power for Development: A Review of the World Bank Group's Experience with Private Participation in the Electricity Sector*, 2003.

¹² Patricia Esteves, "YNN-Pacific has no financial muscle", *The Manila Times*, February 25, 2005; Efren L. Danao, "Winning Masinloc bidder under a cloud", *The Manila Times*, December 8, 2004.

Table
WANING PRIVATE INTEREST?
Investment in Infrastructure Projects with Private Sector Participation
By Sector and By Region, 1990-2003 (in 2003 US\$ Billion)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	TOTAL
Sector															
Energy	1.1	1.3	13.4	16.3	17.6	26.3	35.2	53.6	31.5	19.1	28.9	16.4	19.7	15.6	296.0
Electricity	1.1	1.3	9.2	11.5	15.8	22.0	31.1	50.1	24.6	16.1	26.2	15.0	9.7	14.1	248.9
Natural Gas	*	*	4.1	4.8	1.9	4.3	3.1	3.5	6.9	3.0	2.7	1.3	10.0	1.5	47.1
Telecommunications	6.4	14.0	8.2	10.2	19.2	20.2	28.3	45.3	58.4	40.0	50.1	44.8	31.2	28.7	405.5
Transport	10.7	3.5	4.8	6.1	9.2	9.9	18.4	22.4	19.7	9.1	9.7	10.5	4.9	4.5	143.3
Water and Sewerage	*	0.1	2.1	8.2	0.5	1.9	2.0	9.7	3.6	7.1	5.1	2.5	1.9	0.8	45.5
Region															
East Asia and Pacific	2.7	4.4	9.9	14.0	17.5	22.8	32.8	39.9	10.8	10.1	15.2	12.8	10.6	11.5	214.2
Europe and Central Asia	0.1	0.4	1.4	1.6	4.5	9.7	11.7	16.3	13.6	10.6	24.8	10.9	15.3	9.6	130.6
Latin America and the Caribbean	15.2	13.2	16.9	19.9	19.9	20.6	30.3	57.0	79.9	41.2	41.2	35.4	19.8	15.6	426.2
Middle East and North Africa	0.0	*	0.0	3.7	0.4	0.1	0.4	5.8	3.5	3.3	4.4	4.9	1.5	6.0	34.0
South Asia	0.2	0.9	0.1	1.4	3.5	4.6	6.8	7.0	2.7	5.0	4.5	4.8	5.8	3.5	50.7
Sub-Saharan Africa	0.1	0.0	0.1	0.0	0.8	0.9	2.0	4.9	2.8	5.0	3.6	5.3	4.6	3.4	33.6
TOTAL	18.3	18.9	28.4	40.7	46.6	58.7	83.9	130.9	113.3	75.3	93.8	74.2	57.6	49.7	890.4

* No private participation in infrastructure occurred.

Source: World Bank PPI Database, as cited in Ada Karina Izaguirre, "Private Infrastructure Activity Down by 13 Percent in 2003", Private Sector Note 274, September 2004.

This should give government a useful benchmark in financing, investment, and pricing to complement the market structure. This also gives government flexibility to address new capacity requirements when the private sector is reluctant to take risks.

Better public sector performance is possible. In the Philippines, the first step is to improve the financial performance of the state utility. Complete privatisation, or assumption of its debt by the national government, or increase in tariff, is not the only way to do this. One reason for the financial difficulties of the state utility is the problematic IPP contracts. The result of the IPP review and renegotiation must be rejected, and the process reopened for a deeper review. A deeper review is one that looks at anomalies that could explain the grossly disadvantageous terms of these contracts, correcting them, and making responsible officials accountable. Public sector performance can benefit from improved participatory processes. There should be better access to key information, and greater opportunity for public scrutiny of policies and key decisions.

Governments and IFIs can continue to offer guarantees and other sweeteners to attract the private sector to invest in erstwhile public utilities. The hard fact is that the private sector moves only when it feels comfortable and only when it sees significant profit potential. The concept of public service is not top among its

motivations. ■

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An Ominous Alliance

The ADB-Philippines Development Partnership

MARY ANN MANAHAN AND JENINA JOY CHAVEZ

Time was when the Philippines was touted a “tiger”. Considered as a centre of communication and transportation in the Asian region, the country had the best infrastructure facilities, and was ahead of its neighbours, trailing only behind Japan. The Philippines was one of two countries in Asia predicted to have the biggest chance to prosper.¹ Hosting the first multilateral institution based in Asia-Pacific was of huge importance to developing countries, and for the Philippines, this would cap the string of recognition it was enjoying at the time. It was an indication of relative power and influence in the region.

¹ The other was Burma. Interview with Mr. Richard Ondrik, Chief Country Officer, ADB Philippine Country Office (PhCO), April 15, 2004.

Four decades ago, former President Diosdado Macapagal lobbied hard² and imaginatively³ to host the Asian Development Bank (ADB) in Manila. Other countries, *all non-donors⁴ except Japan*, offered to host the ADB, but the final choices were Japan and the Philippines. Japan desperately needed to host an international organisation to boost its growing international image. But after three days of secret voting, the Philippines emerged as the victor, with nine votes to Japan's eight.⁵ The choice of the Philippines as the host country to the ADB was formalised in Article 37 of the ADB Charter, known as the Agreement Establishing the Asian Development Bank, on December 4, 1965 in Manila.

The 'privilege' of hosting the ADB did not come cheap, nor was it expressive of real influence. The agreement on the 'principal office' or the headquarters of the ADB specified the responsibility of the host country, from the facilities it was required to build and the immunities it must provide the multilateral bank.

For starters, the Agreement⁶ granted the ADB "independence and freedom of action belonging to an international organization", and gave it the following benefits, among others:

- immunity from any form of legal proceedings except when it is related to its powers to borrow, lend and secure obligations (Article III);
- inviolability and assured protection of the headquarters by the

² President Gloria Macapagal-Arroyo. Speech during the Inaugural Rites of the ADB Philippine Country Office, Mandaluyong City, March 1 2001. See

www.opnet.ops.gov.ph/speech-2001mar01.htm

³ The Philippine government, for instance, put up a huge sign along the Manila Bay shoreline, which read "Permanent Site of the Asian Development Bank". See "Drama of selecting host country" in *A Generation of Growth: Asian Development Bank's First 25 Years*, ADB, April 1992.

⁴ Nine countries competed to be the host—Malaysia, Singapore, Philippines, Japan, Iran, Afghanistan, Thailand, Cambodia and Sri Lanka.

⁵ ADB, "Drama of selecting host country", *Ibid.*

⁶ Agreement between the Asian Development Bank and the Government of the Republic of the Philippines regarding the Headquarters of the Asian Development Bank, Article II, Section 3. See <http://www.adb.org/Documents/Reports/Chart>

Philippine government (Article V and VI);

- exemption from taxation, all custom duties and other levies on any goods and articles and all prohibitions and restrictions on imported and exported items (Article IX);
- assistance in obtaining financial facilities such as the freedom not only to purchase and transfer funds, currencies and other financial instruments but also most favourable exchange rate (Article X); and for ADB officials, staff and their families, access to residence and freedom of movement in the Philippines (Article XI), immunity from personal arrest or detention and from legal process of every kind and exemption from taxation and immunity from immigration restrictions (Article XII), and unrestricted duty-free importation of goods.

The Philippines also awarded the ADB a piece of prime property⁷, and was responsible for the construction and major repairs of the building and related facilities. The ADB retained ownership and control of the land and building. It, however, was responsible for the cost of maintaining the building and its premises.

The Agreement between the ADB and the Philippines stacked on the responsibilities of the host towards the ADB, and the ADB's responsibility onto itself. There was little in the Agreement that mentioned anything about the ADB's responsibility towards the Philippines as its host. The 'honour' of hosting the ADB was all there was for the Philippines.

But what has such privilege gotten the country? And what of ADB-Philippines

⁷ When the ADB began its operations in 1966, it occupied the Metropolitan Bank Building in Makati. Under its first president, Takeshi Watanabe, the ADB grew to 600 people and thus, needed a bigger space. The Philippine government constructed a new building for the ADB on Roxas Boulevard, inaugurated on November 18, 1972. ADB moved to its present location in Mandaluyong City in 1991. This allowed the Bank to centralise its operations which had spread to other locations over the years. The building on Roxas Boulevard later housed the Philippines' Department of Foreign Affairs. See *A Generation of Growth: Asia Development Bank's First 25 Years*, ADB, 1992; and *ADB New Headquarters, Manila*,

partnership? Has the ADB's really played a significant role in the country's development?

MAJOR DONOR, MAJOR CLIENT

The Asian Development Bank is the second largest source of development funds for the Philippines. In 2003, ADB loans accounted for US\$1.6 billion, which is 14% of the borrowing from multilateral and bilateral donors.⁸

The Philippines, on the other hand, is considered a major member of the ADB. It is the eleventh largest shareholder with 2.41% of total shares, giving the country a 2.25% voting power in the Board of Governors⁹. Such 'majorness', however, pales in comparison to the real big players – Japan and the United States with 15.78% shares and 12.94% of votes – and does not really make the Philippines a big decision-maker inside the ADB. In concrete terms, the Philippines has to share a seat in the 12-member Board of Executive Directors with five other developing member countries – Kazakhstan, Maldives, Marshall Islands, Mongolia and Pakistan¹⁰.

Rather than its role in setting the Bank's direction, the Philippines is important to the ADB because it is among its biggest clients, i.e. borrowers. It ranks 5th among the 33 borrowing members in terms of the size of borrowing. From 1968, the Philippines has borrowed a total of US\$8.62 billion from the ADB, representing 8% of ADB's total lending. As of December 2004, the ADB has given 192 loans—177 for public sector projects and 15 for private sector projects—to the Philippines. The Philippines is likewise a major user-client of ADB products and services. It has tapped US\$137 million worth of ADB technical assistance (TA) for project preparation, institutional capacity building and policy studies. This

⁸ According to the National Economic and Development Authority (NEDA), 2003 Official Development Assistance (ODA) amounted to almost US\$11 billion. ODA loans from JBIC accounted for 62% and the World Bank, only 13% or US \$1.4 billion. See document at www.neda.gov.ph.

⁹ The Board of Governors is the highest policy-making body within the ADB. Governors are usually either the Finance secretary or Governor of the Bangko Sentral ng Pilipinas (Central Bank of the Philippines).

¹⁰ The Executive Director and Alternate Director for the above countries are currently from the Philippines and Pakistan,

accounts for 6.6% of cumulative technical assistance to its developing member countries, making the Philippines the fourth largest recipient of ADB TA. The country is also the largest user of private sector loans. (See Table I.)

Typical of ADB operations, more than half of the Philippines' portfolio covers infrastructure, mainly in the energy and agriculture sectors. This trend was sustained since the country first tapped the ADB lending windows. The administration of Former President Ferdinand Marcos started the trend of agriculture-energy heavy borrowing. Major shifts in the ADB's operations happened during the term of President Corazon Aquino, particularly the emergence of finance and private sector operations. This coincided with the aggressive privatisation initiatives during Aquino's term. This continued and intensified during President Fidel Ramos' administration, which prioritised the restructuring and privatisation of the energy sector. In line with the public image being maintained by President Joseph Estrada, and in tune with the mantra in the development circles, poverty reduction was attached to almost every ADB loan and technical assistance packaged during his presidency. The rhetoric changed but the mix of projects remained heavily infrastructure based. Currently, President Gloria Macapagal-Arroyo supposedly focuses on the financial and capital market in its ADB portfolio.

MAJOR HEADACHE: THE PORTFOLIO PERFORMANCE

The Philippines' ADB Portfolio has had its share of controversies and slips. (See Box—a summary of controversial projects) But beyond the failures as judged by affected communities and public interest advocates, for the ADB itself, the Philippines is a poor performer.

The first Country Assistance Plan Evaluation (CAPE) prepared for the Philippines found a general deterioration of project ratings since the mid-1980s. Prior to

Table 1
CUMULATIVE LENDING TO THE PHILIPPINES
as of December 2004
In US\$ Millions

TOTAL LOANS			TOTAL TECHNICAL ASSISTANCE				TOTAL INVESTMENT TO THE PRIVATE SECTOR	TOTAL GRANTS	GRAND TOTAL
<i>8% of Total ADB Lending</i>			<i>6.6% of Total TA Approvals</i>						
OCR†	ADF†	Total	Bank	JSF/ACCSF	Others	Total			
7,510.353	1,108.673	8,619.026	53.792	65.204	17.937	136.933	623.743*	15.700	
									9,395.402

†OCR is the usual source of ADB loans. This type of loan gives borrowers 15-25 years to repay the money. Its interest rate charge is at market value and generally is given to middle-income members.

††ADF is a special fund which provides concessional lending to lower income members. ADF loans give borrowers longer time to repay their debt (usually 32 years plus 8 years of grace period) and a much lower interest charge (1-1.5%). Only the poorest countries are qualified to access ADF. However, some countries including the Philippines receive a mixture of OCR and ADF loans (15 projects since 1973).

* 75.4% from Bank loans without government guarantee, 6.4% from equity facilities and 18.2% from complementary loans.

Source: ADB. Loans, Technical Assistance and Private Sector Approvals. December 2004.

1986, more than half (59 percent) of evaluated public sector loans were rated. as generally successful, one third as partly successful, and 4% rated as unsuccessful. However, from the 36 projects that were completed and evaluated since 1986, only 31% has been rated as generally successful compared with the ADB-wide average of 51%, and much lower compared to 68% success rate of its Southeast Asian neighbours. While the Philippine portfolio accounted for only 10% of all projects completed and evaluated during this period, it contained a quarter of all unsuccessful projects, mostly in the agriculture and natural resources sector.¹¹

The evaluation report cites a string of reasons for the high rate of project failures in the Philippines, ranging from frequent internal and external shocks that the economy experienced to more project-specific problems such as poor project design to different types of project implementation bottlenecks such as lack of counterpart funding, low absorptive capacity of the government and complicated land acquisition and procurement policies and procedures.¹² It is no wonder then that “enhanced portfolio quality” through improved project monitoring and implementation has been the watchword for the Philippine portfolio over the past five years.

Another reason for the country’s non-performing loans has to do with the ‘overhang’ of undisbursed loans attributed to sluggish loan components, failure to meet development objectives and to a certain degree, “goal congestion”.¹³ Of the US\$1.8

billion in loans approved by the Bank for ongoing projects from 1998 to 2004, the undisbursed loans amounts to more than 60 percent or US\$1.1 billion. About \$300 million of this undisbursed loan has been identified for cancellation last year, not to mention reducing the number of active loans from 37 to 29.¹⁴ Loan cancellations are general actions taken by the Bank and the Philippine government to improve its portfolio performance. About half a billion worth of loans have already been cancelled by the ADB since 2000. Some examples include the cancellation of the final tranches of the *Grain Sector Development Program*¹⁵ and suspension of disbursements for the *Sixth Road Project*.¹⁶

The bad showing of Philippine projects reflects the overall poor ratings the ADB gets for its entire lending operations. The ADB in its initial years was considered as an agriculture bank, which financed irrigation facilities, agro-processing industries, and activities that increase agriculture productivity. It is therefore quite ironic that most of the unsuccessful projects are in the agriculture and natural resources sector. This trend is not exclusive to the Philippines but an ADB-wide experience—almost all forestry projects have failed, i.e., well known within the Bank. How the ADB responds to this failure, however, belies the ‘development’ banking aspect of its operations. The ADB “has been trying to get out of agriculture lending” because “costs and benefits and project management were not as simple and straightforward as in

¹¹ ADB Operations and Evaluations Department, Country Assistance Plan Evaluation (CAPE) in the Philippines, CAP: PHI2003-04, January 2003. See also “*Report on the Results and Impact of ADF Operation*,” ADB Operations Evaluation Office, Manila, March 2000.

¹² ADB Operations and Evaluations Department, Philippines Country Assistance Plan Evaluation (CAPE), CAP: PHI2003-04, January 2003.

¹³ According to a senior official interviewed by Prof. Walden Bello who spoke on condition of anonymity, “*people in the field are suffering from ‘goal congestion,’ that is, trying unsuccessfully to integrate the various objectives that donor governments have attached to lending in the last few years: poverty reduction, social development, sustainable development, promoting women’s welfare, and good governance*”. See Walden Bello, “ADB 2000: Senior Officials and Internal Documents Paint Institution in Confusion”, *Creating Poverty*

in Asia: The ADB in Asia, Focus on the Global South, May 2000.

¹⁴ “*ADB and Philippine Government Streamline Portfolio to Address Undisbursed Loans*”, News Release, June 25, 2003. www.adb.org/documents/news/2003/nr2003089.a.sp.

¹⁵ According to Richard Ondrik, senior official at the ADB Philippine Country Office, the reasons for shelving the GSDP are “*lack of political and lack of counterpart funding*”, among others.

¹⁶ ADB suspended loan disbursement to the project in June 2003 due to unresolved right-of-way and resettlement issues; the Bank lifted suspension last July. Apparently, some discrepancies between ADB guidelines and Philippine laws had been threshed out. The \$167-million project involves the improvement of about 840 kilometres of national roads in Luzon, Masbate, Mindanao, Palawan and Panay, and other structures.

energy and infrastructure programs.”¹⁷ Instead of improving its agriculture operations, a necessity given that most of its developing member countries are agricultural, the ADB is choosing instead to funnel its resources to where it enjoys the biggest and easiest returns. The ADB, therefore, worries more about its own financial success rather than the needs of its members.

Implementation problems are further aggravated by the changing composition of the loan portfolio as ADB intensifies its policy-based lending¹⁸. By ADB standards, the Philippine government has been slow in undertaking reforms, especially in meeting loan conditions. What is forgotten is that when it comes to reform processes, sustainability rather than speed of implementation counts more. The Bank is also guilty of imposing policy conditions that undermine the country’s democratic processes and that are blind to the political realities of national policy making, leading to civil unrest and leaving a legacy of economic failure. Even by the ADB’s own reckoning, the conditionality approach suffers from many problems—

“(i) undermining ownership by the recipient government;

(ii) a tendency to compensate for perceived lack of commitment/weak administrative, technical, and institution [sic] by increasing the detail and number of conditions in adjustment operations;

(iii) an incentive for borrowers to exaggerate the difficulty of undertaking reforms; and

(iv) partial reform syndrome--reform is acceptably implemented only at the expense of watering down the original requirements.”¹⁹

Despite these findings, however, the ADB shows no sign of slowing down the conditionality route. It even plans to assume “a higher public profile” in the country’s

¹⁷ Walden Bello, “ADB 2000: Senior Officials and Internal Documents Paint Institution in Confusion”, *Creating Poverty in Asia: The ADB in Asia*, Focus on the Global South, May 2000.

¹⁸ ADB Operations and Evaluations Department, Philippines Country Assistance Plan Evaluation (CAPE), CAP: PHI2003-04, January 2003.

¹⁹ Review of ADB Program Lending, November 22, 1999.

policy debates²⁰, likely to increase interventionism from the Bank.

REDEFINING PARTNERSHIP?

The Philippines has enjoyed consistent backing from the Bank despite poor portfolio performance. However, “aid sceptics” and various stakeholders are doubtful of the capacity of development projects and huge loans to address problems of poverty, access to resources and services, and good governance, among others. Even ADB internal assessments reveal that consequences for development of these projects remain ambiguous. In fact, according to CAPE, “ADB lending program has not had a major impact on economic growth or poverty reduction”. Even the impact on institutional development has been mixed. And because the ADB has failed in many of the sectors it lends to, it is now trying to get out of these sectors and leave the job to the private sector.

The ADB’s assistance strategy²¹ to the Philippines has evolved significantly in the last 35 years. The Bank adjusted its operations to government’s policy shifts, changing circumstances, socioeconomic needs and its own internal philosophy. On paper, Country Operational Strategies (COS) and Country Assistance Plans (CAP) drew coherence with between the ADB’s strategic concerns and the country’s priorities. However, as ADB is involved

²⁰ ADB Operations and Evaluations Department, Philippines Country Assistance Plan Evaluation (CAPE), CAP: PHI2003-04, p. vi., January 2003.

²¹ There are two basic documents outlining the ADB’s assistance strategy to the Philippines. One, the Country Operational Strategy (COS), which describes the Bank’s operational strategy covering a period of one year. Two, the Country Assistance Plan (CAP), which details the planned program of assistance covering a three-year period. This usually is prepared between three to four months, in consultation with the Philippine government and other stakeholders, including NGOs. It is then, discussed with the Board of Directors for approval. The CAP is only indicative and may be revised subsequently to reflect more recent developments. Recently, the Bank decided to merge the COS and the CAP into a single coherent document, the Country Strategy and Program (CSP), to address its operation deficit and diverging activities. The CSP was introduced in conjunction with the ADB’s reorganisation in January 2002.

with a wide range of activities, in practice, its lending program tended to deviate from its operational strategy. Previous COS for the Philippines, for instance, were too general and failed to set real and concrete targets. They normally encompass a variety of interventions. This discrepancy between what the Bank professes in paper and what it practices casts even more doubts on the effectiveness of the ADB's development assistance to the country as well as its relevance as a development partner.

To address the incongruity between ADB's publicly stated goals and its operational performance, the ADB established the Philippine Country Office²² in March 2001. This was also part of the ADB-wide effort to "decentralise" its operations and respond 'innovatively' to the needs of its members. The Philippine Country Office is supposed to give sharper focus, better coordination, improved monitoring, and more effective representation in the ADB's operation in the country. In particular, it is concerned with the project administration and implementation issues.²³ Its responsibility also extends to providing policy directions and guidance to the Philippine government, especially on sector policy reforms, and to accommodate the growing needs of the private sector.

The Philippines signed a Poverty Partnership Agreement²⁴ with the ADB in 2001, which was hailed as a high point in the ADB-Philippines "development partnership". The Poverty Partnership

²² The Philippine Country Office has an initial staff of 10, including 5 Philippine nationals. Its top officials, however, are all foreigners.

²³ "ADB Concerned about Philippine Program Performance", *ADB News Release*, March 10, 2003.

www.adb.org/documents/news/2003/nr2003028.asp.

²⁴ Other stakeholders (civil society, the private sector, international donor community) were "consulted" in a series of forums such as the five island-wide multi-sectoral consultation workshops to discuss the National Anti-Poverty Action Agenda, the Employment Summit in Manila in 2001, and consultative meetings and workshops for the preparation of the MTPDP for 2001-2004. However, there was no clear indication of whether inputs from civil society or project-affected communities were carefully considered and incorporated in the agreement.

Agreement reflects the increasing like-mindedness between the two.²⁵

A MODEL PARTNER?

Despite poor portfolio performance, the Philippines remains one of the most aggressive liberal reformers in the Asia Pacific region. Because of this, the challenge of aligning development priorities become easier as the ADB shifts more and more towards the neoliberal agenda. Since it took out its first policy-based program loan from the ADB in June 1988, the Philippines has adopted 18 policy packages (*See Table 2*) under ADB programs. Several more policy interventions are underway, most of which are geared towards the restructuring in the sectors of power, finance, and capital markets.²⁶

The Philippines is a significant partner for the ADB because it leads in some of the crucial initiatives that the ADB is interested in. The Philippines is among the first of the ADB's developing member countries to restructure the energy sector²⁷, and records the highest assistance received from the ADB in this very same sector. The Philippines is also a pioneer of sorts in the ADB's private sector operations. Aside from being the largest user of private sector loans, it covers almost all of the private sector loan modalities (equity investment, co-financing, complementary financing, etc.) and most significant sectors (agriculture, energy, finance, and industry development). Examples such as those coming from the Philippines are important as the Bank continuously looks for opportunities to build up its private sector operations.

The congruence between the Philippines and the ADB may be convenient for the Bank (and most other multilateral economic institutions), but it is iniquitous for the

²⁵ In an interview with Richard Ondrik, chief country officer of the ADB Philippine Country Office last May 15, 2004, his gut feeling was that the Philippine government and the Bank are much closer now than it has been for the last decade.

²⁶ ADB Country and Strategy Program Update 2004-2006: Philippines, November 2003.

²⁷ "ADB Reconfirms its Support to Power Sector Restructuring in the Philippines", ADB Media Center, September 13, 2004. See also Cai U. Ordinario's "ADB pledges continued support to power sector", *Manila Times*, September 14, 2004.

Filipino people who deserve more varied and flexible policy approaches. Projects in industrial and mining sectors, for instance, clearly failed. None of the six companies assisted by ADB thrived. According to the ADB's Operations and Evaluations Department, "one was foreclosed; another prepaid its loan pending investigation of breaches of environmental protection provisions (*See Box below*); and still another is in receivership with a view to salvaging the interests of lenders, including ADB. The rest have all been rated high risks."²⁸ The ills plaguing the restructure Philippine electricity sector warrants a re-examination of the ADB's role and leadership in undertaking reforms.

Finally, the creditor-debtor relationship pervasive in the ADB-Philippines so-called partnership is what's setting it up for failure. ADB officials may refute allegations of interventionism but what it does in fact dilutes its claims. ■

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Interview with Isagani Serrano, Vice-President, Philippine Rural

²⁸ ADB Operations and Evaluations Department, Country Assistance Plan Evaluation (CAPE) in the Philippines, CAP: PH12003-04, p. vi., January 2003.

Reconstruction Movement, April 19, 2004.

Table 2**POLICY PACKAGES OF ADB TO THE PHILIPPINES**

1988-2004

Project	Amount (in US\$ million)	Date Approved
Forestry Sector Program	120.00	June 28, 1988
Fisheries Sector Program	80.00	September 26, 1989
Road and Road Transport Sector Program	100.00	November 8, 1990
Second Palawan Integrated Area Development	58.00	September 27, 1990
Industrial Forests Plantations (Sector)	25.00	October 17, 1991
Forestry Sector	100.00	November 19, 1992
Capital Market Development Program	150.00	August 22, 1995
Cordillera Highland Agricultural Resource Management	19.00	January 11, 1996
Rural Water Supply and Sanitation Sector	37.00	June 4, 1996
Fisheries Resource Management	35.223	October 16, 1997
Power Sector Restructuring Program	300.00	December 16, 1998
Metro Manila Air Quality Improvement Sector Development Program (Policy Loan)	200.00	December 16, 1998
Grains Sector Development Program-Program Loan	100.00	April 24, 2000
Grains Sector Development Program-Project Loan	75.00	April 24, 2000
Pasig River Environmental Management and Rehabilitation Sector Development Program-Program Loan	100.00	July 20, 2000
Pasig River Environmental Management and Rehabilitation Sector Development Program-Project Loan	75.00	July 20, 2000
Nonbank Financial Governance Program	75.00	November 15, 2001
Second Nonbank Financial Governance Program	150.00	September 2, 2003
Health Sector Development Program (Program Loan)	200.00	December 15, 2004
Health Sector Development Program (Project Loan)	13.00	December 15, 2004
Total	2012.223	

Source: Loans, Technical Assistance and Private Sector Approvals, December 2004; Also see Country Assistance Programme Evaluation in the Philippines, CAP:PHI2003-04 January 2003.

Box:

ADB INVOLVEMENT IN CONTROVERSIAL PROJECTS IN THE PHILIPPINES

MASINLOC COAL-FIRED POWER STATION

In 1995, ADB loaned the National Power Corporation US \$254 million for transmission lines and a second 300-MW generating unit in the Masinloc coal-fired power plant. The project was opposed by local communities for the pollution it caused, compromising community health and damaging centuries-old mango orchards and productive fisheries and farming areas. The power plant had poor environmental safeguards – had no desulfurisation device, and was shown to have siphoned much of the water resources from nearby communities. The ADB did nothing.

In 2004, Masinloc was privatised. It was reported that the ADB initially blocked the sale of the power plant because the National Power Corporation was not able to pay its loans. When the Philippine Government agreed to assume the NPC's debt, the ADB gave approval of the sale.

MARINDUQUE COPPER MINING CORPORATION (MARCOPPER)

The mining company, 40% owned by Canadian multinational Placer Dome, received two private sector loans amounting to US\$40 million in 1991 and 1992 from the ADB. In 1996, Marcopper mine tailings spilled to the nearby Boac River, causing massive environmental destruction and human displacement. Environmental groups held the ADB partly accountable for the disaster, claiming that having financed the project the ADB is bound by its environmental policy. The ADB refused to own up to any responsibility, claiming that its Marcopper loan projects have already been closed. To this date, communities affected by the disaster remain uncompensated.

WATER

Public utility Metropolitan Waterworks and

Sewerage System (MWSS) was privatised in 1997, granting 25-year concessions for the management and operation of its facilities. In 2001, the ADB publicly supported demands of private concessionaire Maynilad to increase rates and to claim on foreign exchange losses. At the time, Maynilad and ADB were negotiating a private sector loan, which has since been cancelled.

The ADB, together with the World Bank, is collaborating with the Philippine Government on the privatisation of water districts across the country, abolishing existing local water authorities and replacing them with private entities it will help finance through its private sector lending window.

POWER SECTOR RESTRUCTURING PROGRAM

In December 1998, the ADB extended a US\$300 million Power Sector Restructuring Program loan to the Philippines, designed to dramatically reduce the government's role in the power sector by unbundling the various segments of the power industry, and privatising the NPC. What made the loan very controversial were the conditions attached to the release of tranches, which included effective increase in return on rate base, the passage of the Electric Power Industry Reform Act (EPIRA), and the promulgation of the EPIRA Implementing Rules and Regulations.

Amidst pressure to pass the EPIRA, a payoff scandal in the Lower House of the Philippine Congress was exposed. The ADB denied any involvement, saying they are not in the business of 'meddling' with domestic affairs of client Governments. The ADB, however, was very public about its push for the EPIRA and its displeasure about the delay in its passage. The EPIRA was passed into law, with poor governance and competition provisions. ***(See related article on power in this volume.)***

New Country, Old Tricks

The ADB in East Timor

LAO HAMUTUK

On August 30th 1999, the people of East Timor voted for independence from Indonesia in a referendum organised by the United Nations Assistance Mission in East Timor (UNAMET). When the result was made public on September 4th, the Indonesian military and its militia proxies culminated their 24-year campaign of crimes against humanity, and went on a rampage that destroyed more than 75 percent of East Timor's infrastructure and displaced approximately 680 thousand people. With Indonesia's violent and belated withdrawal, East Timor had no government until the United Nations Security Council approved a second mission, the United Nations Transitional Authority in East Timor (UNTAET) on October 25th.

The Asian Development Bank (ADB) arrived in post-Indonesian East Timor as part of a World Bank-led Joint Assessment Mission which arrived in East Timor on October 26th 1999. The Joint Assessment Mission, which also comprised donors, the United Nations and East Timorese leaders, came to East Timor to identify immediate reconstruction objectives and assess financing needs.

The findings of the Joint Assessment Mission were presented in Tokyo on December 17th at the first International Donors conference for East Timor. Donors endorsed the concept of a Trust Fund for East Timor (TFET) with the World Bank as trustee and joint administrator with the ADB. Of the \$520 million pledged by donors in Tokyo, \$147 million was earmarked for TFET. Since then, TFET has received a total of \$166 million. Through TFET, the World Bank and ADB assumed control of donor funds and began to shape and direct the reconstruction and development process in East Timor.

On January 10th 2000, the ADB signed a memorandum of understanding with the World Bank to establish working arrangements and outline respective areas of responsibility in East Timor. As joint administrator of TFET, the ADB is responsible for a much smaller part of the TFET 'pie' than the World Bank and its projects focus on infrastructure rehabilitation and developing microfinance.

CO-'ADMINISTERING' A NEW COUNTRY

The ADB manages five infrastructure rehabilitation projects in East Timor, most of which are nearing completion. The ADB-managed projects reflect the ADB's usual pattern of relying on foreign consultants and private sector companies; the ADB seems unable to engage or develop East Timorese skills. The ADB awarded large amounts of donor funds to private sector building and engineering firms, mostly from Australia. The ADB is also using its position as manager of TFET projects to increase the possibilities of foreign ownership of water and electricity supply for East Timor.

The ADB's Emergency Infrastructure Rehabilitation Project 1 (EIRP 1) dealt with emergency repairs on major roads throughout East Timor, the rehabilitation of Dili port, and the reinstallation of electric power. Given the urgent need to

reestablish infrastructure after the 1999 destruction, projects were based on systems in use under the Indonesian occupation rather than on studies to find more sustainable systems. Reinstating the power supply focused on power stations in the districts but also included some assistance for the Dili-Comoro power station and developing a power utility and financial management. This part proceeded more slowly than the road and port rehabilitation, which were completed in mid-2002. Most people acknowledge that the ADB-established systems to provide and manage electricity have serious problems. Although other institutions involved in developing the electricity sector (UNDP, UNOPS, and the Portuguese and Japanese governments) share responsibility for these problems, the ADB has been responsible for overall coordination. According to the ADB, they have had 'mixed results' in the electricity sector, and 'consulting services have been evaluated by ADB staff as unsatisfactory'. As of January 2003 more than 30% of the funds amounting to \$9 million went to foreign consultants under the EIRP 1.

The follow-up Emergency Infrastructure Rehabilitation Project 2 (EIRP 2) will establish routine maintenance systems to reduce annual emergency rehabilitation needs. The project includes detailed engineering services and project management services and training.

The Water Supply and Sanitation Rehabilitation Project 1 (WSSRP 1) project included a Quick Response Facility to support urgent repairs and rehabilitation to water supply and sanitation systems for all of East Timor. The project also focused on establishing water supply and sanitation sector management and planning under the East Timor Transition Authority (ETTA) before independence, including capacity building and institutional development to prepare frameworks, standards, and guidelines for the department. The second Water Supply and Sanitation Rehabilitation Project (WSSRP 2) largely continues the activities of WSSRP 1, with added emphasis on upgrading technology and communications, urban sanitation, and implementing a tariff system. The water supply system includes government-operated urban services and community-operated rural services, with international NGOs often contracted to establish the rural systems. Although the ADB states that over 90,000 working hours have been

created and that local NGOs have been involved in water supply projects, over 40% WSSRP 2 funds have gone to foreign consultants. In fact, over 80% of WSSRP 2 funds have been contracted out to foreign consultants, companies and international NGOs.

The ADB continues to be involved in the power and water sectors by funding technical assistance. In the power sector the ADB has funded a plan for the electrification of East Timor through 2025, developed by Electro-watt Ekono, an energy company from Finland. The plan examines different forms of electricity generation, including wind power, diesel generators, and gas turbines. However, the plan's principal proposal is hydroelectric production with five new hydroelectric schemes costing between \$160 and \$206 million.

The ADB is also funding technical assistance for Integrated Water Resources Management (IWRM). The ADB believes that the current 'absence of a national policy that specifies the key principles of IWRM across Timor Leste, coupled with a lack of water resource management skills and experience, poses a very high risk of future incompatible sub sector strategies and conflicts over water resource allocation as demand for water grows'. Therefore, the ADB's technical assistance (TA) aims to develop a national water policy for East Timor in conjunction with a national water law. Water policies are currently being developed by East Timorese government departments, including the Water and Sanitation Service and the Ministry for Agriculture, Forestry and Fisheries, and the Ministry for Development and Environment. The TA will give the ADB the ability to influence ministerial water policies currently being developed and work to ensure that they do not conflict with plans for the provision of hydroelectric power.

The ADB has an enormous amount of influence over future electricity and water provision for the people of East Timor. The East Timorese government presently has a 'no debt' policy, and is unwilling to borrow money for new power generators. Alternative funding can come through ADB-negotiated Build Own Operate (BOT) or Build Own Operate (BOO) schemes. If this happens the ADB can mobilise project financing which will likely come with a government provided 'take or pay' guarantee for electricity based on the ADB's evaluation of what the market can afford to ensure the venture is profitable for the company or

companies involved, rather than benefiting local people. If electricity users cannot pay what the ADB has determined, the government would have to effectively underwrite the agreed cost whether the electricity is used or not.

The ADB has already facilitated one BOT scheme in the telecommunications sector through two TAs which negotiated a contract signed in July 2001, giving Portugal Telecom International a 15 year monopoly on fixed line, mobile, and internet service in East Timor. The TAs also drafted the regulatory framework for government involvement in the telecommunications sector.

BEYOND PORTS

The ADB also manages the Hera Port Fisheries Facilities Rehabilitation Project. ADB involvement with Hera Port (just east of Dili) dates back to the Indonesian occupation, with a \$50 million loan to the Indonesian government in 1984 for the Indonesia-wide Fisheries Infrastructure Sector Project, completed in 1994. The ADB acknowledges that under this project Hera Port was poorly built, hence the current need to rebuild. A 1997 ADB report finds that the former project greatly overestimated the private sector growth that would result from improving such port facilities, which actually did little to generate employment or increase availability and quality of fish. The project significantly damaged coastal and marine environments.

The current Hera Port Fisheries Facilities Rehabilitation Project is similar, although on a much smaller scale. The project is a sub-component of the World Bank-administered Agriculture Rehabilitation Project II, but since it deals with infrastructure, the ADB is implementing it. Aimed at developing Hera Port for use by relatively large offshore fishing vessels, the project focuses on repairing and reinforcing port infrastructure such as breakwater structures and wharves. The project began in October 2001 and after delays, was finally completed in June 2003.

The ADB's rationale behind the project is to facilitate offshore fishing of pelagic species like sardines and mackerel to increase the supply of cheaper fish protein to the population of East Timor. The ADB estimates that current fishing methods will increase fish protein consumption from 8 percent of the FAO recommended daily consumption to 28 percent whereas an increase in offshore

fishing would raise that figure to 56 percent in five years. However, there are currently only 24 boats capable of fishing further off shore, although the ADB expects that more will be provided by the private sector when the improved Hera Port facilities are available.

Almost all fish landed in East Timor are caught by relatively poor local fishermen, using small vessels operating close to shore. They will be unable to compete with larger vessels bringing in larger quantities, and the inshore fishing sector, which supported 9,000 East Timorese fishermen in 1997, will become unviable as a livelihood. Eventually the domestic fishing sector will be dominated by larger fishing vessels which will be owned by wealthier East Timorese or non East Timorese. Moreover, the assumption that this will increase the supply of cheaper fish is only true if the fish cannot be sold more profitably in foreign markets particularly in nearby Australia, but also Japan and Indonesia.

The ADB is currently funding a TA for Exclusive Economic Zone Demarcation which has been working on databases, maps and data sets for the United Nations Convention on the Law of the Sea. Although work is continuing, there is currently enough data available which can be used for agreements with neighbouring Australia and Indonesia on the East Timorese Exclusive Economic Zone which will confirm East Timorese fishing boundaries. Furthermore, the ADB is also currently pushing for the formulation of a Fisheries Act which will govern, *inter alia*, licenses for non-East Timorese vessels to fish in the East Timorese Exclusive Economic Zone. If the ADB does become involved in developing an East Timorese Fisheries Act, they will probably encourage the issuing of fishing licenses as a source of domestic revenue to larger, more competitive international vessels to fish in East Timorese fisheries.

MICRO-MANAGING FINANCE

The ADB's Microfinance Development Project was initially allocated US\$7.72 million from TFET but this was later reduced to US\$4 million. The brief for the Microfinance Development project was to address the lack of financial services available to the rural poor. The ADB aims to increase the availability of rural credit by rehabilitating credit unions and creating a sustainable microfinance bank.

The project formally began in December 2000 with the signing of the

TFET grant agreement but there were massive delays in project implementation. The ADB states that this was due to the absence of a legal framework for the banking sector despite the fact that Indonesian laws continued during the UNTAER period and the Portuguese Banco Nacional Ultramarino began operations as early as 2000.

The ADB wanted to push a different legal framework in order for the project to run as they wanted rather than using the existing Indonesian laws. Together with the International Monetary Fund, the ADB would not allow the creation of a government-owned microfinance bank. Hence, the delay was compounded due to the need for the legislation that allowed the creation of a foundation that 'own' the US\$2 million capital which was set aside from the original TFET grant. Furthermore, the ADB wanted donor, rather than local, control of the foundation to ensure the Microfinance Institute of Timor Leste (IMTL) remains 'faithful to its original objectives' and to 'resist political pressures'. This caused some friction with the East Timorese Council of Ministers who wanted more East Timorese representation on the foundation's board.

Once the laws existed the ADB created the Foundation for Poverty Reduction in East Timor in order to receive the grant and be the temporary owner of the IMTL. The Foundation for Poverty Reduction is currently governed by a Board of Trustees which is comprised of the ADB Representative in East Timor, the Head of the ADB's Special Liaison Office (an ex-officio member) and representatives from AusAID and the Portuguese Development Support Agency. There are two East Timorese members.

The Board of Trustees appoints the Board of Directors, which officially governs the IMTL. At the moment the Board of Directors is the Board of Trustees, with the addition of the Head of the ADB's Project Management Unit and the Administrative and Finance Officer of the ADB's office in East Timor. The Board of Directors does not function independently, and all tasks designated for the Board of Directors are carried out by the Project Management Unit.

The US\$2 million starting capital was disbursed on 18 January 2002, although the IMTL head office and the Main Branch in Dili did not begin operations until 13 May 2002, a week before independence. The district branches in Gleno and Maliana did not open until

September and November 2002 respectively.

TARGETED LENDING?

Initially the ADB focused lending on market vendors in Dili. This was due to the desperate need to get the US\$2 million starting capital working rather than being used up in operating costs. Focusing lending on market vendors in the two main Dili markets provided an opportunity to begin disbursing loans quickly and easily. In addition, IMTL agents could make daily visits to the markets in Dili in order receive the repayments and ensure a high repayment rate.

By December 2002, US\$236,800 of the US\$2 million starting capital had been disbursed. The IMTL had 1,533 borrowers, 1,014 of whom were based in Dili, mostly market vendors. Four months later, the profile of the IMTL borrowers had changed dramatically. Outstanding loans amounted to US\$284,857, accounting for the new borrowers in Gleno and Maliana. However, the number of active borrowers in the Dili main branch had fallen by more than 60 percent to 412 and the average size of a loan for market vendors remains at US\$100, which is the size of the initial loan, indicating that many market vendors are not taking out subsequent or larger loans. The Dili main branch was the only branch where borrowers, all market vendors, defaulted on their loan repayments. In addition, the overall number of borrowers had decreased to 1,502.

The number of Dili-based borrowers dropped because market vendors declined to take out second or third loans. Interviews conducted with market vendors in the main Dili markets Taibisse and Comorro showed the mixed results of the ADB's targeted lending. Some borrowers were relatively successful like Domingos, a former guerrilla fighter who was among the first people to borrow from IMTL and was already on his third loan from IMTL. Domingos said he would not recommend that other people to take out loans from IMTL, since sometimes it was difficult to sell enough to repay the daily installments.

Domingos was by far the most successful of the IMTL clients interviewed. Most borrowers indicated that although the loan allowed them to invest in their stall, their ability to repay was based on the number of customers, which showed no sign of increasing.

Maria, a 28-year-old married woman with three children, who sold mainly coffee and sugar, was using the loan to invest in her stall. She had already received a second loan of \$250. She was able to make the daily repayment of \$2.20 if she had enough customers, but business is very competitive with many stalls selling coffee and sugar. Taking out a larger loan would increase the daily repayments.

Bendita, a widow supporting 7 children in school, had also taken out a market vendor loan. She had used the money to support the immediate needs of her seven children and was not able to invest the money in her small stall. According to her, IMTL sent people to look at her house, type of business and asked about her marital status. She was told that if she did not repay the loan she would be taken to court. According to an IMTL official this is in the agreement with the client.

Borrowers who form groups in order to take out ADB loans in the areas outside Dili are serviced from the Dili main branch. Group loan borrowers felt the loans given to them were not flexible enough to meet their needs, particularly as the initial loan was very small and split within the group, limiting the scope of investment. Group loan clients in Liquisa, a town, west of Dili, said that they were either not that keen on borrowing money or they wanted to borrow more money than the ADB's inflexible loan packages would allow. For example, one wealthier client wanted to borrow enough for a motorbike in order to travel with her stall to villages further inland.

INAPPROPRIATE SERVICES

The ADB had no intention of creating financial services which reflected people's needs. Instead they created a series of loan packages based on what they thought people could afford. All borrowers, but particularly those in Liquisa, wanted savings services, with a nearby bank branch where they could make regular deposits and earn interest. Services in savings were not advertised due to the inability of IMTL to deal with a large number of clients wanting to make deposits. The IMTL has since been overwhelmed by the number of clients wanting to make deposits. The number of depositors in Dili increased from 991 in January 2003 to 2,049 by May 2003 and deposits increased by 70 percent. In Gleno deposits increased by 66 percent

and in Maliana deposits have increased by 265 percent.

The total figure is 264 percent over the amount of deposits predicted in the ADB's Business Development Plan and financial projections. The ADB's IMTL is now in the awkward position of soon not being able to accept more depositors as the amount of deposits is very close to the \$1 million legal threshold which allows it to remain a microfinance institute rather than becoming a bank. Moreover, once deposits reach \$1 million the IMTL needs to recapitalise in order to maintain a 2:1 capital to deposit ratio as specified by international banking regulations. The proportion of the original TFET grant deposited as equity has been used up in operating costs. The ADB currently does not know where it will get the money from.

SUSTAINABLE FUTURE?

From May to October 2002, 28 percent of all costs were met by interest from equity deposited in commercial banks, 11 percent from interest from loans and 20 percent from loan fees charged on new loans. The remaining 40 percent was charged against equity. By May 2003 the income earned from interest from equity deposited in commercial banks had fallen to 13 percent and income from loans had increased to 35 percent. A massive 50 percent of the income was due to the increase in loan fees on the microfinance group loans when the Maliana and Gleno branches opened.

At the moment the income makes up 80 percent of the operating costs, but this is likely to drop if present trends continue, as there is no more money to open up new branches to increase the number of borrowers, and existing borrowers are reluctant to take out subsequent loans.

Up until December 2002 the largest proportion of IMTL's income came from interest from equity deposited in commercial banks. This amount has decreased as loans have been disbursed, which has increased the IMTL's income from predominantly fees charged on new loans and interest. The initial income boost from loan fees on market vendor loans has diminished as market vendors are not taking out more loans. This was significant as market vendor loans accounted for 49 percent of the value of all loans. Since December 2002, the IMTL has relied on loan fees on rapidly disbursed microfinance group loans out of the Maliana and Gleno offices to make

most of its income. Equity has decreased with loan disbursements and continuing operational losses and because a quarter of the original TFET grant was spent on international consultants fees. The IMTL will have to rely on loan fees and interest from existing borrowers and this only makes up 35 percent of its operational costs.

The Microfinance Development project ends in December 2003. The Foundation for Poverty Reduction and IMTL will be transferred to East Timorese hands, a process the ADB refers to as 'divestment'. The present Boards of Trustees and Directors will be replaced and the Project Management Unit will be disbanded. The new Board of Trustees will appoint a new distinct Board of Directors, which will assume all the management tasks of IMTL. The ADB currently has no idea how this divestment process will take place.

With \$4 million dollars and a project running since December 2000, the ADB's microfinance project is a debacle with less than US\$300,000 currently disbursed as loans and declining numbers of borrowers. They will be looking to hand over to East Timorese ownership a loss making entity which is in urgent need of more funds in order to be legally and financially viable.

A FUTURE WITH ADB?

With the microfinance development project and with other projects, the ADB has been overly preoccupied with 'being seen to get things done' rather than addressing real needs. Although the ADB manages funds donated by other countries for the benefit of East Timor, large amounts of TFET money has been spent on foreign consultants and companies at the expense of local labour, capacity and industry.

Most of the TFET projects are nearing completion and the ADB is currently looking to extend its influence in East Timor through technical assistance. Through its involvement in the power and water sectors it is advocating the construction of large hydroelectric schemes. No independent environmental and economic assessment has as yet been carried out. The ADB's rationale behind the scheme is not to meet the needs of people but what they can afford to pay for, making it likely to be yet another utility operated at a profit by an international company. ■

Playing God in God's Own Country?

The ADB in the Indian State of Kerala¹

K RAVI RAMAN

Resistance to the ADB policy package in the Indian state of Kerala has been manifest both before and after the acceptance of the first tranche of an ADB loan for US\$775 million.² With the acceptance of Rs 600 crores (approx: \$137 million) in December 2003, resentment runs high against the sweeping neo-liberal reforms, written into the conditions of the loan, of the privatisation of critical sectors like education, banking, power and urban development.³

¹ 'God's Own Country,' is the State Government of Kerala's tourism advertising slogan

² The Netherlands is co-financing one of the programmes within this loan package with \$75 million.

³ For a discussion on the implications of high-conditionality loans in developing countries, see Jeffrey Sachs, 'Conditionality, Debt Relief, and the Developing Country Debt Crisis' in *Developing Country and Economic Performance*, Jeffrey Sachs (ed.), 3 vols, vol 1, The University of Chicago Press, London, 1989:255-98.

In scrutinising the implementation of reforms, ADB officials and their consultants have often swooped down on Government offices. These acts have often been blockaded by Government employees as well as resistance groups. In August 2004, for example, ADB officials had to quickly cut short their visit to the Kerala State Cooperative Agricultural and Rural Development Bank (KSCARB) following protests by the bank's employees. Given that the KSCARB is one of the most well run co-operative institutions in India – in terms of rural outreach and credit deposit ratio – neither the ADB nor the state were able to convince the public why restructuring of any sort was required, let alone the type of restructuring they were proposing. Concerns were expressed that the ultimate objective of the ADB was to convert the KSCARB into a high-tech bank with a re-prioritised neo-liberal reform agenda and to implement a Voluntary Retirement Scheme (VRS) for its employees.

A similar situation arose when ADB officials visited the Corporation offices of the State in August 2003, and also when they entered the State Education Department, a few months back. The public was incensed that ADB officials were attempting to monitor the implementation of ADB-directed reforms in sectors like education and public sector restructuring as a condition of the first tranche of the loan.

The major apparent preoccupation of state bureaucrats and politicians in Kerala is whether they will be able to acquire the second tranche of the ADB loan worth Rs 600 crores. In order to ensure this, the state would have to show discrete progress on meeting the conditionalities of the first tranche. For this however, the state requests more time because of stiff resistance from various quarters delaying reforms. However, notwithstanding that ADB loan funds have already been partially dispersed, the state could very well do without any assistance from the ADB, a point repeatedly made by the *ADB Quit Kerala Campaign* well before the acceptance of the first tranche, a point to which we shall return later.

The high-conditionality loan is meant to launch three programmes: the Modernising Government Programme and Fiscal Reforms (MGP) which would require US\$300 million, the Power Sector reforms and the Environmental Improvement and Poverty Reduction Programme, both costing US\$200 million

each. The Netherlands also proposed to co-finance the MGP with an amount of US\$75 million; the state would get an overall loan of US\$775 million. The MGP and Fiscal Reforms is a cluster loan comprising two sub-programmes: the first would receive the allotted US\$200 million in two equal tranches and the remaining US\$100 million would again be disbursed in sequence, every fresh disbursement hinging on the state's adherence to the prescribed reform programme.¹ The loan, which would be routed through the Government of India (GoI) would be directed to Kerala in a 70:30 loan-grant ratio. The repayment would be over a twenty-year period with a grace period of five years. ADB loans to India are provided out of its Ordinary Capital Resources at an interest rate based on the prevailing six-month US dollar LIBOR (London Inter Bank Offer Rate) plus 0.6% per annum. In addition, the ADB charges 1% (0.5% for loans negotiated and approved during 2003) for the front-end fee on the full loan amount, and a commitment charge of 0.75% per annum on the undisbursed loan balances.²

Even as the GoI receives the loan at the current LIBOR rate of interest from the ADB (repayable in US dollar terms), the State is expected to repay the GoI an interest rate as high as 10 per cent in rupee terms for the loan portion. The GoI would bear the foreign exchange risk on the loan but a partial transfer of risk to the state government remains a distinct possibility.

LEGITIMISING THE INVASION?

Rectifying the breakdown of the finances of the state and low economic growth on the one hand and the poor performance of public service systems on the other are the major reasons cited as justifying the MGP. The ADB prescription for this malady is 'good governance,' and it claims that its approach to governance is 'economic' rather than 'political'. The Bank's governance policy is considered an integral component of its poverty reduction strategy, particularly as part of its larger infrastructure development plan. The ADB's reading of the state's fiscal position is first of all partial, and secondly, its obvious agenda is the implementation

¹ ADB Documents 1 - 8, Government of Kerala, Thiruvananthapuram; Also see GoK, Asian Development Bank Loan Assistance Co-funded by Government of Netherlands.

² See *Loan Disbursement Handbook*, January 2001, <http://www.adb.org>.

of neo-liberal reforms serving the interests of market capitalism.

That the financial status of the various states in India have been badly eroded since the mid 1980s brooks no argument.³ The situation in Kerala is much worse than that in the other states, with a longer history of fiscal deficit than the others. All of Kerala's fiscal deficit indicators have shown an increase, as a percentage of the State Domestic Product, throughout the last decade. The share of revenue deficit in the total fiscal deficit was as high as 84 per cent in the late 90s. The responses of various states in India to their respective fiscal imbalances have been varied, ranging from public expenditure cuts and treasury restrictions, to borrowing from various sources including multilateral financial institutions. While Andhra Pradesh, Karnataka and Uttar Pradesh have opted for World Bank loans, others like Madhya Pradesh, Gujarat and Kerala have resorted to commercial loans from the ADB.

What exactly has been the cause of the 'fiscal crisis' in Kerala? Is it the slow growth of its resource base as conventionally argued, or is it just a lack of mobilisation of revenues and liquidity squeeze? Available evidence points unequivocally to the latter. Contrary to the trend in the 1980s, the Kerala economy registered a revival from the early 90s, and stayed above the all-India average. It kept up this tempo throughout the decade, despite the aberrations created in the cash crop sectors by the WTO-induced policies of the GoI, the declining trend in the devolution of revenues from the GoI to the state in addition to the successful implementation of the statutes of the revised pay commission. Thus the state's actual revenue deficit is not due to negative growth in the economy, as one would expect, but rather due to the lack of judicious mobilisation of revenues from within the state.

ALTERNATIVE SOURCES PLENTIFUL

A few missed opportunities for resource mobilisation are highlighted here. The swelling middle and upper class income brackets in the state signal a vibrant consumer market. It is most reflected in

³ See Govinda Rao, 'State Finances in India; Issues and Challenges,' *EPW*, August 3, 2002; George K K, *Limits to Kerala Model of Development*, Centre for Development Studies, Thiruvananthapuram, 1999

Kerala becoming the state with the highest per capita consumer expenditure in India. Yet, the potential of commodity taxes has not been tapped.⁴ Tax evasion is as high as 30-35 per cent and it is probable that the richer sections of society are benefiting from this.

The case of specific commodities traded in the state makes for strange reading. Kerala is probably the richest market for gold in the country yet, the sales tax revenue realised from this sector is as low as Rs 32 crores a year. It should have been five to six times this amount, had there been stringent tax enforcement.⁵ Tax evasion has reached such heights that the returns filed by the majority of the gold merchants/traders in the capital city of Thiruvananthapuram show sales amounting to a mere one sovereign per day!

Most importantly, there is an ever increasing revenue loss in various revenue generating sectors of the economy owing to under-assessment of tax, incorrect computation of agricultural income tax, exclusion of income from assessment, including those of luxury hotels and bars, non-realisation of potential value in forest produce and so on. Failure to implement the revised lease rents in plantations alone leads to a loss of at least Rs 500 crores per annum, allowing the big planters to amass huge profits. This has been repeatedly confirmed by the Assurance Committees of the State Legislative Assembly.⁶ Yet, the class bias of the state blinds it to such pockets of accumulation, just as it is blind to the pockets of poverty in the plantations, in the adivasi belts, urban slums and along the coasts. Hardly three to four per cent of the adjustment cost in the MGP has been specifically set aside for poverty amelioration: [the Kerala model of the twenty first century!] A quick estimate of all the locked up funds – tax and non tax arrears and others in the state – comes to more than Rs 4000 crores, an amount more than equivalent to the ADB loan.

It would take just 20 percent or less of the locked up funds to save the State from the ignominy of seeking the second

⁴ For a discussion on the commodity taxes in Kerala, see Sebastian, 2000.

⁵ For details, see K Ravi Raman, 'The Asian Development Bank Loan for Kerala: Adverse Implications and the Search for Alternatives', Working Paper No 357, Centre for Development Studies, 2004.

⁶ Some of these issues are extensively dealt with in the Legislative Assurance Committee Reports, GoK, 1996 and 1997

tranche of Rs 600 crores from ADB. As the state is inherently biased towards such classes - the corporate planter capital, liquor barons, gold merchants, luxury hotel owners and so on, that form the social structures of accumulation - huge funds fail to flow to the state exchequer.⁷

What has been noted above refers to the existing statutory means of resource mobilisation. Other potential sources are equally important and could assure the State greater bargaining power vis-à-vis the central government and the multilateral financial institutions such as the World Bank and the ADB. The State's domestic savings, which include the foreign exchange remittances of its Gulf migrants, are relatively high. The domestic savings in the nationalised banks in the State works out to more than Rs 60,000 crores, of which around Rs 25,000 crores are given as credits to the State. Given that the credit-deposit ratio in the State is low, the State's claim to more funds from the banks can easily be justified. The State would also have attracted a significant portion of foreign exchange from its Gulf migrants to the tune of Rs 18,000-20,000 crores per year, had it politically negotiated with the GoI and offered an interest rate nearly as much as it now offers the ADB.⁸

Another possible source is market borrowing. After assuming power, the present government has issued development bonds more than 20 times, mobilising more than Rs 4000 crores. The Malayali-speaking world would do well to realise that Japan, the leading donor to the ADB, became what it is today through the mobilisation of its domestic savings during its post-war devastation. The transformation of China into an industrial giant in the current climate of globalisation has a lot to do with the money remitted by Chinese emigrants.

And what is more, even as the state patiently waited before the Federal, the WB and ADB have glibly walked away

⁷ For some theoretical reflections, see David M Kotz, Terrence McDonough and Michael Reich, *Social Structures of Accumulation: The Political Economy of Growth and Crisis*, Cambridge University Press, 1994; For a variant contemporary reading, see Barbara Harris-White, *India Working*, Cambridge University Press, 2002.

⁸ For an early account of the remittances, see Zachariah, K.C., Kannan, K.P and Irudaya Rajan, S, eds. *Kerala's Gulf Connection: CDS Studies on International Labour Migration from Kerala State in India*, CDS, 2002.

with permission from the Government to raise up to \$250 million in rupees from the Indian debt market.⁹ Allowing external agencies to raise funds domestically for what is domestic lending simply accentuates the post colonial 'bleeding process'. Enron, the architect of the Maharashtra debacle, too, mobilised its funds from Indian banks!

The State could have been able to find economic and democratic ways of mobilising the already generated surplus or whatever tax is due to it both from the elite and the general public. It could have then substantially expanded the productive base of the economy with sustainable fiscal balances. The State would not then have been forced on its knees by the ADB.

ADB LOAN NO CURE FOR DEBT OVERHANG

To grasp the true consequences of the ADB loan in Kerala involves first examining the State's existing public debt. Like many other states in India, the outstanding debt of Kerala rose fast during the 1990s. In absolute terms, the total debt of the state increased from Rs 4716 crores in 1990-1 to Rs 20176 in 1999-00 and to more than Rs 36000 crores by 2003-4.¹⁰ The debt indicators, such as the debt-state domestic product ratio and the debt-servicing ratio, clearly show the state's vulnerability. The debt servicing cost went up from Rs 483.42 crores to more than Rs 3000 crores by 2002-3. The ratio of outstanding State debt to the net state domestic product (NSDP) is more than 34 per cent, one of the highest in India. The State's public expenditure is increasingly becoming synonymous with debt servicing which consumes nearly one-third of the state revenue. The repayment capacity, therefore, has been outpaced by the growth rate of debt servicing.¹¹

Consequently, the developmental expenditure of the State has declined. The education and health sector - two major social sectors supporting marginalised communities - already receive a declining share of capital outlay. Any fresh borrowing would only further compromise

⁹ See *The Hindu*, September 24, 2002.

¹⁰ Some of these details are worked out from CMIE, *Public Finance*, February 1999 & March 2002; *RBI bulletins*; Budget In Brief, GoK, 2004-05; GoK, *Memorandum Presented to the Twelfth Finance Commission*, Finance Department, 2003.

¹¹ For details, see K.Ravi Raman, *op cit*.

the financial well-being of the state. The annual debt servicing for the ADB loan alone would be around Rs 3500-4000 crores for about a decade. This in addition to the existing cost of debt servicing worth around Rs 3000 crores would take the annual total repayment to the range of Rs 3500 crores for a considerable period of time. This would imply that nearly 38 percent of the State's own revenue would have to be set aside for debt servicing alone. The ADB loan is not the right, 'fiscal medicine,' for Kerala.

Yet, the State tows the ADB line that it was bad governance that bred the fiscal chaos, poor public service delivery and poverty in the state. The solution then lies in applying the modified policies of the Washington Consensus - modernisation of governance (i.e. cuts in social security, including pension and retirement benefits), the privatisation of strategic state enterprises and so on, - to spur economic growth and fiscal sustainability and in turn, reduce poverty. And in order to ensure that policies follow the plan, aid is accompanied by multiple conditionalities set by the multilateral financial institutions, making 'good governance' mandatory.

To this end then, the State Cabinet was effectively converted into an administrative reform committee of the ADB. With its 10th five yearly planning document, itself being carved out of the larger agenda of the ADB, the State Planning Board thought it fit to drop the term 'self' from the earlier 'local self administration'. A senior State spokesperson even went as far as to say that democracy is an obstacle for development. And the Government plays along with the ADB, only too willing to accept its package of conditionalities such as direct intervention in policy matters including the approval of VRS and ESS (Employment Separation Scheme) to all categories of employees. A Government that ought to be providing employment opportunities for its educated, unemployed masses has actually agreed to maintain a minimum annual net attrition rate for civil servants of one per cent. It also sees nothing amiss in the ADB's insistence that all procurements/contracts/technical assistance shall be through 'normal commercial practices'. Needless to say, the ultimate beneficiaries would be corporate capital in the donor countries, local capital as junior partners and a few of

the state's own comprador bureaucrats and consultants.¹²

The ADB's view of 'good governance' is illustrated by the massive hike in the power tariff. It was beaten back by the mass mobilisation of various social sectors, including the mainstream left parties, even though they were responsible for inviting the ADB to the State in the first place. ADB reforms also promote the unbundling and corporatisation of the power sector by setting up separate companies for the generation, transmission and distribution of electricity and the formation of an autonomous Tariff Regulatory Commission - all intended to privatise the public sector giant. This is at a time when power sector de-regulation in most countries has led to a dismal picture of price gouging and hoarding. The way in which the power sector reforms have evolved, even denying a meagre subsidy to the marginal farmers in Madhya Pradesh, shows without doubt, the hidden agenda behind externally aided policy loans.

More interestingly, no effort has been made to seek viable alternatives to the existing pattern of electricity generation and distribution in the State. The heavy bias in allocation of high-tension power in Kerala to a handful of enterprises with low levels of employment and minimal linkage effects, continuous patronage to power-sucking units and so on, are all being perpetuated while the possibility of setting up mini-hydro projects, in a state blessed with rivers, remains unexplored.

The State's unholy tie-up with the ADB could be countered broadly at two levels: as being immoral and undemocratic. Why should a resource-rich state look for external aid, attached with multiple conditions? What moral right does the Government have to mortgage future generations of the people of Kerala? How does the State propose to meet its future debt servicing obligations? In a country that screams democracy at every step, the decision to take out an ADB loan has no public mandate or a parliamentary discussion.

¹² K. Ravi Raman, 'External Finance, Policy Reforms and the Welfare State: Implications of the ADB Programme Loan in Kerala, India', paper presented at the *International Convention of Asian Scholars*, National University of Singapore, Singapore, 19-22 August 2003; 'Politics of Policy Reforms in India: Kerala Model Under Pressure', *European Conference on Modern South Asia*, Lund University, Sweden; 6 - 9, July 2004

On the first of May last year, a few of the democratic groups and socially concerned scholars of Kerala launched a massive campaign demanding that the ADB quit Kerala.

With the state already steeped in debt, any further loan, they said, would only put the State in greater jeopardy. More importantly, it was pointed out that the entry of multilateral financial institutions like the ADB into traditionally grown democratic institutions in the State, would ultimately erode them and consequently, the active political participation of the majority of the people of Kerala, spurring the further marginalisation of the poor. A day before the ADB Quit Kerala Campaign was launched, a few radical youth, calling themselves, 'Porattam' ('the Fight', a Maoist outfit), stormed the ADB state office in the capital city of Thiruvanthapuram, damaging office files and equipment.

The campaign, with new groups of feminists, environmentalists, and scholars, chose novel ways to register its protest. It instituted a, 'sathyagraha chain'(fast), in place of the ritualistic relay fast. Anyone was free to join the chain, which was maintained for several days. When the protests gained momentum, the State cracked down on protestors, even dismantling their shelter. It is probably a reflection of our times that none of the so called intellectuals questioned this most undemocratic action of the government, save one or two members of the opposition. Though the campaign drew to a halt for a few days, the individuals involved kept up their protests in unprecedented ways: a Dalit activist bound himself in chains in front of the secretariat with his little son helping him. The most novel protest probably came from the feminist groups of Kerala. Breaking all norms, they claimed the night as their own, painting and dancing all night long to express their anger and discontent at the ADB's violation of democracy. The campaign called for a 'democratic hartal' (strike) on the 1st of November - the day of state formation. Though at the moment, only a few Malayalis recognise the risks inherent in the ADB loan, new social forces are expected to join in future. The politics of reform makes it compulsory to accept reforms even if the existing system does function well.

The involvement of the ADB and the other multilateral financial institutions like the World Bank in the Asia Pacific,

also presents a very dismal picture; be it the transport system of Sri Lanka or Pakistan's Access to Justice Programme. Japan's Overseas Development Assistance also has a bad environment and the human rights record, particularly its involvement in the Sardar Sarovar Dam in India and the Koto Pandgjang Dam in Indonesia. Such 'uncivil engagements' are plentiful, as has been consistently highlighted by *Focus on the Global South*, a Thailand-based NGO.¹³

SEMI-SOVEREIGN PEOPLE?

For the people of Kerala, the point of greatest concern is that the ADB contract is not just a loan but comes attached with multiple conditionalities. A few of these are worth mentioning. In future, all contracts, agreements or even negotiations with other financial agencies/donors must be discussed with the ADB, which reserves the right to insist on cross-conditionality with respect to other foreign contracts. In clearer terms, the Government loses its decision-making freedom on financial matters. The State even severely restricts its freedom to enter into bilateral negotiations with other financial agencies/countries.

In addition, loan conditions concerning the restructuring of State Level Public Enterprises (SLPEs) include ensuring a minimum annual 'net attrition rate of one per cent' of staff and approval and extension of the VRS and ESS to all categories of workers. They also require the successful implementation of the recommendations of the Enterprise Reforms Committee (ERC), by accepting, 'alternative systems of management including privatisation, disinvestment, merger, management contracts and leasing'.

More over, public utilities would henceforth be run on market principles of cost recovery and efficiency in delivery. Rising user costs would most likely restrict access to education, health and water and power. 'Uneconomic' schools would be closed and the Public Distribution System – the State subsidisation and distribution of basic goods and, Kerala's pride – would be reduced to a bare minimum: in effect, an enclosure of the commons.

¹³ Mushtaq Gadi, 'The ADB's Uncivil Engagements: The Experiences of Chashma Affectees', in *Good Governance or Bad Management*, Focus on the Global South, May 2002.

The Modernising Government Programme and Fiscal Reforms promises to be a 'paradigm shift in the way Government transacts its business'. In reality, it means the adoption of the ADB diktat. This is recognised by the angry voices of protest - of trade unions, the non-parliamentary left, social activists, adivasis, women's groups and environmentalists. Once the ADB was able to bind the State through the conditionalities contained in its 'common policy matrix,' it is feared that the financial, social and, to a certain extent, the political structure of Kerala would change. The radical alterations will reverse the State's social development model.

The proliferation of self-financing colleges in the State, catering to the interests of various religious groups, will surely undermine the high quality of education that Kerala has been proud of. The economic and social implications of this large scale privatisation of higher education are already being felt; the worst being the suicide of Miss Rajani - an engineering student who could not meet the financial burden of her education.

Who stands to gain most from the ADB-driven reforms? With the massive allocations of funds for capacity building, training, and computerisation, it is unrealistic to expect these to percolate down to the lowest strata of society. The ADB is very particular that all procurement - engineering technologies for civil works, software and hardware, goods and related services - will be through 'normal commercial practices'. This means that ADB contracts would be awarded through internationally advertised competitive bidding, although bidding is confined to the powerful donor countries of the ADB. The past performance of ADB-tied procurements shows that most of the procurement goes to the world's biggest corporations in the donor countries.¹⁴ And with respect to grant or loan-tied Technical Assistance, the beneficiaries are again, a handful of the donor countries particularly the US, UK, Canada and Australia. Indeed, the consultancy on fiscal reforms in Kerala went to the PDP Australia (P) Ltd. Yet

¹⁴ For details see Chris Adams, 'Punishing the Poor: Debt, Corporate Subsidies and the ADB'; also see C.P. Chandrasekhar, 'Debt and Development in Asia', both in *The Transfer of Wealth: Debt and the making of a Global South*, Focus on the Global South, (2000).

another newly created class stands to benefit - the comprador bureaucrats and consultants.

Moreover, by redefining one of the 'core functions' of the state as policing and disciplining labour, the class nature of this new governance is gradually surfacing. Both the ADB and the State have been outdoing each other in trying to project the "human face" of the policy-package. But the ADB deal is inhuman when the initial, paltry allocation of 4 per cent of the MGP for poverty eradication dwindles even further in the final programme implementation structure. And this miniscule percentage is intended for targeting, identifying, and improving the quality of poverty reduction measures, which seems like the longest route to poverty eradication. At a time when suicides and starvation among plantation workers and adivasis are on the rise, one wonders why a fresh effort to identify the poor is needed. Perhaps the ADB's only contribution here would be to scrap the Below Poverty Line (BPL) survey of the Government of Kerala which puts the poverty level in rural Kerala at a shocking 36 per cent.

Whether the Government's dream of a 'modernised' and a 'structurally adjusted' State comes to fruition, or remains an illusion, one thing is clear - no more will Kerala ever be *God's Own Country*. Henceforth it would become, irrevocably, the *ADB's Own Country*. ■

Saving the Tonle Sap Lake the ADB Way

*Building a Large-Scale Modern Harbour,
the “Gateway” to Environmental and Social Ruin*

SUGITA RENA

Tonle Sap lake, known as the ‘heart’ of Cambodia, is the largest fresh-water lake in Southeast Asia and is recognised for its unique and diverse ecological system. It is vital for the livelihoods and food security for a vast number of Cambodian fisherfolk and farmers. However, poor natural resource management and environmental degradation threaten the lake’s fragile ecology and the population that depend upon it. The Royal Government of Cambodia, international agencies, and local people are seeking solutions such as fishery reform, promotion of community fisheries, and protective measures such as the ‘Tonle Sap Biosphere Reserve,’ with mixed results.

Taking advantage of this context, the Asian Development Bank (ADB) is proceeding with studies to build a large-scale modern harbour it calls an 'environmental improvement project.' Central to the studies' efforts, with obvious logical difficulties, is to argue that the harbour will 'help' and 'improve' the local community of floating villages and consequently reduce the environmental destruction they cause. As an ADB staff member writes:

{T}he anticipated changes at Chong Kneas [the harbor] will draw the human settlement within the Tonle Sap Biosphere Reserve farther from the lake, eliminate sources of pollution and, above all, provide hope of a brighter future to some of the world's poorest and most deprived people.¹

Calling this large-scale transport infrastructure project in the reservation area an 'environmental improvement project' has so far effectively shielded the ADB from complying with Cambodia's environmental protection provisions and the ADB's own policies. These require broader public consultation, and consideration of the environmental impacts of a modern harbour on the well-being of the Lake as a whole. Yet, the ADB has limited the main scope of the harbour's environmental impact assessment (EIA) by restricting the definition of 'project affected people' to the close vicinity of the project site. By doing so, the broader negative impacts of the harbour are not being appropriately considered. The project's altruistic name seems to have also prevented the Chong Kneas community from gaining a clear understanding of what the project really is.

The communities around the lake, as well as a number of local and international NGOs, have already been voicing strong concerns that the harbour would exacerbate the existing social and environmental problems, and counter the emerging community-based attempts to manage natural resources. These voices have been officially recorded in studies for a different ADB-funded project. However, their concerns have simply been dismissed. The ADB is expected to decide

whether or not to fund the project as early as the beginning of 2005.

The lake's unique hydrology, makes it 'beat' once a year, giving it the name of the 'heart' of Cambodia. During the dry season, the lake covers an area of approximately 250,000-300,000 hectares at a depth of 1-2 meters. Water flows out of the lake via the 100 km long Tonle Sap river to join the Mekong river. In the rainy season, abundant water flowing down the Mekong reverses the flow of water up the Tonle Sap river, and the lake expands up to 1-1.6 million hectares, reaching a maximum depth of 8-11 meters. Approximately 60% of the lake's water originates from the Mekong river, and 30% from the Tonle Sap watershed. Water levels rise at an average rate of seven centimetres per day during the rainy season, and fall by six centimetres during the dry season.

This vast floodplain, said to be one of the most productive inland fisheries in the world, is critical to the overall health of the basin, and is home to many globally significant species. The large wetland area is home to an extraordinary richness of life. Many types of habitat, including flooded forest, open water, and grasslands, provide protection and food for the diverse plant communities, fish and wildlife species, including at least 57 threatened species.

Approximately 1.2 million people live in the floodplain area, 25% of who live in floating houses. Most of the floating villages are said to have been established hundreds of years ago, and their traditional way of life has not changed much since. Fishing is the principal source of income for the majority of these villagers. The lake yields about 230,000 tons of fish per annum, which is more than half of Cambodia's total catch, and provides livelihoods to an estimated 11% of the country's population. Fish from the Tonle Sap Lake are critical to Cambodia's food security, providing 40-70% of the animal protein intake of Cambodians. Rice production in the Tonle Sap floodplain constitutes around 12% of Cambodia's total production. The lake also plays a significant role in Khmer cultural identity, which is reflected in the country's traditions, livelihoods, festivals, and tastes.

Considering the ecological, economic, and socio-cultural value of the lake, its management is an urgent and significant challenge for Cambodia. In October 1997, the Tonle Sap Biosphere Reserve (TSBR) was established in accordance with the

¹ Ian Fox, "Floating Villagers Head for Higher Ground", *ADB Review*, Volume 35 No. 6, November-December 2003.

statutory framework of the World Network of Biosphere Reserves. This was followed by numerous conservation and management attempts by the Cambodian Government, international agencies, local communities, and NGOs. The well-being of the lake is, however, under threat, mainly by over-exploitation of natural resources. The lack of appropriate management plans and legal conservation framework, and insufficient capacity and consensus to implement plans, as well as conflicts among the stakeholders, have all further hindered such efforts.

Inequitable access to resources is the main cause of conflicts among stakeholders, namely fish lot owners and small-scale fisherfolk. Cambodia's water bodies, including the lake, are divided into concession areas or fishing lots, which are auctioned to private entrepreneurs for exclusive rights to catch fish for a limited number of fishing seasons. By its nature, the fishing lot system encourages large-scale commercial fishing operations, and their interests often prevail over conservation objectives, even under the watch of the agencies responsible for management, such as the Department of Fisheries of the Cambodian Government. While the fish lot system could potentially offer good fisheries management, in practice however, it has been criticised for encouraging the over-exploitation of fish resources, fostering corruption, and for leaving little space for local communities to maintain their livelihoods. Fishery reform implemented in 2001 reduced these concessions areas by 55%. However, some previous problems still remain and furthermore, new difficulties have emerged.

Under such conditions, people around the lake have also intensified their exploitation of other resources including wildlife, forest and farming, to meet their basic needs. Increasing resource exploitation is compounded by an increasing population around the lake, a result, amongst other factors, of escalating in-migration. Some fisherfolk, facing decreasing catches, have resorted to illegal fishing practices. Habitats are being increasingly degraded as flooded forests are rapidly cleared for farming. The increasing use of pesticides and fertilizers to enhance agricultural production is deteriorating water quality.

Community-based fisheries and natural resources management have been promoted. However, the low level of education and poor social organization of local communities, as well as insufficient

institutional support, are major obstacles to its effective development. The hydrological cycle that supports and maintains a high biodiversity and productivity within the Lake is also thought to be changing. Logging activities both in the Mekong basin and the lake's catchment area have changed the water flow cycle. According to the draft harbor project EIA, the maximum water levels over the last 20 years (1979-98) have decreased by approximately 10% compared to levels between 1924 and 1965. This change may be linked to dam building activities in the Mekong Basin that commenced in the 1950s. Dam developments also contribute to diminishing fish stocks by blocking fish migration in the Mekong Basin. Declining food security and income will not only worsen the living standards of local communities but also the larger population of Cambodia, potentially causing social unrest and political instability.

ADB'S HISTORICAL INTERESTS IN HARBOR BUILDING

It was within this context that, in November 2002, the ADB approved the Technical Assistance (TA) to prepare the Chong Kneas Environmental Improvement Project (CKEIP). The stated objective is to prepare an investment project to 'improve the social and natural environment in the Chong Kneas area' in Siem Reap Province. At the time of writing (August 2004), the TA is near completion. According to the ADB, the starting point of the study 'was to find out what the people themselves wanted'.² On the contrary, the CKEIP TA began with the ADB's prior interests in building a harbour.

The design proposed is not a modest improvement of the landing site, but a grand scale modern harbour. The main components of the project are the construction of a harbour, two navigation channels connecting the harbour to the lake's low water edge in dry season, and a resettlement site for approximately 1,000 households, mostly from the 'floating communities' of Chong Kneas. Under the design, the harbour basin will be located at the high-water edge of the lake (i.e. the edge of the lake at maximum flooding during the rainy season) with the maximum dimensions of 600 meters by

² Ian Fox, "Floating Villagers Head for Higher Ground", *Ibid.*

1,100 meters. To connect the lake to the harbour basin, a 5-kilometre long commercial navigation channel will be dredged an additional one kilometre into the lake beyond its low water shoreline, with a nominal 52 meters width at the toe of the side slopes.

One more channel will be dredged from a point near the settlement site reaching to the existing natural channel of the Siem Reap River. This secondary channel will be for the villagers' use, as well as to flush the water in the commercial channel, which would be connected to the secondary channel through an underground pipe with a pump. The commercial and secondary channels and the harbour basin, inclusive of side slopes, are expected to cover a total land area of approximately 110 hectares. The settlement site and the harbour platform, created with excavated material from the harbour basin and the channels, are planned to cover 43.6 hectares and 27.8 hectares, respectively.

BLAMING THE VILLAGERS

The Critical Wetlands TA mentioned earlier, led to not only the CKEIP TA but also to a number of 'environmental' projects around the Tonle Sap Lake, collectively referred to as the 'Tonle Sap Initiative'. The primary objective of this initiative is to, 'intervene in this downward spiral [of environmental degradation reducing the income and livelihoods of the poor, inducing the poor to further deplete resources and degrade the environment] and establish a basis for environmental sustainability of natural resources of the Tonle Sap Lake, while allowing for those resources to economically sustain livelihoods'.³ The CKEIP TA does intervene: it simplistically blames the community for the environmental destruction and claims that, 'improvement of environmental conditions requires construction of physical infrastructure including a harbor, [and] navigation channels'.⁴

However, the draft EIA, which is derived from the CKEIP TA, fails to show how the construction of a modern harbour will improve the environment of Chong Kneas. Critically, it fails to sufficiently understand the present

environmental and social conditions faced by the Chong Kneas communities. The Chong Kneas Commune (approximately 8,000 people or 1,200 households) consists of eight villages, seven of which live on the water. These floating villages shift their residence according to the seasonal changes in the lake's water level. About 80% of the community practice fishing as the main source of livelihood, and are also often involved in fish cage aquaculture and fish trading. The draft EIA describes the need to improve their income levels and living conditions. Due to the shifting nature of their lifestyle and distance from the on-shore facilities, they often lack employment opportunities and access to social services, such as wastewater and solid waste management, drinking water services, education, and health facilities.

The community's current disposal practices, of draining and throwing everything directly into the lake (including human faecal matter and organic waste from fish cages), and its dependency on natural resources are described in the draft EIA as degrading the environment of the lake. However, the many studies that would be necessary to reach such a conclusion have not been conducted, making the offered conclusion unfounded. In fact, the Chong Kneas communities are subsistence fisherfolk who are generally thought to put comparatively small pressure on the total fishery resources. Furthermore, no flora and fauna studies were conducted during the TA and other pollution sources, such as the hotels and businesses in Siem Reap that dump sewage into the river, which flows into the project area (where the water quality was tested for the draft EIA), were also unexamined. The draft EIA also fails to study the practices of other actors, such as illegal or larger-scale fishing operators.

The project's fundamental premises remain to be satisfactorily justified. Various ADB documents emphasize the community's wish to move onto land where social services would be provided, and how that would improve the environment. Indeed, the CKEIP plan contains a resettlement component. This component, however, does not necessarily depend on the construction of a harbour, raising doubts about the need for one at all. Critically, the TA fails to consider how the social and natural environments could be improved without the harbour construction. Instead, the alternatives considered are a 'no project option' and options with lesser degrees of

³ Plancenter et al., *Environmental Impact Assessment (Draft) for Chong Kneas Environmental Improvement Project* (ADB Technical Assistance 399-CAM, (2003).

⁴ *Ibid.*

resettlement. In addition, the potential negative impacts of the harbour and how they compare to the environmental degradation allegedly caused by the Chong Kneas community is not investigated.

A WOLF IN SHEEP'S CLOTHING

The construction of the large-scale modern harbour would be likely to exacerbate both the environmental and social problems CKEIP proposes to address. In essence, CKEIP is an infrastructure project that would increase transportation, leading to an increase in extractive activities and development on the lake and its floodplain. Given the lake's fragile status, as well as the flawed governance system, these changes could have critical and irreversible negative impacts. Listed below are some of the key concerns:

■ *Increased activities on the floodplain of the Lake:* If constructed, a modern harbour is expected to increase in-migration by providing employment opportunities and improving access to markets and transportation, which would in turn lead to further development in the floodplain. The harbor and construction itself may have negative impacts, many of which have been insufficiently assessed.

■ *Increased natural resource extraction:* The draft EIA predicts an escalation in the rate of fishery resource extraction:

{As a result of harbor construction} pressure on the capture fisheries will increase due to increased ease in bringing catch to market, the lowering of transaction costs, and the ability to utilize larger boats and more sophisticated equipment. Local and regional demands for fish will increase as the area's economy expands and better transport links are established to the Thai boarder.⁵

As large-scale fishing operations and fish catches increase, the study anticipates a decline in small-scale fishing operations. (See Table 1) Instead of limiting large-scale fishing operations, however, the proposed mitigation measures promote community fisheries, failing to address the anticipated escalation of fishing by large-scale operations. The draft EIA provides no

⁵ Plancenter et al., *Environmental Impact Assessment (Draft) for Chong Kneas Environmental Improvement Project*, *Ibid.*

prediction of the project's impacts on fish resources or its sustainability.

■ *Increased volume and risk of pollution:* The draft EIA refers mainly to pollution coming from the communities of Chong Kneas, and from the navigation and landing areas of the project. Operation of the harbour is also however, expected to bring additional pollution risks due to increased boat traffic on the lake (especially for fuel transport, See Table 1), road transportation, in-migration, and development in the area. It should be noted that there are no navigation regulations or oil spill contingency plans on the lake.

Besides contributing to the downward spiral of environmental degradation as described, the harbour could contribute to inequality and further social problems. These concerns are:

■ *Increased inequality and conflict over resources:* Commercialisation and expansion of large-scale fisheries operations is likely to further marginalise small-scale fisherfolk. Moreover, conflicts over limited and already overstretched resources caused by in-migration could intensify. Domination of markets by middlepersons or formation of monopolies is also a concern, as is 'informal' fee collection which is already prevalent in Cambodia. The draft EIA, after admitting a lack of understanding of the current situation, simply concludes that as long as the government does not permit individual monopolies, this should not be a concern.

■ *Threat to food security:* Fish is the main source of animal protein for up to 70% of the Cambodian population. Fish would become increasingly unaffordable to the rural non-fishing population, especially to the poorest segments of the population, if commercial values rise - a strong likelihood if fish is harvested for markets outside Chong Kneas. Environmental destruction and resource depletion would also threaten food security. This is simply not considered in the draft EIA.

■ *Threat to livelihood:* All the negative impacts above would accentuate difficulties in maintaining the livelihoods of all small-scale fisherfolk around the lake. Experts point out that it is the small-scale sub-sector which provides the most income and employment opportunities

per unit of extracted aquatic organisms, and that maintaining these benefits may require a reduction of large-scale commercial fishing operations.

■ *Land acquisition and resettlement:* Past projects in Cambodia involving resettlement and land acquisition have been highly problematic, bringing into questions such processes proposed for the CKEIP. Public consultation processes, and the level and delivery of compensation to affected people have generally been inadequate. The legal status of land is still unclear in many cases, and Cambodia has no law governing resettlement. In the case of the National 'Highway 1 Improvement Project' (funded by the ADB), for example, the amount of compensation provided to most of the affected communities was far from enough to restore their living standards to pre-project levels.⁶ The suffering of these communities has not been addressed by the ADB or the Cambodian Government to this day.

■ *Financial burden on Cambodia:* Financing the construction of a harbour using an ADB loan, as well as the cost of operation and maintenance, may be an additional burden on the already impoverished Kingdom of Cambodia. Many consequences of building the harbour could be costly, yet many are not incorporated into the project cost since they are not adequately studied, cannot be defined, or are dismissed as insignificant. In particular, the road connecting Phnom Penh to Siem Reap, construction of which is currently being funded by ADB, is likely to see more use. It is considered a more cost effective route for travel than by boat over the lake especially as low water levels during the dry season (and due to ongoing dam construction) will likely limit lake traffic. The successful operation of the harbour, furthermore, is subject to question as it would depend greatly on improved local governance. How that could be achieved, however, is unclear.

BAITING THE LOCAL COMMUNITY

How does the local community in Chong Kneas feel about the proposed harbour project? The draft EIA claims that the

⁶ Legal Aid of Cambodia and NGO Forum on Cambodia, *Report on Compensation for Three Groups of People Affected by National Highway 1 Improvement Project-Neak Leung to Bovet*, (2002)

majority of the local community welcomes the project. But this claim is questionable, because the local people have been given information primarily about the benefits of the project, and have been told that the environmental or economic impacts of the harbour will be insignificant or effectively mitigated.

The draft EIA explains that villagers were asked two very important questions towards the end of one of the major consultations: '(i) did they have any problem with or objection to the "resettlement" alternative; and (ii) was there a way to design the "no-resettlement" alternative that the consultants might have overlooked so that it would meet the needs of the community'.⁷ Without being able to consider a 'no harbour' option, villagers were required to choose whether or not they wanted the social services and free land that were offered with the harbour development. Obviously, presented with this choice most villagers would select the 'social services and free land,' option. This has not only shifted the attention of the villagers away from the impacts of the harbour, but also foreclosed meaningful participation by the local community in finding the best way to improve the social and natural environment.

Even so, local communities and NGOs around the lake have been voicing strong opposition to the harbour plans. These voices were officially recorded in the public consultations of another ADB-financed project, the 'Tonle Sap Environmental Management Project':

'Nine groups (private sector, government, community fisheries, NGOs) rejected [fishing harbors at Chong Kneas and Kompong Luong] because they felt it would have negative impacts on the environment, encouraging more people to move down to the lake, leading to increased boat traffic and an increased number of people using the resources of the Tonle Sap, increasing pollution, impacting on fish habitats, increasing fees the poor would have to pay, and creating a situation in which the local community would live under the oppression of the private company which leases the harbour. One of these groups (community fisheries) suggested that there should be other more appropriate projects to develop

⁷ Plancenter et al., *Environmental Impact Assessment (Draft) for Chong Kneas Environmental Improvement Project*, *Ibid.*

these areas and increase income for villagers living there.⁸

However, the voices were not included in the public consultation process for the CKEIP, as the project limits its definition of stakeholders to the Chong Kneas area only.

WORKING AGAINST CONSERVATION

Considering its potential negative impacts, the harbour construction may violate the TSBR functions set out in the 2001 Royal Decree on the Establishment and Management of Tonle Sap Biosphere Reserve. The Decree provides that the TSBR shall fulfill three complementary functions; (i) conservation; (ii) sustainable development; and (iii) a logistic function in support of demonstration projects, education and training, and research and monitoring. Whether construction activity is legally permitted in the TSBR buffer zone, where the proposed project site is located, is also highly questionable. While the Decree stipulates that activities in the buffer zone should be managed in a way that is consistent with the protection and conservation plan of the core area, the draft EIA actually indicates the project may lead to an increase in wildlife hunting and trade, including from the Prek Toal wildlife sanctuary located in the core area. The Decree also states that, the conservation of fish and the quality of the environment is required. Considering that the draft EIA did not conduct necessary studies, such as on flora and fauna in the project area, how environmental quality can be effectively preserved and monitored is unclear.

If the CKEIP were to proceed in its present form, it is also likely that it would be in violation of ADB policies. First, failure to adopt a precautionary approach to harbour construction that could increase fishing capacity would be a violation of the ADB policy on fisheries. Before supporting harbour construction,

⁸ Food and Agriculture Organization for the United Nations (FAO), 2003. Consultation with Stakeholders on Components and Activities in the Draft 5-Year General Fisheries Plan for the Tonle Sap: Results of Provincial Consultation Workshops. Tonle Sap Environmental Management Project: Component 1: Technical Assistance Improving the Regulatory and Management Framework for Inland Fisheries (ADB TA 3993-CAM).

the following should have been assessed to determine whether increase in fish production would be sustainable: i) the impacts of an increase in fish production on resources in terms of conservation, rehabilitation, and long-term sustainability; ii) the impacts of the harbour construction on over-fishing practices or any existing problems; and iii) the project's impacts on markets, and financial, economic, and social aspects.

There are many other concerns regarding compliance with various sections of safeguard policies as follows:

- Failure to appropriately and sufficiently assess direct and indirect environmental and social impacts.
- Failure to prepare appropriate mitigation and monitoring measures for negative impacts.
- Exclusion of local fisherfolk and NGOs around the lake from the public consultation process.
- Failure to provide information to affected communities in a timely and appropriate manner, including translation into Vietnamese.
- Failure to ensure meaningful participation of local communities in decision-making.
- Possible failure to follow Cambodian law concerning protective land use regulations.
- Failure to ensure special consideration of vulnerability of ethnic Vietnamese.

Relevant ADB policies in this case include: Incorporation of Social Dimensions in Bank Operations, Governance, Environmental Considerations in ADB Operations, and Involuntary Resettlement.

CONCLUSION

Local and international NGOs have been raising concerns about the CKEIP TA, only to receive responses from the ADB that the project is appropriate. In June 2004, Mekong Watch submitted comments on the draft EIA to Mr. Rajat Nag, Director General of the Mekong Department of the ADB.⁹ In the comments, the following

⁹ Mekong Watch, Comments regarding the Draft Environmental Impact Assessment for the Chong Kneas Environmental Improvement Project (ADB TA 3997-CAM), (2004) Cambodia. (Response from the ADB has not yet been received as of 2 August 2004)

recommendations were made to re-establish a track back to the project's original aim of improving the social and natural environment of the Chong Kneas area.

1. *Thorough investigation into the current social and environmental problems facing Chong Kneas, and the reasons for those problems.* Only with a sound understanding of the issues being faced by Chong Kneas communities and the problems threatening the natural environment can a project reflecting the real needs of communities and the environment be successfully designed. Obstacles to effective conservation efforts and natural resource management need to be examined in the context of the Lake as a whole.

2. *Negative impacts of the harbour must be thoroughly assessed.* When a conclusion is made in the EIA that an impact is "insignificant," sufficient basis for this conclusion must be provided.

3. *Alternative project plans, in particular a 'no harbour' option, must be examined.*

4. *Lessons should be learned from past experiences and incorporated into project planning.* This is true for both the environmental and social components of CKEIP. Any project designs, including institutional arrangements, should incorporate lessons learned from previous and ongoing efforts, such as those to regulate unsustainable fishing operations, promote community fisheries, and manage natural resources. There are also many lessons to be learned from past projects involving land acquisition and resettlement. Furthermore, compensation and resettlement problems in past ADB funded projects in Cambodia should be addressed before proceeding with new projects involving resettlement and land acquisition.

5. *All of the above should be conducted in close consultation with local communities and other relevant stakeholders.* Decision-making should ensure meaningful and informed participation of communities. Consultations must be sensitive to issues faced by vulnerable groups among the Chong Kneas communities. Considering the inadequacies in the public consultation process to this point, an effective communication strategy needs to be prepared. This strategy should incorporate lessons learned from problems already arisen in this TA, as well as other ADB-funded projects in Cambodia in the past. Furthermore, a user-friendly feedback mechanism should be put in

place to facilitate communication between project proponents and affected people. This is necessary so that affected people can more easily voice their concerns as they arise. ■

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Table 1: PROJECTED INCREASE IN VESSEL ARRIVALS AT CHONG KNEAS
(from Plancenter, et al., 2003).

	2002	2008	2013	2018	2023	2028	2033
<i>No. of Annual Arrivals:</i>							
Fishing Boats	2,394	2,052	1,795	1,596	1,436	1,436	1,436
Fuel Transporters	78	93	108	126	149	176	210
<i>Tonnage per Boat:</i>							
Fishing Boats	5	7	8	9	10	10	10
Fuel Transporters	200	200	220	240	260	280	300

A simple calculation of the number of boats and the tonnage per boat suggests an increase in the total catch of fish. It is implied that while the number of small-scale fishing operations will decrease, the number of large operators will increase. Between 2002 and 2033, the amount of fuel transport is expected to increase by 400% (15,600 to 63,000 tons), and boat frequency by 270%. Although the probability of accidents occurring is thus greatly increased, the impact of accidents is not assessed in the draft EIA. In addition, the draft EIA states, 'if the costs estimated for spill prevention and control are realistic, the comparison [between costs for shipment of oil to Siem Reap by water and road] suggests that ceasing shipments would be a better alternative'. (Plancenter, *EIA*) Nevertheless, the harbor plan includes facilities for receiving fuel, and navigation regulation or spill contingency plans on the lake are not proposed.

Box 1: LIST OF ADB PROJECTS UNDER THE 'TONLE SAP INITIATIVE'

So far, four projects (total of US\$3.245 million) have been completed, and six projects (total of US\$13.552 million), including CKEIP TA, are currently being implemented. By 2007, the approval of seventeen more new projects is planned.

(Note: the list does not include investment projects that may result from TA studies. For example, the actual CKEIP loan that might be approved on the basis of preparatory studies conducted under the ongoing CKEIP TA is not included in the list. It also does not include projects outside of the 'Tonle Sap Initiative' framework, including an irrigation dam project on Stung Chinit River, the lake's tributary.)

Completed

Project Name	Approval Date	Funding Amount (US\$)	Funding Source(s)
Protection and Management of Critical Wetlands in the Lower Mekong Basin	1998	\$1.65 million	ADB, Finland
Establishment of the Tonle Sap Basin Management Organization	2003	\$135,000	ADB
Improving the Regulatory and Management Framework for Inland Fisheries	2002	\$560,000	ADB
Capacity Building of the Inland Fisheries Research and Development Institute	2002	\$900,000	ADB

Ongoing

Tonle Sap Environmental Management	2002	\$10.91 million	ADB
Chong Kneas Environmental Improvement	2002	\$997,000	Finland
Living with Floods on the Tonle Sap	2003	\$85,000	CFWS
Tonle Sap Sustainable Livelihoods	2003	\$1.26 million	ADB, Finland
Participatory Poverty Assessment of the Tonle Sap	2003	\$250,000	DFID
Developing and Testing Methodologies and Tools for Environmental Education and Awareness	2004	\$50,000	CFWS

DFID - Department for International Development of the United Kingdom
CFWS - Cooperation Fund for the Water Sector.

Sizing up the Grid

How the Mekong Power Grid Compares Against the Policies of the ADB

INTERNATIONAL RIVERS NETWORK

The Asian Development Bank (ADB) is promoting the development of a regional power grid and electricity trading system in mainland Southeast Asia fuelled primarily by hydropower. This initiative threatens to undermine the fragile Mekong River ecosystem that millions depend on for their livelihoods.

The ADB envisions that China's Yunnan province, Burma, and Laos – where hydropower potential is huge and community opposition is stifled – will generate cheap, reliable, and environmentally sustainable power for growing markets in Thailand and Vietnam. An ADB-financed master plan recommends building transmission lines to connect a dozen proposed hydropower projects to these countries. This includes the controversial Tasang Dam in Burma, the Jinghong and Nuozhadu dams on the Mekong mainstream in China and the Nam Theun 2 Dam in Laos. Hydropower projects are also recommended for development on Cambodia's Se San River, China's Panlong River and rivers in central and southern Laos, among others.

By promoting the Mekong power grid, the ADB is lending considerable institutional support for hydropower development in the region. The ADB is encouraging governments to press ahead with ambitious hydropower plans and rallying public and private investors to finance projects. ADB policies state that such development should proceed through an open and transparent process with full public participation and full consideration of the impacts to communities and natural resources. However, in this instance, this is not the case.

Despite its grand scale and potentially far-reaching impacts, the ADB is leading the multi-billion dollar Mekong power grid initiative through a very poor process of development. This process has violated the ADB's own safeguard policies on energy, water, and indigenous peoples. It has also contravened the ADB's poverty reduction strategy, strategic environmental framework for the Greater Mekong Subregion (GMS) and the recommendations of the World Commission on Dams. In addition, contrary to the international best practice standards set by the World Commission on Dams, the Bank has not comprehensively assessed the full range of options available to meet the energy needs of the Mekong region.

MEKONG POWER GRID INITIATIVE

Known formally as Power Interconnection and Trade in the Greater Mekong Subregion, the Mekong power grid is one of the flagship initiatives of the ADB's GMS program, which is supposed to encourage cooperation and economic growth in the six countries sharing the

Mekong River basin.¹ As well as creating a regional grid, the initiative would establish a system for regional power trade and encourage private investment in the power sector. Other institutions involved include the World Bank, Japan Bank for International Cooperation (JBIC), and the Association of Southeast Asian Nations (ASEAN).

According to the ADB, the initiative will enable countries to reduce national investments and power reserves, provide a more reliable supply of electricity, reduce operational costs, reduce greenhouse gas emissions, and increase consumers' access to the cheapest and most environmentally friendly sustainable source of electricity in the Subregion.²

The ADB has played a leading role in facilitating this initiative. The Mekong power grid was conceived in an ADB-sponsored energy sector study for the region completed in 1994 by Norconsult, one of Norway's largest hydropower consulting firms. Since then, the ADB has convened discussions among top Mekong government officials and commissioned studies to guide its development. In 2002, the ADB facilitated the signing of an Inter-Governmental Agreement on Regional Power Trade at a summit of GMS leaders. This key agreement committed the Mekong governments to establishing a regional power market and created a high-level leadership body to coordinate the implementation of regional power trade.

In April 2003, the ADB approved a technical assistance grant to help GMS members prepare the regional power trade operating agreement. Three months later, the ADB released the Indicative Master Plan on Power Interconnection and Trade in GMS Countries. This master plan, also completed by Norconsult, examined the technical and economic aspects of the proposed initiative and recommended connecting twelve proposed dams in Burma, China and Laos to the grid. In late 2003, the ADB approved a loan to finance power interconnection between Cambodia and Vietnam, and approved technical assistance grants for the Nam Theun 2 Hydropower Project (Laos) and

¹ The GMS includes Burma, Cambodia, Laos, Thailand, Vietnam and the Yunnan Province of China.

² Asian Development Bank, 'Technical Assistance for the Study for a Regional Power Trade Operating Agreement in the Greater Mekong Subregion,' (technical assistance report, April 2003), pp. 1-2.

for power interconnection between Thailand and Vietnam (via Laos).

LACK OF PARTICIPATION AND CONSULTATION

The importance of the participation of civil society in formulating strategies and managing natural resources is stressed throughout the Bank's water and energy policies. The Bank's operations manual explicitly states that participatory development processes will be adopted which allow stakeholders to influence decision-making throughout project development cycles. Despite these stipulations, members of civil society have been excluded from participation in the development of the Mekong power grid initiative over the last ten years.

For most of the last decade, discussion and debate on the Mekong power grid has been largely restricted to meetings of high-ranking government officials, ADB, World Bank, aid agency officials, and hydropower industry representatives.³ The initiative was proposed in a 1994 ADB-funded subregional energy sector study completed by Norconsult. Since then, discussions have taken place in two primary forums: the ADB-sponsored Electric Power Forum and the Experts Group on Power Interconnection and Trade. The Electric Power Forum was set up as an advisory body to promote regional power sector development and consists of two members from each of the six GMS countries (one from the government agency responsible for energy policy matters and the other from the largest national power utility). The Forum has met annually since its first meeting in Burma in 1994.⁴ The Experts Group on Power Interconnection and Trade was set up by the ADB to develop detailed work programs to help implement regional power interconnection and trade. The experts group, which has met annually since 1998, is comprised of senior energy officials from the Mekong governments. Both of these groups have excluded members of civil society in substantive discussions on the Mekong power grid.

³ Summary of Proceedings, Meetings of the Experts Group on Power Interconnection and Trade and Electric Power Forum, 1995-2002. Available at <http://www.adb.org/Documents/Events/Mekong/Proceedings/default.asp#power>

⁴ S. Chander, 'South Asia Growth Quadrangle Cooperation in the Energy Sector,' (Asian Development Bank Senior Project Engineer, 2000)

Basic information on the Mekong power grid and its potential benefits and costs has not been presented to the public and non-governmental stakeholders. Information is confined primarily to lengthy technical reports written in English, including the ADB-financed energy sector study and master plan. This lack of important documents translated into regional languages and the failure to create accessible summary materials has inhibited regional civil society from learning about and engaging in debates on this initiative.

The process for collecting data for the 2003 master plan was limited to reviewing existing reports and meetings with government officials. According to the master plan, a Norconsult specialist visited the GMS countries in February and early March 2001 and met with officials, relevant ministries and power supply operating units to give the specialist, 'a comprehension of the situation and to exchange ideas on possible future development'.⁵ Drafts of the master plan were discussed at three subsequent meetings of the Experts Group on Power Interconnection and Trade held in 2001 and 2002.⁶ It does not appear that drafts or development plans were presented or discussed with electricity ratepayers, affected people or other members of civil society.

INDIGENOUS PEOPLES NOT ENGAGED

The ADB's indigenous peoples policy states that special attention must be given to development initiatives that have an impact on indigenous peoples. The Mekong power grid and the hydropower projects that the grid would support are likely to affect ethnic minorities living in the region. They are most likely to be displaced by hydropower projects, which are often in upland areas. Transmission lines are likely to cut through their lands, displacing people, and destroying their farmlands, fields and ancestral homelands.

Thus far, ethnic minority representatives have not had an

⁵ Norconsult, *Indicative Master Plan on Power Interconnection in GMS Countries*, Volume IV, Institutional and Regulatory Arrangements, June 2002, pp. 1-1.

⁶ Summary of Proceedings, Fifth and Sixth Meetings of the Experts Group on Power Interconnection and Trade, Greater Mekong Subregion, 2001, 2002. Available at <http://www.adb.org/Documents/Events/Mekong/Proceedings/default.asp#power>

opportunity to voice their concern, provide their consent, or discuss alternatives. Concern for indigenous peoples has not been integrated into each step of programming, project processing, and policy development.

Ten years ago, the energy sector study recognized that the Mekong power grid and its associated hydropower projects could threaten the survival of ethnic minority groups. Yet despite this earlier forewarning, the ADB has not conducted even a cursory survey to determine which ethnic minority groups are likely to be impacted and to what extent their culture, livelihoods, and social and economic institutions would be affected by this initiative. This also contradicts a provision in the indigenous peoples policy stating that, '[s]trategies and approaches to development that affect indigenous peoples must include clear mechanisms for accurate, objective analysis of their circumstances'.⁷

Despite organising ongoing discussions with high-ranking government officials about the Mekong power grid, the ADB has not consulted with, or encouraged governments to consult with, ethnic minority groups. With this failure, the ADB has ignored its indigenous peoples policy which says that plans should be conceived, planned and implemented to the maximum extent possible with the informed consent of affected communities.

CONCERNS NOT GUIDING DECISION-MAKING

The ADB-commissioned 1994 energy sector study and the master plan have focused on technical and economic issues related to energy sector development, while failing to adequately address the social and environmental impacts of such activities.⁸ Nevertheless, these pivotal

⁷ Asian Development Bank, *Indigenous Peoples Policy*, p. 17.

⁸ Asian Development Bank, *Regional Indicative Master Plan on Power Interconnection in the GMS*, Summary information on technical assistance grant, March 8, 2000. The scope of the Technical Assistance, 'will include to (i) assess electric power demand and review the generation and transmission expansion plans in the member countries; (ii) update power grid interconnection earlier, based on the revised demands and supply projections; (iii) formulate an indicative transmission master plan to promote regional power trade; and (iv) identify the institutional and regulatory issues

studies have influenced policymaking on power interconnection and trade, led to the formation of regional advisory groups and are guiding ADB technical assistance activities.

According to Norconsult, the energy sector study, 'should probably have been updated and made more complete on subjects such as socioeconomic implications and benefits of expanding the GMS power trade'.⁹ While the energy sector study devotes one chapter to the general environmental and socioeconomic impacts of thermal and hydropower development, it does not adequately examine the impacts of specific projects recommended for development. Norconsult categorised 54 hydro projects in terms of low, moderate, high or severe environmental impact. This was assigned based on reservoir size, area of forests and agricultural land flooded, number of people resettled, degree of flow regulation, and presence of ethnic minorities. Some projects were classified, although no environmental impact assessments were available on which to base these simplistic classifications. Norconsult acknowledged that environmental information was lacking for most hydropower projects and that assessments, 'should not be assumed to be a definitive appraisal'.¹⁰ During the eight years which elapsed between when the energy sector study and master plan were completed, no additional environmental and social impact assessments were carried out.

The ADB defined the terms of reference for the master plan so narrowly that social and environmental concerns were not investigated, as even Norconsult noted.¹¹ Consequently, analysis of these concerns is limited to statements about the number of people who would be displaced and a graph comparing resettlement with mean energy costs. The master plan did not assess the total number of people who would be resettled or affected by the projects nor the potential impacts faced by ethnic minority groups as well as the potential impacts of the transmission corridors on communities, forests, or nature reserves.

Norconsult admits that the level of study of the generation projects

that need to be addressed to properly implement the plan'.

⁹ Norconsult, *Indicative Master Plan*, Volume IV, p. 7-10.

¹⁰ Norconsult, 1994, p. 2-50.

¹¹ Norconsult, *Indicative Master Plan*, Volume IV, pp. 7-10 to 7-11.

considered in the master plan is varying and that the, 'possible environmental implications are quite uncertain'. It also recommends that findings, 'need to be verified in more detailed studies before investment decisions are made'.¹² The master plan also states that, '[h]ow to deal with environmental and socio economic matters should be subject to clarification in connection with implementation of the master plan. These tasks include legislation as well as an adapted governance structure'.¹³

Despite these warnings for more studies and appropriate governance structures, the ADB is irresponsibly moving forward with the Mekong power grid initiative.

IMPACTS ON FISHERIES RESOURCES NOT ASSESSED

The master plan recommends the development of the Jinghong and Nuozhadu dams on the Upper Mekong in China. These dams are part of a planned cascade of eight dams on the Upper Mekong which are likely to severely disrupt the Mekong's flood-drought cycle and block the flow of sediment downstream. It is predicted that these impacts will lead to a major decline in fisheries in the basin, including possible extinction of some species.

The master plan also recommends the construction of the Nam Theun 2 Hydropower Project in Laos. This project would divert water from the Theun River to the Xe Bang Fai River, a Mekong tributary on which over 120,000 people depend for fishing, gathering wild vegetables and irrigating their rice fields. A 2001 livelihood survey of people living in the Xe Bang Fai basin detailed the complex fish migration patterns concluding that wild capture fisheries, 'are clearly one of the most important livelihood resources in the Xe Bang Fai basin'.¹⁴

Despite these potential impacts to fisheries no assessments have been carried out in accordance with the ADB's fisheries policy.

¹² Norconsult, *Indicative Master Plan*, Volume III-A, p. 8-5.

¹³ Norconsult, *Indicative Master Plan*, Volume IV, p. 7-13.

¹⁴ Bruce Shoemaker, Ian G. Baird and Monsiri Baird, *The People and Their River: A Survey of River-Based Livelihoods in the Xe Bang Fai River Basin in Central Lao PDR*, (Canada Fund, Vientiane, November 15, 2001).

CUMULATIVE IMPACTS NOT CONSIDERED

The ADB-financed master plan envisages the construction of 10 key power interconnection projects, associated hydropower projects, substations and other infrastructure projects, yet does not consider the cumulative impacts of these projects. Nor does it consider how these impacts may exacerbate impacts of projects already built or those currently under construction. This is despite the Bank's guidelines on environmental assessment highlighting that, '[c]umulative impacts are important because impacts of individual projects may be minor when considered in isolation, but significant when the projects are viewed collectively'.¹⁵

Possible cumulative impacts not assessed, include impacts to fisheries, water and sediment flow, downstream communities, plant and animal biodiversity, and the repercussions of displacing people from their lands and their subsequent impact on natural resources. Indeed, rather than assess cumulative impacts, the ADB recently stated that for the Mekong power grid: '[e]ach project would be evaluated on its own merit'.¹⁶

Further, Bank policies state that hydropower projects will be examined in an overall context of integrated water resource management (IWRM). This sentiment is echoed in the Bank's Strategic Environmental Framework, which states that, '[t]he ADB should only consider financing hydropower development projects if compatible with an endorsed river basin management plan'.¹⁷

It does not appear that the Bank has considered the power grid initiative in an overall context of integrated water resource management. To achieve this, the Bank should work with institutions such as the Mekong River Commission to assess the condition of natural resources

¹⁵ Asian Development Bank, 'Strategic Environmental Assessment,' undated, available at http://www.adb.org/documents/guidelines/environmental_assessment/strategic_environmental_assessment.pdf

¹⁶ Letter to International Rivers Network from Jong-Inn Kim, Project Engineer, Asian Development Bank, Mekong Department, Infrastructure Division, (September 22, 2003).

¹⁷ Asian Development Bank and Stockholm Environment Institute, *Strategic Environmental Framework*, p. 9.

in the basin; determine how and to what extent people use and depend on these resources for their livelihoods; and analyse options for development of these resources for agriculture, energy, water, transport and other uses.

COST-EFFECTIVENESS NOT PROVEN

The scenario recommended for grid development in the master plan is estimated to save about \$900 million compared to a non-grid option. However, Norconsult admits the savings are only in the order of 1-2 percent of total cost, meaning that grid development will have minimal impacts on consumer electricity tariffs. The generation and transmission system is estimated to cost \$43 billion. Furthermore, Norconsult stated that cost estimates used in the master plan and the initiative's potential environmental impacts were uncertain, concluding that further studies should be carried out before investments are made.

The ADB's energy policy stipulates that the ADB should support power trade that is cost-effective for all parties. However, as the master plan explicitly states, the initiative's cost estimates and environmental implications are uncertain and need further study. The ADB should heed this advice and suspend investment decisions on the Mekong power grid until its cost-effectiveness has been proven.

ASSESSMENT NOT COMPLETED

The recommendations of the World Commission on Dams (WCD) represent current international best practice standards for water and energy development planning. The WCD was established by the World Bank and IUCN (World Conservation Union) to assess the past performance of dams and issue guidelines for future energy and water development. When the WCD report was released in 2000, the ADB expressed its support for the WCD's recommendations.¹⁸ It incorporated them into a 2000 ADB energy policy paper, which stated that, 'For new hydropower projects, the approach recommended by

¹⁸ Letter from Asian Development Bank President Tadao Chino to Kader Asmal, Chair of the World Commission on Dams, (December 22, 2000).

the World Commission on Dams will be pursued'.¹⁹

One of the most important principles in the WCD report calls for the comprehensive assessment of options before decisions are taken to proceed with any program or project. The WCD also states that, 'Assessing options should start early in the planning process and can be incorporated into master plans and sector plans using strategic impact assessments and other planning tools'.²⁰

The ADB is implementing the proposed Mekong power grid and trade initiative despite no comprehensive analysis of energy options having been conducted. There is no proof that the construction of a power grid fueled by new hydropower projects is the best option for meeting the region's energy needs. Despite this, the ADB is continuing to promote the development of the power grid and its associated hydropower projects as the most environmentally sound and economically viable option.

Renewables, decentralised options: The ADB has not assessed the viability of large-scale renewable energy options or decentralised small-scale energy systems for meeting the growing energy needs of Thailand and Vietnam. The 1994 energy sector study focused exclusively on the potential development of thermal (coal, oil, gas) and hydropower projects for connection to a regional power grid. Norconsult briefly mentioned that the Electricity Generating Authority of Thailand is involved with solar, wind, geothermal, fuel cells, and solar water heating projects. However, Norconsult states that these resources are unlikely make major contributions to the Thai energy supply by the year 2020, dismissing these options without assessing them.²¹

The master plan states that options available for future generation in Vietnam include hydropower, coal and gas, geothermal heat, and nuclear power. Hydropower and thermal options are investigated in detail, with tables listing potential projects and basic information on their generating capacities and locations. The report mentions that

¹⁹ Asian Development Bank, *Energy 2000: Review of the Energy Policy of the Asian Development Bank*, (2000), p. 55.

²⁰ World Commission on Dams, (2000), pp. 222-223.

²¹ Norconsult, *Indicative Master Plan*, Volume III-A, p. 2-3.

Vietnam aims to develop more renewable sources of energy in the future and that 200 MW of geothermal-based generation are included in Vietnam's power development plan up to 2020. However, no details are given about the total estimated geothermal potential in Vietnam in the master plan nor of specific projects that may be implemented.²²

Recent developments indicate that renewable technologies have considerable potential for meeting energy needs in Thailand. A 1998 study commissioned by Thailand's National Energy Policy Office found that biomass-fired power plants had the potential to generate 3,000 MW of economically viable power. According to Thai energy expert Detcharut Sukkamnoed, the technical potential of biomass in agro-industrial factories is as high as 7,000 MW. In Vietnam, the use of small decentralised systems such as mini-hydro plants and wind generators, large-scale photovoltaic power systems, and biogas plants also have significant potential.²³ Any energy strategy for the GMS should take into account the potential of renewable options not only in Thailand but in meeting needs in other countries in the region. These options should be assessed as equal contenders to traditional options, with social and environmental factors given the same significance as technical, financial, and economic factors.

Demand-side management and supply-side efficiency: The ADB's energy policy and the WCD stress that demand-side management and supply-side efficiency options should be given priority over the financing of new electricity generating projects. It does not appear that these options were considered in the ADB-financed energy sector study or master plan. The former study did not analyse the potential to reduce energy demand or improve the efficiency of existing infrastructure. The master plan states that the effects of demand side management were factored into the estimates of Thai future energy demand. However, the potential energy savings from demand-side management is not quantified, analysed or discussed in the report.

According to the magazine *Watershed*, the International Institute for Energy Conservation estimates that

²² Ibid., p. 2-19 to 2-22

²³ Grainne Ryder, 'Ending Vietnam's Hydro Threat to Cambodia's Mekong Tributaries: Why Power Sector Reform Matters,' (Probe International, November 2002).

implementation of demand-side management measures could save 2,200 MW in Thailand.²⁴ This could result in energy savings at a lower cost and with fewer environmental and social impacts compared with the construction of controversial new power plants. Given these benefits, the ADB should have adequately considered and supported supply-side efficiency and demand-side management options before moving forward with the Mekong power grid initiative.

CONCLUSION AND RECOMMENDATIONS

The Mekong power grid initiative is an ambitious plan – recommending the construction of 12 hydropower projects and hundreds of miles of transmission lines across the region and costing an estimated \$43 billion. According to the ADB, this initiative will provide cheap, reliable and environmentally sustainable power for Thailand and Vietnam. However, as this analysis shows, the ADB has not proven that this initiative is economically, environmentally, or socially sustainable. The ADB has promoted this initiative through a poor process of development, violating its own safeguard policies on energy, water, and indigenous peoples, failing to consult with civil society in the region and contravening its poverty reduction strategy, strategic environmental framework for the GMS, and the recommendations of the WCD.

Rather than rushing forward to implement the Mekong power grid, the ADB should step back and take a 'cautious approach' to development in accordance with the Bank's own policies and strategies. We call for the Bank to implement the following recommendations:

- 1) Given the uncertainties regarding the power grid initiative, its potential social, environmental, and economic costs and questionable benefits for electricity consumers in Thailand and Vietnam, the ADB should suspend the Mekong power grid initiative.
- 2) The ADB should ensure that a comprehensive assessment of energy options for the region is undertaken in

²⁴ Apsara Palettu, 'The Role of the State in the Marginalization of Alternative Energy,' *Watershed*, Vol. 7, No. 3, (March-June 2002), p 26.

accordance with WCD recommendations. This process should be open, transparent and participatory. This assessment should consider demand-side management, supply-side efficiency, and both large-scale and decentralised renewable options. Social and environmental concerns should be given as equal consideration as technical and economic concerns.

3) As part of the comprehensive options assessment, studies should be carried out to examine the cumulative environmental

and social impacts of the Mekong power grid. This should be completed with the full participation of affected people. Particular emphasis should be placed on consulting with and assessing the impacts to ethnic minorities.

We urge the ADB to follow these recommendations and ensure that the Mekong power grid initiative will not undermine the environment, negatively impact people's livelihoods and cause economic hardship.

Corruption and the ADB

BRUCE M. RICH

Corruption in the multilateral development banks (MDBs) can occur at three interconnected levels. First, there is corruption of individual members of staff and management for personal gain. Second, there is corruption in procurement for provision of goods and services for specific investment projects (e.g. the corrupt bidding practices, through agents, of international companies involved in the project). Third, there is systemic corruption on the part of government officials and ministries in borrowing countries, where substantial percentages of development assistance are stolen, with at least passive MDB complicity.

There are indications that the Asian Development Bank (ADB), due both to its organisational deficiencies and its external lending environment, is more susceptible to corruption than the World Bank at all three levels. The following sections examine the ADB's internal culture and effectiveness in addressing these three types of corruption.

THE EXTERNAL BORROWING ENVIRONMENT IN ASIA

The external lending environment of the ADB is extremely corruption prone and calls for an extraordinary level of due diligence - a level the institution has not met. The ADB's top five cumulative borrowers, and its largest borrowers in 2003, are among the most corrupt countries, as ranked by Transparency International. They are Indonesia (\$19.3 billion), China (\$13.3 billion), Pakistan (\$13.55 billion), India (\$13.315 billion), and Bangladesh (\$7.32 billion). The ADB approved some \$6.105 billion in loans for fiscal year 2003, of which \$1.532 billion were for Indonesia, \$1.488 billion for China, \$871 million for Pakistan, \$275 million for Sri Lanka, and \$262 million for India.

Transparency International ranks countries annually according to a Corruption Perception Index (CPI), from a possible highest rating of 10 (highly clean) to 0 (highly corrupt). In 2003, Transparency International published 133 rankings: Indonesia is rated near the bottom at number 122, with a CPI ranking of 1.9. Bangladesh ranks dead last at 133 on the list with a CPI of 1.3. Pakistan, the third largest cumulative borrower and third most important borrower for FY 2003, ranks 92 with a CPI of 2.5. India ranks number 83 with a CPI of 2.8 and China, number 66 with a CPI of 3.4. Moreover, a number of the ADB's smaller borrowers such as Cambodia and Laos, while notoriously corrupt, do not even have a Transparency International rating.

Such a lending environment should call for controls on corruption as perhaps the number one institutional priority. Instead ADB Management has only belatedly and timidly recognised the seriousness of the issue, despite having promulgated a good governance policy (for its borrowers, not for itself!) in 1995, an Anti-Corruption Policy in 1998, and more detailed Operational Procedures on Anti-Corruption in 2000.

My own conversations with ADB officials (some of whom were quite

forthcoming, some of whom wish to remain anonymous) revealed concerns over the quality of financial reporting and accounting from borrowers. While the ADB offers technical assistance to borrowers for 'governance' programs, it has not prioritised rigorous financial reporting and accounting for its own loans - the most important thing to ensure borrower transparency. I was told that the ADB now requires that financial reports be submitted in a timely and regular manner, and that ADB staff are supposed to read the reports, but it is not clear what attention is actually paid to them.

A DYSFUNCTIONAL INTERNAL CULTURE

The ADB suffers from the same 'culture of loan approval' as the World Bank and other MDBs, yet without sufficient resources and commitment to monitor and implement them. But it also suffers from a deeper institutional crisis: an internal culture that continues to turn a blind eye to corruption. Stephen Baker, a former Executive Director to the ADB representing Australia, shared his reflections with his peers in February 2001. He stressed that following the Asian financial crisis there was a, 'rude awakening to the damage wrought by corruption,' and that the ADB still had 'to get far tougher with those who "skim and scam" on ADB projects and those governments which are party to, or allow it to happen'.¹ This former ADB Executive Director also alerted his colleagues to the poor performance of the ADB: 'Having previously worked under the premise that every \$1 of investment must return at least \$1.10, it was depressing to find from the evaluation reports that some projects returned as little as 30c on the dollar and even some of the generally successful ones only 60c on the dollar. Even more depressing was the fact that in certain sectors, the Bank kept lending and kept failing'.²

Just fifteen months ago (June 2003), Frank Black, former Executive Director to the ADB for United Kingdom, Germany, Austria and Turkey, noted that, 'the Bank's appointments, promotion, appraisal and incentive systems are in

¹ Stephen Baker, 'ADB - Wherefore Art Thou (Reflections of a Board Member who spent three interesting years with the Bank)', February 2001, p. 10.

² *Ibid.*, p. 1.

need of a thorough overhaul. The system lacks transparency at present, and there is a prevalent “patronage” system, whereby staff of sometimes dubious quality, can rise in the institution by aligning themselves with powerful “patrons” in senior positions’.³

Black, in his widely circulated critique of the Bank, stated that the ADB, ‘is perceived as very government-oriented’ and, ‘can too easily slip into playing the role of propaganda mouthpiece for some governments (and not always the most democratic or legitimate governments)’. Black argues that the ADB’s ability to promote good governance in its borrowers is often hampered by an institutionally rooted conflict of interest where major borrowers are also shareholders. The Board itself is part of the problem since, ‘it is almost entirely reactive to, and very effectively “contained” by the Bank’s management, and by its “consensus culture”’. According to Black, ‘[t]oo often, and particularly in the case of institutional reform and some sensitive policy issues, this can mean either “no change” or a series of backroom deals and compromises presented as “consensus,” but amounting to the lowest common denominator’.⁴

These deeper institutional crises feed into and reinforce the culture of loan approval. Pushing money out the door represents the path of least resistance for a management and board that is reluctant to exercise independence and rigor vis-à-vis major borrowing governments. In the words of former Executive Director Baker, ‘Considerable energy is spent on preparing projects and programs for Board approval. Far less is spent on ensuring they are successfully implemented’.⁵

In this atmosphere, ADB Management has shown an almost cavalier approach to the implementation of its own policies and procedures. In response to documented examples of major violations of ADB policies in complaints before the ADB’s Inspection Panel, Management has denied every alleged violation in every case: the Samut Prakarn Wastewater Management Project, the Sri Lanka

Southern Transport Development Project, and most recently the Pakistan Chashma Right Bank Irrigation Project (Stage III). The first two projects are discussed in more detail in section VI of this statement.

The most recent ADB Management response (May 2004) to an Inspection claim concerns the Chashma Right Bank Irrigation Project. For this project, the ADB committed \$172.6 million (60% of the total project cost of \$296.52 million) for a 171-mile irrigation canal along the Indus River, including the construction of 72 distribution canals, 68 cross-drainage structures, and 91 bridges. The most recent ADB financing was approved in 1999. The project area in northwest Pakistan impacts on part of the Northwest Frontier Province bordering Afghanistan. A grievance committee for the project received complaints from almost 9,000 people detailing economic hardship and livelihood losses resulting from the project. A major issue is that the ADB never prepared, as required by ADB policy, a resettlement and rehabilitation action plan to address the forced displacement, and losses of land and livelihood by the thousands of people covered by the project’s huge infrastructure footprint. In November 2002, representatives of local affected communities requested an independent inspection of the project, and the inspection finally commenced in December 2003.

ADB Management issued its response to the draft inspection report in May 2004. Their views on ADB policies and procedures are disturbing and revealing. Management defensively asserts that no ADB Operational Policies and Procedures were violated because, ‘[j]udgment also applies to the interpretation given to Operational Policies and Procedures themselves. It is for this reason that the ADB’s “internal laws” are not written as rule based statutes but as operational principles... This set up... means that Management (as well as the Board) are called upon to make evaluations and decisions about what is possible and “doable” while adhering to the integrity and spirit of ADB’s internal laws... With the above in mind, Management feels it relevant to highlight that many (if not all) of the operational principles in place in the past and today are drafted on the understanding that “one rule does not fit all”.

³ Frank Black, ‘The Asian Development Bank (ADB): A Unique Contribution? The Effectiveness of the Financing and Political Role of the ADB in Reducing Poverty in the Asia/Pacific Region,’ (prepared by Frank Black, departing Executive Director for Austria, Germany, Turkey and the United Kingdom at the ADB, June 2003), p. 8.

⁴ Stephen Baker, ‘ADB – Wherefore Art Thou,’ *Ibid.*, pp. 4-8.

⁵ Baker, ‘ADB—Wherefore Art Thou’.

Professional judgment fills the vacuum (emphasis added).⁶

And what a vacuum it is! Rather than enforce adherence to policy and procedure, Management goes on to argue that instead, their application is a question of “professional judgment”. Broadly, such judgment, ‘is needed in relation to all due diligence areas, including: technical, commercial, economic, financial, legal, institutional, environmental, social, gender, indigenous peoples, resettlement.’ For the ADB to grant itself such a broad prerogative in interpreting its own ‘operational principles’, especially for financial and legal procedures, policies and requirements, is an extraordinary declaration of unaccountability for an international public financial institution.

NEGLIGENCE OF THE ADB IN INVESTIGATING CORRUPTION

Non-governmental and community organisations in ADB borrowing countries have complained about financial irregularities and corruption in ADB projects for years. We see flagrant cases where corruption has been linked not only to irregular procurement and massive cost overruns but—most importantly from the standpoint of local communities—also to major changes in the location and design of large infrastructure projects. These unappraised changes have resulted in major, unmitigated social and environmental impacts. Two of the most blatant examples are described below.

A. The Thailand Samut Prakarn Wastewater Treatment Plant

The ADB approved a total of \$230 million in loans for this project. When the original \$150 million loan was approved by the ADB Board in 1995, the project was appraised as two industrial wastewater treatment plants on both sides of the Chao Phraya River in Thailand. Yet the project approved was never implemented. Instead, the Thai Pollution Control Board moved the site of the plant 20 kilometers away to build a single plant in the Klong Dan district. Only one company - the NVSPKG Joint Venture - submitted a bid

⁶ ADB, ‘Comments of ADB Management to the Inspection Panel on the Panel’s Draft Report on the Chashma Right Bank Irrigation Project (Stage III) (Loan 1145-Pak [SF] in the Islamic Republic of Pakistan, May 2004,’ pp. 3-4.

for the construction, a violation of both Thai and ADB procurement rules.

Building the plant on the changed site resulted in a cost overrun of 87% (from \$507 million to \$946 million; among other things, a pipeline had to be built to transfer the waste from the industrial plants near the original site). In addition, some 60,000 villagers would suffer serious environmental, social and economic impacts because wastewater plant discharges would pollute the coastal fisheries that most are dependent on. To finance the cost overruns caused by the change of location, ADB Management asked the ADB Board to approve an \$80 million supplemental financing loan in 1998. ADB policies and procedures clearly required a reappraisal of the project at that time, since it was not the project that was approved in 1995, but this was not done. Nor were any of the required environmental impact or social studies conducted based on the new site.

Over the past several years, the Thai press has printed numerous articles alleging that this seemingly illogical and costly site change was linked to a massive land fraud conspiracy among various Thai government officials. The *Bangkok Post* reported on November 15, 2002 that the Thai Development Research Institute found the company that won the bid was linked to a former Science Minister and his relatives, and the then deputy Commerce Minister and the Deputy Industry Minister happened to be co-owners of the land at the new site.⁷ Thai law enforcement authorities believe that PCD [the Thai Pollution Control Authority, Executing Agency for the project] officials, executives of the Joint Venture, and the owners of the Klong Dan property conspired to inflate the purchase price of the [land] parcels by as much as 1000 percent.⁸ Thai

⁷ Supawadee Suanpoolthong, ‘A Case Study of Corruption: Politicians exploited plan “at every stage”’, *Bangkok Post*, November 15th 2002.

⁸ Steve Herz, “Zero Tolerance?": Assessing the Asian Development Bank’s Efforts to Limit Corruption in its Lending Operations’ (Washington D.C.: Bank Information Center, March 2004), p. 22, citing *Bangkok Post*, ‘Klong Dan Wastewater Plant Scandal: Vartana, Nine Others Accused: Graft Report Names VIPs, Senior Officials’ (June 11, 2002); and *The*

authorities have brought criminal indictments against senior officials of the Pollution Control Authority, real estate developers, and executives of the contractor.⁹

Several Thai Government bodies launched investigations into corruption in the project. A Special Committee of the Thai Senate 'found corruption at every stage of the project'.¹⁰ The Thai Prime Minister stated last year that the ADB project was, 'riddled with corruption'. This has become one of the biggest, most public corruption scandals in Thai history and more remains to be uncovered: 'Many in Thailand now suspect that the collusive land deals are only the tip of the iceberg of the corruption on the Samut Prakarn project, and that far grander corruption is likely to have occurred in the procurement and construction of the project.'¹¹

So how has the ADB responded to corruption allegations in Samut Prakarn? A June 2000 ADB Special Review Mission to Klong Dan found no evidence of irregularities in the land acquisition process. The affected communities at Klong Dan then filed claims of violations of ADB policies before the ADB Inspection Panel and the ADB Anti-Corruption Unit of the Office of the ADB Auditor General (OAG). But the Inspection Committee of the ADB's Board, which has to approve inspections, refused to allow the Panel to pursue the corruption allegation, arguing that it was outside the Panel's jurisdiction and that the Anti-Corruption Unit was conducting its own investigation. The Anti-Corruption Unit never conducted a full investigation, arguing that the Thai government was already on the case. The ADB mainly examined the allegation that an ADB official involved with the project had a conflict of interest, and concluded by rejecting the allegation.¹² The Auditor

General of the ADB has stated that while the ADB did not release its internal findings to the Thai authorities, it did pass on some 'tips' to them.

Meanwhile, ADB Management's February 2002 response to the ADB's Inspection Panel investigation claimed there were no violations of ADB policy and procedures.¹³ The Inspection Panel released its report in March 2002, and found violations of six major ADB policies, including Management's failure to conduct a complete reappraisal of the project when supplemental financing was requested in 1998. After a heated Board discussion, with some major borrowing countries arguing against the findings of the Inspection Panel, the Board basically endorsed the report's recommendations for remedial measures to address the needs of the affected population, but did not address any internal issues concerning violations of ADB policy and procedures, let alone corruption.¹³

In early 2003, the Thai government declared the contract for the plant null and void, and the Pollution Control Department announced that it was pursuing legal actions against the contractors to sue for recovery of all funds paid under the contract. All consulting contracts have been terminated.¹⁴

The plant remains unfinished and the numerous legal actions filed by Thai authorities are unresolved. The ADB closed both loans for Samut Prakarn in December 2003; the 1998 supplemental loan of \$80 million for cost overruns and the yet to be disbursed balance of \$18.3 million of the original \$150 million loan from 1995. None of the remedial measures to address the harm done to local communities have been carried out.¹⁵

It is a scandal that a full investigation of the ADB's responsibility for not monitoring, supervising, and addressing the massive corruption in this debacle has not happened. Once the corruption allegations and huge cost overruns began to surface in the late 1990s, it should have intervened, demanded a full forensic audit

Nation (Bangkok), 'Making the Case for Graft at Klong Dan,' (July 18, 2003).

⁹ *Ibid.*, citing *Bangkok Post*, 'Klong Dan Wastewater Plant Scandal: Vartana, Nine Others Accused: Graft Report Names VIPs, Senior Officials' (11 June 2002).

¹⁰ Luntharimar Longcharoen, 'Slap in the ADB's Face: The Klong Dan Wastewater Treatment Project Corruption Scandal,' TERRA (Towards Ecological Recovery and Regional Alliance), Bangkok.

¹¹ Herz, 'Zero Tolerance,' citing and *The Nation* (Bangkok), 'Making the Case for Graft at Klong Dan,' (July 18 2003).

¹² See Herz, 'Zero Tolerance', pp. 24-25 and footnotes.

¹³ See Bank Information Center, 'BIC Project Factsheet #8: The ADB funded Samut Prakarn Wastewater Management Project in Thailand,' Updated July 2002.

¹⁴ Asian Development Bank, 'Samut Prakarn Wastewater Management Project, Fourth Semi-Annual Report to the Board of Directors on the Implementation of the Recommendations of the Board Inspection Committee as Adopted on 24 March 2002,' April 2004.

¹⁵ *Ibid.*

of the project, and halted disbursements on loans. Instead, the Board Inspection Committee's February 28, 2002 response to the Inspection Panel (which was not allowed to address the issue of corruption) simply noted: 'A sudden increase of \$421 million in the estimated cost of a recently approved ADB project is a significant event'.¹⁶

And what has the ADB learned? Following the second hearing of this Committee on corruption and the MDBs in July 2004, the *Far Eastern Economic Review* published an article posing that very question to ADB officials. The director of the ADB's Mekong Department declared, 'we learn from Samut Prakarn as much as we learn from other projects'.¹⁷ Given the ADB's record, this is not encouraging.

B. The Sri Lanka Southern Transport Development Project

The Sri Lanka Southern Transport Development Project (STDP) is an ongoing controversy with some similarities to Samut Prakarn. After the ADB Board approved loans for a major infrastructure project that was appraised in one location, the location was changed, causing massive cost overruns, environmental damage, and economic hardship for affected populations. Evidence of procurement irregularities in the ADB-funded project were highlighted in the Sri Lankan press. The lead contracting company reportedly bribed the project head who was subsequently dismissed by the government. An affected community filed an Inspection Panel claim in 2001, and again in 2004, after their original claim was rejected by the ADB Board Inspection Committee. The Board Inspection Committee reaffirmed Management's assertions that no policies were violated, despite the recommendation of an Inspection Panel member that an inspection proceed. Although the corruption charges became a widely publicized national scandal, the ADB continues to turn a blind eye to mounting evidence of major procurement irregularities, cost overruns, and corruption in this \$90 million loan.

¹⁶ ADB Board Inspection Committee, 'Inspection Request, Samut Prakarn Wastewater Management Project,' February 28, 2002, Para. 38, p. 7.

¹⁷ Christopher Gay, 'Thai Project Yields Graft and New Policies,' *Far Eastern Economic Review*, July 20, 2004.

The Sri Lanka STDP involves the construction, under the authority of the Government Road Development Agency (RDA), of a high-speed highway link from the capital, Colombo, to the southern city of Matara. Much of the original route and area of impact for the road (a trace three kilometres wide) was moved to a different location after the project was appraised and approved. According to the June 4th complaint submitted to the ADB by Sri Lankan community groups, the changed road route is twice the cost of what was presented to the ADB Board when it approved the loan.¹⁸ The result is that the number of households displaced and destroyed by the construction more than doubled, from 622 affected houses, according to the original environmental assessment, to at least 1,315.¹⁹ The altered route will destroy a valuable wetland, 1,000 hectares of rice paddies, and rubber, tea, fruit and vegetable gardens belonging to the local inhabitants. Five temples will be damaged. The affected communities were not consulted, and the ADB, the claimants allege, has violated its environmental, social and resettlement policies.

The affected communities filed a lawsuit against the Road Development Authority (RDA) and won a judgment from the Sri Lanka Supreme Court in January 2004 that RDA had violated both the National Environmental Act and the rights of the petitioners under the Sri Lankan Constitution.²⁰ To violate the laws of its borrowers is a blatant contravention of ADB policy.

Allegations regarding contracting irregularities emerged in Sri Lankan newspapers in 2001 and 2002, which were confirmed by a parliamentary Committee on Public Enterprises. In the bidding process for the project, 29 companies applied, and three met the pre-qualification bidding procedures, based on a number of considerations, including the financial condition of the prospective contractors. A Japanese company, Kumagi Gumi, did not meet the pre-qualification

¹⁸ Joint Organization of the Affected Communities on Colombo-Matara Highway, 'Submission of Complaint: Southern Transport Development Project Sri Lanka, Loan SRI 1711,' June 4, 2004 (complaint submitted to the Asian Development Bank Special Project Facilitator as part of the revised ADB inspection claim process), p. 3.

¹⁹ *Ibid.*, p. 2.

²⁰ *Ibid.*, Appendix 2 containing details of Inspection Request and new evidence, and Appendix 9, Supreme Court Judgment.

criteria²¹, and in fact had a negative financial worth. Kumagi hired an agent, Access International, to help win the contract. As is typical with this sort of arrangement, Access would win a hefty fee if it paved the way for a successful contract award for its client. Sri Lankan newspapers reported that Access had influential political connections, including in the Prime Minister's Office.²² Access is alleged to have bribed the RDA project official, by installing a new diesel generator in his home, giving him the use of a new SUV, and promising financial rewards if Kumagi won the contract.²³ This use of agents as motors of corruption to win contracts similarly occurred in the Lesotho Highlands Project, discussed in the Committee's July 21st, 2004 hearing.

After the pre-qualification process was complete, the ADB reportedly sent a letter to the Sri Lankan Treasury requesting that Kumagi Gumi nevertheless be considered as a bidder on the project. Three companies, including Kumagi, participated in the final bidding; only Kumagi was allowed to submit a second alternative bid. Kumagi, knowing the lowest bid of the other two companies, was naturally able to submit another, lower bid, and win the contract. In the aftermath, the bidder that would have under normal procedures won the contract, protested, threatening to bring legal action.

The Sri Lankan parliamentary Committee on Public Enterprises (COPE) conducted an investigation, and concluded that both national government procurement guidelines and those of the ADB had been violated.²⁴ The Attorney General of Sri Lanka, when asked how Kumagi could have won the contract in violation of national and ADB tender guidelines, reportedly stated: 'Kumagi Gumi had been accommodated purely on a suggestion by the ADB on February 13, 2001, particularly since it is an ADB funded project and the guide on pre-qualifications specifically provides [in such

²¹ To pre-qualify companies had to score 60 points in an evaluation framework assessing their financial stability, technical capacity etc. The pre-qualifying companies had scores of 95, 79 and 75. Kumagi's score was 54.

²² Frederica Jansz, 'COPE shoots down Southern Highway,' *Sunday Leader* (Sri Lanka), October 27, 2002; Frederica Jansz, 'Of Highways and Backroom Access,' *Sunday Leader* (Sri Lanka), November 1, 2001.

²³ *Ibid.*

²⁴ *Ibid.*

cases] for ADB approval'.²⁵

When the ADB Anti-Corruption Unit undertook its first mission to perform spot procurement audits in a borrowing country last year, it went to Sri Lanka, but did not look at the Southern Transport Development Project.²⁶ According to ADB staff, they do not wish to pursue anti-corruption claims against a project where an Inspection Panel claim may be underway or pending. This is truly a perverse and counter-productive approach, since the Inspection Panel does not appear to investigate corruption, and indeed, projects with Inspection Panel claims underway may be precisely the ones where corruption may be better documented.

Meanwhile, the STDP project proceeds and Kumagi remains the contractor. Neither ADB Management nor the ADB Board appears to be interested in investigating the extremely serious procurement irregularities and cost overruns in this case.

The June 2004 complaint of affected communities notes:

'The ADB Board of Directors approved a project which was significantly different to the one being implemented. ADB management is disbursing funds for a Project that is different from the one approved by the Board in 1999. ADB management has not carried out a full review of the Project to ensure that the current project is in compliance with ADB policies nor has it sought approval for the Project's increased costs.'²⁷

This would seem to be a clear case of ADB Management and its Board failing to fulfill its fiduciary duty under the Articles of Agreement to, 'take the necessary measures to ensure that the proceeds of any loan made, guaranteed, or participated in are used only for the purposes for which the loan was granted...'

WHAT IS THE ADB DOING TO COMBAT CORRUPTION?

In the past few years the ADB has failed to systematically apply its Anti-

²⁵ *Ibid.*

²⁶ The Anti-Corruption Unit examined another project, and no corruption. It found weak financial controls which could have been exploited for corruption if corruption were present in the project.

²⁷ *Ibid.*, p. 4.

Corruption Policy and Procedures. It has not investigated the most flagrant, scandalous, and well publicized examples of corruption, such as the Thailand Samut Prakarn Project and the Sri Lanka Southern Transport Development Project. This lack of institutional leadership and managerial integrity concerning a public international financial institution's most basic fiduciary duty is disturbing.

Conversations with ADB staff and Executive Directors' offices reveal differing perspectives on the institution's commitment to fight corruption. Some assert that over the past year ADB Management has finally started to realise the seriousness of the issue and there is a new resolve to deal with the problem. The ADB's Auditor General is both candid and hopeful, but concedes that change is just beginning and progress is fragile. Some senior staff are deeply cynical about the institution's ability to change, noting that cosmetic commitments to reform come in cycles in anticipation of new ADF replenishments or ADB capital increases.

These caveats should be kept in mind when examining the anti-corruption potential of several ongoing initiatives discussed below.

A. The June 2004 Donors' Report for the Ninth ADF Replenishment

The Asian Development Fund (ADF) IX Donor's Report reveals a general awareness of institutional problems in the ADB, but, as noted above, barely mentions the word corruption.²⁸ The Donor's Report does not address the scale of potential 'leakage' from ADB lending, let alone suggest anything as specific as Stephen Baker's farewell observations to the Executive Board in 2001. It does emphasise a, 'Managing for Development Results (MfDR)' framework, to be administered by a Results Management Unit (RMU). 'MfDR at ADB will incorporate measures of effectiveness, efficiency, client satisfaction, and staff satisfaction. The RMU is developing these indicators drawing on global best practices...'²⁹ With respect to specific measures to combat corruption in ADB loans, this is not very illuminating.

The Donors' Report notes the need for a 'merit-based culture' and that 'the current incentive structure is weighted

²⁸ Asian Development Bank, 'ADF Donors' Report: Development Effectiveness for Poverty Reduction,' June 2004.

²⁹ *Ibid.*, pp. 6-7.

towards new lending; they [donors] suggested that ADB reorient incentives towards implementation and development outcomes'. To that end, a new Human Resources Strategy is being developed. 'ADB is planning early remedial action, including: (i) revising staff incentives to promote greater attention to project quality rather than lending targets...(iv) implementing a human resources strategy focused on improving performance management and providing for greater accountability.'³⁰ It is very difficult with commitments expressed in such general, vague language to assess how deep or effective they are. The avoidance of any specific discussion in the text of glaring problems in ADB performance, and above all, the almost total avoidance of the corruption issue, only fuels scepticism.

B. Performance Based Allocation

The Donors' Report cites improving the Performance Based Allocation (PBA) of ADF resources. The idea is to allot lending based on overall country performance, as assessed by ADB-promoted indicators. The ADF IX Donors' Report proposes a greater emphasis on PBA for determining country lending allocations, and an increased weighting of governance considerations in the PBA to 50%.³¹

The ADB has had a PBA system in place since 2001. This system does not appear to have had any impact on the implementation of the Anti-Corruption Policy and Procedures, nor caused any perceptible change in Management's willingness to investigate even the most glaring corruption scandals associated with ADB projects. Although a revised PBA system could result in reduced lending allocations to borrowers that rank low on the Transparency International Index, this includes many of the ADB's major borrowers. Moreover, allotting resources to borrowers based on general 'governance' rankings would seem to have little relevance to stopping actual ongoing corruption of ADB resources if the ADB itself has no idea of the extent of 'leakage' from its country lending.

C. Suspending Loans When Borrowers Do Not Address Corruption

One unambiguously promising development has occurred in the past

³⁰ *Ibid.*, pp. 7-8.

³¹ *Ibid.*, p. 16.

year: the reported halting of disbursements on two loans to Indonesia because of corruption concerns. Although the 1998 ADB Anti-Corruption Policy provides for this type of recourse, until last year it had never been used. Reportedly, ADB Management and the Board are considering halting disbursements on a third loan to Indonesia, again for corruption.

D. The New Human Resources Strategy

The Donors' Report also refers to the new ADB Human Resources Strategy. The Human Resources Strategy contains a somewhat franker acknowledgement of ADB's institutional problems: 'There is a widespread perception that the internal appointment and promotion processes are not transparent and are not structured to ensure merit-based decision making....Staff consider that there is undue non-disclosure of information about the processes, and combined with the lack of objective criteria for recruitment and selection, they do not have an appropriate level of information to substantiate decisions. These factors create a strong level of distrust and cynicism about how the organization makes HR decisions.'³² There is a grotesque irony here. ADB staff complain that they suffer from the same lack of access to information, and arbitrary, unaccountable disregard of ADB policies – at least concerning human resources management – as communities and NGOs affected by ADB projects.

The new Human Resources Strategy proposes general measures that in one sense are uncontroversial: a 'Focus on Results' and 'Linkage Between Performance and Incentives,' looking at, *inter alia*, 'internationally accepted best practices in its HR management policies and practices'.³³ But exactly what results and incentives is the strategy referring to, and how will these plans be implemented?

The Summary of Actions in the Human Resource Strategy notes that the, 'lack of objective criteria to aid selection for each position,' will be remedied by the establishment of 'an ADB-wide competency framework and skills inventory,' by the end of 2004. A 'stronger linkage between salary increase and improved performance evaluation to

³² Asian Development Bank, 'Human Resources Strategy: Revised Draft for Discussion,' 5 July 2004.

³³ *Ibid.*, p. 8.

ensure high level performers are rewarded with higher salary increases,' will be established. Finally, the Summary states that to establish a 'clear understanding of unacceptable behaviours and consequences' for staff, there will be 'a more effective internal governance system,' 'mandatory code of ethics seminars for all staff,' and a 'review and strengthen[ing of] policies, processes and appropriate sanctions to ensure staff compliance'.³⁴

In the July 5th, 2004 'Revised Draft' of the Human Resources Strategy, there is no mention of the priorities expressed in the ADF Donors' Report of 'reorient[ing] incentives towards implementation and development outcomes,' 'promot[ing] greater attention to project quality rather than lending targets' – let alone any reference to country lending 'leakage'. The 'Summary of Actions' in the Human Resource Strategy does not contain the slightest indication of what the specific content or orientation of the new performance indicators will be. It proposes purely instrumental measures which are almost completely disconnected from the very real corruption and project performance problems that are undermining the ADB's mission.

E. Reviewing the Implementation of the Anti-Corruption and Governance Policies

The ADB is also conducting a review of the implementation of its Governance and Anti-Corruption Policies to consider, 'the governance and anticorruption priority actions for the period 2005-2009'.³⁵ The studies of NGOs have already, as one staff member told us, done a significant part of the work the ADB should have done itself.³⁶ The Committee should be kept apprised of the progress of this effort, particularly regarding the 'priority actions' that the review will identify for the next five years.

F. Revised Public Communications Policy

The ADB is currently revising its 'Public Communications' [information disclosure] Policy. Non-governmental groups have

³⁴ *Ibid.*, pp. 10-16.

³⁵ ADB, 'Fighting Poverty in Asia and the Pacific: Achieving Results Together - Review of the Implementation of the Governance and Anti-Corruption Policies' (ADB internal document, 6 pages), p. 1.

³⁶ See e.g. Herz, 'Zero Tolerance?'; Environmental Defense Fund, 'The ADB in its Own Words', etc etc

welcomed progress in this area, noting that the draft proposals of the ADB do go beyond the current disclosure standards at some other MDBs.³⁷ But there are a number of critical areas of particular relevance to assessing the ADB's corruption efforts where more information should be disclosed – starting with, for example, more detailed disclosure of the ADB's own operational budget, resource allocation, and expenditures and outlays.³⁸

G. The Anti-Corruption Unit

Finally there is the role of the Anti-Corruption Unit itself. The ADB Anti-Corruption Unit, with five professionals, appears to be understaffed compared to the 55-person strong Department of Institutional Integrity (INT) at the World Bank. Indeed, a report undertaken by Richard Thornburgh and his associates in July 2003 indicates that the World Bank plans to further increase its anti-corruption staffing levels.³⁹ In the case of the ADB, with approximately \$6 billion a year in loan commitments compared to the World Bank's \$24 billion, an appropriate staffing level for the Anti-Corruption Unit should be at least around 14.

The Anti-Corruption Unit, which is under the authority of the ADB's Office of the Auditor General (OAG), is primarily reactive in its function, investigating cases of alleged corruption when someone files a complaint. An Oversight Committee (analogous to the World Bank Sanctions Committee) rules on whether individuals and firms should be blacklisted and barred from future ADB business (usually for a limited period of several years). With a much smaller staff than the World Bank's INT, Anti-Corruption Unit investigations have led to the debarment of 207 firms and individuals, as opposed to 288 to date at the World Bank. The World Bank makes its debarments public, but the ADB does

³⁷ Letter of Jennifer Kalafut and Mishka Zaman, Bank Information Center, to Mr. Robert Salamon, Principal Director, Office of External Relations, Asian Development Bank, May 28, 2004.

³⁸ *Ibid.*, p. 6.

³⁹ Dick Thornburgh, Ronald L. Gainer, Cuyler H. Walker, 'Report Concerning the Proposed Strategic Plan of the World Bank's Department of Institutional Integrity, and the Adequacy of the Bank's Mechanisms and Resources for Implementing that Strategy,' July 9, 2003, p. 6.

not. The Thornburgh report on fighting corruption at the World Bank strongly emphasized the desirability of automatic publication of debarments.⁴⁰

The rationale for not naming debarred companies and individuals at the ADB seems to be two-fold. First, the news of debarment supposedly spreads rapidly in the business and consulting community, since debarred firms doing business in the Asia-Pacific region have to alert possible business partners of their status for every prospective ADB contract. Second, large, powerful firms bring tremendous political pressure to bear when confronted with potential debarment. Public debarment would likely make this pressure on the ADB, given its closeness to governments, even more intense. In particular, some major industrialised donor nations play an extraordinarily hypocritical role in lobbying for their businesses behind the scenes at the MDBs. ADB staff informed us that the Ambassador to the Philippines of a donor country directly protested the prospective debarment of a major company for corruption, claiming that the ADB Anti-Corruption policy was not intended to have such consequences. Nevertheless, the argument for automatic publication of debarments is strong.

Since the Anti-Corruption Unit serves a primarily reactive function, it is at best only one part of an effective strategy to address corruption. Preventive measures, as the Thornburgh World Bank report stresses, are equally important. The Anti-Corruption Unit has begun, despite its limited resources, to undertake proactive spot procurement audits of projects. As it is, the effectiveness of the Anti-Corruption Unit is also limited by the restrictions and limitations ADB Management and the Board have put upon it. For example, there appears to be a de facto rule that the Anti-Corruption Unit will not conduct pro-active investigations of projects if an Inspection Panel claim is in process or pending, nor when there is an ongoing government corruption investigation. But these are precisely the cases where there may be greater evidence of ADB negligence or complicity.

⁴⁰ Thornburgh, Ronald L. Gainer, Cuyler H. Walker, "Report Concerning the Debarment Processes at the World Bank," August 14, 2002, pp. 82-83.

When Things Fall Apart

MUSHTAQ GAADI¹

On 27 March the Asian Development Bank (ADB) Inspection Panel met with Mr. Khadim Hussain, one of the Requesters of the Inspection of the Chashma Right Bank Irrigation Project (CRBIP). He informed the panel that it had been decided at the Lok Sath that the requesters would ‘disengage’ themselves from their role as the Requesters of the Inspection, but they would nevertheless facilitate the work of the Panel.

(An excerpt from Final Report of the ADB Inspection Panel on Chashma Right Bank Irrigation Project)

¹ This article presents views and experiences of the writer who was one of the requesters of the Inspection Claim on ADB-funded Chashma Right Bank Irrigation Project (CRBIP) in Pakistan. The process of engagement and dialogue with ADB started with the Chashma Stakeholders Dialogue in August 2001. After the stakeholders’ dialogue failed, the Inspection Claim was filed on 19 November 2002. The request for inspection was judged valid by ADB Board Inspection Committee (BIC), but the actual inspection process was delayed to enable the ADB and the Pakistani government to establish and implement the Grievance Redress and Settlement Committee (GRSC). The Requesters rejected this decision and argued for immediate inspection. The GRSC functioned without the participation of the requesters from 20 May to 29 December 2003. Its final report was submitted to the BIC on 16 February 2004. A four-member Inspection Panel was later constituted. The Panel visited Pakistan and the project area between 27 March to 6 April 2004. The final Chashma Inspection Report was approved by the ADB Board of Executive Directors on 19 August 2004.

The tale of the Chashma struggle needs to be told and retold. The architecture of silence within which the Bank and its Inspection Panel are constituted and operate are more revealing than all the words that fill their reports and statements. The uncovering of this silence is itself a tool for speaking truth to Power.

There are many moments in the Chashma struggles -- the stakeholders' dialogue, the filing of the inspection claim, the establishment of the Grievance Redress and Settlement Committee (GRSC)—that need to be properly recorded and analyzed. Even more important and urgent is the need to explain the causes of and the thinking behind the project affected 'requesters' decision to disengage from the official inspection process. It was a major event in the inspection process, but on which the final inspection report is completely silent.

The inspection report is wordless on many other aspects of the Chashma inspection. It did not even refer to the Panel's failure to attend the special session of Chashma Lok Sath (Peoples Assembly) held in the project area on 27 March 2004. The Lok Sath was held not only to present what had been lost and what violations the lands and peoples suffered. It was also an occasion to pass a peoples' judgment. Similarly, the inspection report is completely silent on the way the Panel's terms of reference were framed, and glosses over the fact that requesters refused to give comments on the Panel's TOR as a gesture of protest. The Panel's Silence on these and many other issues belies the serious deadlock the Panel encountered from its birth to its end.

As one of the Inspection requesters, I consider it indispensable to expose that deadlock, to explain the underlying philosophy of the Chashma struggles, and to vindicate the victims' refusal to conform with the law and power represented by the ADB's inspection process.

The deadlock was primarily a *dialectical* (methodical) inversion of the relationship between law and power. It is therefore necessary to position the law and legal activism in the proper context.

The law primarily operates in a political sphere, with aims to solve conflicts and contradictions in (*civil*) society. These conflicts and contradictions relate to life, security, property, wealth, identity, religion, sex,

rank, status, profession, culture, environment, development and many other aspects of social life.

Marx eloquently described the logic of law and power as "defined simply as non-interference; the limit within which each individual can act without harming others as determined by law, just as a boundary between two fields is marked by stakes"¹. The law is thus not concerned with liberty and freedom as such, and instead constructs the limits to liberty and freedom. The law creates and sustains the fiction of the sovereign and equal individual. By declaring that the *real and effective* (social) differences in wealth and power shall not affect the equal and sovereign *titling* of concerned individuals or parties as stakeholders, the law leaves these differences intact. The law not only leaves relations of domination and conflict in (civil) society untouched, but strengthens them by infecting the law (political sphere) itself. Far from abolishing these *real and effective differences* in position and power, the law actually presupposes and supports their existence.

That law, justice and social order are created by the weak and are products of the contract between the weak and the powerful is a myth. They are creations of the powerful who seek to put an end to the (*senseless*) resentments among the weak. They are power internalized.

It is from this point that we define and analyze the Chashma struggles viz. standard legal activism. Legal activism denotes, here, *invoking* the law to seek accountability, reforms, remedies, compensation and reparations for sufferings and losses as a result of *breaches* in the rule of law.² The law is invoked to avoid or minimize further losses. That is, invoking the law is maintaining the rule (and *power*) of the law. The law is grounded on logical utilitarian considerations— if we know what moves the law and how, we can manipulate it accordingly. To do this, however, it is necessary that we accept the law and its power. Here the truth-justice game is conjured: interpretations, evidence and counter-evidence, drama of *victimhood*, judge and finally, judgment. Whatever utilitarian objectives legal activism claims

¹ T.B. Bottomore, ed., Karl Marx, Early Writings, p.26

² The term 'legal activism' represents the wide range of standard practices including public interest litigations, lobbying, advocacy, stakeholders' dialogue, policy reforms dialogues, etc.

to serve, it inevitably ends up affirming prevailing relations of domination. As Nietzsche said, the moment “one party has *become* decisively *weaker* than the other, then subjection enters in and law *ceases*, but the consequence is the same as that previously attained through the rule of law”.³

Despite the *manifest* differences in form and strategies between the rule of law and subjection, the consequence and dialectics of oppression remains the same in both conditions. The rule of law merely follows the guidelines of the oppressor.

However, this manifest difference in form and strategies of the rule of law and subjection ceases to exist in (*post*) colonial situations, which historically meant the brute power to kill and *kill*. A brute and naked *imperial* sense of power defines sovereignty. The law exists in its most primal form, that is, the power to *inflict* torture, corporal punishment, physical coercion, and death. Law and justice here have not yet acquired the power of peculiar pleasure-seduction that is the main characteristics of modern societies.

It would be helpful to briefly juxtapose the prevalence of the *alienation* of victim/oppressed from the law with the Marxian/Hegelian alienation in *labor/work*. Marx said that, “the more the worker spends himself, the more powerful the alien objective world becomes which he creates over against himself, the poorer he himself-his inner world-becomes, the less belong to him as his own”.⁴ Similarly, the more the victim/oppressed involves him in the *labor of justice*, the more he feels alienated, estranged and, finally dead. The *labor of justice* that the victim/ oppressed spends in the sphere of law eludes the victim in very strange way, as he himself *is* not in it. Justice remains external to victim as it does not belong to his essential being. The more he strives to gain justice in the sphere of law, the more he feels sheer denial and negation. The law thus becomes major and effective instrument for domination and dehumanization.

At the most perverse level, *law fetishism* makes the victim/oppressed take the law as his *Master* and fall down before him. As morality and, more concretely in this case, law, is originally rooted in a desire to avoid pain and violence, an act of its

obedience is the tragic reaffirmation of that *primal scene* of compulsion and violence.

The Chashma struggles at first followed standard legal activism – NGO’s lobbying and advocating, stakeholders’ dialogue with ADB and the government, filing the complaint, and preparing the inspection claim. This first phase of Chashma struggles was *labor of justice*: kneeling down before the *Master* and living in the anticipated moment of the Master’s death from which the salve (victim) would begin to live.⁵ Then came the radical break from, or rupture in the *economy* of law. This happened when the victim/oppressed declared through his Word that the Master (*law*) was no more alive, already *dead*. This was the moment of casting off the dark shadow of law and power and thereby disassociating from the conditions of *alienation* and immersing into an act of knowing, transforming and becoming.

This started when the law (and its causes and effects) became the object of reflection. This reflection was later thus described in a letter to the Grievance Redress and Settlement Committee:

“*Law?* First he robbed everybody, took all the earth, and all rights away from men, took them for himself - killed all those who were against him, and then wrote laws forbidding to rob and to kill..... it was you who came and told us about the Law. You said, 'the law permits you to forcibly snatch away our ancestral lands and destroy our houses, crops and trees'. The law sanctions you simply to do everything you want to do'. We knew not of such Law and such method.”⁶

This dialectical inversion did not only reveal itself in *Word*; it was also concretely achieved and realized in practice. The Chashma Lok Sath was the framework of a peoples’ law, the spirit of a people’s *experimentation* with the truth and truth telling.

It would be a mistake to assume that the experiment of the Chashma Lok Sath was an easy one and that it emerged uncritically. As Paulo Freire says, in

³ K. A. Pearson (1996).ed, Friedrich Nietzsche: On the Genealogy of Morality, p. 138. Cambridge

⁴ Karl Marx. Economic and Philosophic Manuscript of 1844, p.70.

⁵ Jacques Lacan (1953). Functions and field of speech and language. p. 144.

⁶ Second Letter of the Inspection Requesters to the GRSC dated August, 2003. See www.chashma-struggles.net.

dialectical thought, *action* is human only when it is not merely an occupation but also preoccupation, that is, when it is not dichotomized from reflection. Moreover, the term 'experiment' itself implies uncertainty and requires the dialectical unity of action and reflection. The concept and methods of the Lok Sath emerged and evolved in a very concrete situation of conflict and competition.

Before the start of the inspection process, the ADB and the Government became united in the establishment of the Grievance Redress and Settlement Committee (GRSC). The establishment of the GRSC was perceived as a threat to the peoples' struggles and unity. A discussion was initiated and the idea of doing peoples' law and a peoples' tribunal was suggested. It took a long time before these suggestions were realised as the Lok Sath. The reflections on relationship between law and domination, the discussion on underlying causes of their oppression and helplessness, the collection of histories and litany of violence, testimonies of the violated and victims, story-telling, singing and dancing were the methods of the Lok Sath. The Lok Sath was 'the pedagogy of the oppressed that was forged *with*, not *for*, the oppressed'.⁷

It was not an easy experiment. The first and foremost challenge in the Lok Sath was to de-mystify law and power and to re-establish the truth of the victim/oppressed. This does not mean that the victim/oppressed were not conscious of the violence of law. On the contrary, the violence of law was their every day experience. Who are better prepared than the victims/oppressed themselves to understand the terrible significance of the violence of law and domination?

However, it is equally true that their constant immersion in situations of oppression inhibited their imagination. The opening of a new imaginative space required them to overcome deeply-rooted fears of violence, and to take risks that are only possible with the unity of reflection and action. The Lok Sath stimulated the restoration of this dialectical unity. Most important, it was successful in the de-mystification of law and establishing the truth of the victim/oppressed. The Lok Sath statement on 24 August 2003 presents this truth thus:

⁷ Ibid.

"We assemble here to guard the Truth....The Truth that is eclipsed by perpetual fabrication of falsehood and mendacity. The Truth that is mutilated by dishonest reports, wrongs of high-paid consultants and officials and lust for money and profit..... *Sarkar* (the government) and *Subkar* (the banker) come to us and offer sympathies and promised to alleviate our sufferings and correct wrongs. A strange happening. Whenever we assemble and cement our alliances we are offered futile dialogues and false promises. When we stopped the canal at different points, we were promised that we would be provided alternative lands and houses. We were left wounded and annoyed. Then we were invited to participate in multi-stakeholders' dialogue. It left us bleeding. It is now third time that Sarkar and Suhkar have made the Committee to alleviate our sufferings and hardships. The old drink in a new bottle. It will also pass, leaving us without any destiny... We denounce the falsehood of the promises. We reject the Committee and its recommendations. The Committee was imposed on us. It was established without our consent and participation. We refuse to play the old game."⁸

The specific deadlock that the Chashma Inspection Panel tried to avoid when visiting the project area was this process of the Lok Sath. The Inspection Panel was invited by the requesters to attend the special session of Lok Sath on 27 March 2004. The invitation stated:

"We will show what we have lost. What violations and crimes have been effected upon our lands and our beings. And will tell of a common sense and a reason that relies on the knowledge of the peoples that reject the security regimes inflicted in the names of progress and development."

⁸ Statement of the Chashma Lok Sath held on 24 August, 2004. See www.chashma-struggles.net.

Not only did the Panel opt not to attend the Lok Sath, but it also refused to acknowledge its legitimacy. The Inspection Panel knew that their participation in the Lok Sath would subvert the law as determined by their Master. Later on, in a letter to the Inspection Panel, this event was thus depicted:

“Like the coil of a snake, Power (un-Truth) encircled and controlled you by the force of its *magical armaments* (contracts, terms of references, rules, fire walls, plans, permissions). Power decided the terms and conditions of your *birth* as well as your *existence* and thus *stripped* you of your real human face. This became especially clear to us when you could not come to Lok Sath.”⁹

The rupture-abyss that emerged through Lok Sath led to the collapse of the Chashma Inspection. Things fell apart. This was not the final act of Lok Sath. The future of Lok Sath is open and will be decided through the new dialectics of actions and reflections. ■

⁹ A letter to the Inspection Panel. See www.chashma-struggles.net.

Right to Information and the Right to be Informed

GURURAJA BUDHYA

The citizens of India have been struggling hard to receive what democracy promised. Post-independent India witnessed 'development' projects that displaced and affected the lives of millions of poor. In part, this has resulted from a lack of information flowing between government and civil society on issues of policy and development. The major obstacle to the development of an effective freedom of information regime in India is the culture of bureaucratic secrecy.¹ The recent involvement of International Financial Institutions (IFIs) and especially the Asian Development Bank (ADB) in India has only served to entrench this culture, despite pronouncements to the contrary.

¹ Right to Information – Resource Kit: By Public Affairs Centre (PAC), Commonwealth Human Rights Initiative (CHRI) and Consumer Rights Education & Awareness Trust (CREAT). Circulated during a Right to Information Workshop organized by Mangaluru Nagara Parisarasaktha Okkuta (MNPO) and in association with NGO Forum, December 2003.

Article 19(1)(a) of India's Constitution guarantees that, "all citizens shall have the right to freedom of speech and expression." The Supreme Court of India has, in several landmark decisions, interpreted this broad guarantee to include the right to information as well. India is a signatory to the Universal Declaration of Human Rights, which, in its celebrated Article 19, defines freedom of expression and opinion as including the right to, "seek, receive, and impart information" and to the International Covenant on Civil and Political Rights, which also protects the right to information.

In several states in India in the 1990s, movements developed to monitor government projects in order to root out corruption and promote transparency. In Rajasthan, for example, the Mazdoor Kisan Shakti Sangathan emerged as a powerful force in checking bureaucratic corruption.¹ These in turn led to Right to Information Acts being implemented in 12 Indian states to ensure openness, transparency and accountability in government, and to ensure the meaningful participation of citizens in governance.

However, these laws have existed only on paper. After a decade of legislation, central and state governments continue to neglect public participation in decision-making.

Globally, civil society has been active in pushing for greater responsiveness and accountability of public institutions, demanding that they institute proper consultation processes support and participatory development. The 1990s saw many governments, including those of Japan, Republic of Korea and Thailand, approve laws guaranteeing their citizens the right of access to government information. International Financial Institutions (IFIs) have also considerably influenced governments to enact transparency laws, however symbolic they may remain.²

This paper looks into the case of an infrastructure development project in coastal Karnataka, South India, and using this example examines the Indian

¹ On the MKSS, see Mazdoor Kisan Shakti Sangathan, *The Right to Know, the Right to Live* (MKSS: July, 1996) and Mander and Joshi, 'The Movement for Right to Information in India'.

² The Right to Information to People, by Y.G.Muralidhara, Kannada Prabha, dt.3.1.2003.

Government's and the ADB's claim that the public is informed.

INFRASTRUCTURE DEVELOPMENT PROJECTS IN COASTAL KARNATAKA

The coastal region of Karnataka is an environmentally sensitive area located between the Arabian Sea and Western Ghats. Since the early 1990s, the Karnataka State Government has brought mega-industries into the coastal regions of Karnataka.

Presently, the region is at the receiving end of an infrastructure development project called the 'Karnataka Coastal Environmental Management and Urban Development Project (KCEMUDP).³ It is funded with a loan from the ADB, and implemented by the Karnataka Urban Infrastructure Development and Finance Corporation (KUIDFC).⁴ Since the west coast of Karnataka has been identified as an important growth zone by the State Government, the KCEMUDP was seen as providing a support for this, as part of the State's urban investment program. The State has commenced the loan application process without meaningful consultations with people on the development plans.

The KCEMUDP is the second project for Karnataka being funded by the ADB and the third Urban Development Project for India. The KCEMUDP (as agreed between the ADB and Government of Karnataka) targets:

- already existing selected urban and industrial areas;
- potential industrial and tourism development zones; and
- environmental management and coastal erosion control.

The project will comprise a number of sub-projects, namely, urban environmental improvements, urban transport, poverty alleviation, coastal environmental management and capacity building.

³ Refer -Executive Summary-Final Report, Karnataka Coastal Environmental Management and Urban Development Project (TA No.2806-IND), By NEDECO/DHV Consultants in association with ORG, November 1998.

⁴ The Karnataka Urban Infrastructure Development and Finance Corporation is a company incorporated under the Companies Act, 1956, with 100% equity participation from the State Government. The State Government has identified KUIDFC as the nodal agency to implement external aided projects for infrastructure development.

The estimated cost of the project is Rs.8, 667, million (\$206.4 million), out of which 70% is from the ADB as a loan, 24% is from the State Government and the remaining 6% is from the Urban Local Bodies. The loan is obtained from the ADB by Government of India (GOI), which further lends from it to the Government of Karnataka (GOK) as 70% loan and 30% grant. The loan, at the ADB's variable rate of interest, is for 25 years with an initial grace period of five years. The loan from the GOI to the GOK attracts 13% interest and similar repayment periods as the ADB/GOI loan. The GOK will sub-lend the total proceeds of the GOI assistance together with its own contribution to the respective implementing agencies in a mix of loan and grants. In General, all direct revenue-earning projects are financed as loans while other projects are financed through grants, or a mix of the two.⁵

UNDEMOCRATIC DECISION-MAKING PROCESS

After deciding to go ahead with the development of the coastal region, the KUIDFC appointed the Netherlands Engineering Consultants (NEDECO) to prepare a proposal for submission to the ADB on the KCEMUDP. Not a single public debate or discussion was held by the GOK during the formulation of the 'Coastal policy on Urbanization'. It was public pressure led by the environmental movement in the coastal areas, that prompted the Department of Forests, Ecology and Environment (DFEE) to prepare an Environmental Management Plan with the help of the Danish aid agency Danida in 1995.⁶ The plan spelt out specific actions to be taken by local and state institutions to ensure that district development proceeded in a sustainable manner.⁷ These reports are now gathering

⁵ Refer -Executive Summary-Final Report, Karnataka Coastal Environmental Management and Urban Development Project (TA No.2806-IND), By NEDECO/DHV Consultants in association with ORG, November 1998.

⁶ Refer to the report, 'Managing Sustainable Development', DFEE-Danida Study on Environmental Management Plan for Dakshina Kannada District, India, 1995.

⁷Refer the report 'Managing Sustainable Development', DFEE-Danida Study on Environmental Management Plan for Dakshina Kannada District, India, 1995. Implementation of the recommendations of

dust in the Department. There were also no public debates on the completion reports of the plan in 1998, and their approval by the State Cabinet in 2000.⁸ They have never been brought into the public domain, thus defeating the spirit of people's involvement in decision-making as envisaged by the 74th Constitutional Amendment, since:

- Firstly, no consultations were held when the State developed and finalized its infrastructure development policy.
- Secondly, even as it had already applied for the ADB loan, the GOK did not hold consultations to examine the financial and other impact of the activities to be funded by the loan.
- Thirdly, even after the approval of the loan by the ADB, full information was not made available to the people of the region.

THE PEOPLE'S STRUGGLE FOR INFORMATION

A few NGOs participated in a few meetings organized by NEDECO in 1998 while it prepared its initial report. But NGOs and citizens have not been informed or engaged in policy processes after these meetings. In response, the NGOs of Mangalore, who have been discussing issues of concern together since 2000, formed the NGO Task Force on ADB.⁹ The Task Force's objective is to seek clarity about the project and to make the information available to the public. The Task Force raised concerns related to the rate of interest on the loan, norms, unnecessary expenditure, repayment terms and the implementation of the project.¹⁰

The NGO Task Force did not relent in their efforts to get information from the

the report is the responsibility of the Government.

⁸ Government Order No.UDD 2 PRJ 99 (P), Bangalore, Dated 21st December 2000.

⁹ Concerned individuals and groups to bring together the NGOs working on issues concerning Mangalore region have initiated NGO Forum meetings. The main objective is to develop an understanding and information sharing amongst them. More than 35 NGOs working on wide range of issues meet once in a month.

¹⁰ Memorandum submitted by NGO Task Force, Mangalore to Hon'ble Mayor of Mangalore, dt.27.6.2001.

ADB. It was only when a letter written by the NGO Task Force to the ADB-Resident Mission was redirected to KUIDFC, that they got an initial response.¹¹

There are no mechanisms in place for providing information to the general public on the progress of the project. The participation of stakeholders in the planning and implementation of the project is totally missing. The KUIDFC has not voluntarily provided information to the general public about the ongoing project or even supplied information when asked for it. When the KUIDFC was contacted to provide project progress reports, the KUIDFC directed the inquirer to the Mangalore City Corporation.¹²

People's access to project information is important, because without the participation of affected peoples and the community in general, project quality suffers. The Karnataka Urban Infrastructure Development Project (KUIDP), funded by another ADB loan, is a case in point.¹³ On visiting the sites, the NGO Task Force on ADB observed the poor quality of water supply, drains, underground drainage, roads and public works implemented under the project. The latest investigation by the Karnataka Lokayukta (Government of Karnataka Ombudsmen) unearthed shortfalls and lapses in KUID Project implementation in Tumkur City. The investigation found that the project lacked proper attention from the supervising staff, engineers and project consultants. The investigation reported that none of the schemes under the project were fully implemented¹⁴, supporting feedback from citizens about the lack funds reserved for post-project maintenance and the state's burdened

taxation base.¹⁵

THE UNDERMINING OF LEGAL RIGHTS TO INFORMATION

The public expectation on the Karnataka Right to Information Act (KRIA) 2000 is yet to be realized.¹⁶ Experience in the past two years shows KRIA's legal weakness (e.g. narrow definition of 'responsibility of competent authority' and interpretation of concepts like 'information' and 'document'), and illustrates the administration's reluctance to implement it.¹⁷ KRIA only provides information to those who ask for it, rather than require the state to proactively disseminate information, making it possible for state agencies to keep the public and municipalities in the dark about state projects.

The 74th Constitutional Amendment considers people as important in deciding how their own needs should be met. Its main objective is to decentralize power to the municipalities, providing for many changes in their structure, composition, powers and functions.¹⁸ But the Central and State Governments have not been willing to carry out such changes. The entry of the IFIs with their huge sums of money has strengthened State and Central governments, encouraging them to move in the opposite direction, curtailing the autonomy of the urban local governments.

THE ADB AND PUBLIC COMMUNICATIONS

The IFIs also responded internally to demands for transparency and reviewed their information and disclosure policies since 2001. Presently, the Asian Development Bank's (ADB) public

¹¹ Letter from KUIDFC to NGO Task Force, Mangalore (letter No.KUIDFC/NGO TASKFORC/LOC EX/2001- 2002 467 Dt.7.5.2001).

¹² Interview with the members of NGO Task Force, Mangalore.

¹³ The KUIDP is an integrated urban infrastructure and institutional strengthening program designed to provide and upgrade essential urban infrastructure and services in the towns of Mysore, Chennapatna-Ramnagaram and Tumkur cities. See Annual Report - Urban Development Department, Government of Karnataka, 2000-2001.

¹⁴ Investigation report by the Executive Engineer, Technical Wing, Karnataka Lokayukta, Bangalore, dt.12.3.2004

¹⁵ Review Report on ADB Funded Projects (1996-2001) Mysore, Tumkur, Chennapatna, Ramnagaram, By NGO Task Force, Mangalore, February 2002.

¹⁶ Karnataka Act No.28 of 2000, First Published in the Karnataka Gazette on the thirteenth day of December, 2000. The Karnataka Right to Information Act, 2000, received the assent of the Governor on the tenth day of December, 2000, and was implemented in July 2002.

¹⁷ Southern News - Karnataka, August 11, 2004 at <http://www.newindpress.com/>

¹⁸ Information brochure on 'The Constitution 74th Amendment Act 1992 on Municipalities', published by the National Institute of Urban Affairs (NIUA), New Delhi for the Ministry of Urban Affairs and Employment.

communications policy¹⁹ spells out its intention to be more open to decision-makers and the public. The ADB feels that its advantage over other development agencies in Asia will be lost unless it modernizes its approach to disclosure and dissemination of information.

After receiving comments from the public and civil society organizations and conducting consultations in 12 locations, the ADB intends to implement its policy from 1st January 2005. Such an elaborate exercise seems appropriate, but how serious it is about implementation is unclear.

The ADB's 'Draft Public Communications Policy' only allows public comments on the reactive and limited responsibility of the institution to 'give information to one who seeks'. The draft policy limits the responsibility of the ADB to providing information only to those who explicitly ask for it, rather than a broader flow of information from the ADB to the public.

The ADB's policy must be more than just symbolic to ensure that the public has a clear and balanced picture of its contributions to the region's development.

A more proactive communications policy will also help ensure that projects funded by the ADB incorporate people's many concerns. Proper information will facilitate the involvement of local municipalities in project implementation. The ADB should take the responsibility for monitoring and informing the public on how projects are being implemented.

CONSULTATIONS, NOT JUST FOR SHOW

The public consultations on the Draft Public Communications Policy in India and elsewhere have drawn criticism. The citizens and NGO representatives boycotted the consultation in July 2004 in Bangalore because consultation organizers did not inform or invite representatives of affected communities, notably from Kerala, Karnataka and other South Indian states where there are projects implemented with ADB loans. The report of the meeting did not document the 'boycott', raising questions on the way the ADB holds its consultations.

¹⁹ Draft Public Communications Policy of the Asian Development Bank, 28th February 2004, available online for comment at www.adb.org/disclosure.

The right to information and the right to be consulted become even more important given that IFIs lending come with policy conditions. IFI financed projects are implemented by bureaucratic state agencies, and lack of access to crucial information increases the vulnerability of the stakeholders. Without informed participation of citizens, ADB projects will either only benefit vested interests or be ineffective.

Loan conditions should be put in the public domain because they directly affect the crucial policies of the recipient government.

The ADB has failed to initiate dialogue with the public in their project regions in India, giving rise to many problems. The ADB's Draft Public Communications Policy raises the issue of resource implications claiming, "the implementation will result in additional demands on current staff", or "likely to spend more time and effort", or "incur additional costs for printing, copying and postage." These are claims that should not carry any weight. These are but apprehensions due to a lack of 'experience' in communicating with the public. The ADB has to realize that meaningful engagement with the public is the most important component of communication. The entire institution and its project planning processes, therefore, must incorporate the public dialogue mechanisms.

Institutions like the ADB that make governments toe the line on their policy conditions are now themselves subjected to greater public scrutiny. If institutions they do not adhere to the principles of democracy and respect the objectives of the Constitutions of sovereign countries, civil society will swing into action, as they have already done in many places. ■

Accountability at the ADB?

A Critical Analysis of the Asian Development Bank's New Accountability Mechanism

FUKUDA KENJI

The Board of Directors of the Asian Development Bank (ADB) approved its new Accountability Mechanism on May 29, 2003. This was the result of a long process to review the ADB's Inspection Function, which aimed to enhance the ADB's accountability by addressing the concerns of the people negatively affected by ADB-funded projects. At the same time, the new mechanism was established in response to strong voices from civil society in both the South and North criticizing the shortcomings of the existing process and calling for accountability and transparency in ADB-funded projects.

This paper examines the background and process of the review of the Inspection Function, and analyzes the new mechanism in the context of the struggles of affected people and civil society efforts against the ADB's problematic projects.

ORIGIN OF INSPECTION MECHANISM

The development of Inspection Mechanisms at Multilateral Development Banks (MDBs) stems from the controversial Narmada dam project in India. As a response to the global campaign against the Narmada project during the beginning of 1990, the World Bank, which was the main financier of the project, decided to conduct an independent investigation of it. The independent investigation team assessed the Narmada project and the World Bank's compliance with its own policies on environmental assessment and involuntary resettlement. The team reported that the dam would adversely impact the lives of the local communities and that the World Bank shared responsibility for such harm. This report led to the Board of Directors of the World Bank to pressure the Indian government, and as a result, India finally declared in 1993 that it would not ask for the outstanding disbursement of the World Bank loan for the Narmada project.

The Narmada case made clear that Bank Management tended to avoid ensuring that Bank-funded projects met the international standards set forth in the Bank's safeguard policies. Some NGOs monitoring World Bank operations therefore proposed the establishment of a permanent independent body to receive complaints from affected people. The U.S. Congress was also a strong proponent of this independent mechanism. In September 1993, the World Bank's Board approved the establishment of the Inspection Panel, which is an independent body to investigate the compliance of the World Bank to its policies based on requests from affected people.

The ADB, the little brother of the World Bank, became the third organization to establish an inspection mechanism called the 'Inspection Function' in 1995, after the Inter-American Development Bank (IDB) in 1994. However, both the ADB and the IDB adopted less independent systems compared to the World Bank. The stated

objective of the current Inspection Function of the ADB is to enhance the transparency and accountability of the ADB by conducting investigations by independent experts on whether or not the ADB has complied with its operational policies and procedures.

WHY ARE INSPECTION MECHANISMS IMPORTANT?

Firstly, inspection mechanisms provide one of the few quasi-judicial mechanisms by which independent experts can monitor management staff of Multilateral Development Banks (MDBs). MDBs otherwise enjoy immunity from any legal action under international law. However, most of the inspection bodies of MDBs report to the respective Boards of Directors and are thus not totally independent from the decision-making bodies of the institutions.

Secondly, inspection mechanisms are the only institutional ways for affected people to raise their concerns to MDBs. Before this mechanism, affected people had to rely on informal ways to influence decision-making in MDBs, including public campaigns and lobbying MDBs, donor governments and the media. Though the importance of these tools has not diminished, inspection mechanisms provide avenues for affected people to access independent investigation bodies that are expected to provide impartial assessments of MDB's policy compliance. They also provide ways for affected people to attract attention of decision-makers within MDBs.

Whether or not the inspection mechanisms provide solutions to the grievances of affected people is a difficult question. The experiences of the World Bank's Inspection Panel, which has received 27 claims since its establishment, demonstrate different impacts of the mechanism upon project implementation, local struggles and the policies and practices of the World Bank. Only two projects were canceled as a result of investigations by the Panel, while partial solutions or compensation for the problems were provided to some people in several cases. The Management of the World Bank has continuously tried to avoid the investigation mechanism by building coalitions with Board Members from developing countries. This tactic has been a big obstacle for the operation of the mechanism. In the case of the ADB, while eight claims were filed, only two have been approved for inspection. Of

these two cases, requesters' grievances have yet to be adequately addressed.

HOW DOES THE INSPECTION FUNCTION WORK?

Before describing the complicated procedures of the Inspection Function, it is important to explain the primary actors and their roles in the inspection process.

Requesters of the Inspection are, needless to say, those who initiate the inspection process by filing a claim. To satisfy the eligibility criteria set by the ADB, the requesters have to be two or more persons affected by an ADB-funded project, or their representatives. The Inspection Policy requires requesters to show that (1) the ADB has failed to comply with its own operational policies and procedures, (2) this failure led to material harm upon the requesters, and (3) requesters have already contacted ADB Management to ask for remedies to the problems. These legalistic requirements make the mechanism difficult for affected people to access.

The *Board Inspection Committee (BIC)* is a sub-committee of the ADB Board of Directors. It oversees the whole inspection process and makes recommendations to the Board. The BIC has a critical role in the inspection process, including; (1) making recommendations to the Board on whether or not an inspection should be conducted; (2) selecting Panel members from the Roster of Experts after the Board authorizes an inspection; (3) preparing the Terms of Reference (TOR) and timeframe for the inspection; and (4) making recommendations to the Board on any remedial measures based on the Panel's report and the Management response to the report. The Board of Directors decides upon the recommendations submitted by the BIC. Thus, the Board is the final decision-making body to decide what actions should be taken on the project concerned.

The *Panel of Experts* is a team of three persons that conducts the actual investigation of the project concerned and reviews ADB Management's compliance to policies and procedures. The members of the Panel are selected by the BIC from the Roster of Experts, and the Panel's activities are determined according to the TOR also prepared by the BIC. Upon completion of the investigation, the Panel prepares a report of their findings and recommendations, and submits the report to the Board.

The existence and importance of the BIC is one of the major differences between the ADB's Inspection Function and the World Bank's Inspection Panel. The BIC undermines the independence of the Panel by recommending another set of remedial measures after the Panel's report. Furthermore, members of the BIC may have conflicts of interest when the BIC receives claims regarding countries they represent as Board members.

The inspection process is lengthy. Requesters are required to send a complaint to ADB Management, and Management responds to the complaint within 45 days. If requesters are not satisfied with the Management response, they send an official request for inspection to the BIC. Then the BIC forwards the request to Management and Management is allowed 30 days to respond to the request. Within 14 days of Management responding, the BIC recommends whether or not to authorize the inspection to the Board. The Board then decides on whether to authorize the inspection within 21 days. Thus, 110 days are consumed just to decide whether or not the ADB will conduct an inspection.

After the inspection is authorized by the Board, the BIC selects three panel members from the Roster of Experts, to conduct the investigation and prepares its TOR and timeframe for the inspection. After the Panel completes the investigation on policy compliance and submits the report on its findings to the BIC, including any recommended remedial changes in the scope or implementation of the project, Management is again given 30 days to respond to the Panel's report. Within 14 days of receiving Management's response, the BIC submits the final recommendations to the Board based on the Panel report and the Management response. It is then up to the Board to make the final decision on the BIC's recommendations within 21 days.

ACCOUNTABILITY DOWN THE DRAIN

Because of the complex process and uncertain outcomes, relatively few requests have been filed with the ADB Inspection Function. So far, the Samut Prakarn Wastewater Management Project in Thailand is the only case that has gone through the entire process. All other requests for inspection have been dismissed as 'ineligible' except for the request on the Chashma Right Bank

Irrigation Project-Stage III in Pakistan, for which the Board of Directors decided to conduct inspection in April 2003 but delayed the commencement of the actual investigation until the second half of 2003.

The Samut Prakarn Wastewater Management Project has been the most controversial ADB-funded project for the past three years, and it has been the target of local villagers' protests and international campaigns calling for the ADB's accountability.

The project has been subject to much criticism regarding environmental and social impacts, corruption, lack of public participation and lack of environmental impact assessment. Local people especially fear that the wastewater from the treatment facility will damage the fisheries, especially the mussel farming, upon which their livelihoods depend.

Local people have been struggling against the project since late 1998, half a year since the beginning of the construction of the project. In 2000, NGOs, farmers associations, trade unions and other civil society organizations in Thailand, jointly organized a large protest at the ADB annual meeting held in Chiang Mai, Thailand. The ADB faced more than 3,000 people protesting against them chanting, 'ADB get out of Thailand'. The rally included two hundred people from Klong Dan, where the Samut Prakarn project is. After this event, Samut Prakarn became recognized as the most notorious ADB project. International NGOs also started to campaign against the project, targeting the ADB and the Japan Bank for International Cooperation (JBIC), claiming that these Banks should be accountable to the people affected by the projects they fund.

The decision to file an inspection request was not made easily. Some local groups in Thailand were skeptical about the effectiveness of this process. In the end, however, local people decided to use the Inspection Function as a way to make the ADB accountable, and demand the ADB suspend its loan for the project. The project was obviously not in compliance with ADB policies because an environmental impact assessment for the project was never conducted. The ADB Board authorized the inspection on July 20, 2001, which marked the first authorization in the history of the Inspection Function.

The inspection process of the Samut Prakarn project was filled with disappointments. First of all, the Panel

could not enter Thailand to visit the project site. Under the Inspection Policy, 'no-objection' from the government is a prerequisite for the Panel's site visit. When asked by the BIC, the Thai government put many conditions on the site visit, including that the ADB should bear all responsibility for any damages caused by the site visit. The Panel considered that they could not conduct interviews with the stakeholders in a fair manner under such conditions, and decided not to go to Thailand. As a result, the requesters lost the opportunity to present their views to the Panel, and the Panel had to finish their investigation without ever meeting with requesters. The Panel also complained that they had no way to communicate with outside stakeholders, and they had difficulties in accessing relevant documents and interviewing ADB staff.

Despite these obstacles, the Panel report revealed that the ADB had violated seven policies in the course of approving the Samut Prakarn Project. These included policies on supplemental financing for cost overrun, operational missions, environmental considerations, involuntary resettlement, social dimensions, governance, and benefit monitoring and evaluation. The Panel recommended that the ADB should admit these violations and that the ADB should negotiate with the Klong Dan community regarding the damages, remedies and the local community's participation in the management and operation of the plant. The Panel denied, however, the requesters' demand to suspend ADB loan disbursement for the project.

Although the Management Response to the Panel's report denied every policy violation, the BIC agreed with most of the conclusions of the Panel, but failed to recommend that the Board actually admit to the policy violations. The Board approved the BIC's recommendations on March 25, 2002, without admitting to policy violations, and instructed Management to make semi-annual reports regarding the implementation of the BIC's recommendations.

The ADB has not however, taken any steps to build trust with the Klong Dan community to this day. The ADB continued to disburse the loan for the project while substantially ignoring the major issues local people raised. Thus, despite the Panel finding clear violations by the ADB of its own policies, accountability of the ADB to the people affected by its project was not fulfilled.

The fact that the ADB had violated its own policies on environmental and social impacts may have influenced the Thai government's decision-making. One month after the final decision of the Board, Prime Minister Thaksin Shinawatra visited Klong Dan and met with the community, which led to a series of studies by the Environment Ministry. As a result of strong criticism from local people, media, senators and academics, the Thai Government announced the suspension of the project's construction in February 2003. This was a remarkable event in the histories of both civil society's struggle in Thailand and international campaigns against the ADB.

REVIEW PROCESS OF THE INSPECTION FUNCTION

During the inspection of the Samut Prakarn project, many stakeholders recognized the serious need for revising the inspection policy. The review of the policy began in December 2001, and took almost one and a half years to complete. It is worth noting that the review of the Inspection Function was the most transparent and participatory policy-making process in the ADB's history. At the same time, it involved political conflicts among the stakeholders, none of whom were satisfied with the results of the review.

In the beginning of the review, international NGOs played a leading role. The ADB employed two environmental lawyers from NGOs who had extensive experience working on the World Bank Inspection Panel. In March 2002, 11 NGOs submitted recommendations for revising the inspection policy.

The ADB released a total of three drafts of the new policy, and organized 10 public consultations in both developing countries and donor countries, where the first and second drafts were extensively discussed. NGOs organized preparatory strategy meetings for these consultations, and as a result, NGO's proposals arguing for a permanent and independent panel and accessible procedures gained broad support at these consultations.

After the initial success of the NGO campaign calling for an independent and strong accountability mechanism, ADB staff and governments of developing countries started to resist such a mechanism. At the Phnom Penh consultation in August, the Management attempted to influence the views of developing countries by circulating a

memo written by senior staff. This incident became a scandal and infuriated donor governments and NGOs.

After a round of external consultations, the debate continued within the ADB, and civil society had to wait for the result of these secret negotiations until February 2003, half a year after the second draft was released. The subsequent 'working paper' (the third draft) proposed to establish both a problem-solving body and an independent panel to review policy compliance. NGOs again submitted comments on the working paper claiming that the sequential model proposed in the working paper - which requires a case to first go through part of the problem-solving phase before reaching the compliance review process - would undermine the effectiveness of the mechanism.

Finally, the Board of Directors approved the new policy called the 'ADB Accountability Mechanism' at the end of May 2003. The new policy is a compromise between NGOs and donor governments on the one hand, and ADB senior staff and governments of developing countries on the other. Although there are a number of improvements in the new policy, several severe shortcomings also exist. Both positive and negative aspects of the policy are described below.

STAKEHOLDERS OF THE MECHANISM

Following is an explanation of the various stakeholders' perspectives on the Accountability Mechanism, based on their reactions to the inspection of the Samut Prakarn Project and the subsequent review of the Inspection Policy.

ADB Management and Staff: ADB Management and staff have been major obstacles in the inspection process. ADB staff have a strong incentive to lend more money to their clients, the developing member countries, and do not want to admit to the problems caused by their funding. In each inspection case, ADB staff have tried all means to derail the inspection process. In the Samut Prakarn case, the Management Response to the inspection request denied every policy violation alleged, and claimed that there was no need for the inspection. There was even a rumor that the Thai government's 'objection' to the site visit was suggested by ADB staff. After the Panel revealed that the ADB had failed to comply with a

number of policies, the Management again responded that they believed there had been no policy violations, despite the BIC's report to the Board largely agreeing with the Panel's conclusion. In the case of the Chashma Right Bank Irrigation Project, Management claimed that an Inspection should not be conducted because it would undermine the on-going efforts to solve the problems through the 'Grievance Redress and Settlement Committee'. ADB staff have tried to avoid inspection by pressuring the Pakistani government to establish this committee although, the process of its establishment, including the TOR and selection of members, was far from satisfactory for the requesters. These are some of the examples of how ADB Management has tried to avoid taking responsibility for the harm caused by ADB projects.

Developing Member Countries' Governments and their EDs: In many cases, Developing Member Countries' (DMCs) governments are the owners of the projects subject to protest by local people, and naturally do not want these voices to be heard by the ADB. They also tend to be under the mistaken impression that the inspection is to investigate the faults of DMCs. Some claim that the Thai government opposed the site visit by the Panel in the Samut Prakarn inspection because it feared that the Panel would investigate the Thai government's conduct, instead of the ADB's.

In the process of the policy review, DMCs strongly opposed the introduction of a problem-solving mechanism, claiming that the mechanism would undermine the sovereignty of the DMCs. They also strongly opposed the unrestricted site visits by the Panel, and demanded that site visits should only be conducted with the consent of the governments. These DMCs opinions have been incorporated into the new policy to some extent.

Donor Governments and their EDs: Donor governments have been the major proponents of the independent inspection panel. They feel that their contributions to the ADB should be used effectively, without causing local and international protest. In some countries, NGOs monitoring the ADB had successfully convinced the donor governments to support their proposals.

NGOs and People's Organizations: There are different perspectives on the ADB's inspection mechanism among civil society

organizations. International NGOs working on the ADB's accountability have been the main actors pressuring the ADB to establish a more independent and effective mechanism, because it is almost the only institutional mechanism within the ADB where affected people can have their grievances addressed. NGOs in developing countries are more skeptical of the effectiveness of the mechanism. They are concerned how actual solutions for the local people will (or will not) be implemented through this mechanism. Other local NGOs and people's organizations see it as one strategy in the campaigns to gain the attention of decision-makers in the ADB and donor governments. Although the degree of expectation varies, there is a consensus among NGOs that an effective and accessible inspection mechanism will be a useful tool to demand the ADB's accountability.

THE FUNCTION OF THE 'CONSULTATION PHASE'

The ADB newly introduced a 'problem-solving' function in the ADB Accountability Mechanism, which will be performed by the 'Special Project Facilitator (SPF)' during the 'consultation phase.' The SPF is separated from the Panel, and the position is for one person with a small secretariat. The role of the SPF is to conduct the consultation phase of the Accountability Mechanism "to respond to specific problems of locally affected people in ADB-assisted projects through a range of informal and flexible methods." The SPF is appointed by and reports to the President of the ADB. Thus, the SPF is fundamentally the tool of Management, and the Board does not have significant influence on the process during the consultation phase.

It is welcomed that the ADB recognizes its own role in problem solving for ADB-funded projects. While the compliance review by the Panel will only look at the problems caused by the ADB's violations of its policies and procedures, the SPF will broaden the scope to problems not related to issues of policy compliance.

Although the problem-solving function may be useful for affected people to a certain extent, there are many concerns regarding the consultation phase, as explained below.

Independence of the SPF: NGOs have demanded that the SPF should be independent from Management and

should report to the Board instead of the ADB President. The independence of the SPF is essential in the consultation phase because trust by the parties concerned (including the borrower and affected people), is essential in seeking a satisfactory resolution to a dispute. It is disappointing that the SPF will be appointed by the President. Furthermore, the new policy also allows current ADB staff to be the SPF. It is unlikely that an internally selected person would ever be seen as independent and trustworthy by project-affected people.

Relationship between the SPF and the Panel: It is regrettable that the new Accountability Mechanism requires the requesters to file their complaints first to the SPF, and then to wait for at least 84 days before filing a request for compliance review. This means that even if the requesters are already exhausted from engaging in fruitless dialogues with Management, they still need to file their complaints first to the SPF and wait nearly two months. This step is redundant and a waste of time and energy for both the requesters and the SPF.

ADB's ability to solve problems: The fundamental question of the new consultation phase is the ADB's ability to solve the problems of affected people in a fair and impartial manner. The new policy states, 'the consultation phase is designed ultimately to improve and strengthen the internal problem-solving functions of the operations departments'. Many experiences of engagement with ADB Management suggest, however, that the ADB has always sided with borrowing governments, and as such, is reluctant to solve or even acknowledge problems. The ADB's poor problem solving capacity has again been demonstrated in yet another project, the Chashma Right Bank Irrigation Project-Stage III. It is not clear how the SPF will overcome this culture of denial within the ADB.

MAJOR IMPROVEMENTS?

Although some issues remain to be addressed, there are a number of improvements in the policy. In particular, the new mechanism has become far more accessible to affected people, even compared to the World Bank Inspection Panel.

Independent and Permanent Panel: A permanent Panel called the Compliance Review Panel will be established.

Assuming requesters can endure the consultation phase, this will allow the requesters to consult with the Panel and be given necessary assistance for filing claims. It is also expected that the Panel can build institutional learning regarding policies and institutional problems of the ADB.

Citation of Policy Violations: The new policy does not require requesters for the compliance review to cite the policy violations that led to material harm. Because the ADB has many policies and all of them are written in English, the previous requirement was a major burden and obstacle to the affected people. Under the new policy, requesters will be asked to explain; (1) how they are, or are likely to be, affected materially and adversely; and (2) that this material harm is, or will be, caused by the ADB-assisted project. Now it is the Panel's role to decide which policies and/or procedures are violated in the project of concern.

Reduced Management Response: The Inspection Function was extremely lengthy and allowed many meaningless refutations from Management. Under the new policy, Management will be allowed to submit their response only once when the Panel delivers a draft report. This will save the time and energy of both the Panel and Management.

Language: The new policy will allow both the claim to the SPF and the request for compliance review to be submitted in any official or national language of the ADB's developing member countries.

Anonymity: Requesters can ask that their identity be kept confidential.

Requesters' Comment on Panel's Draft Report: Requesters will be given the opportunity to comment on the draft report of the Panel. They may thus have a certain degree of influence on the Panel's final report.

Monitoring of the Remedies: The Panel will monitor the implementation of any remedial actions approved by the Board as a result of the compliance review. This will help its compliance review to be more beneficial to local people affected by the project. In many inspection cases of the World Bank, implementation of the Board decisions have been left to the Management. The effectiveness of these decisions was severely undermined by the

reluctance of Management and borrowing governments to follow the decisions.

Private Sector Operations: The private sector operations of the ADB are covered by the new mechanism, which were not included previously in the Inspection Function.

TOOTHLESS NEW POLICY

Compared to what NGOs were advocating, the new policy lacks measures to ensure the impartial investigation of and adequate solutions to problems.

Site Visit: Among the most controversial aspects of the policy revision concerned site visits. The old policy required ‘no-objection’ from the government for the Panel to conduct a site visit. The experience of the Samut Prakarn case clearly showed that this process must be abolished to ensure fair and impartial investigations. NGOs proposed that this condition be eliminated, and that there should be a clause in every loan agreement between the ADB and borrowing governments allowing the Panel to conduct site visits. In the process of the review, developing member countries of the ADB strongly opposed this proposal, saying that allowing free site visits by the Panel would infringe upon the sovereignty of a country. The new policy is unchanged and says, ‘the policy should assume the good faith cooperation of all parties in the compliance review’. Leaving room for governments to resist site visits will limit the effectiveness and independence of the Panel’s investigations.

Suspension of Loan Disbursement: Another major issue of contention was the suspension of loan disbursement. The requesters of the Samut Prakarn case seriously questioned why the ADB did not suspend the loan disbursement when it became obvious that the ADB violated its own policies during the project. During the inspection policy review process, NGOs demanded that the Panel should be empowered to recommend the suspension of loans even when the inspection is in progress, because some cases may require immediate attention to address problems of affected communities. In the Samut Prakarn case, more than 90% of the project construction was completed when the inspection was over; it became too late to change the project design thus

undermining the effectiveness of the Panel’s recommendations.

The new policy still says nothing about loan disbursement. It only states that after the investigation, the Panel will make recommendations including any remedial changes in the scope or implementation of the project.

FURTHER STEPS

Although there are a number of improvements in the new Accountability Mechanism, the mechanism itself will not be enough to prevent the negative impacts caused by ADB-funded projects. Further steps must be taken to enhance the social and environmental performance of the ADB, including the transparent implementation of the mechanism, addressing the shortcomings of the mechanism, institutional reforms of the ADB, and strong and effective monitoring from civil society.

Transparent Implementation of the New Mechanism: While the review of the Inspection Policy was conducted in a transparent manner, the effectiveness and reliability of the mechanism rests on how the Accountability Mechanism will be implemented. NGOs have suggested that the new mechanism should have a committee or a forum consisting of representatives of each sector to enhance communication with external stakeholders, but this proposal was not incorporated into the new policy. There are still opportunities,, however, for NGOs and peoples’ organizations to influence the implementation of the policy, including the selection of the Panel and the SPF and establishment of the operating procedures for both phases. The ADB should ensure that these processes are as transparent and participatory as the policy review process was. In particular, the SPF should be selected by and work in consultation with civil society organizations, because the institutional arrangement of the SPF (i.e. s/he is appointed by and reports to the President) will not ensure her/his independence and credibility.

Leadership of the President: Even if the new mechanism is an improvement over the previous arrangements, the implementation is left to the ADB and external stakeholders, and the leadership of the President is crucial for the successful implementation of the

mechanism. Traditionally ADB Presidents have been reluctant to strongly lead the institution, and have seen their role as a mediator in the culture of consensus-based decision-making in this 'Asian' organization. In the Samut Prakarn inspection case, the President failed to exercise his leadership when the Thai government objected to the Panel's site visit and Board opinion split between the South and the North.

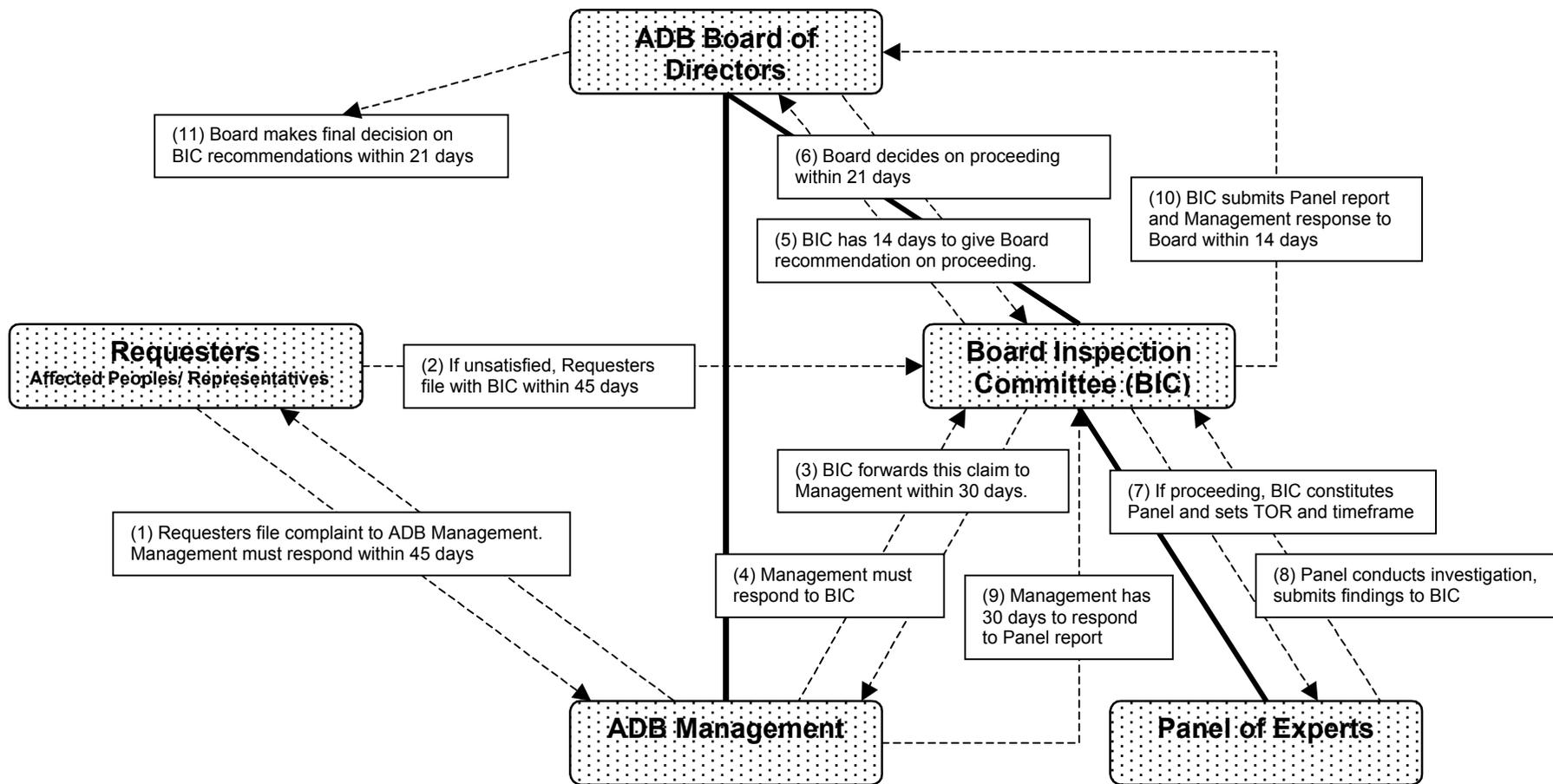
Responsible organizations need leaders who hear the people's voices and guide their institutions. The ADB president is playing a key role as the chief executive of ADB Management and the chair of the Board of Directors. The newly introduced consultation phase requires a more active President, as it is the President who decides on the remedial measures recommended by the SPF. Lack of means of enforcement in the new mechanism, i.e., suspension of loan disbursement, can also be addressed if the President exercises his leadership in making decisions to suspend loans in cases which require urgent actions.

Educating ADB Staff: It is ADB staff that design, appraise and implement the ADB loan projects. Even if the Panel/SPF is independent and recommends solutions that people demand, the implementation of these recommendations is in the hands of ADB staff. Educating and training ADB staff regarding the negative impacts caused by ADB loans and the importance of accountability will help make operations of the Accountability Mechanism more effective. The staff should also be given incentives to avoid negative impacts from the projects they fund.

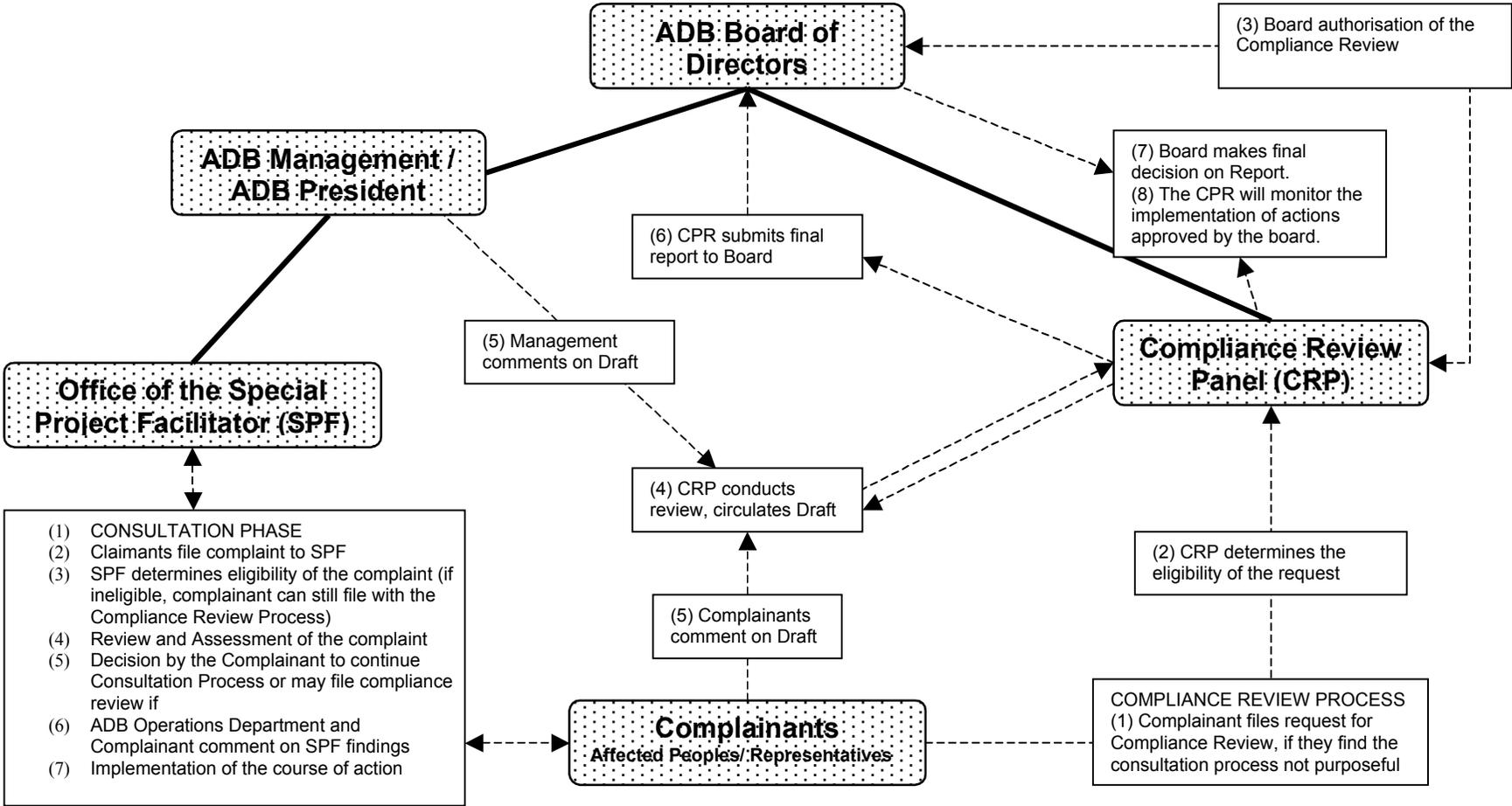
Strengthening Civil Society: As described in the beginning of this article, inspection mechanisms have been established as a result of civil society's struggles against destructive projects funded by international financial institutions. It is also true for the ADB. NGOs and people's organizations have made tremendous efforts in both inspection cases and in the review of the inspection policy. The new mechanism is the result of this strong effort to establish the accountability of the ADB and bring justice to affected communities. The case of Samut Prakarn showed that local people, local NGOs and international NGOs can work together against giant organizations like the ADB.

Critical flaws remain in the Accountability Mechanism that can potentially undermine the entire process, specifically, the right of governments to reject site visits and the lack of measures to stop loan disbursements. Without persistent and active monitoring, both of projects in the pipeline and those already under way, we will continue to see disasters caused by the ADB. While civil society has had some success in bringing about this new Accountability Mechanism, it may also be up to civil society to make sure that it works. ■

ADB INSPECTION FUNCTION
 (superceded by the New Accountability Mechanism, May 2003)



ADB ACCOUNTABILITY MECHANISM PROCEDURE
(Active, May 2003)



STATEMENTS ON ADB POLICIES
FROM MOVEMENTS, ADB WATCHERS,
CIVIL SOCIETY GROUPS,
AND SOCIAL CRITICS

On the Draft Public Communications Policy of the ADB

In an effort to make the ADB more open, transparent, accountable and effective to its various stakeholders, the Bank came out with a new Public Communications Policy (PCP) last year. The PCP deals with issues on stakeholders' and affected communities' right to accurate and timely information, a critically important element to their right to meaningful participation.

The Bank's press releases state that the draft has been developed with inputs from various stakeholders including representatives from NGOs and civil society in Bangladesh and India. On October 26, 2004, after a process that included 13 face-to-face consultations, a teleconference with Nepali groups, a walk-out in Bangalore, written comments and statements of protest, the ADB released the second draft of the PCP. The new draft failed to incorporate many of the recommendations offered by civil society. Below is a collection of comments and statements of protests from movements and civil society groups monitoring the PCP review process.

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NGO LETTER TO ADB PRESIDENT TADA0 CHINO ON THE PCP

April 5, 2004

President Tadao Chino
Asian Development Bank
Manila, Philippines

Dear President Chino,

We are writing regarding the recently released *Draft Public Communications Policy of the Asian Development Bank (28 February 2004)*. While we acknowledge that the Draft Policy includes some improvements over existing standards, it still remains an inadequate policy draft document failing to address many of the obvious problems associated with access to information at the ADB. We are therefore disappointed with the draft, as it may imply that there is insufficient political will within the institution to adopt critical transparency reforms. We hope this interpretation will be proven wrong, but we feel it is important to clearly state our concern with the ADB's refusal to adopt many of civil society's core recommendations.

As recently reported by the *Financial Times*, you have a keen desire for the ADB to emerge from this review as a leader among the Multilateral Development Banks (MDB). We are uncertain how this desire will be translated into reality if the ADB does not substantially improve the Draft Policy. If the ADB aspires to be a leader in the MDB community, the requirements outlined in the Bank's disclosure policy should not fall short of transparency standards that are well established and foster universal agreement.

We believe that all citizens have a right to information about ADB operations that affect them. As a Multilateral Development Bank, the ADB's governors represent nations that have legal obligations under the International Bill of Human Rights, yet the Draft Policy rejects many of civil society's key recommendations that are consistent with this international agreement.

The name of the policy, as well, does not properly represent citizens' right to information as described in international law. The use of the term "public

communication" does not in any way completely address the reason for developing such a policy or explicitly state nor imply that the policy is an enforceable rule for disclosure that fully respects the citizen's right to information, applicable to all the Bank's officials and department. We would strongly recommend that the policy affirm this right unequivocally, and that the policy be named the *Public Communication and Information Disclosure Policy*.

The draft Public Communications Policy acknowledges that disclosure provides opportunities to "enhance development effectiveness by making more operational information available to the individuals and communities" that benefit from them, or that are affected by them. We feel there are many ways in which the ADB could improve the Draft Policy in order to acknowledge and respect the right to information as enshrined in the International Bill of Human Rights. This affirmation and action on well established principles of democratic governance is exactly what the draft PCP is avoiding; and this failure is most disappointing.

Key recommendations from civil society absent in the draft Public Communications Policy include, among others:

- disclosure of detailed descriptions of proposed loans and grants in draft and final draft form (this refers to the Report and Recommendation of the President and the Technical Assistance Report), including those pertaining to private sector lending;
- disclosure of Aide Memoires;
- disclosure of all draft and final draft policy, country, and strategy papers, with adequate time provided for comment;
- opening the meetings of the Board of Directors, including the release of transcripts of Board proceedings or, as a preliminary measure, detailed summaries of Board discussions;
- making a commitment to translate a wide range of policy

- and operational information into relevant languages;
- providing citizens with an opportunity to appeal to an appropriate and independent body in cases where they feel the Bank has failed to adequately implement the Policy's guiding principle of "a presumption in favor of disclosure;" and
- strengthening the capacity of Resident Missions so as to prevent policy implementation from becoming overly dependent on Headquarters in Manila.

Detailed comments on the draft Public Communications Policy will follow from civil society organizations separately during the comment period.

Finally we hope and trust that you will reconsider the proposed Draft Policy and lead the institution towards adopting a Policy that will demonstrate the ADB's desire to play a leading role in promoting meaningful transparency in its own operations and among the Multilateral Development Banks in general.

Sincerely,

Sameer Dossani
Executive Director
NGO Forum on the ADB

Cc: Board of Directors

Endorsed by:

Australia:
Michael Simon, Oxfam Community Aid
Abroad

Lee Tan, Australian Conservation
Foundation

Binnie O'Dwyer, FoE – Australia

Azerbaijan:

Azad Aliev, Association of Social
Economic Researchers

Bangladesh:

Ashraf-ul-Alam Tutu, Coastal
Development Partnership (COP)

Nasreen Pervin Huq, ActionAid
Bangladesh

Majibul Huq Dulu, Jamuna Char
Integrated Development Project
(JCDP)

Zakir Kibria, BanglaPraxis

Bulgaria:

Anelia Stefanova, Za Zemiata (For the
Earth)

Cambodia:

Sithirith Mak, Fisheries Action Coalition
Team

Thida Khus, SILAKA

Canada:

Ian Baird, Global Association for People
and Environment (GAPE)

Germany:

Dorothy Guerrero, Asienhaus

Knud Vöcking, Urgewald

Carole Werner, World Economy, Ecology
& Development

India:

Shripad Dharmadhikary, Manthan
Adhyayan Kendra (Manthan Research
Centre)

Smitu Kothari, Lokayan Programmes on
Seeds of Hope and Tribal Self-Rule

Anna Pinto, Centre for Organization,
Research & Education (CORE)

Debabrata Roy Laifungbam, South Asian
Solidarity for Rivers and Peoples
(SARP)

Charmaine Rodrigues, Commonwealth
Human Rights Initiative (CHRI)

Himanshu Thakkar, South Asia Network
on Dams, Rivers & People

Ravi Rebbapragada, SAMATA

Indonesia:

Fabby Tumiwa, INFID – Working Group
on Power Sector Restructuring

Muhammad Riza, Yayasan Duta Awan

Italy:

Antonio Tricarico, Campagna per la
riforma della Banca mondiale

Japan:

Kenji Fukuda, Mekong Watch Japan

Yuki Tanabe, JACSES

Kei Kurihara, Fukuoka NGO forum on
ADB (FNA)

Kazakhstan:

Yevgeniy Zhovtis, Kazakhstan
International Bureau for Human
Rights and Rule of Law

Malaysia:

Adrian Goh, SOS Selangor

Nepal:

Gopal Siwakoti, WAFED

Netherlands:

Henneke Brink, Both Ends

Vincent Brisard, ASEED Europe

Pakistan:

Khadim Hussain, ActionAid Pakistan

Mohammad Nauman, CREED Alliance

Zafar Lund, Hirrak Development Center

Mukhtar Ahmad Ali, Consumer Rights
Commission Pakistan

Asim Nawaz Khan, NGO Network
Welfare Association

Khawar Mumtaz, Shirkat Gah

Papua New Guinea

Ruth Pune, Center for Environmental
Law and Community Rights
(CELCOR)

Philippines
Sameer Dossani/Jessica Rosien, NGO
Forum on ADB
Joan Carling, Cordillera Peoples Alliance
Sheila Coronel, Philippine Center for
Investigative Journalism
Nepomuceno Malaluan, Action for
Economic Reforms
Switzerland
Bruno Gurtner, Swiss Coalition of
Development Organizations
Thailand
Pianporn Deetes, South East Asia Rivers
Network (SEARIN)
Penchom Saetang (Ae), Campaign for
Alternative Industry Network (CAIN)
Piyachet Klaewklad, Asian Labor
Network on International Financial

Institutions Thailand (ALNI Thailand)
S. Parasuraman, ActionAid Asia
Naing Htoo, EarthRights International
(SE Asia)
UK
Alex Wilks, Bretton Woods Project
Tom Griffiths, Forest Peoples Programme
Toby Mendel, ARTICLE 19
USA
Mishka Zaman, BIC
Susanne Wong, International Rivers
Network
Shannon Lawrence, Environmental
Defense
Doug Norlen, Pacific Environment
John Fitzgerald, GAP
Paul Orum, Working Group on
Community Right-to-Know

◆

BOYCOTT OF ASIAN DEVELOPMENT BANK'S CONSULTATION ON DRAFT PUBLIC COMMUNICATIONS POLICY

16 July 2004
Mr. Louis de Jonghe
Country Director
India Resident Mission
Asian Development Bank

Dear Mr. Jonghe,

We, the undersigned members of various civil society organisations do hereby express our profound concern with the process of consultation that is taking place today. The reasons for our concern are elaborated below:

- a) This consultation is not representative of those deeply affected by ADB supported projects. Affected people across Southern India have not been invited into this consultation process (to name a few, from Infrastructure development projects in Tumkur, Chennapatnam and Ramanagaram, and the West Coast Project in Mangalore implemented by the KUIDFC).
- b) It is not clear to us what criteria ADB has used to select participants to this consultation. Those who should be legitimate participants in this consultation process (project affected people) have been denied a voice, and thereby their rights to shape projects in their area. Moreover, those who have been invited to this consultation were given extremely short notice (one week).
- c) Our experience with past and ongoing projects of ADB shows that it is critical to give substantive information in local languages to affected people. It is the right of the affected people that they receive information about the projects at early stages of negotiations and not during the implementation phase only. By not engaging in this practice ADB is denying people's right to

information. The organizing of this consultation process also reflects these flaws.

- d) Past and ongoing experiences of ADB project show that the appropriate information is not provided to the appropriate people at appropriate times. Despite repeated requests from project affected people and local elected decision makers, ADB project managers and implementers have not shared crucial information about project design, financing arrangements, risks, liabilities and repayment schedules. Further, project affected people and the locally elected decision makers do not have access to clear and effective grievance and redressal procedures.
- e) As a public institution, ADB must be bound by the best practices of information disclosure. Whether or not the project implementer (Government or a private contractor) provides information on projects, ADB cannot shy away from its own responsibilities in this matter.
- f) It is evident that ADB's commitment to public participation is superficial. Any process of information 'disclosure' that does not result in meaningful participation by project affected people and perceptible change in ADB's institutional behaviour towards accountability and responsiveness to community concerns, is a futile exercise. It is also clear to us that ADB's 'disclosure' of information has no bearing on its institutional decision making processes.
- g) The standards and norms that are used by ADB while undertaking social-economic and environment assessments are inadequate and unacceptable.

- h)** We strongly object to ADB's disregard for national laws, local regulations and measures whereby the institution pressurizes governments to amend laws to suit project interests.

The above concerns have been voiced by civil society actors and project affected peoples in several countries and in several forums. It is indeed a matter of great regret that ADB has not found these concerns important enough to address. For these reasons, we the undersigned choose not to participate in this consultation. Should the ADB, be willing

to engage seriously with the issues raised above, we would be happy to take the discussion further.

Sincerely,

M. N. Kotenagabhusan, Tumkur
Chelevaraju, Ramanagaram
Samatha, Hyderabad
Communications for Education and
Development, Bangalore
Focus on Global South, India
EQUATIONS, Bangalore
Civic, Bangalore
STDP, Srilanka
Environment Support Group, Bangalore

◆

SOUTH ASIAN STATEMENT ON THE 2ND DRAFT OF THE ADB'S PUBLIC COMMUNICATIONS POLICY

We, the undersigned civil society organizations and movements in South Asian region, call upon the Asian Development Bank to adopt the following demands to be incorporated in its Public Communication and Information Disclosure Policy.

We believe that the communities and citizens have a right to timely, full and accurate information about projects and policies that shape and affect their lives. As an institution that claims commitment towards public good, the ADB has a responsibility and obligation to operate in a transparent and accountable manner. We believe that the ADB has failed in its duty to consistently provide timely, complete, accurate and accessible information to the public. Reading the 2nd draft PCP, we recognize that changes have been made, but are inclined to comment that the changes are few and cosmetic to say the least, and where changes have been made, they serve to mainly boost the ADB's image rather than deepen its commitment to transparency and accountability. Further, contentious issues raised in past civil society comments and statements have not yet been resolved.

The second draft of the PCP still falls far short of the demands of citizens and civil society organizations in the South Asia region.

Following are our comments on the 2nd draft PCP and our demands on what we expect to see in the final Public Communication and Information Disclosure Policy.

- The current draft is silent on how certain decisions and the changes made to the draft arrived at; the policy should disclose the process and rationale behind the changes.
- We demand that the PCP be renamed as **Public Communication and Information Disclosure Policy**, by which the duties and responsibilities of the ADB are geared towards disclosure.
- The disclosure should be more orientated towards project-affected people, communities and

citizens, not towards industry, private sector and government.

- The policy should be more specific and conclusive, rather than narrative. The policy should be unambiguously in favour of full disclosure and not allow for selective interpretation by ADB management and project staff.
- The policy is still geared towards *constraints* than disclosure, there is change in the 2nd draft but the tone remains the same.
- The ADB should not only disclose information, but also, it must recognize that its disclosure policy should come out as a result of demands and aspirations of the people.
- The policy should not make any distinction between public and private sector lending and projects. The ADB is a public institution and should act as such, and not favour private sector interests.
- The draft is extremely weak on private sector projects. Given that all development projects are (directly or indirectly) publicly financed, information pertaining to all private sector operations in ADB supported development projects must be on the public domain. This is particularly important in light of increasing private sector involvement in ADB financed projects and programmes. The business and competitive interests of project sponsors cannot take precedence over the public's right to know about the details of these projects, especially if the public will eventually shoulder the financial burden of these projects.
- In all private sector projects, the ADB must disclose full and accurate information about financing arrangements including,

details of concession and actual financing agreements, risk and profit distribution, contingent and other liabilities, details of guarantee and counter-guarantee agreements, expenditure patterns, audit reports and anti-corruption reports.

- There should clearly articulated methodology on how the policy will be evaluated.
- We believe the policy must include recourse to an independent appeals body. Such a body will interpret ADB's stated presumption in favor of disclosure and provide an independent review of the regime of exceptions. The policy must be under the review of CRP (Compliance Review Panel). We demand that any individual citizen or interested party, regardless of whether they are harmed by ADB's non-disclosure, should be eligible to lodge a disclosure related appeal with the CRP.
- The policy still does not meet the standards in place in many national information laws. We demand that at a minimum, the policy reflects national and local Right to Information laws and regulations.
- ADB should also be bound by member countries international human rights obligations related to freedom of information such as article 19 of UN International Covenant on Civil and Political Rights which many Asia Pacific countries have ratified.
- ADB enjoys immunity to national laws (for example as in Bangladesh). We demand that there should be no such immunity to the disclosure policy or to ADB as an institution.
- We demand a shift from document-based disclosure to recognition of a general obligation of the ADB to disclose all information held.
- We demand that there should be clear mechanism to take recourse to CRP (Compliance Review

Panel) if ADB provides wrong and delayed information. ADB must provide adequate compensation if it provides any wrong information and if there is any damage because of delay in providing information.

- We demand that the obligation to disclosure information, for ADB financed and supported public and private sector projects be on the ADB. The ADB cannot transfer its obligation to full disclosure on to governments.
- The draft policy is still not specific on how the ADB intends to disseminate information beyond the Internet. The cost of providing information in national and local languages should be borne by the ADB.
- The ADB's policy on information disclosure must be linked to its institutional decision-making processes, particularly those on inspection and anti-corruption. Information disclosure in and of itself does not satisfy the expected standards of transparency, accountability and good governance.

We look forward to the ADB's response to these comments and demands.

November 24, 2004

Signed by:

South Asian Solidarity for Rivers and Peoples (SARP), Nepal
Brahmaputra Barak Rivers Watch (BBW), India
Delhi Forum, India
BanglaPraxis, Bangladesh
Sri Lankan Working Group on Trade and IFIs, Sri Lanka
Advancing Public Interest Trust (APIT), Bangladesh
AOSED, Bangladesh
Focus on the Global South, India
Water and Energy Users' Federation- Nepal
Nepal Policy Institute, Nepal
Melamchi Local Concerns Group, Nepal
South Asia Network on Dams Rivers and People, India
The Innovators, Bangladesh

Individual signatory:

Gururaja Budhya, India

On the ADB's Accountability Mechanism

The accountability mechanism, which was approved in 2003, is an institutional platform/tool through which project-affected communities can raise their concerns with the ADB and have them evaluated (address their problems and investigate actual violations) in an independent and neutral body. This mechanism comprises two complementary functions—a consultative phase run by the Special Project Facilitator (SPF) and a compliance review phase led by an independent three-person Compliance Review Panel (CRP). The former aims to assist communities adversely affected by ADB projects through informal methods of consultation, inspection and evaluation of problem projects on the ground, with the consent and participation of all parties involved. When the complainants are unsatisfied with this process, they can opt for the CRP to address their concerns. The CRP determines whether the ADB did violate any of its operational policies and procedures with the intention of holding the institution accountable for its actions.

Much has been written about the limitations (and flaws) of this policy. It provides a space for the affected people to voice out their complaints but does not provide any solution. The bodies tasked to evaluate the cases are, more often than not, neutral and impartial but undemocratic and secretive. To date, there are four cases filed at the office of the SPF (Melamchi in Nepal, Southern Transport Development Project in Sri Lanka, Sixth Road Project in the Philippines, and Chasma Right Bank Irrigation Project in Pakistan). The STDP and Melamchi are also under inspection at the CRP.

Below are the statements of complaint on the STDP from Sri Lankan affected communities and protest letter on the Chasma Right Bank Irrigation Project in Pakistan.

◆

**RE: SOUTHERN TRANSPORT DEVELOPMENT PROJECT SRI LANKA,
LOAN SRI 1711**

23rd March, 2005

President Haruhiko Kuroda,
Asian Development Bank,
6 ADB Avenue,
M a n d a l u y o n g C i t y
Philippines

Dear President Kuroda,

Bank Information Centre of Washington, Both Ends of Amsterdam, Friends of the Earth of Tokyo and Environmental Defense of Washington join us in bringing the following to your attention.

We are writing to you to express our concern regarding the closure of the process of the Special Project Facilitator (SPF) for the Southern Transport Development Project (STDP) in Sri Lanka. As you will be aware, we, the affected communities of the Southern Transport Development Project registered a complaint with the SPF on 9 June 2004. The complaint was registered by SPF on 16 June and determined eligible on 5 July 2004.

The Complaint was raised because the project was being carried out in breach of ADB Guidelines and Polices, thereby causing unnecessary harm and suffering to many people. The SPF was meant to resolve the problems created, but the SPF having admitted that there are real problems with the project has done nothing to help or reduce the harm being caused to the Complainants or others by the Project. SPF stated specifically that required Environmental studies and social studies had not been completed

"The CT was designed on the basis of feasibility studies, including a SIA and an EIA. The feasibility of the FT has to be similarly assessed in social, environmental, economic and technical terms, a task which does not seem to have been done adequately to date."
The SPF stated that

".. the number of households to be relocated have increased

considerably", there were "insufficient transparency ... delays in payment ... resettlement sites lack water, roads and electricity... Affected Persons ... live in sub-standard temporary shelters".

These are breaches of ADB Policies and Guidelines and of the Loan Covenants.

A request has been made to the Compliance Review Panel (CRP) who are now investigating the project, but they have said that only the SPF can stop the harm being caused to the affected people. Confirmation of any breaches will be available from CRP in July along with recommendations on what should be done. This will be long after the harm has been done and the situation becoming irretrievable.

The main criticisms we would like to draw your attention to refer to the following aspects:

Delay of the Process:

The SPF delayed the investigation taking more than double the time provided for in the policy. The SPF gave its original reason for the delay its wish to await the outcome of a national committee established by the Sri Lankan Prime Minister. Subsequently in the RAR, the SPF further attributed the delay in the process to the fact that SPF wanted to await the outcome of the Safeguard Compliance Review commissioned by ADB Management. Since the SPF is part of the ADB's independent accountability mechanism, the SPF should not defer to political interventions of the borrowing country or to investigations undertaken by ADB management.

Failure of OSPF to Facilitate Agreed Conditions:

In preliminary discussions with the claimants leading up to a meeting of all parties, the OSPF had proposed to the claimants that certain items be completed prior to such meeting. The claimants agreed to this suggestion. The conditions

included the publication of Safeguard Compliance Review Report conducted by Management. However, the Management of the South Asia Regional Department (SARD) failed to provide the claimants with this report and the claimants have not received it until this day.

Since the conditions for the proposed joint meeting had not been met, the claimants chose not to participate in the joint meeting proposed by the facilitator.

Failure of OSPF to Take Leadership in the Facilitation Process:

The SPF chose to contract the facilitation process to a professional mediator, which is an option in accordance with the Accountability Mechanism. (as per Appendix 7, para 6). However, the SPF deferred all responsibility to the mediator by allowing the mediator to keep all agreements and communications between the disputing parties confidential. Although such confidentiality agreements are standard international practice, they are inappropriate in the context of the SPF. The ADB's Accountability Mechanism Policy clearly establishes the SPF as the facilitator. If the SPF chooses to hire a mediator, it should be under the condition, that the SPF would always be informed of developments in the facilitation process. The mediator was ill-informed and took no account of the Course of Action that had been agreed by all parties and approved by your predecessor, President Tadao Chino. The mediation process consisted of only one meeting with some of the Complainants when only the background was explored. No attempt at finding a solution was made. The hired mediator issued a report full of inaccuracies and errors indicating his lack of grasp of the facts and points already agreed with SPF. Please see the attached comments on the mediator's report made by the Complainants.

Inappropriate Closure of the SPF Process:

In February, the SPF announced its decision to close the process on the basis that it had been "unpurposeful". This announcement came as a complete surprise to the claimants who were expecting the process to continue. In making the decision to close the process, the SPF deferred to the judgment and report of the hired mediator. The mediator himself relied simply on the fact that the Executing Agency and the Bank

failed to respond to the mediator and that the Executing Agency did not wish to continue. The SPF did not make its own evaluation of the facilitation and therefore failed in its mandate to take the lead on the facilitation process. Further, the SPF has failed to define the meaning of "unpurposeful" yet uses it as an escape from doing its duty to "be responsive to Affected Persons"

The position is a result of their inability to put any pressure through the mediation process on the ADB Management to find a solution to the harm being caused. Having claimed "unpurposeful" the SPF failed to consider the claimants opinion on whether or not they thought the process was purposeful.

Conflict of Interest:

In May 2004, before the SPF process had started, ADB Management commissioned a Safeguard Compliance Review on STDP. For reasons of transparency and achieving a joint solution to the problems and harm being done to the Affected Persons it was agreed that the report on the Safeguards Review would be shared with the Complainants. It appears that ADB Management failed to release the report as they were concerned that it would create difficulties for them in any subsequent investigation of the breaches. This conflict of interest of the Management meant that they did not wholeheartedly seek to find a solution to the suffering that was being caused by the project.

The SPF is set up as recourse mechanism for affected people if they feel that ADB Management has failed to address their concerns. While Management must always be encouraged to review its own functioning and correct acts of omission/commission, to do so during an on-going accountability process while having ignored all previous requests calling upon it to undertake just such an assessment, leads one to believe that Management's separate investigation was not undertaken in good faith. The SPF should have recognized that the timing for separate investigations by Management was inappropriate in view of the ongoing SPF process. In failing to discourage Management from conducting this independent review, the SPF compromised its supposedly independent investigation.

In Conclusion:

The failure of the SPF has direct practical impacts for us, the affected people, in that we are losing our homes due to a project that has violated ADB policies. In the course of its investigation, the SPF recognized the failings. We are very disappointed and concerned about the SPF's handling of this case, and hope that you will take the initiative to investigate our claims and address the situation of the affected people on the ground. **Whilst your investigation is underway we strongly recommend a Suspension of Disbursements of the Loan, this is possible as the Executing Agency has breached and continues to breach the loan covenants.**

Best regards,

Sarath Athukorale, Heather Mundy
President Secretary

Joint Organization of the Affected
Communities on Colombo Matara
Highway

Endorsed by:

Friends of the Earth Japan
Both ENDS, Netherlands
Bank Information Centre, USA
Environmental Defense, USA

Copies:

Executive Directors
Alternate Executive Directors
Special Project Facilitator
Chairman Compliance Review Panel
Director General South Asia
Department



THE JUDGEMENT

Chashma Lok Sath
March 27, 2004

I

In the Beginning

We gathered in Daera Din-Panha (Circle of God's Protection) to meditate on truth - to uncover the truth of what has passed. How and why it had become. And what is to be done now.

Where these words are the result of our meditations on truth at the Lok Sath, they are words which emerge from the depths of truth. And it is our judgement on the Chashma Canal.

Where we sat bears visual testimony to the color by which the canal has scarred our lands. The entire Damaan lay itself bare to us. In the distance towards the West the Suleiman Range, the fountain of the rowed kohee, cast its shadow a reminder of the ways things had once been. We sat in the Command Area laid dusty brown – testimony to the failure of the canals dream and promise of abundance and perennial water. And we looked down on kaachi seeing the lush green of the riverine belt. And in the distance we see the shimmering of the goddess. The Indus.

And it is homage to the Indus that the Lok Sath opens with our poets' recitation:

If the River dies, my dearest listen, the eyes die, the heart dies, the identity of our being and our living dies

So as the slumber of the blue waters die
It is not just the swan couplet that dies,
But the entire laughter of the River that dies

And so we are inextricably tied to the River. To know the state of our being look merely at the River as your guide. Our laughter, cries and suffering are mere echoes of that of the River. We allowed ourselves to be parted from the Indus and the ways of our ancestors, we allowed others to take her away from us and be

packaged in languages which have no relation to the lands and its waters.

And singing our redemption song we brought to pass the Lok Sath: And in taking back the power we worship the Goddess. To revive our lands and our waters and speak once more in the language of the Indus.

The passing of this judgement at the Lok Sath sets a precedent of our peoples doing law. And it is in this vein that we speak this judgement our gaze turning upon those who perpetuate crimes which destroy the link which furnishes as our very being.

II

Dreams and Crimes

There once came a dream of abundance. A Canal would be carved across our lands that would furnish us with all the wares that we need to enter the world of the developed. A world in which water would be plentiful, and crops could be grown for sale at far away markets, and all the oddities of the world could come to rest in our hands and on our terms.

We lived and breathed that dream. It colonised the way in which we knew our world. It was taught in our schools. It was echoed in the building of our nation(s). All spoke from the same hymn sheet and a sense of naturalness was granted to this dream. It became the only dream. And therein lies the first and most deadly of all crimes, the drawing of a singular dream.

So the canal came into being. And in its becoming the dream slowly faded. Reality was a mere shadow of the promises. And we awoke from the dream. Instead the dream brought with it a violence that ruptured our very sense of being, tearing us from the lands and its waters. The mirage was built on lies and deceit.

Here is the litany of violence that the canal and its dream brought to us, by design or by default, by intent or by negligence this is what came to pass:

Flooding
 Lands stolen
 Housing destroyed
 Roads destroyed
 Birds Flown
 Crops destroyed
 Trees Uprooted
 Forests Cleared
 Deceit
 Lies
 Corruption
 Mobility lost
 No Compensation
 Drains unnecessary/incomplete
 Distributaries incomplete/too low
 Graveyards lost and torn and made
 inaccessible for us
 Water Logging
 Prisons built to protect us
 Rowed Kohee Destroyed
 Livelihoods destroyed
 Damaan divided
 Too much water/Too little water
 Migration
 Barren wastelands
 Nomadic lifestyles destroyed
 No Consultation
 New Power brokers
 Kacchi destroyed
 (wo)manslaughter as people drown in the
 canal

And therein lies the testimony of those who have lost. This litany would be seen

as isolated incidences and so the categories and listing of violence would restrict itself. And that is precisely how you would bracket your violence, simple boxes to be remedied. To be left in your hands and your graciousness to remedy. That this is not a mere misfortune or an isolated happening was testified to by those from other areas who have suffered similar violation. From the LBOD; Tarbela; Badin, RBOD, Kacchi Canal, Greater Thal Canal, Ghazi Barotha Project, coastal areas – all subject to similar logics.

The dream had become a nightmare.

And yet there was a deeper series of crimes that this litany speaks of. It tells of a threefold taking

Of Language: When you tore us apart you also tore apart the language by which we read this land. The language of the land by which we have lived for centuries was replaced by a science which relies on the state as its motor and its legitimacy – yet a science that failed as the litany bears testimony to its technical failures. Language dignifies life and you deny us the communicable nature of humanity and nature. The Lok Sath restores this.

Of Power: power was taken away from us and placed in others' hands. And with that destiny is taken from our hands. Everything that furnished us with the languages of the land have been taken and given to others to exert their control over us and our destinies. No longer paying homage to the Goddess and the Rowed Kohee we must pay homage to the man who controls our waters, who compensates us, who resolves our disputes over our lands et al. The Lok Sath restores this.

Of Material: water which lied between God and us you have taken away and sought to make it into just a simple good which can be bought and sold. And in commodifying water you commodify us. The Lok Sath responds to this.

III

Guilt

The testimony of the victims that constructs the litany omits to tell us who is responsible for these crimes. Who enabled this violence? Who is guilty?

We bring to task two criminals who colluded together:

The state of Pakistan
The Asian Development Bank

The former provided the physical arms for the implementation of the crime – the police, the ongoing colonial architecture of power, WAPDA, the law, the bulldozers. The latter furnished the capital and forms the new colonial architecture of power that the weight of the world now carries.

The justification and your defence is that it was done for a greater common good, under the name of development. It is this that animates your interventions. A development that requires sacrifices, the death of us as us. And for what have we been sacrificed – the salvation you seek for this sacrifice is in development. That what you do is for the good of us. And if not us then certainly it is good postponed for some future or a good shifted to some other place. And when we testify that in fact it is not good for us and victims from other projects testify that you are habitual criminals, one wonders who it is who benefits from this sacrifice?

We announce that those who benefit are yourselves. Your machinery and industry of your being – civil contracts, corruption, consultants, interest rates, new loans to cover old loans, promotions, daily allowances, and the continuity of elites old and building of elites new.

That this was your intent is apparent as you attempt to abrogate responsibility claiming it was the other that committed the crime. And when you have the chance to redeem yourselves in your Stakeholders dialogue and in the GRSC, you soil your hands even more and your intent is made clear as the business of your being is renewed. You obscure your crimes by your laws and your conscience dies.

Our Lok Sath pronounces you guilty.

IV

Punishment and/or Surrender

And so what is to be done?

Realisation of your crimes has not been forthcoming, your deeds, your words and your eyes tell us that this realisation has not come to pass. Instead you obscure and collude to avoid your responsibility, the passing through the temples and the machinery of your law acts as your redemption song. And yet it cannot redeem because you have not recognised your crime and your failures.

Instead we are left with no choice. Punishment and/or surrender? It is both. The only punishment that can be is surrender of yourselves and the confession and realisation of your crimes. Step away from your law which negates any possibility of your conscience. And resort to the course of salvation which lies either in the law of love or of suffering. The choice is laid bare for you – respond to your conscience and admit your crimes and failures and take responsibility for these. Or face our conscience.

Let us help you make this tangible:

The Lok Sath declares the start of a campaign of civil disobedience which can include:

- 1 **Water Taxes** will not be paid.
- 2 A **Long March** or **Jal Jatra**, a pilgrimage to worship the Indus water and feel its pain.
- 3 An **Indefinite Hunger Strike** to suffer on your behalf and quench violence. ■



SOILED TEMPLE OF JUSTICE

Letter to the ADB President Tadao Chino

Who would want to enter into the soiled temple of Justice, wherein lies the corpse of Justice, slain by her very guardians?

- Robinton Mistry

Justice is mocked and slain whenever the powerful refuses to respect and obey the laws that he make himself. The case of chashma inspection is not quite different.

We filed the inspection claim and continued to engage in this process with the hope that ADB would at least respect its accountability laws and thus accept the verdict of its own appointed inspection panel. We were of the view that ADB would be keen to learn from its obvious project failures and take corrective actions. We believed that the inspection process would provide leverage to local communities and open the space for their real and meaningful participation in decision-making process.

However, very soon, our hopes turned into utter despair. After four years, the situation on the ground is as much oppressive and devastating as before. Few points will be suffice to elaborate this ever growing alarming situation.

For last four years, the project-caused flooding continued to turn the once fertile and very productive vast Indus riverine belt into desert. Agriculture is completely destroyed in this region. Hundreds of houses, tube wells, schools and hospital buildings and local roads have been demolished or severely damaged. Majority of the people have not yet been paid rightful and just compensation for their lands that were illegally and forcibly acquired under the British colonial laws. Rather, they are compelled to pay 25 percent commission as a bribe to get their compensation. The resettlement plan has never been prepared. The villages in the western belt are still living in danger flooding zone. Forests and grazing lands have been destroyed while a large number of people once depending on these natural resources for their subsistence are now left to cope with this situation themselves.

These are just few examples.

Precisely speaking, the situation is alarming in terms of flooding, environmental destruction and livelihoods losses and, will continue to become worst unless genuine efforts to ensure peoples' participation in decision-making are not undertaken.

ADB proclaims that the establishment of the Grievance Redress and Settlement Committee (GRSC) is one of its major achievements. However, this claim is nothing more than self-delusion. The GRSC was established against the advice of the Roster member at the initial stage of inspection. Moreover, ADB failed to create enabling conditions for the meaningful and effective participation of the requesters and representatives of local communities in decision-making of the GRSC. At the time of the GRSC's mid term review, the ADB's consultant for land acquisition alleged the serious corruption in the use of the grant money. He was fired and his contract was terminated. Later on, the inspection panel did also confirm the inadequacy of the GRSC and its doubtful achievements.

After this long and disappointing engagement, we feel that the inspection laws are rather only beneficial to ADB in terms of getting fake legitimacy and credibility, and controlling and diffusing opposition of local communities. The worst aspects of this situation is that the requesters and local communities are exposed to the coercion of the government while they get nothing substantial in terms of the compensation of their losses.

We believe the only way to make the accountability laws credible and trustworthy is the open confession of policy violations that will lead to the genuine cooperation. ***Otherwise, nobody would want to enter into this soiled temple of Justice.***

Specific Comments regarding the ADB Board Inspection Committee's Response to the Chashma Inspection Panel Report

The Panel's recommendations address two separate issues: 1) the need to remedy the specific problems caused by Management's non-compliance with ADB policies in the case of the Chashma Right Bank Irrigation Project (CRBIP), and 2) the need to prevent these type of failures in future ADB-funded projects.

It is essential that the ADB Board's discussion on the Inspection Panel report provides answers to the following questions:

- 1) What is the specific action plan to *urgently* address the significant negative impacts of this project, as detailed in the Inspection Panel report and the Inspection Claim?
- 2) How will the implementation of these Panel recommendations, as endorsed by the Board Inspection Committee actually change the situation of people in the project area and provide necessary remedies?
- 3) Given the well-documented failures of consultation and participation in the design and implementation of CRBIP, how will the Board ensure that "remedial actions" are carried out with the "full participation of the affected communities and their representatives"?
- 4) What actions will be taken by ADB Management and the Board to ensure that these supervision and policy compliance failures do not happen again?

The reliance on the implementation of GRSC recommendations and the long overdue EMP and Hill Torrent Management Plan to address the Panel's first recommendation is inadequate.

- 1) The GRSC did not include "full participation of affected communities and their representatives" or provide for "full compensation for any losses and restoration of livelihoods of communities and households that have been adversely affected," as recommended by the Inspection Panel. According to the Inspection Panel report:

"Management does, however, refer to several instances when the NGOs have declined invitations to attend meetings, primarily in

the setting up of the GRSC, and concludes that 'solutions cannot be found unless the engagement of all parties is meaningful and constructive.' **But Management does not discuss the explicit demands that the Requesters have formulated, and which they consider prerequisites for making their participation meaningful.**" (para 218)

"The reasons given by the Requesters for refusing to 'become a formal part' of the negotiation on the GRSC included the 'inadequacy and unrealistic nature' of the proposed committee. They also refer to their experiences of previous efforts to engage in a dialogue. One such experience refers to the deficient decision-making process on resettlement, which - as discussed above - Management considers to have been 'informed, consultative and participative.'" (para 219)

"The isolated efforts to engage affected communities and civil society organizations in a dialogue have suffered from a lack of continuity and clearly defined framework. None of the efforts has resulted in any process or structures that would allow representatives of affected peoples or civil society organizations to participate in the execution and follow-up of agreed measures, or that would make possible a regular and institutionalized information sharing. Even without going into any discussions about shortcomings in terms of its composition and mandate, the most recent experience of the GRSC illustrates the problem. After an eight-months spate of intensive activity, the committee has been dismantled and follow-up is handed back to the EAs and project consultants." (para 222)

- 2) The GRSC recommendations do not address critical categories of project-induced impacts and losses. As the BIC notes, GRSC recommendations do not consider forest degradation and reduced access to fuel wood and restricted access to grazing land in previously unirrigated land, which together accounted for the largest

percentages of complaints submitted to the GRSC. Additionally, the GRSC recommendations do not address project-related impacts in the eastern riverine belt, do not provide for sufficient remedies of the landless and were not developed in a participatory manner with affected communities. Furthermore, there has never been an assessment of the GRSC recommendations' compliance with currently applicable ADB policy requirements. The Inspection Panel report itself documents several inadequacies in the scope of the GRSC recommendations:

“However, GRSC noted that ‘the number of the affected persons will certainly be more [than the number of complaints 8,914 received] as many of them may not have filed their applications/complaints for one reason or the other.’ Moreover, the complaints were processed on the basis of responses to a prescribed matrix and classified accordingly. The complaints in the Request, however, covered a wider range. They included various aspects of matters relating to land acquisition, resettlement, compensation, rehabilitation, loss of livelihood, loss of mobility, loss of or diminished access to cultural properties, exposure to floods, loss of access to or loss of sources of potable water, deprivation of water for the practice of the traditional rod-kohi cultivation system, in-migration and the use of fertilizers and pesticides.” (para 58)

“One of the charges to GRSC was to identify measures to mitigate adverse impacts on the more vulnerable of the population - women, small landholders and the landless. The GRSC was also to explore and recommend program options to extend opportunities to the poor who are displaced from their land and other assets. Though the percentage breakdown of grievances presented in the entitlement matrix provides evidence as to the extent of the various types of harm, **it does not address the socio-cultural issues (e.g., access to town, severance and**

loss of support networks, dispersal of community, gradual disappearance of graveyards, conflict between farmers and between farms and landlords). Nor does it propose any appropriate measures to rectify them.” (para 246)

“GRSC, from a broader gender perspective, points to a number of such issues as girl enrolment and retention rates in schools; mother and child health care; strengthening of women’s roles leadership, representation and decision making for effective participation under the new local government system and involvement of women in the canal water management for domestic use. **However, it does not provide any concrete recommendations related to these issues.”** (para 247)

“GRSC talks of providing canal water allowance for domestic use for villages with saline ground water and a high percentage of landless inhabitants as an entitlement in compensation for reduced opportunity for grazing and fuel-wood collection. **It is doubtful that just an assurance of freshwater supplies as compensation is sufficient, or even relevant, for those people (women, smallholders and landless) who are vulnerable to risks of further impoverishment.”** (para 248)

Recommendations for the Board in its discussion of the Chashma Inspection Panel report:

- 1) ADB should openly confess the violations and non-compliance with all relevant and applicable policies.
- 2) Based on the more than 8,000 complaints received by the GRSC, remedial actions should be developed *in consultation with local communities*. Some of these remedial actions may be similar to GRSC recommendations, while others may arrive at different locally appropriate and acceptable

solutions. The development and implementation of these remedial actions should be monitored by an independent entity acceptable to all parties, including to the Requesters. A participatory assessment of project-induced impacts in the riverine belt and proposed remedial actions should be included in the Hill Torrents Management Plan.

- 3) The Inspection Panel report recommendations should be implemented and progress should

be monitored by the Board.

- 4) The Board should clarify and emphasize that Management is required to comply fully with ADB policies and not simply to adhere to “the integrity and spirit” of ADB’s internal laws based on Management’s own judgment

Mushtaq Gaadi
Inspection Requester (Chashma Lok Sath)
August 17, 2004



HUNGER STRIKE AT THE ADB OFFICE

February 15, 2005

Ten persons from the ADB funded Chashma Right Bank Irrigation Project staged one day hunger strike in front of the ADB office in Islamabad, Pakistan. The hunger strike began at 9:30 in the morning. When the hunger strike started, there was rainfall that continued for the whole day.

We decided to sit on the ground in the rainfall. The police came at 10:00 PM, and asked us to end the hunger strike or face the arrest. We told the police officer that we were peaceful and non-violent and we would not end our hunger strike at any cost. Finally, the police officer appointed twenty policemen to guard the office of Asian Development Bank. After sitting more than six hours, we went to the gate of the Asian Development Bank. A couple of ADB staff member came down and asked us to give our written resolution. We refused to give the written resolution and insisted that we would directly give it to Mr. Marshuk Ali Shah, the country director of Asian Development Bank in Pakistan. The ADB staff members went to inform Mr. Marshuk Ali Shah. He has however refused to meet us. We told the ADB staff that we would not leave the place and continue to our hunger strike in front of their office until and unless Mr. Marshuq Ali Shah would not receive our resolution and listened our message. After half an hour, Mr. Marshuq Ali Shah decided to receive our resolution and listen our message. We then met him in his office inside the ADB building and handed over the following resolution. Moreover, we told him that we staged the hunger strike to register our peaceful protest against the way ADB and the government are negotiating and finalizing the agreement. We told him that we would not accept the agreement if our full participation and consent is not ensured. Mr. Marshuq Ali Shah said that we should accept any middle ground and make compromise. He did also commit that ADB would attend the Lok Sath to be held on March 20, 2005.

Following is the final written resolution.

Resolution

We are here today to tell the world of the suffering we continue to face because of the wrongs of those who purport to be committed to our “development”. For many years we, the sufferers of the ADB funded Chashma Right Bank Irrigation Project, have followed and exhausted all possible legal procedures for the realization of our rights and compensation/ reparations of the damages we suffered. But the justice has been denied to us time and again. We realized that the Law has become an effective tool in the hands of the powerful to silencing and weakening the voices of victims and violated ones. We come here today to once again alert the powers that our non-violent and peaceful **Civil Disobedience** will continue.

1. The government and the ADB have recently negotiating an agreement to conclude the inspection process that will supposedly reflect the recommendations of the Inspection Panel. We have serious reservations about this report and particularly the draft Action Plan and we will not accept any “agreement” between the ADB and the government until and unless we are part of the deliberations and find the “agreement” to be satisfactory.
2. Given the continuous and widespread violations of our rights, we consider it our duty to defend ourselves through breaking the Law in the non-violent and peaceful manners. The litany of the violations is not small one. Our lands were forcibly and illegally acquired and we have not been so far compensated even the project is complete for the last two year. When some of us go and demand the compensation, they are asked bribe. We consider this is an act of robbery against the Weak. Our legal and historical rights over floodwater were abolished without even giving us any information. Our lands are now being flooded every year because of the project. We have lost our homes, property, crops, trees, grazing lands, forests, public infrastructure, ways, and many other things. We are also losing our culture as well. There is now massive in-migration of

outsider tribal Pakhtoons in our area after the project. We have therefore no other option except the refusal to pay Abiana (Irrigation Tax) in order to defend our selves against the excesses of Law. We will strive to make this civil disobedience as widespread as possible.

3. We will be holding the Lok Sath on March 20, 2005 at Taunsa Sharif. As we have done on the previous occasions, we invite the ADB and the government agencies to join us in the Lok Sath and

hear our voices. If the ADB does not respond to our invitation, our campaign of non-violent and peaceful civil disobedience in the form of refusing to pay the irrigation tax will be initiated with immediate effect at the Lok Sath.

4. Our final mode of protest be an indefinite hunger strike. This will begin when it becomes clear that there is no longer any utility to waiting and hoping for the ADB and the government to respond meaningfully to our demands.

On Sector Policy: *Forestry and Water*

The ADB Forestry Policy was crafted in 1995 but there was never an operations manual (OM) issued for this policy. The policy, in theory, prohibits the Bank from funding projects that contribute significantly, directly or indirectly to deforestation, degradation or depletion of forests. An Environmental Impact Assessment (EIA) is required for any projects that may affect forests. The ADB Water Policy (approved in 2001), on the other hand, outlines its vision for an integrated water management in the region.

Both policies are currently under review. And both review processes have been contested by groups monitoring them. Below are some of the statements on the reviews of the water and forest policies.

ON THE REVIEW OF THE FOREST POLICY

November 19, 2004

Dear President Chino,

We are writing to express our concern about the review process of the Forest Policy. NGO Forum and many of our NGO colleagues have been monitoring the review process ADB has been conducting on the Forest Policy for two years now. It is our observation that the review process has been extremely lacking in transparency and accountability. Despite repeated enquiries from our side, we have received no or arguably misleading information about the status of the review at different stages. In fact, it was only after an NGO member approached ADB in early 2003, that ADB made the working paper of the policy publicly available.

As late as October 22, 2004, ADB's webpage on the Forest Policy stated that *"the Forest Policy Committee is finalizing the revisions of the Board considered Working Paper. A revised Draft Forest Policy Paper will be made available for stakeholder comments by July 2004. Comments will be accepted up to four weeks from the date of posting. Forest Policy Paper will be scheduled for Board consideration/approval for 3rd quarter 2004"*.

This section of the webpage has now been replaced by a link to the Forest Policy Paper stating that *"the proposed Policy is based on a review and revision of ADB's Policy on Forestry (March 1995) and a participatory review process."* This link opens up a pdf document of the working paper of June 2003. However, it is our understanding that this working paper was rejected by ADB's Board in July 2003. The webpage conveniently omits this crucial detail. No explanation is given in regard to the earlier commitment to post a revised working paper with a four week period for public comment.

This inconsistent process is unacceptable. The suspicion arises that ADB is deliberately trying to mislead or only partially inform the public on the developments on the Forest Policy. From the point of civil society organizations

tracking the ADB Forest Policy process, it is not even clear at this point whether the ADB still intends to produce a final R-paper on the policy for Board consideration. The lack of information on ADB's webpage gives rise to serious concerns as to whether the Bank has unilaterally decided to abandon the review process altogether. Such a decision shows disrespect to the NGO representatives that ADB invited to take part in consultations or submit comments.

We strongly believe that specific sectoral and thematic policies for IFIs and other development agencies are essential instruments to make IFIs more accountable to affected communities and help ensure that sector projects and programs do not cause adverse impacts. For this reason, we wish to have clarification as soon as practicable regarding the ADB's policy proposals for dealing with the impact of its future funding on the people and forests of the region.

To this end, we strongly advise you and the Forest Committee Team to inform civil society organizations (CSOs) that have been monitoring the review process about the latest developments and future plans regarding the finalization of this policy. Tribal peoples, forest communities and workers, and others who depend on forests have a right to know what decisions ADB is taking in regard to their environment and means of livelihood. The Bank cannot expect to be taken seriously in its commitments to transparency and effective participation, if it does not bring light into this situation. We look forward to your early action and response on this matter.

Best regards,

Sameer Dossani
Executive Director

CC:
Javed Mir, Forest Policy Committee
Board of Directors

Response from Bob Dobias, the new head of the Agriculture, Natural Resources and Socials Sectors Division, and therefore in charge of the Forest Policy sent a general response saying that:

"We fully appreciate your concern that the review of the Policy on Forestry be transparent. As you may know, well over 500 people, representing governments, NGOs, private sector, and other stakeholders, have provided inputs to the review. It is our intention to continue with the public consultation process.

Our internet site on the policy review (<http://www.adb.org/Projects/forestpolicy/>) has informed readers that, following a revision of the W-paper to incorporate comments received from internal and external reviewers, fundamental issues were raised related to ADB's support to the forest sector. We currently are in the process of an internal discussion of these concerns.

Please be assured that we will make public the conclusions of our internal deliberations and invite comments on them."

ON THE PROPOSED REVISION TO ADB'S WATER POLICY

June 2, 2004

President Tadao Chino

Dear President Chino:

We, representatives of 34 NGOs from 18 countries, are writing to express our concern with the proposed revision to ADB's Water Policy regarding Large Water Resources Projects and to encourage you to push for modifications to the text that would bring the policy in line with World Commission on Dams (WCD) recommendations. The proposed new text significantly waters down the spirit and intention of the original policy prescription and undermines the ADB's commitment to the recommendations of the World Commission on Dams (WCD). The revision would contradict the international trend towards recognition of a rights-based approach to development, and the principle of free, prior and informed consent.

In a letter from Mr. A. Seki, former Director General of the Bank's Regional and Sustainable Development, to IRN dated 9 July 2002, Mr. Seki stated the following:

"We are still benefiting from the recommendations of the WCD when developing or revising our relevant policies and practices. An earlier example was the Water Policy... Please note that actions to implement the Water Policy are being taken, supported by the Water Fund. ADB will consider the specific concerns of IRN in the implementation of the Water Policy with regard to specific projects. When the Water Policy implementation is reviewed in 2005, ADB will consider the generic concerns of IRN in any update."

Given the Bank's commitment to consider the WCD recommendations in any update to the Water Policy, we were surprised and disappointed to see a proposed change to the Water Policy that actually weakens the policy's stipulations in relation to gaining public acceptance and brings it substantially out of line with

WCD recommendations. In addition, we were surprised to see that the interim review of ADB's Water Policy Implementation fails to mention the WCD even once.

Therefore, we would like to recommend, in line with ADB's previous commitments to

...over incorporate WCD recommendations into its safeguard policies¹, that the proposed paragraph be modified as follows to bring it in compliance with World Commission on Dams guidelines. In addition, we expect that the 2005 revision of the Bank's Water Policy will look at ways of incorporating other WCD strategic priorities into the Water Policy, as promised by Mr. Seki. We suggest the following language modification to the disputed paragraph:

"ADB will adopt a cautious approach to large water resource projects - particularly those involving dams and storage - given the record of environmental and social hazards associated with such projects. All such projects will need to be justified in the public interest, **and decision-making process and mechanisms should be used that enable informed participation by all groups of people, and result in the demonstrable public acceptance of key decisions. Where projects affect indigenous and tribal peoples, such processes are guided by their free, prior and informed consent.**"

This proposed language comes directly from the WCD's Strategic Priority 1 on Gaining Public Acceptance. In recent years, there has been a growing recognition by the international community that free, prior and informed

¹ In a letter from Mr. Tadao Chino, President of the ADB, to the Mr. Kadar Asmal, Chair of the WCD, dated 22 December 2000, Mr. Chino stated that "ADB will re-examine its own procedures, including our environment and social development policies, and determine the extent to which the report's recommendations may necessitate changes in these procedures."

consent (FPIC) and other forms of public acceptance are important principles of development policy². Evidence demonstrates that only such a rights-based approach will allow affected communities to negotiate satisfactory outcomes of development projects.

For your reference, we enclose Mr. Seki's letter to International Rivers Network of 9 July 2002, as well as IRN's original letter to President Chino analyzing the ADB's response to the WCD and suggesting changes to ADB policies to bring them in line with WCD recommendations.

We hope you will push for this proposed revision when the policy comes to the Board in July, and we hope you will ensure that the 2005 Water Policy revision will look at ways of further incorporating WCD guidelines into the policy.

Sincerely

Aviva Imhof
Director, Southeast Asia Program

Endorsed by:

Australia:
Michael Simon, Oxfam Community Aid Abroad

Bangladesh:
Zakir Kibria, BanglaPraxis
Ashraf-ulAlam Tutu, Coastal Development Partnership

Cambodia:
Russell Peterson, NGO Forum on Cambodia

Canada:
Ian Baird, Global Association for People and the Environment (GAPE)

India:
Sanjai Bhatt, Department of Social Work at the University of Delhi

Shripad Dharmadhikary, Manthan Adhyayan Kendra
Smitu Kolthari, Lokayan
Roy Laifungbam, CORE (Centre for Organisation Research & Education)
Sankar Ray, Freelance Journalist
Himanshu Thakkar, South Asia Network on Dams, Rivers & People

Indonesia:
Heine Nababan, People's Coalition for the Rights to Water

Japan:
Yuki Tanabe, Japan Center for a Sustainable Environment and Society (JACSES)

Netherlands:
Henneke Brink, Both Ends

Norway:
Tonje Folkestad, FIVAS (Association for International Water and Forest Studies)

Pakistan:
Mushtaq Gadi, MAUJ
Zafar Lund, Hirrak Development Center
Asim Nawaz Khan, NGO Network Welfare Association

Philippines:
Joan Carling, Cordillera Peoples Alliance
Jiragorn Gajasen, Greenpeace Southeast Asia

Jessica Rosien, NGO Forum on the ADB
Isagani Serrano, Philippine Rural Reconstruction Movement (PRRM)

South Korea:
Joo-won Seo, Korean Federation for Environmental Movement

Sri Lanka:
Hemantha Withanage, Sri Lankan Working Group on Trade and IFIs and The Centre for Environmental Justice

Sweden:
Göran Ek, Swedish Society for Nature Conservation

Switzerland:
Bruno Gurtner, Swiss Coalition of Development Organizations

Thailand:
Jim Enright, Mangrove Action Project (MAP)

Shalmali Guttal, Focus on the Global South

United Kingdom:
Juliette Williams, Environmental Justice Foundation

USA:
Nancy C. Alexander, Citizens' Network on Essential Services (CNES)

Shannon Lawrence, Environmental Defense
Alfredo Quarto, Mangrove Action Project
Mishka Zaman, Bank Information Center

² The principle of free, prior and informed consent for indigenous peoples has been recognized by many legal instruments and development institutions, including ILO Convention 169, UNDP's policy on indigenous peoples, and IDB's resettlement policy, OP 710. The report of the Extractive Industries Review (EIR) that was commissioned by the World Bank recommended the adoption of the FPIC principle for indigenous people and for any other communities affected by Bank projects. Since the EIR report came out, the principle has been supported by World Bank President James D. Wolfensohn and by several member governments of the World Bank.

The ADB Annual Governors Meeting (AGM)

The Asian Development Bank (ADB) is a multilateral development bank comprised of shareholders from 63 member countries, 45 from Asia-Pacific and 18 from outside. The highest policy-making responsibility in the ADB rests with the Governors, or Finance Ministers of member countries. They regularly meet once a year in the Annual Governors Meeting (AGM), an occasion to report on ADB administrative, financial, and operational directions. Mandated by the ADB Charter, in Articles 28 and 29, this meeting provides a space for member governments to interact with ADB staff, non-government organizations (NGOs), media, senior government officials, and representatives of observer countries, international organizations, academe and the private sector.

The AGM is held in a member country usually in April or May for three days, preceded by a two-day high-level seminar program on topical issues such as governance, poverty reduction, development finance, international financial architecture, economic and social development, information technology in development, and country presentations to investors by finance ministers of developing member countries.

At the ADB's Inaugural Meeting, the Board of Governors elected the Directors of the Bank in accordance with the ADB Charter and determined the date for the commencement of its operations. At its Second Annual Meeting, the Board of Governors reviewed the size and

composition of the Board of Directors in conformity with the provisions of Article 30.1 of its Charter. It was also decided that effective from the Fourth Meeting, there will be 8 Directors representing regional members and 4 from non-regional members to be elected by the Board of Governors.

The AGM used to be exclusive for ADB directors, governors, staff and member countries' officials. In 1992 NGOs were invited to the AGM for the first time. Thus began a new era of civil society engagement and direct challenge to the ADB. In this section we have compiled the most significant civil society statements on the AGM since 2000.

Table
The Party Hosts
THE ADB AGM THROUGH THE YEARS

YEAR		DATE	VENUE/COUNTRY
2006	Thirty-Ninth	4 - 6 May	Hyderabad, India
2005	Thirty-Eighth	4 - 6 May	Istanbul, Turkey
2004	Thirty-Seventh	15 - 17 May	Jeju Island, Korea
2003	Thirty-Sixth	30 June	ADB Headquarters, Manila
2002	Thirty-Fifth	10 to 12 May	Shanghai, China
2001	Thirty-Fourth	9 to 11 May	Honolulu, USA
2000	Thirty-Third	6 to 8 May	Chiang Mai, Thailand
1999	Thirty-Second	30 April to 2 May	ADB Headquarters, Manila
1998	Thirty-First	29 April to 1 May	Geneva, Switzerland
1997	Thirtieth	11 to 13 May	Fukuoka, Japan
1996	Twenty-Ninth	30 April to 2 May	ADB Headquarters, Manila
1995	Twenty-Eighth	3 to 5 May	Auckland, New Zealand
1994	Twenty-Seventh	3 to 5 May	Nice, France
1993	Twenty-Sixth	4 to 6 May	ADB Headquarters, Manila
1992	Twenty-Fifth	4 to 6 May	Hong Kong, China
1991	Twenty-Fourth	24 to 26 April	Vancouver, Canada
1990	Twenty-Third	2 to 4 May	New Delhi, India
1989	Twenty-Second	4 to 6 May	Beijing, China
1988	Twenty-First	28 to 30	April Manila
1987	Twentieth	27 to 29 April	Osaka, Japan
1986	Nineteenth	30 April to 2 May	Manila, Philippines
1985	Eighteenth	30 April to 2 May	Bangkok, Thailand
1984	Seventeenth	25 to 27 April	Amsterdam, The Netherlands
1983	Sixteenth	4 to 6 May	Manila, Philippines
1982	Fifteenth	28 to 30 April	Manila, Philippines
1981	Fourteenth	30 April to 2 May	Waikiki,, Hawai'i
1980	Thirteenth	30 April to 2 May	Manila, Philippines
1979	Twelfth	2 to 4 May	ADB Headquarters, Manila
1978	Eleventh	24 to 26 April	Vienna, Austria
1977	Tenth	21 to 23 April	ADB Headquarters, Manila
1976	Ninth	22 to 24 April	Borobudur, Indonesia
1975	Eight	24 to 26 April	ADB Headquarters, Manila
1974	Seventh	25 to 27 April	Kuala Lumpur, Malaysia
1973	Sixth	26 to 28 April	ADB Headquarters, Manila
1972	Fifth	20 to 22 April	Vienna, Austria
1971	Fourth	15 to 17 April	Singapore
1970	Third	9 to 11 April	Seoul, South Korea
1969	Second	10 to 12 April	Sydney, Australia
1968	First	4 to 6 April	Manila, Philippines
1966	Inaugural	24 to 26	Tokyo, Japan

Source: <http://www.adb.org/AnnualMeeting/all-meetings.asp>

Chiang Mai 2000

The ADB was in for a jolt in Chiang Mai when the People's Forum 2000, an assembly that paralleled the 33rd AGM, gathered more than a thousand participants, many of whom were from communities affected by ADB projects, who demanded accountability from the ADB.

STATEMENT OF THE PEOPLE'S FORUM Chiang Mai, Thailand May 5, 2000

More than 1,200 participants, including representatives of community groups, people's organisations, nongovernmental organisations (NGOs), academics and concerned citizens, gathered for the People's Forum 2000 at the Phucome Hotel in the city of Chiang Mai from 3-5 May. The Forum was organised by the Thai Working Group on the ADB, a network of Thai NGOs, and participants included village people and representatives of NGOs from throughout Thailand, as well as NGO representatives and concerned citizens from many other countries, including Laos, Cambodia, Vietnam, Philippines, Sri Lanka, Pakistan, Bangladesh, Indonesia, Nepal, Hong Kong, Japan, Australia, Canada, Finland, Netherlands and the United States.

The People's Forum 2000 was convened prior to the 33rd Annual General Meeting of the Board of Governors of the Asian Development Bank (ADB) in Chiang Mai from 6-8 May. Forum participants shared knowledge about the impacts of ADB projects and programs in many countries, describing how ADB loans and policy prescriptions are causing and exacerbating social and environmental problems throughout the Asia-Pacific Region.

Having examined and discussed the projects, programmes, loans and loan conditionalities of the Asian Development Bank, the participants of the People's Forum 2000 are in agreement that:

I. The ADB promotes and imposes development based on a narrow and prescriptive economic growth model, ignoring the many well-documented failures of this model and its inability to ensure ecologically sustainable or socially equitable development.

a) Throughout the Asia-Pacific Region, local communities and people are being victimised by, and fighting against, projects funded by ADB loans that dispossess people by evicting them from their homelands, violating their rights to use and manage local resources, polluting and destroying their environment, and undermining their food and livelihood security. Detailed case studies documenting the impacts of specific ADB-funded projects were presented during the People's Forum 2000. These projects include large-scale hydroelectric dams, industrial complexes, wastewater treatment plants, highways, plantations, and chemical intensive agriculture.

b) Although the ADB promotes the supposed virtues of transparent and competitive market-driven reforms and processes, the ADB itself inherently distorts the market in a way which favours large corporations and inappropriate development, while undermining local small-scale, people-centered and environmentally benign development.

II. The ADB does not only provide loans for socially and environmentally destructive projects, but also exerts its political leverage with client governments to impose far-reaching policy changes including sectoral reform, structural adjustment, privatisation, and the removal of state subsidies and social services.

a) In using loans and prescriptive loan conditionalities to impose these projects and policies on local communities and governments, the ADB ignores and undermines national and local systems of

democracy, accountability and decision making.

b) The economic, environmental, and social impacts of national debt incurred as ADB loans, and the impacts of servicing this debt, is becoming an increasingly serious problem for many governments in the Asia-Pacific Region, and are often cited by the ADB as a pretense for its imposition of further structural adjustment, loan conditionalities and poverty creation in these countries.

c) The Asian Development Bank's Greater Mekong Subregion (GMS) program is an unaccountable forum for promoting and subsidising private sector development and investment in sectors such as power generation, transport, telecommunications, etc. The GMS program further bypasses and marginalises national and local processes of decision making.

d) While the ADB's loan conditionalities impose the reduction or removal of state subsidies and social sector spending in some of the poorest countries of the Asia-Pacific Region, the ADB itself relies on public subsidies from Northern country donors for its very existence. Furthermore, many of the structural reforms of the social sector (e.g. removal of public subsidies of small-scale food producers) sought by the ADB, and the undemocratic processes used by the Bank to impose these reforms, would be totally unacceptable to societies in the donor countries that fund the ADB.

III.

projects and programs, nor to the taxpayers in donor countries whose money finances the Bank, its staff and operations. In fact, in the Northern donor countries of the ADB, there are no effective mechanisms for public oversight or monitoring of the ADB and its activities in the recipient countries.

a) Project development studies and environmental and social impact assessments of ADB-funded projects and programmes are not subject to public hearings and independent peer review. In fact, these studies are often undertaken by consultant companies that have a vested interest in the implementation of these

projects. On the rare occasion that these studies do raise critical concerns about the potential social, environmental, and economic impacts of a particular project, these concerns and potential impacts are routinely ignored by the ADB.

b) In several donor countries, the income received by private companies in these countries through project procurement and consultancy contracts with the ADB is equal to, or greater than, the amount contributed to the ADB by these countries. Clearly, the ADB is simply a mechanism for donor governments to subsidise their domestic private sector – with no regard for the impacts in recipient countries of this hypocrisy of the ADB and donor governments.

c) Even by its own analysis, more than 40 per cent of ADB projects fail to achieve their state objectives. But neither the ADB as an institution, nor the ADB's highly-paid staff, accept legal, financial or moral responsibility for these failures. The failure of ADB-funded projects is used by the Bank as justification more disbursing more loans and contracting more consultants, all of which only serves the institutional agenda of the ADB.

Furthermore, we the participants in the People's Forum 2000, in recognition of the ADB's present activities in Thailand, the host country of the People's Forum 2000, are in agreement that:

If the ADB accepts the right of people and society to reject the destructive projects the Bank funds, the ADB must immediately initiate a process by which the Bank will halt its loan disbursement for all active loans to the Government of Thailand and cancel its loans for the ~~The ADB's project~~ promoting 'good Thailand':

1. The ADB must stop all loan conditionalities to the Thai government that interfere with the sovereignty of Thailand.

2. Samut Prakarn Wastewater Treatment Project, Klong Dan sub-district, Bang Bo district, Samut Prakarn province

This project would – every day – release more than 500,000 cubic metres of wastewater contaminated with heavy metals and other toxic inorganic effluents emissions into one of the most productive

fishing grounds in the Gulf of Thailand, and ultimately destroy the fishing-based means of livelihood and local economies of more than 30,000 families living in communities located in the vicinity of the project/

3. Agriculture Sector Programme Loan

The conditionalities of this loan would result in policy and sectoral reforms that would benefit large-scale industrial agriculture, degrade the genetic diversity of food crops, and undermine the means of livelihood security and self-reliance of small-scale farmers who are the primary food producers for Thai society. Women farmers, and particularly women heads of rural households, would be especially disadvantaged by the implementation of these loan conditionalities that would severely restrict their potential economic and social advancement.

4. Social Sector Programme Loan. The conditionalities of this loan would result in:

Privatised education would reduce teacher-student ratios, increase family-level education expenses while reducing access to primary and tertiary education at reasonable cost. Conditionalities would also result in drastic changes to the country's education system. Economically disadvantaged people will have less opportunity to receive an education and the quality of education will decrease. The private sector will have the opportunity to manage education, which will result in re-orienting education towards business and profit, while ignoring the role of education in creating an awareness and sense of responsibility to society, and will also result in the entrance of foreign investors into Thailand's education system. Privatised education as proposed and guided by the ADB will lead to a failure in the education system which, as stated in the Eighth and Ninth National Economic and Social Development Plans, must emphasise human development.

Corporatisation of public health care institutions would introduce the profit motive of private corporate administrators into the health and welfare of all members of Thai society, leading to increased costs and decreased access to emergency and long-term health care, impacts that would particularly affect poor families, women, and those members of society with chronic health problems such as those resulting

from HIV/AIDS and urban environmental pollution.

The oppression of workers will occur as a result of ADB loan conditionalities that seek to abolish or freeze the minimum wage for workers. This will deny the fundamental rights of workers to receive a minimum wage ensuring the livelihood security for workers, their families and dependents. ADB conditionalities have already been applied to eliminate the standard minimum wage provisions in every province, resulting in minimum wages for workers that do not correspond to the variations in the cost of living in various provinces. The minimum wage must be equally applied throughout the country and must correspond to the actual cost of living. Additionally, the government must contribute to social security funds in an amount equal to the funds contributed by workers and employers, and must immediately establish an unemployment fund to ensure the social security of employees.

The corporatisation of State-owned enterprises must be immediately halted as corporatisation will result in the transfer of ownership from the Thai public to multi-national corporations. People would be directly affected by corporatisation as the purchase price of services will increase, State-owned enterprise workers will be unemployed, and eventually public utilities will be monopolised by multi-national corporations.

5. If ADB activities violate the rights of the people and if its activities occur without the consent of the people, and instead relies on information provided by the government, the people will not accept responsibility for re-paying the ADB loans.

6. For the impacts caused by the ADB's conceptual framework, policies and conditionalities attached to loan agreements, and ADB-funded government development projects and the resulting damages, including the destruction of livelihoods, resettlement, environmental degradation, the ADB must pay compensation to the people affected.

Furthermore, the ADB must immediately halt all disbursement of Technical Assistance grants and loans and immediately halt all activities regarding the preparation of ADB-funded project and programme loans proposed for funding or implementation in Thailand in the future.

The participants of the People's Forum urge the Board of Governors and the Board of Directors of the ADB, during the Bank's Annual General Meeting of the Board of Governors, to include the above demands regarding the Bank's loans to Thailand on the Board's Agenda. Participants of the Forum, and in particular the local communities that would suffer the impacts of the ADB-funded Samut Prakarn Waste Water Treatment project, expect that the ADB and its Board of Governors will respond in an effective and constructive manner to the above demands.

In conclusion, we the participants in the People's Forum 2000 witness for the public record the absence of representatives of the

ADB during the proceedings of the Forum. Bank President Tadao Chino declined our invitation to attend the concluding plenary session of the People's Forum 2000. While the ADB's Governors and Executive Directors may believe the Bank's rhetoric about participatory development and its desire to work within a civil society, the participants of the People's Forum 2000 have once again observed the vast difference between the rhetoric and practice of the ADB.

Endorsed by the participants of the People's Forum 2000,
Final Plenary Session,
5 May 2000

◆

Honolulu 2001

The tradition of direct action and engagement started in Chiang-mai continued in Hawa'ii, at the 34th Annual Meeting of the ADB. The Honolulu protests featured another first in civil society engagement with the ADB -- ADB President Tadao Chino came out of the AGM site to personally receive the statements prepared by the protesters.

PEOPLE'S CHALLENGE TO THE ASIAN DEVELOPMENT BANK
Honolulu, Hawaii
May 2001

The Asian Development Bank (ADB), which is holding its 34th Annual Meeting in Honolulu on May 7-11, 2001, is an institution that is now widely recognized as having imposed tremendous sufferings on the peoples of the Asia Pacific. In the name of development, its projects and programs have destroyed the livelihoods of people, brought about the disintegration of local and indigenous communities, violated ancestral domains, undermined sovereign self-determination, promoted a sharp rise in inequality, deepened poverty, and destabilized the environment.

We, representatives of peoples, indigenous communities, and organizations throughout the region, have had enough of this destruction in the name of development. We have had enough of an arrogant institution that is one of the most non-transparent, undemocratic, and unaccountable organizations in existence.

We seek genuine dialogue with the ADB, demanding that it recognize the error of its ways and yield the space to promote alternative strategies of development that truly serve the people's interests.

In this spirit, we are presenting the following demands to President Tadao Chino:

1. Development must not be a process that creates refugees. The ADB creates refugees through physical displacement of peoples as well as alienating them from their communities, livelihoods and culture.

We demand an immediate halt to and independent review of all controversial/disputed ADB projects, especially those that directly threaten people's livelihoods and economic and social security like the Samut Prakarn Wastewater Management in Thailand and the Cordillera Highland

Agricultural Resource Management Project in the Philippines. The ADB should not take any further action on these projects until critical issues are resolved.

- a. The ADB should acknowledge that ADB financed projects have displaced peoples and created a new class of "development refugees."
- b. The ADB should assess the compensation needs of all those people whose livelihoods have been negatively affected, particularly those displaced as a result of past ADB projects, using open, transparent and participatory processes. Following such assessments, the ADB should develop and implement adequate, just and timely compensation measures. The Bank Funds earmarked for compensation should be used for direct compensation and not for further studies and assessments, or to pay for consulting companies or experts. Funds for assessments and eventual compensation must be provided through project budgets and the ADB's own resources. Full direct compensation must be provided to all people negatively affected by ADB funded hydropower and other infrastructure projects in the Asia Pacific region. This must be done in a timely and transparent manner, in consultation with local peoples, and with ongoing monitoring and input from truly independent observers.
- c. The ADB must put into place appropriate mechanisms to monitor

the environmental, social and economic impacts and costs of all projects and programs it supports in any manner or form. These mechanisms must include guidelines for mitigation of impacts and how mitigation costs will be met; such costs cannot and must not be externalised and passed on to affected communities, society at large, or the public purse. Those who benefit most from projects must be responsible for the proportionate share of the costs.

- d. The ADB must put into place transparent and universally accessible arbitration/grievance procedures through which the ADB can be held accountable for violation of its own guidelines. The ADB should put particular emphasis on this in both its public and private sector operations.
 - e. The ADB should put justice high on its agenda. A rigorous mechanism for reparation for the negative impacts of past and existing projects should be set up.
 - f. In solidarity with the people of Klong Dan, we demand that the Samut Prakarn project be immediately stopped, and that no further release of funds be made until the Inspection process is fully completed in a transparent and participatory manner.
 - g. In solidarity with the advocates in Sri Lanka opposing the Sri Lanka Water Resource Management Project, we demand a halt to the project and a review of the Wildlife Management Project.
 - h. The ADB should adopt and implement the fundamental principles and guidelines recommended by the World Commission on Dams, especially those regarding prior informed consent and the assessment of alternatives.
2. Current sectoral reform processes such as those in the agriculture sector in Pakistan and Thailand and in energy in the Philippines fail to fully capture the complex

political-economic realities in these countries. Indiscriminate scaling down or abolition of agricultural and social subsidies exposes poor households with low access and endowments to start with to even greater insecurity.

We call for an independent evaluation and an immediate stop to all sectoral reform processes. The results of these evaluations must be used to re-work and restructure reforms, including content, sequencing and even alternative models.

3. We call for an immediate and independent review of the ADB's Private Sector Development (PSD) strategy with special focus on the impacts of this strategy on local populations, the public sector, national and subnational government capacities and the overall business climate. The results of this review should feed directly into a fundamental rethinking and reworking of this strategy to serve local, subnational and national economic priorities and needs, rather than those of external investors and foreign governments. During the period of the review and re-strategising, ongoing PSD initiatives should be slowed down and no new initiatives should be started. The review should also take into consideration political, social and economic realities such as distributional disparities that render markets uncompetitive and exclude the poor, as well as weak governance structures that render regulation ineffective and incapable of upholding consumer and worker rights.

4. The ADB itself acknowledges that close to 70 percent of its loans to the developing countries will fail to produce lasting economic or social benefits in these countries. Yet the ADB insists that these debts be repaid, further contributing to the impoverishment in these countries.

We demand full and unconditional cancellation of the illegitimate debts of ADB's borrowing countries. The ADB must also immediately undertake a region-wide assessment of the debts owed to it by all borrowing countries. In particular, the assessment should focus on; a) the impacts of debt servicing on social and other essential services; b) the programmes and conditions under which the debts were contracted, as well as their legitimacy in terms of debt repayment.

When the ADB experienced an internal financial squeeze at the height of the Asian crisis, it chose to remedy this by making

capital costlier for borrowing governments. We demand that the ADB shift the burden back from the borrowing to the donor countries.

5. We deplore the inconsistency with which the ADB requires good governance, transparency and accountability from borrowing governments while at the same time fails to impose the same strict standards on itself.

In its push for privatization, the ADB turns a blind eye to corrupt practices employed by borrowing governments such as the Philippines in the case of the power sector reform loan in order to meet conditions for the release of ADB loans.

Furthermore, we challenge the ADB to stop placing the entire blame for the failure of projects and programmes on governments and take institutional responsibility for the projects and programs it supports.

- a. The ADB should democratize decision-making within the highest levels, and function on the principle of one country, one vote, and not on the current practice based on the amount of subscribed capital.
- b. In general, the ADB should open to public scrutiny decision-making and agreements between the ADB and host governments about projects and programmes. The ADB should review past and current decision making processes in light of their impacts on national sovereignty and where found wanting, these decision making processes must be changed to respond to national, rather than external interests.
- c. All of the ADB's review panels for projects, programmes, operations and governance must be equally balanced in their composition among affected peoples, civil society and independent experts. Further, affected peoples and civil society must have the right to select their own representatives on these panels.
- d) The ADB should locate all reviews and assessments of its projects, programmes, lending practices and decisionmaking processes within national and sub-national democratic processes such as parliaments, congresses and

national assemblies. Directions for future policies and practices must emerge from public debates and discussions, and not through closeddoor negotiations among elite groups of ADB management, national and government elites and technical "experts."

WE CALL ON THE ADB TO RESPECT THE RIGHTS OF PEOPLES OVER THEIR RESOURCES AND LIVES AND IMMEDIATELY IMPLEMENT THE ABOVE DEMANDS.

ON MAY 9, WE MARCH IN SOLIDARITY WITH THE PEOPLES OF HAWAII WHO REJECT ANY FUTURE USE OF THEIR ISLANDS BY MULTILATERAL INSTITUTIONS LIKE THE ASIAN DEVELOPMENT BANK KNOWN FOR THEIR ANTI-PEOPLE AND ANTIDEMOCRATIC POLICIES.

Endorsed by:

Northern Farmers Alliance, Thailand
Kanchanaburi Conservation Group, Thailand
Bor Nog Conservation Group, Thailand
Ban Krud Natural and Conservation Group, Thailand
Klong Dan Local Community Projection Group, Thailand
Isaan Framers Cooperative Federation, Thailand
Committee for the Solution of Farmer's Problems, Chiang Rai
Committee for the Solution of Farmer's Problems, Payao Local Theatre Project, Thailand
Four Regional Alternative Agricultural Network, Thailand
Northern Farmer Network, Thailand
Kok-Ing-Nan River Network, Thailand
Mae Thood River Network, Lampang
Mae Mog River Network, Lampang
Soi River Network, Lampang
Isaan Forest and Land Network, Thailand
Thai Network for People Living with HIV/AIDS, Thailand
Isaan River Network, Thailand
Chiang Mai Consumer Network, Thailand
Women Rights Network, Thailand
Chiang Rai-Payao Rural Women Network
Thailand Labor Network, Thailand
Four Regional Slum Network, Thailand
Chiang Mai Community Network, Thailand
Media Center for People, Thailand
Eastern Farmer Network, Thailand

Southern Local Fisherman Federation, Thailand
 Student Federation of Thailand Committee for Natural and Environmental Conservation Educational Institute, Thailand
 Assembly of Isaan Farmer, Thailand
 Assembly of Cassava Planter Thailand
 Assembly of Indigenous People, Thailand
 Assembly of the Poor, Thailand
 Assembly of Moon River Basin, Thailand
 Group for Save Wand River, Thailand
 Nam Ping River Community Forest Network, Thailand
 Love Muang Nan Group, Thailand
 Assembly of Northern Community Forest, Thailand
 NGO-Coordinating Committee for Development (NGO-COD), Thailand

Freedom from Debt Coalition, Philippines
 Cordillera People's Alliance, Philippines
 Focus on the Global South, Thailand
 Focus on the Global South - India Programme

Fukuoka NGO Forum on the ADB, Japan
 AID/WATCH, Australia
 Creed Alliance, Pakistan
 Global Justice Coalition, Australia
 NGO Forum on the ADB (International Committee)
 Non-Timber Forestry Project, Cambodia
 Oxfam America
 Oxfam Community Aid Abroad-Australia
 International Rivers Network, USA
 Asia Pacific Movement on Debt and Development (Jubilee South AP)
 Environmental Foundation Ltd., Sri Lanka
 ODA Reform Network, Japan
 Mekong Watch, Japan
 NGO Forum on Cambodia
 PADETC, Lao PDR
 ACTION AID
 UK Green Movement of Sri Lanka
 Shelly Rao, Fiji
 SUNGI Development Foundation, Pakistan
 Youth for Unity and Voluntary Action (YUVA), India



Shanghai 2002

After two consecutive years of massive protests, the AGM was brought to China where no street action was organized. Instead, dissent was brought inside the AGM in highly critical seminars organized by NGOs to directly confront ADB officials. No joint statement was prepared in Shanghai.

Manila 2003

Originally set for Istanbul, the 36th AGM was reduced to a fanfare-free one-hour business-only meeting in Manila due to security issues highlighted by the United States' war on Iraq. Filipino activists took the lead in the protest actions against the ADB.

ASIAN DEVELOPMENT FOR WHOM?

The Philippine Working Group on the ADB Statement on the 2003 ADB AGM
June 2003

We, members of civil society following on the actions of the Asian Development Bank, urge its officials, country representatives, and delegates to stop adopting flawed policies such as the privatization of public utilities and basic services. We further call on the ADB to cease pushing indiscriminate liberalization of the economy.

While the ADB speaks of lending to overcome poverty and pursue development, in reality it chooses to push market-oriented policies for private profit. These policies benefit ONLY the developed countries and owners of capital at the expense of people's welfare, livelihood, and the destruction of the environment.

It has been 36 years but the ADB has yet to distinguish itself against the Bretton Woods institutions. On the contrary, the Bank threads the same line: espousing policies of industrialized countries and corporate interests. All of these take place while developing member countries wait to make their pleas heard and their membership count. Genuine development has been elusive because there has been no real concern for poor countries in the first place.

Instead, the ADB has coalesced with the International Monetary Fund, the World Bank, and the World Trade Organization in paying lip service to "helping the poor" through poverty reduction programs and sector reform loans. But there is a catch—countries have to acquire ADB's goodwill only through faithful and most of the time, painful compliance with the Bank's conditionalities. The Philippines has fallen victim to these conditionalities. After decades of prescribing, nay imposing structural adjustment programs, the ADB continues its adherence to market-based policies. Further, the Bank applies the same

private sector fundamentalism to all social service sectors without second thought.

The results speak for themselves.

While the ADB speaks about "water for all", it treats water as a mere economic good, accessible only to those who can pay. At present, water is four times the original government price, and yet the promised quality of service has not been achieved.

The power sector suffered the same fate in 2001, when ADB loans backed the passage of the law privatizing power generation, supply, and transmission. Since then, power rates have risen to unprecedented levels. This is contrary to claims of private sector efficiency that supposedly leads to cheaper costs.

Water and power sector privatization has failed because it is flawed in the first place. The provision of basic services is better served and protected by the public sector.

Other sectors in the public sphere are also up for grabs, the same with government services. Increased private sector participation is peddled as panacea to all existing problems. Adding insult to injury, the Philippine government has accepted this diminished role rather conveniently.

The cry for genuine reform calls for a reexamination of the whole privatization and liberalization policy. The people, especially the poor, are held hostage by these policies. We, therefore, call on the ADB to review and amend its programs of operations.

We further demand, that the ADB cease promoting privatization of public utilities and basic services, and the indiscriminate liberalization of the economy.



Jeju Island 2004

The ADB took the 38th AGM to Jeju Island in South Korea, an extremely expensive place beyond the reach of NGO's limited resources. Groups engaging the ADB chose to concentrate on on-the-ground work and decided to boycott the Meeting.

A BETRAYAL OF ASIA AND THE PACIFIC Boycott the 37th Annual Meeting of the ADB May 1, 2004

The NGO Forum on the ADB calls on all civil society organizations and activists to participate in a month of protest against the disastrous consequences of the policies and projects of the Asian Development Bank (ADB). We also call upon civil society organizations and representatives to refrain from participating in the 37th Annual General Meeting of the ADB, on 15-17 May 2004, Jeju Island, Republic of Korea as part of this protest. For nearly four decades, the ADB has **created poverty in Asia** through irresponsible project and program lending. Its continued focus on mega infrastructure projects, rent seeking investments, and privatization of water and power reflect its prioritization of narrow corporate, financial and elite interests over the concerns of the majority, especially the poor. The ADB's reckless promotion of economic models that benefit elites rather than common people has placed an unsustainable **debt burden** on the peoples and communities of Asia and the Pacific. Given that the major architects and beneficiaries of ADB projects and programmes are Japan, the United States (US) and Europe, ADB operations are tantamount to a betrayal of the people of the Asia-Pacific region.

It is time to say enough is enough.

The selection of the remote island of Jeju, South Korea, as the venue for the upcoming Annual General Meeting (AGM) is a highly inappropriate choice for a meeting of this magnitude. The expense of travel rules out civil society participation, even for Korean civil society. Jeju is the latest in a long line of remote and expensive venues for the ADB's AGM, which have included places such as Honolulu in the US and Nice in France. The choice of Jeju as the venue for the 2004 AGM indicates that the ADB cares little for broad civil society participation and largely ignores its own

claim that "interaction with NGOs is essential to [ADB's] effective operations". If the ADB were serious about this goal, it would do everything in its power to **ensure that the AGM is held in accessible venues**.

Civil Society Organizations demand that the ADB be held **accountable** for the consequences of its lending. The ADB claims to agree in principle with this statement, but views accountability only in terms of compliance to its own operational policies for safeguard, governance and quality. While such a view of accountability is extremely limited, experience has repeatedly shown that the ADB is incapable of living up to even this narrow concept.

We **demand** that the ADB commission independent monitoring and evaluation of its projects. While the Evaluations Department of the ADB has recently been given some degree of autonomy, this does not constitute independence. We also **demand** that the ADB change its system of staff incentives to stop rewarding those who can most effectively have loans approved (currently the most common way for a Bank to measure success) and start rewarding those who work to ensure ADB compliance with its operational policies.

While the ADB recognizes **official corruption** as a major impediment to sustainable and equitable development, it has continued lending on a large scale to governments that have a limited capacity to utilize funds. The governments do not want their aid flows to decrease; the ADB does not want its lending levels to decrease. This scenario is an open invitation to corruption.

We **demand** that the ADB enforce its policy of "zero tolerance" towards corruption by conducting an independent audit of all its operations. The ADB must take steps to ensure that money lent to the

public purse is not diverted to private pockets.

Despite ADB's lip service to the benefits of **transparency**, stakeholders are still often denied access to information while ADB projects impact their lives and livelihoods with impunity. We **demand** that all stakeholders have access to project related documents in local languages. We further demand that all documents submitted to the Board of the ADB be in the public domain, and that Board meetings and transcripts be open to the public.

We call on Civil Society from around the world to express their solidarity with the peoples of Asia by joining in the AGM boycott. We further call on groups to express their outrage at the ADB's policies of plunder by arranging demonstrations, letter writing campaigns and other activities of protest during the month of May.

Endorsed by:

Australia:

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Lee Tan, Australian Conservation Foundation
Binnie O'Dwyer, FoE – Australia

Bangladesh:

Ashraf-ul-Alam Tutu, Coastal Development Partnership (COP)
Khurshid Alan Shashanka Saadi, ActionAid Bangladesh
Zakir Kibria, BanglaPraxis

Brazil:

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India:

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Shripad Dharmadhikary, Manthan
Adhyayan Kendra (Manthan Research Centre)
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Heine Nababan, People's Coalition for the Rights to Water

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Kyrgyzstan:

Natalia Ablova, Bureau for Human Rights and Rule of Law

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Kalia Moldagazieva, Human Development Centre, Tree of Life

Tolekan Ismailova, Civil Society Against Corruption

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National Policy Institute

National Concerns Society

Melamchi Loan Concern Group

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"Affected Communities Col Mata Highway"
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Gama Surekaama Sanvidhaniya

Hemantha Withanage, Sri Lanka Working Group on IFIs

United Society for the Protection of Akmeemana

Thailand:

Naing Htoo, EarthRights International (SE Asia)

Jim Enright, Mangrove Action Project

UK:

Tom Griffiths, Forest Peoples Programme

USA:

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INTERNATIONAL RIVERS NETWORK, established in 1985, works with affected communities in fighting economically, environmentally, and socially unsound river intervention projects. For inquiries, contact Susanne Wong at swong@irn.org. "Sizing up the Grid" is an abridged version of an article released in January 2004. Full text may be accessed at <http://www.irn.org/programs/mekong/pow/eranalysis.pdf>.

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