

Failure to Deliver

The State of People's Access to Information under the ADB PCP

**Assessment Report by the NGO Forum on the ADB
on the Public Communications Policy of the
Asian Development Bank**

15 April 2010

Introduction

The Asian Development Bank reviews its Public Communications Policy (PCP) this year, five years after the ADB Board of Directors approved it on 22 April 2005 to replace its Confidentiality and Disclosure of Information document adopted on 18 August 1994. More than four years after the PCP's implementation, it is important for public interest organizations working on ADB issues, as well as organizations working with communities affected by ADB operations, to intervene in the ADB review of its PCP. This is because there are basic and fundamental problems in the PCP that we need to raise with the ADB.

The NGO Forum on ADB (Forum) has undertaken major activities relating to the ADB PCP beginning in 2009. These activities were building up to the Forum's intervention in the ADB PCP review, as well as informing Forum's longer-term practice on accessing information held by ADB.

On 11-12 February 2009, Forum co-organized with the Global Transparency Initiative (GTI) and the Freedom from Debt Coalition (FDC) a two-day workshop on the people's right to information held by IFIs and on the ADB PCP. In addition to presentations on the ADB PCP and the people's right to information, there were also nine country presentations of local experiences on accessing information from the ADB. All these provided evidence that there are problems in the PCP relating to the Right to Information as a fundamental human right, and to access to information by affected people particularly regarding project implementation and broad exceptions. There is also the issue relating to proactive or voluntary disclosure.

As follow-on process, the PCP was taken up in one of the policy review workshops in the Forum Annual Meeting in Bali on 28 April 2009. The discussions in the Bali workshop confirmed the major issues identified in the Manila workshop. It also surfaced the need to link the PCP closely with ADB's practice on public consultations on projects and policies, as well as the need for more translations of the PCP. Organizational matters and action points were also discussed, including the resolve to set up a communication mechanism for the groups interested in taking up the PCP issue, the need to deepen research, consultations and analysis on the issues identified, and the need to firm up a campaign plan and strategy.

NGO Forum also organized a panel on the PCP as one of the NGO events in the ADB AGM in Bali. The panel was a good opportunity for a preliminary exchange of perspectives on the PCP review, and sent the message early on that Forum intends to substantively engage the PCP review.

To coordinate its intervention on the PCP review as well as its partnership with other groups, Forum appointed a Facilitation Team composed of Souparna Lahiri (Member, National Forum of Forest Workers and Forest People), Hemantha Withanage (Executive Director, Centre for Environmental Justice), Isagani Serrano (President, Philippine Rural Reconstruction Movement), Kay Leak (Executive Director, Conservation & Development Cambodia), Red Constantino (Executive Director, NGO Forum on the ADB), Tea Soentoro

(Advocacy Coordinator, NGO Forum on the ADB), and Maya Eraleiva (Central Asia and Caucasus Coordinator, NGO Forum on the ADB). The Facilitation Team is joined by Nepomuceno Malaluan (Member, GTI Executive Committee) as representative of GTI.

The Facilitation Team led the Forum PCP process, including the planning of activities, preparatory engagement with ADB, and communications and discussions among Forum members.

One of the preparatory engagement activities was the sending by Forum and GTI of a joint letter to the ADB in November 2009. It contained a number of requests for commitments from ADB to help build confidence and enhance the quality of participation in the review process, consistent with the PCP mandate to actively engage interested individuals and organizations in the review.

Among the points raised in the letter were:

- the review process should recognize the affected communities as primary stakeholders;
- ADB must expressly recognize that the people have a right to information held by ADB;
- ADB must commit to a thorough review of the PCP on: (a) access by affected people; (b) exceptions; (c) appeals mechanism; (d) resources and their allocation;
- the review process must recognize the need to expand the areas of mandatory disclosure to include new areas of critical public interest, such as carbon accounting;
- ADB should clarify the process for the upward harmonization of other bank policies with the updated PCP; and
- ADB has to open the process of formulating and deciding the consultation agenda and its methodology, the timeline of the review process, and the determination of participants and venue for the consultations, to ensure maximum engagement by interested groups.

In its response made through its Public Information and Disclosure Specialist, the ADB expressed that it recognizes that people have a right to information held by the ADB and that this is the underlying principle that governs the PCP. It also committed to undertake wide consultations and to consider the specific issues that were raised in the letter. We welcome such response.

But the highlight of the Forum PCP process has been the consultations with affected communities. Forum, with participation from GTI, organized consultations meetings with select affected communities and their support groups from Indonesia (held in Yogyakarta, Indonesia on 22-23 January 2010), the Mekong region (held in Siem Reap, Cambodia on 19-

21 February 2010) and South Asia (held in Dhulikhel, Nepal on 26-28 February 2010). We also solicited comments from groups in Central Asia and Caucasus based on their experiences from around four years of project monitoring and advocacy with the affected communities.

In addition, Forum received insights and analyses from groups working on ADB monitoring and advocacy.

This report consolidates the Forum's PCP consultation and review process since February 2009, and presents the resulting analysis and recommendations. It also provides a brief historical note on the ADB review of its 1994 Disclosure Policy.

The Report is organized as follows:

Part I provides a brief historical note on public consultations on the ADB review of its 1994 Disclosure Policy;

Part II presents the findings from the Community Consultations;

Part III presents other analysis and comments from groups working on ADB monitoring and advocacy;

Part IV presents case experiences on access to information issues relating to select ADB-assisted projects; and

Part V presents the Forum recommendations on the PCP at its review.

Part I. Note on the 2004 Public Consultations Leading up to 2005 PCP

In May 2003 until the adoption of the PCP in 2005, the ADB embarked on a process to review and combine its existing Disclosure Policy and Information Policy to prepare a Public Communications Policy. Part of the review was a public consultations process which involved inviting comments on the first draft of the PCP, organizing consultation meetings in Asia, Europe and the USA in 2004, and inviting comments on the second draft PCP.

Included in the country consultations were those held in Dhaka, Delhi, Bangalore, Beijing, Jakarta, Hanoi, Sumatra-Java, and in Bishkek countries. Consultations were also held in Ottawa, Washington DC, London, Sydney and Tokyo. A video conference took place with groups in Nepal.

Following are the relevant and common points raised in the consultations that took place in 2004.

General Comments

- The PCP should ensure an increased role for civil society at all levels of decision-making.
- The PCP should be oriented more towards affected people than towards ADB and the government.
- Right to information laws at both national and state levels include features more aggressive than the PCP. South Africa requires that private sector information be made public. Four Indian states have clear procedures for what to do when information is refused, or when someone is given wrong information. There are also penalties for the willful destruction of records or noncompliance. Appeals are heard by an independent body.
- ADB should look at the freedom of information laws in the Indian State of Maharashtra, Mexico, South Africa, and Queensland (Australia).

Information for Affected Persons

- Disclose information related to project financing during project implementation.
- Affected groups and communities are not included in the list of audiences.
- Research should cater to the needs of affected peoples/groups.
- ADB should take responsibility for ensuring that information is provided.
- At project identification, ADB should disclose information about the expected project impact so the public can be real partners in the feasibility study. The relevance of the project should be discussed at the concept stage.
- The following information are needed at the concept paper stage, even if these are preliminary:
 - Project studies, including impact assessments.
 - Project information, including costs, project description and objectives, loan terms, implementing agencies, and contractors.

- For affected communities, placing documents on a website often does not constitute proactive disclosure.

Consultation Mechanisms

- Public hearings should be held starting from the project concept stage. These should be organized by the local implementing authority.
- Affected persons should also be given the project's evaluative reports and asked to supplement them with their own evaluation.
- All public consultations should be conducted in the local language, providing information found in the various reports, i.e., a translated executive summary.
- Documents should be provided in official and state languages.
- Government mechanisms and offices should be used to disseminate information and coordinate consultations.

Prior informed consent -- agreement of well-informed affected people - should be obtained for any development initiative.

- Continuous dialogue is needed among the government, project implementation agencies, and stakeholders. ADB needs to use a grassroots approach rather than a "blueprint" approach.
- Communications should be two-way and interactive.
- The PCP should provide for feedback of information from target groups.

Information Delivery Mechanisms

- The main mechanism of information dissemination is the Internet. It is also highly Manila-centric. The proactive role of ADB Resident Missions, and their means of dissemination, should be enhanced in the draft.
- A communications plan should be provided, with details.
- Project information centers can be integrated into local government offices.
- The Resident Missions should be responsible for addressing information requests in local languages.
- It is unclear in the policy what "publicly available" means. Posting documents on a web site is inadequate and does not constitute "publicly available."
- The policy should indicate a mechanism for reaching local media in affected communities, and more clearly define the ways to reach local communities.
- The policy should suit local conditions and be sensitive to local needs and culture. Localized communications mechanisms should be employed.
- There should be a mechanism to ensure that information has been given.

Grievance Process

- The policy should indicate how grievances will be addressed.

- PCP should also indicate that persons who feel that they have been harmed as a result of not receiving information can contact the Special Project Facilitator, as part of the Accountability Mechanism.
- The PCP should call for an independent monitoring mechanism.

Exceptions to Presumed Disclosure

- The policy seems more tilted to nondisclosure rather than disclosure with the numerous exceptions,
- A clear definition of “presumption” should be included.
- All information should be made publicly available except those commercially sensitive (e.g., trade secrets) or related to individual privacy or national security.
- Many of the policy’s disclosure provisions lack precision, e.g., “when necessary,” “at the discretion of ADB,” etc. These phrases allow ADB staff to avoid disclosure.
- The names of companies blacklisted for fraud and corruption should be made publicly available.
- Some participants thought the policy should mandate the release of certain agreements/contracts, such as power purchase agreements.
- The sponsors themselves should not determine confidentiality.

Information that should be Disclosed

- Aide Memoires should be released after excising sensitive or problematic (in terms of national security) sections.
- Rehabilitation and Replacement (resettlement and indigenous peoples planning) documents must be disclosed.
- Draft RRP’s need to be made available at least 30 days before they go to the Board.
- Whatever information is disclosed should be easy to understand, simple, and accurate.
- Project audit reports should be made public, with a complete budget breakdown. The level of budget detail proposed for disclosure in the Project Information Document (PID) is unclear. Citizens must have complete financial information to ensure proper management.
- Reports submitted by the borrower on project progress should be made publicly available, rather than simply transferring information from project progress reports into the PID.

On the Disclosure Policy Review Consultations

- The consultation process for the draft PCP is not inclusive enough. People affected by projects have not been included.
- More advance notice should have been given for the consultations.

- Consultations should be held in project areas where feedback would have been far more beneficial to ADB than meeting with NGOs. ADB should seriously consider holding a series of field visits.
- Representatives from the Parliament, local government, affected communities, and ethnic minority groups should have been included.

Looking at the points raised in the 2004 consultations, we identify the following key omissions and remaining issues in the current PCP:

1. The audience for ADB does not explicitly include the affected people. Paragraph 48 states:

While it is important for ADB to reach the general public, this strategy does not directly target the public in donor countries or in developing member countries, or the private sector. ADB's engagement with the general public will remain indirect.

2. Forms and tools of delivery of information to the public at large and the affected people are not clear in the PCP. The PCP just talks about the importance of its resident missions. Even translation of documents remains at the discretion of the ADB.
3. For ADB policy documents like CSP and RCSP, the PCP states, "shall be made publicly available according to the time period specified, after consultation with the respective borrower or private sector sponsor as appropriate, and subject to the section on exceptions to disclosure (paragraphs 123-130)."
4. For information to the project-affected people, the PCP says that "ADB shall work closely with the borrower or project sponsor to ensure information is provided and feedback on the proposed project design is sought, and that a focal point is designated for regular contact with affected people." This is ambiguous and does not clearly say whose responsibility is what.
5. The PCP is dependent on the ADB website and internet communication. It does not include any separate disclosure arrangement for affected communities or the public at large.
6. The list of exceptions is too long and some exceptions are overly broad.

Thus, as we come into the 2010 ADB PCP review, we are already confronted with a number of pending issues, specifically those related to the affected people and communities, and to the division of responsibilities of ADB, borrower governments and the private sector on disclosure of information.

The ADB PCP also remains nowhere near many national legislations related to Right to Information (RTI), and fails to respect and recognize the spirit behind the Right to

Information and its relation to basic human rights as enshrined in a number of international human rights covenants and instruments.

Part II. Community Consultations on PCP

The NGO Forum on ADB, with participation from GTI, hosted three Community Consultations regarding the implementation of the ADB PCP. These consultations were for sharing of experiences by communities and support NGOs and movements. They were conducted on 22-23 January 2010 in Yogyakarta, Indonesia; 19-21 February 2010 in Siem Reap, Cambodia; and 26-28 February 2010 in Dhulikhel, Nepal. These consultations were held as part of Forum's pro-active preparation for ADB's PCP Review.

More specifically, the Consultations aimed to gather inputs and experiences from affected communities and groups working with them in project monitoring and advocacy about the implementation of PCP in ADB-funded projects. It also provided a process for consolidating their demands regarding how information should be provided to affected communities and an opportunity to deepen understanding of the right to information and to develop strategic follow-up activities for campaign and policy intervention.

Participation and Coverage of Project Experiences

Participants of the Community Consultations included representatives of communities affected by ADB-funded projects, groups working with affected communities, and NGOs engaged in ADB monitoring and advocacy.

The Community Consultation in Yogyakarta was attended by 37 participants (16 women and 21 men) composed of members of the Dayak Council of West Kalimantan (Dayak is the Indigenous Peoples in Kalimantan), community members from ADB project-affected areas, local organizers, support groups, and Forum Secretariat. Experiences of communities and their support groups related to five projects, including: the Regional Road Development Project that will be approved by the ADB Board in 2010; the Madrasah Education Development Project; the Coral Tri-angle Initiative Project; West Jakarta Water Supply Development Project; and Integrated Citarum Water Resource Management Investment Project (ICWRMIP).

The Mekong Community Consultation was attended by 33 participants (12 women and 21 men) composed of community members from ADB project-affected areas in Cambodia, support groups in the Mekong region (Cambodia, Thailand and Vietnam), members of Forum's Facilitation Team on PCP Review, and Forum Secretariat. Experiences of communities and their support groups related to four projects, including: Klong Dan waste Water Treatment Project; Song Bung Dam 4 Project; Railway Rehabilitation Project; and Highway One Project

South Asia Community Consultation was attended by 41 participants (10 women and 31 men) composed of community members from ADB project-affected areas in India, Nepal, and Sri Lanka, support groups from that region, members of Forum's Facilitation Team on PCP Review, and Forum Secretariat. Experiences of communities and their support groups

in nine projects were discussed, including: West Seti Hydropower Project; Melamchi Hydropower Project; Khimti Hydropower Project; Kaligandaki Hydropower Project; Kirindi Oya Irrigation and Settlement Project (KOISP); Upper Watershed Management Project; Southern Transport Development Project (STDP); Southwest Integrated Water Resource Planning and Management Project (SWIWRPMP); and Lafarge Mining Project.

Key Findings from the Consultations

In all three community consultations, the problems identified by participants are, in general, similar: lack of information or insufficient information to communities about the project; no information about ADB and its policies; and the method of information provision by ADB is not accessible to most affected peoples. This situation leads to related concerns among affected communities, such as not being involved in consultations and decision-making on the projects and uncertainties about displacement, future livelihood, and the fragile ecosystem. There are also worries about intensifying land conflict and violence, particularly with people in power and the military. Furthermore, they also do not know where to submit their grievances when they have concerns about the project.

Usually, the communities receive information regarding projects in their area, as well as regarding the ADB and its policies, only after they start to network with NGOs and support groups.

Among the key findings from the consultations are the following:

(1) Information on projects

- **Lack of information on the project**
 - No information to affected communities on projects in their areas from government and/or ADB, particularly for projects in the preparation stage.
 - No information about purpose and the use of loan for the projects; many implementers do not know about the ADB loan as source of fund for the project.
 - No information about resettlement process, including the compensation.
- **Information is not accessible to communities**
 - There is a language barrier because information is provided mostly in English and not in the language of affected communities.
 - Information about the project posted on the ADB website is not accessible to the affected communities because they have no access to internet.
- **No timely disclosure of information**
 - Information is not timely given.
 - Information is not disseminated before project approval
 - In some projects people were informed about the project long after project approval and only after intensive push from supporting NGOs.

- **Insufficiency of information**
 - If information is provided, it is often insufficient, particularly regarding project description, executing agencies, determination of right-of-way and corridor of impact, Detailed Measurement Survey (DMS), Detailed Engineering Design (DED), Detailed Project Report (DPR), Resettlement Plan and Rehabilitation Plan, Mitigation Plan, project designs, maps, entitlement and compensation, and grievance mechanism.
- **Inaccurate information**
 - Some projects showed inaccurate information related to number of affected people, particularly during the project preparation stage.
- **Difficulty in obtaining information from government**
 - There is lack of faith in ADB resident missions and also in governments for giving appropriate and sufficient information.
 - It is difficult to obtain information from executing agencies; many times communities encounter arrogant behavior of government officials/executing agencies.
 - Local government officials as the executing agencies do not know how to provide information on the projects because many of them have no knowledge about these projects and even about ADB.
 - ADB's resident missions are not trained to communicate with affected people.
 - Many documents are in English; many times, these were misinterpreted by the interpreter; there is no allocation for translation.
 - Information from and opportunities to meet with responsible government agencies often happen only after intervention by the NGOs.
 - There is no clear chain of information delivery as government and ADB point to each other on where to get the information.
- **No information about ADB**
 - Affected communities are not given information about ADB as an institution – what it is and what it does.
 - There is no information about ADB policies, including project grievance procedures.
 - Communities have difficulty understanding ADB policies and procedures that are mostly in English.
 - Information about ADB are obtained only after communication with NGOs.
- **No Free Prior Informed Consent (FPIC)**
 - There is no consent or consultation for projects in general.
 - There are instances of people being made to sign documents with no explanation on what they are.

(2) Exceptions on information disclosure

Aside from implementation issues, there is also the problem with exceptions. The exception list on the PCP is long and many times abused to block disclosing requested information by affected communities and/or their support groups.

There are cases of ADB refusal to disclose particular information with the reason that the requested document is a government document. An example of this is the DMS (Detailed Measurement Survey) which contains important details on displacement.

(3) Access to information as a common issue in complaints under ADB accountability mechanism

An analysis of complaints submitted to the Office of Special Project Facilitator (OSPF) as part of the ADB accountability mechanism shows that information is a main or related problem.¹ From the 25 complaints filed at SPF in 2004 to 2009, problems in access to information were raised in 10 complaints. Problems about consultation/participation also surfaced in 7 complaints, and issues of resettlement, compensation or land acquisition were in 16. These show that information disclosure to affected people is a critical issue and that the ADB PCP lacks effectiveness.

Moreover, the analysis shows that 16 complaints were found by the OSPF as 'not eligible'. This is indicative of the PCP's failure to facilitate understanding of the ADB grievance procedures.

¹ Toshi Doi, Mekong Watch, PCP: Policy Complained-of by People, powerpoint presentation at the Mekong Community Consultation, Siem Reap, 20 to 22 February 2010.

Part III. Analysis and Comments from Groups Working on ADB Monitoring and Advocacy

A. Access to Information in Central Asia and Caucasus²

Access to information under the ADB PCP is under tremendous criticism in Central Asia and Caucasus region. The political situation, as well as the arbitrariness of government systems coupled with lack of awareness among a large section of population on existing ADB policies and rules, results in lack of people's trust in demanding transparency from government as well as from ADB. The development under the ADB in the region lacks proper people's participation in development decision-making.

Access to Information in the Region

Country	Year of joining ADB	National laws on Access to information	Constitutional Provisions on Access to Information	Accession to the Aarhus Convention
Armenia	2005	2003		2001
Azerbaijan	1999	2005	Article 50	1999
Tajikistan	1998	2002	Article 25, 30	2001
Kazakhstan	1994	No law	Article 20	2001
Kyrgyzstan	1994	1997	Article 14	2001
Mongolia	1991	No law	Article 16 and 17	

Challenges on Access to Information in Central Asian Region and Caucasus

Having good national laws and having ratified international instruments do not necessarily mean that these are properly put into practice. The implementation of laws on access to information, as well as of ADB disclosure policy, has been a problem for the society as a whole in the region. After providing on paper the laws or provisions on access to information, most of the governments have failed to ensure their proper execution. For its part, the inadequate information posted on the ADB website, mostly in English, has deprived common people the means to participate in the development process in the region.

One aggravating problem is that citizens (especially in rural areas, where many development projects are under implementation) are not aware about ADB projects and its policies, including the PCP. There is still a hangover from the strict secrecy and non-

² Maya Eralieva , Non-participatory Development in Central Asian and Caucasus Region: An analysis of implementation of ADB's Public Communication Policy (PCP), 2010

transparency of the former Soviet bureaucracy. Participatory governance mechanisms do not work due to insufficient exchange of information between public servants and citizens of the country. Frequently, it is not just public servants that fail to provide necessary information. Citizens also do not demand from national government agencies and local government bodies the information they need.

There is lack of faith in the accountability systems, such as existing judicial systems, in the countries. Although laws on access to information provide the public the right to appeal in court any unlawful refusal to provide information, many citizens prefer not to go to the courts as there is common belief that the executives control the judiciary.

The absence of a unified request processing system in government agencies and the absence of a unified system for the registration, classification, and storage of information in government agencies have added more problems to public access to information. In practice, national government agencies and local government bodies do not know whether they have a particular piece of information or whether they should provide that piece of information to the public. Lack of coordination among government units also creates a situation of minimal information. In addition, agencies do not have the proper reference materials to inform someone on how to access information.

The situation aggravates with government instability (for example in Kyrgyzstan, the government structure or government cabinet members changes as many as 2-3 times in a year). There are cases when projects were stopped by government without justification. For example, Southern Agriculture Area Development Project funded by ADB in Kyrgyz Republic abruptly stopped. According to an official document, the project-allocated funds were transferred to the energy needs of the country. This has been without consultation with interested stakeholders, including community people who would have been beneficiaries of the project.

The language has been an important barrier on access to information in general. Most ADB project information are in English, using very difficult technical terms which are not accessible to community people in general. The inadequacy of information on the ADB website and the inaccessible country resident mission are symbols of the exclusion of community people.

Experience on PCP Implementation

Against such backdrop, there have been serious constraints and challenges faced by civil society organisations and communities regarding access to information on ADB projects, programs and policies. There are many cases where requests for information are denied without adequate explanation of legal ground, or denied under ADB PCP. There are also instances of requests that are not answered, or where response is delayed.

Among the specific problems have been as follows:

Lack of Project Information at the Lowest Level of Governing Institution

In the Rural Road Sector project in Armenia (Number: 40610), the head of the local government administration and of the local community were not involved in the project at all, from project preparation to its implementation. Lack of public consultation and lack of information on the project contributed to poor project outcomes. The local administration did not know how and whom to address the problems.

After complaints from local people, the ADB sent a mission to the project site and took several measures to improve the situation.

Similarly, in the Massali–Astara Express Highway Construction Project, under the ADB-funded MFF Road Network Development Program-39176 (formerly Southern Road Corridor Improvement Project) in Azerbaijan, there is no information regarding the road design, maps, latest version of resettlement plan, and draft design and monitoring framework in affected villages. Although the head of executive authority of the village administration informed that 126 families would be affected by the construction of the expressway and with the loss of agriculture land, most of the people have no information about the project and its related resettlement plan. According to the head of the executive authority of the village administration, information is only in the Agriculture Department headquarters or at the Ministry of Transport and Communication of Azerbaijan.

The same case has been registered in Tajikistan, Rural Development Project – 37520. Non-government Organizations were denied to receive project implementation plan. Government officials from local authorities Hukumats were also deprived to have information about the project and could not provide people with any project documents.

In the “West China – West Europe” project, four institutes are identified as information centers where the public can get acquainted with the documents on the project: - the Department of Highways, offices of district and rural authorities, libraries, and district departments of Justice. But in reality, there is no information in these identified public institutes. The Transport Department makes everyone come to their office in the Almaty city, which community people cannot afford.

Project Executing Departments are not interested to disclose information. In their understanding, the less people know, the less problems there will be for the project. Project managers do not comply with the PCP – they are not interested to keep in touch with NGOs and local communities. Everything is written nicely on paper, but in reality, they are not implemented well. Executing Agencies and the ADB use limited possibilities to distribute information.

Delayed and Contradictory Information on Co-financing Projects

In the Azerbaijan East-West Highway Improvement Project (35457) supported by ADB and co-financed by the Islamic Development Bank and Saudi Fund for Development, approximately 700,000 people will be displaced but most of them have no information regarding the project. The most pressing concern comes from the settlements in the

Yevlakh–Ganja road section of the highway where property owners are not given any information about the details of the project and its design. There has been no agreement with them about either relocation or resettlement. There is no resettlement plan available in public institutions like the local executive authority’s offices. There is no information on which part of the road project is being funded by which co-financer, and on who is responsible for environmental or resettlement planning.

It took five months to clarify whether the project is financed by ADB, IDB or a Korean private company. While affected people are waiting for the facts, there has been no Environmental Protection Report, Due Diligence Report for Involuntary Resettlement, Environmental Assessment Report, and two aid memoires by ADB. The ADB project officer, while admitting that the ADB is a co-financer, has asserted that the Bank could not disclose these documents. The project officer suggested that the other co-financers be contacted. A complaint letter was sent to ADB OSPF but the complaint was declared ineligible.

Limitation on Safeguard Policy Compliance Memorandum and Initial Environmental Examination

Under the Power Transmission Enhancement Project, ADB says that most information relating to this loan is included in the ADB Report and Recommendation of the President (RRP) to the Board of Directors. The initial environmental examination (IEE) report is available only upon request. This means, however, that the IEE is not proactively made available at the early stage of the project. On the other hand, the Safeguard Policy Compliance Memorandum cannot be disclosed as it is an “internal document.”

Public Consultation Proceedings or Documents

In an ADB-funded MFF project in Kazakhstan -- the CAREC Transport Corridor I (Zhambyl Oblast Section) – project-affected people were informed just two days before the public consultation through a small announcement in a local newspaper. While people suggested corrective measures for the project design during the public consultation, the implementing agency did not include the suggestions in the consultation proceedings.

Aide Memoire, Paragraph 126 of PCP, and the PDAC

Information related to Power and District Heating Rehabilitation Project (Loan 1443-KGZ) were denied under paragraph 126 of the PCP. The Public Disclosure Advisory Committee (PDAC) also refused to provide access to the Aide Memoire between the government and the ADB being requested by Bishkek-based CSOs based on paragraph 126 (3).

Paragraph 126 (2) of PCP states: “Information exchanged, prepared for, or derived from the deliberative and decision-making process between ADB and its members and other entities with which ADB cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision-making process between and among ADB and its members and other entities with which ADB cooperates by inhibiting the candid exchange

of ideas and communications, particularly with respect to policy dialogue with developing member countries.”

Paragraph 126 (3) states: “Information obtained in confidence from a government or international organization that, if disclosed, would or would be likely to materially prejudice ADB’s relations with that party. “

The use of these provisions to frustrate access to information is not isolated. On 1 October 2008, a Tajik-based CSO requested information regarding an aide memoire with covenants on Loan-2062 TAJ and Loan-2196 TAJ Road Rehabilitation Project at the Dushanbe-Kyrgyz border. On 2 October 2008, the InfoUnit acknowledged receipt of the letter. On 30 October 2008, the InfoUnit in ADB refused to release the documents providing as reason paragraph 126 (2) of the PCP.

However, in the latest Implementation of PCP Report 2008, it is mentioned that Aide Memoire is a public document. Why then does the ADB continue to deny access to aid memoires?

Intimidation

According to the ADB, the Mongolian Education Sector Development Program (MESDP) I, II and III project reached all 21 provinces, capital city, *soums* and districts of Mongolia, and the project is still continuing. After a long continuation of the project with huge funding, major project beneficiaries still do not have information about the project implementation. When the CSO project monitoring team met the project implementation unit, the latter refused to provide information and subjected the team to intimidation. The team sent a letter to the ADB which remains unanswered.

B. PCP and the Private Sector Operations, Including Financial Intermediaries³

As the ADB moves increasing amounts of its portfolio into private sector operations, there is a pressing need to ensure full transparency of these investments, activities and projects, regardless of the modality of funding. The recently-completed ADB Safeguard Policy Update process enshrined the principle that there should be no differentiation in the treatment of public and private sector operations and that all components of all projects, regardless of mode of finance, are subject to safeguards assessment and disclosure requirements. After close to five years of consideration, the ADB has decided to apply important disclosure rules -- for example the 120-day review period for draft Environmental Impact Assessments -- equally to public and private sector operations.

³ Stephanie Fried, Ph.D. Ulu Foundation Comments on the ADB Public Communications Policy Review, Concerns Pertaining to ADB Private Sector Operations, Including Financial Intermediaries. April 6, 2010

During the SPS process, staff from the South Asia Department and South Asia Energy Division commented as follows:

SARD finds that the request from external stakeholders to have different disclosure rules for public and private sector projects is not a sufficient reason to have differential disclosure policies for private and public sector projects.

The ADB Environment Policy shall not make special concessions to the private sector when it comes to observing the safeguard policy requirements -- compromising on environment information disclosure, safety, and/or impact mitigation shall not be the way to attract/stimulate private investments. On the contrary, ADB should demonstrate leadership when it comes to compliance with information disclosure and environmental mitigation (according to the principles of the Aarhus Convention).

We feel that these arguments apply to all disclosure requirements, including the PCP, and ADB should take appropriate measures to remove standards which provide a lower bar for private sector disclosure requirements compared to public sector requirements. In addition, given the many relatively new forms of ADB finance and investments, the Bank should develop clear, broad and mandatory transparency requirements for the entire range of ADB private sector activities, regardless of finance modality.

There is a deep civil society concern regarding the involvement of the ADB in Financial Intermediaries (FI), including offshore private equity funds domiciled in secrecy jurisdictions, often known to be tax havens.

The use of secrecy jurisdictions and “offshore” tax havens by public financial institutions is of concern for a number of obvious reasons, including the difficulty of public oversight of the use of such public funds and the likelihood that fellow investors may be involved in money laundering and that the source of their investments may come from illegitimate or illegal means, including theft of state assets, illegal efforts to avoid taxation, or operations involving human rights abuses or environmental crimes.

Capital flight from developing countries to secrecy jurisdictions sharply undermines development efforts and significantly limits the capacity of local governments to utilize their own funds to address pressing social and environmental needs.

The by-laws of corporations or funds domiciled in secrecy jurisdictions often include clauses to ensure that it is impossible for shareholders or the public to obtain basic information on the operations or activities of such companies, including their environmental and human rights records. For example, the following language was excerpted directly from by-laws of a corporation domiciled in a secrecy jurisdiction in the Caribbean:

“Information Available to Shareholders

1. Except as provided by the act, no shareholder shall be entitled to any information respecting any details or conduct of the Company's business which, in the opinion of the directors, would be inexpedient in the interests of the Company to communicate to the public.
2. The directors may from time to time, subject to rights conferred by the Act, determine whether and to what extent and at what time and place and under what conditions or regulations the documents, books and registers and accounting records of the Company or any of them shall be open to the inspection of shareholders, and no shareholder shall have any right to inspect any document or book or register or accounting record of the Company except as conferred by statute or authorized by the directors or by a resolution of the shareholders."⁴

Under such conditions, it would likely be impossible to obtain not only information on basic environmental and social impacts of such an ADB-supported operation, but also on the financial performance of any portfolio companies held by such a financial intermediary. Such language would appear to prevent the ADB from determining not only the identity of co-investors in a fund domiciled in a secrecy jurisdiction, but also the legitimacy and legality of the source of co-investors' often substantial funds.

It is of the utmost importance to apply full and robust transparency and public information requirements for Financial Intermediaries and subprojects, including private equity funds domiciled in secrecy jurisdictions. Bank should withdraw or refrain from involvement in any transactions which are unable to meet broad and clear transparency requirements.

Currently, the PCP states:

v. Private Sector Project Legal Agreements

104. ADB shall not make private sector legal agreements entered into by ADB, or amendments to such agreements, publicly available.

This is entirely unreasonable, given that, as a public institution, the use of public funds should be held to the highest levels of public scrutiny.

To date, it has been impossible for project-affected communities and the general public to identify which subprojects, portfolio companies, etc. have been invested in by ADB-supported private sector operations such as Financial Intermediaries, and to exercise their rights to information disclosure, participation, consultation and livelihood protection.

On Redaction

Redaction is the removal of a section of text from an otherwise public document. One troubling aspect of redaction practices at the ADB is that they appear to differ between private sector and public sector processes. InfoUnit staff have explained that when public

⁴ Copy of corporate by-laws provided to `Ulu Foundation, February 2010.

sector documents are redacted, the excised sentences are indicated with an annotation that there had been a redaction. For private sector documents, entire sections are removed without notice or comment, and documents may be entirely rewritten prior to public release.

It should be clear to the public the amount and extent and location of each redaction and that there should be no difference in practice between public and private sector documents. ADB should require "strike out" redaction – where a dark black line is drawn through any "business confidential" sections -- so that the public has an idea of the extent and location of material claimed to be categorized as such. This is standard practice in many government agencies. Over the years, it has become quite apparent that many financial institutions attempt to shield important safeguards information misleadingly under the rubric of "business confidentiality." It is impossible to know the extent of materials removed from public purview given the current method of redaction allowed at the ADB. The new PCP should require "strike out" redaction and lay out a process for the appeal of confidentiality claims applied to sections of text, involving an independent review of the blacked-out materials.

Part IV. Case Experiences

A. West Jakarta Water Supply Development Project

According to the United Nations Development Programme, 30 per cent of Indonesians in urban areas and 50 per cent in rural areas still have no access to piped drinking water. As a signatory to the Millennium Development Goals (MDGs), the government vows to halve the number of people without access to safe water sources by 2015.

Indonesia's water concessionaire PT PAM Lyonnaise Jaya (PALYJA) has pounced on such promise, obtaining a IDR 455 billion (US\$50 million) loan from the Asian Development Bank (ADB) supposedly to improve water distribution in West Jakarta for 25 years beginning in 1997. PALYJA is a private company that absorbed the operations of the state agency, Perusahaan Daerah Air Minum Jakarta Raya (PAM Jaya), which has remained undeveloped and acquired mounting local and foreign currency debts.

The approved loan for what came to be known as the West Jakarta Water Supply Development Project (Project Number 41913) became a subject of contention. As the loan was just one of the loans PALYJA acquired for its capital expenditures, it becomes unlikely that improvements on the water system would result in better but cheaper access of water. This can be gleaned in the language of the Report and Recommendation of the President itself. The project's outputs primarily concerns PALYJA's financial development:

- rehabilitation of existing distribution network
- expansion and densification of water distribution network
- increase in end-user connections and meter installation
- reduction of unaccounted-for water losses.

Groups such as the Amrta Institute for Water Literacy further pointed out that PALYJA's projected benefit of the project from 15.2 million cubic metres in 2008 to 27.8 million in 2009, was an overestimation. It asserted that: "In PALYJA's more than ten years of operation, there has never been any significant increase in the volume consumed. From 2002-2007, the yearly volume consumed has stagnated at 13 cubic meters."

The contribution of PALYJA's loan with the ADB to PALYJA's operations, financial health and services could have been better appreciated had certain appendices been disclosed in the RRP:

- Appendix 9 – Detailed Financial Projections
- Appendix 10 – Financial Analysis
- Appendix 11 – Economic Internal Rate of Return

The RRP that is currently available on the ADB website only includes up to Appendix 8, yet its early part already refers to the missing appendices.

The communities represented by the Amrta Institute for Water Literacy have found more reason to inquire with ADB when they obtained telling financial information on PALYJA from Indonesia's Stock Exchange Market. PALYJA's financial statements said that in 2008, the company's net cash is not enough to pay the bonds and dividends of about Rp 194 million (US\$21,107). This means that it is possible that PALYJA may be using its loan with the ADB for repayment rather than investment.

In her e-mail communication on behalf of the Amrta Institute for Water Literacy, Nila Ardhianie formally requested the ADB copies of the missing documents. However, Robert Paul S. Mamonong, Senior Public Information and Disclosure Coordination Assistant of the ADB's Public Information and Disclosure Unit responded that they cannot release Appendix 9 for it constitutes confidential business information, citing paragraphs 126 (8) and 126 (9) of ADB's Public Communications Policy.

He added that the main content of the other two appendices are already included in the RRP, particularly Appendices 7 and 8: "What is referred to as Appendix 10 'Financial Analysis' in the text is Appendix 7 in the redacted version, and Appendix 11 'Economic Analysis' in the text is Appendix 8 in the redacted version."

Sources:

ADB (2007). "Report and Recommendation of the President to the Board of Directors: Proposed Loan-Republic of Indonesia (Project Number: 41913)." URL: <http://www.adb.org/Documents/RRPs/INO/41913-INO-RRP.pdf>

Arhianie, N. (2009). "Questioning ADB's Loan to PALYJA." URL: <http://www.waterjustice.org/uploads/attachments/Questioning%20ADB's%20loan%20to%20Palyja%20V3.doc>.

_____ (2009). "West Jakarta Water Supply Development Project." (presentation material). (copy text).

IRIN (27 August 2008). "INDONESIA: Nationwide campaign to improve sanitation." URL: <http://www.irinnews.org/Report.aspx?ReportId=79993>

UNDP (n.d.). "Status of MDGs in Indonesia." URL: <http://www.undp.or.id/mdg/>

B. Whose Regional Road?

In 2006, the Indonesian government thought of upgrading its highways in Java and Kalimantan in a way that would allow travel from one end of the island of Java to another, and for Kalimantan, to further link it to the Indonesia-Malaysia borders. Costing US\$1,625,000, the project preparatory technical assistance (PPTA) has been largely facilitated by a grant from the Japan Special Fund through the Asian Development Bank. Of the total cost, ADB is shouldering US\$1,300,000 while the rest will be financed by the Indonesian government.

The PPTA aims to focus on three major projects:

- 1,300 kilometers (kms) in West Kalimantan
- 600 kms in East Kalimantan
- 1,700 kms in Southern Java

But as early as the preparatory stage, issues are already being raised by communities. Foremost of these are land acquisition and compensation issues. In Yogyakarta, it is not clear where payments would be made in case the Southern Java highway is constructed. The land in question is considered that of the Sultan of Yogyakarta, although communities have been there for generations.

What puzzles concerned groups such as Solidaritas Perempuan is the ongoing construction of an infrastructure that is supposed to be part of the planned project. Sixteen kilometers out of the proposed 30-kilometer Girijati-Baron road link is already done while another two-kilometer stretch is being constructed. Such infrastructure has cost the government nearly US\$3 million.

Similarly, the planned highways in Kalimantan are controversial for they pass through oil palm plantations whose produce are exported to Malaysia. It is feared that affected communities would be treated unfairly, obtaining less compensation than what the project proponents may give to plantation companies. The highways may even serve the plantations better for these could improve access between Indonesia and Malaysia.

The PPTA also failed to conduct studies on the proposed project's possible social and gender impact. It is silent, for instance, on the actual condition of the communities. It does not specify how many affected households are headed by women or how women can benefit from the proposed project.

As Hikmah Diniyah asserted, "The government and the ADB need to describe the benefit of the road project to trade so people can assess whether the road project addresses poverty or merely increases the profits of businesses."

In July 2009, the Indonesian Directorate General for Highway hosted a few meetings with stakeholders from the academe and non-government organizations (NGOs). The meetings were held in Pontianak, Tarakan and Yogyakarta.

Unlike in the meeting in Yogyakarta, the participants of the meetings in Pontianak and Tarakan complained of the inadequate briefers particularly on the impact of the project to communities, including indigenous peoples. In the Pontianak meeting, the planned widening of the road along Tayan-Sosok was not disclosed. The figures on potential affected residents were also understated. For instance, the project proponents said that 63 families will be affected; yet the affected areas actually cover three sub-districts which host the indigenous communities of the Dayak, Menyabo, Tamiang Mali, Senyabong, Keadu, Mak Kawing, Tebang Benua and Cempedak.

But even in the meeting in Yogyakarta, the participants observed a dearth of data, particularly those that could have addressed concerns on compensation.

While the three meetings enabled some civil society organizations to learn of the proposed project, the flow and quality of information remain limited. As of this writing, no consultations are being conducted within the communities in the local language. In fact, conflicts have erupted because of the various pieces of information that are being circulated about the project. Since the three meetings, the Indonesian government tightened its grip on any information regarding the proposed project.

Indonesia's regional road development project is intended to be processed through a multi-tranche financing facility that amounts to US\$500 million.

Sources:

Asian Development Bank (ADB) (n.d.). "PID: 38479: Regional Roads Development." URL: www.adb.org/projects/project.asp?id=38479

_____ (2008). "Republic of Indonesia: Preparing the Regional Roads Development Project (Project Number 38479)." URL: <http://www.adb.org/Documents/TARs/INO/38479-INO-TAR.pdf>

Diniyah, H. (2009). "Briefers: The Regional Road Development Project in Indonesia." (copy text).

Don, A. (12 February 2010). "The People's Right to Know: Towards a More Inclusive and Transparent Disclosure of Information." URL: <http://www.forum-adb.org/inner.php?sec=4&id=144&b=1>

C. Cambodia's Derailed Communication Lines

The Asian Development Bank is set to rehabilitate a 650-kilometer railway track, including that which is linked to the Cambodian-Thai border. Of the total project cost that amounts to US\$115 million, ADB is committing US\$84 million for the ambitious project that also aims to surface the missing link between Singapore and China.

Part of the railway runs through forests; yet there are no plans for the construction of access roads. Despite the scale of the project, affected communities have yet to be consulted or even informed. In fact, some communities only learned about the project from the survey team that marked and noted the areas where their houses stand. However, the people were uncertain to whom the survey team was accountable: the ADB, the government or a private company.

“Information is given only to the commune office, which does not know how to spread such information,” remarked Asisah of NGO Forum on Cambodia.

The second time a survey team visited the towns of Sihanoukville and Romdoucheng, for instance, the communities were told that each household was to receive a compensation amounting to US\$50. The people were also not informed of the materials that would be used in case the project proponents indeed plan to build them houses for their relocation.

As construction work has begun, some communities have already been evicted. Srey Sraz, one of the affected residents, has been forced to move to a relocation site that hardly meets even the Bank's minimum requirements for resettlement. The relocation site lacks the basic services such as water and electricity. It is also quite far from the nearest schools and workplaces. “Our children can no longer continue with school, we cannot access the hospital. Another concern is our income since the relocation site is too far from the city.”

Meanwhile, those who remain in their communities continue to worry about their future. To this day, ADB has yet to explain to them its plans for the rehabilitation of the tracks, particularly the compensation schemes it has to offer to affected communities. Most of them have been living within the government property near the tracks for the last 30 years.

The situation becomes even more difficult for women who have less participation in public life. Women tend to have less access to information, which would have allowed them to better engage in any discussion and also prepare for their future and that of their families.

While the documents such as resettlement plans are now available on the ADB's website, affected communities could not easily access these given the very low internet penetration in the country and the capital and skills that are required to operate a computer. Although second-hand internet-capable computers can be obtained for US\$65, the amount is still beyond the means of most families in rural areas where monthly income can be as low as

US\$25. Moreover, basic literacy is quite low in the areas covered by the project. Nationwide, the figure is pegged at 82.1 per cent for men and 61.4 per cent for women.

Sources:

Agence France Presse (20 February 2010). "ADB Opens Rail Project in Cambodia." URL: <http://www.independent-bangladesh.com/200802202125/business/adb-opens-rail-project-in-cambodia.html>

Asian Development Bank (ADB) (n.d.). "Fast Facts: CAM: Loan 2288 - (GMS) Rehabilitation of the Railway in Cambodia Project." URL: <http://www.adb.org/Projects/CAM-Railway/fast-facts.asp>

_____ (n.d.). "CAM: GMS Rehabilitation of the Railway in Cambodia: Regional." URL: <http://pid.adb.org/pid/LoanView.htm?projNo=37269&seqNo=01&typeCd=3>

"Cambodia, ADB sign new railway funding agreement" (2 March 2010). URL: <http://balita.ph/2010/03/02/cambodia-adb-sign-new-railway-funding-agreement/>

Roul, A. (24 January 2009). "Revitalising Railway Connectivity in Cambodia: ADB's fractured objective and battered mission." URL: <http://www.forum-adb.org/inner.php?sec=4&id=55&b=1>

Akhtar, S. and Arinto, P. (Eds.) (2009). Digital Review of Asia Pacific 2009-2010. URL: http://www.idrc.ca/en/ev-137877-201-1-DO_TOPIC.html

D. The South West Integrated Water Resource Planning and Management Project (SWIWRPMP) of Bangladesh

The United Nations General Assembly resolved in 1946 that “freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated.” Asian Development Bank (ADB) in its *Overview of the Public Communication Policy (PCP) and Its Importance* mentioned that “in an age of information and an economy of knowledge, access to information is widely considered a people’s right, and information sharing is integral to participatory development.”

The ADBs commitment to public participation, however, is superficial. Any process of information ‘disclosure’ that does not result in meaningful participation by project-affected people and a perceptible change in ADB’s institutional behavior towards accountability and responsiveness to community concerns, is a futile exercise. ADB’s ‘disclosure’ of information also has little bearing on its institutional decision-making processes. The appropriate information is not provided to the appropriate people at the appropriate time. Despite repeated requests from project-affected people and locally elected decision-makers, ADB project managers and implementers have not shared crucial information about project design, financing arrangements, risks, liabilities and repayment schedules. Project-affected peoples and the locally elected decision-makers do not have access to clear and effective grievance and redress procedures.

ADB has not learned any lesson from the Khulna Jessore Drainage Rehabilitation Project (KJDRP). In the KJDRP project, area flood, erosion and sedimentation are the common negative phenomena. The construction of embankments leads to a change in the natural course of the river and therefore the river characteristics and flow conditions are bound to change.

It is critical for ADB to give substantive information in local languages to affected people. It is the right of the affected people to receive information on projects at the early stages of negotiations and not during the implementation phase only. By not engaging in this practice ADB is denying the people’s right to information.

The Bangladesh Water Development Board (BWDB) has implemented Chenchuri Beel & Narail Flood Control Drainage and Irrigation (FCDI) Projects from 1975 to 1995 but in the course of time, due to inadequate fund, BWDB could not maintain these FCDI Projects. This SAIWRPMP is a follow-up project to rehabilitate these two earlier projects, which is funded by ADB and the Royal Netherlands Government to improve the socio-economic condition of the people in the southwest areas, particularly the districts of Narail, Jessore, Magura, Rajbari and Faridpur. This is a Government of Bangladesh-approved project.

The public was not informed of the financial part of the project though there was public demand. There was no financial accountability of the project to the public. There was no coordination in inter- and intra-organizations among non-government organizations (NGOs), the BWDB, Department of Fisheries (DOF), Department of Agriculture Extension(DAE), CEGIS, and TA experts. Most of the project information are in English. Key

personnel of the project are foreigners who cannot understand the local language. The interpreter misinterprets conversations. An interest group is created by the project personnel. They mislead the affected community. Most of the findings from the community consultation meetings are not incorporated at the implementing level. The information gathered from dividing the project areas into hydrological subunits and undertaking participatory planning of structural, nonstructural, and livelihood enhancement measures are not shared or made available to the community. The communities in the project areas are not aware or informed about the community-based fishery management framework.

The resettlement plan was not summarized in the local language (Bangla) and not disclosed to the affected people. The affected persons were not informed about the land acquisition plan, compensation policy and payments, and the EIA report.

BWDB formed a group that includes five local NGOs, for social mobilization, survey/study and investigation, plan preparation, and design and construction supervision. But it is doubtful whether the groups chosen have the expertise to conduct these kinds of activities.

Local people have been trying to participate in the decision-making processes. Foreign experts come and go but they have no stake in the environment in which they apply their knowledge and skills. But the local people have. They have to stay there and survive. Any change in the environment profoundly affects local communities and the lives of the people. If local communities are to achieve the desired progress, they have to exercise more power in making decisions. Abstract facts, data, and debates on different issues should be made simple so that people can easily understand these issues and realize their own roles in the development of their region, as well as the consequences that might follow and what should be done in such eventualities.

All the organizations and agencies connected with the different stages of the development process have the responsibility to promote such a people-oriented approach.

E. Messing up Melamchi

“ADB has made strenuous efforts and shown maximum flexibility to sustain the project at several critical times when it has been at risk over the past six years.”

This was a statement made by the country director of the ADB in 2007, prior to the Bank's reassessment of the botched water project a year after. Indeed, Nepal faced a great deal of political instability in the last several years. Yet even without this piece of history, the statement is contradicted by many signs of violations, including the Bank's non-compliance of its own policies.

The Melamchi Water Supply Project aims to divert the flow of the Melamchi River through a 26-kilometer tunnel to provide much needed water resources to Kathmandu. During the first stage, 170 million liters of water per day will stream to the capital. The same amount will be added through a similar water diversion involving the Yangri and the Larke Rivers.

Of the US\$500 million project cost, US\$120 million would come from the ADB. Other financiers include Japan Bank for International Cooperation (JBIC), Swedish International Development Agency (SIDA), Norwegian Development Agency (NORAD), Nordic Development Fund (NDF), Oil and Petroleum Exporting Countries Fund (OPEC-Fund) and the Government of Nepal.

The project was conceptualized as early as the 1970s but much of the more serious surveys began in the mid-1990s. It was only in 1998 when some communities got wind of the project through a Kathmandu-based non-government organization, the Water and Energy Users Federation-Nepal (WAFED).

“We did not know what kind of water supply ADB was building. We just know that payments are to be made by the people. But we also don't know about the water release. We are not informed on the compensation we are going to get,” Ram Bahadur Khadka, head of one village development council (VDC) remarked.

Bahadur's community is just one of the 14 VDCs that would be badly affected by the construction of the dam and other infrastructures. Despite the threat of the project to the VDCs, notices and consultations were not initiated by the project proponents.

No one knows how much water would be released nor how regular such release would be. Discussions on resettlement and compensation have yet to be planned. Although press releases were written over ADB's green light to proceed with the project after reassessing the project plan and schedule, the town of Melamchi has yet to see a single worker on what is supposed to be an access road towards the dam.

In 2008, ADB reaffirmed its support for the project with a new cost estimation where US\$195 million would go to infrastructure development that includes the tunnel, access road and water treatment plant. Some US\$9.22 million is allocated for social and

environmental support programs. According to the ADB, such programs include the following:

- Construction of four (4) health centers and provision of essential drugs;
- Construction of eight (8) school buildings in Melamchi valley and provision of educational kits to 89 schools; and
- Forest nursery in Timbu.

Such promises, however, have yet to be seen. Instead Ram's village received condoms and pencils. More importantly, the ADB has yet to engage the VDCs over the project that has been marred by bureaucratic red tape and corruption. Equally frustrating is the Bank's hesitation in disclosing documents that explain its support for the project. Some of these documents are the environmental impact assessment (EIA) and resettlement plans. The EIA would have laid down the dam's discharge of water, the changes that would take place in the river's course and water level over the years, the flow of water through the field terraces and many more. The resettlement plan is critical in the communities' decision on their survival and contribution to the project.

Much of the more critical information on the project was only revealed when four people representing affected communities and civil society organizations filed a case against the ADB in 2004. But even though the Bank released a few documents, the latter were in English and therefore incomprehensible to farming communities which do not enjoy electricity, running water and much less the internet. To this day, these documents have yet to be translated into Nepali and printed for distribution especially in the 14 VDCs. Moreover, most communities have yet to be visited by ADB officials.

Sources:

ADB (2004). "Final Report of the Special Project Facilitator on the Melamchi Water Supply Project." URL: <http://www.adb.org/Documents/SPF-Reports/NEP/31624/spf-final-report.pdf>

_____ (2007). "ADB's Statement on Melamchi Water Supply Project." URL: <http://www.forum-adb.org/pdf/PDF-melamchi/NRM%20NR%20-%20Melamchimay07.pdf>

_____ (n.d.). "Melamchi Water Supply Project: Nepal." URL: <http://www.adb.org/documents/profiles/loan/31624023.asp>

Himalayan Times (24 January 2008). "ADB to Extend Melamchi Project Loan: Yami." URL: http://www.wafed.org/melamchi_news_006.php

_____ (26 June 2008). "Melamchi Project Showcases Graft in Nepal: TI Report." URL: http://www.wafed.org/melamchi_news_005.php

Manandhar, R. (13 January 2008). "Melamchi Locals Press Demands with Government." URL: http://www.wafed.org/melamchi_news_009.php

Rising Nepal (21 January 2008). "Melamchi Project Unlikely to Meet 2015 Deadline." URL: http://www.wafed.org/melamchi_news_008.php

_____ (20 February 2009). "Parched Kathmanduites Hope Relief from Melamchi Deal." URL: http://www.wafed.org/melamchi_news_001.php

Somera, N. (27 February 2010). "No Consultation but Condoms from the ADB in Melamchi." URL: <http://forum-adb.org/inner.php?sec=4&id=148&b=1>

Community visit and interviews, 28 February – 1 March 2010, Melamchi, Nepal.

F. Barriers to Disclosure: Experience on ADB PCP in STDP

“You are kindly advised to refer to www.adb.org website for any information referred therein.” This was the response I received from the Sri Lanka Road Development Authority in October 2009 for my request for information related to the Southern Transport Development Project (STDP) in Sri Lanka.

Undoubtedly STDP is one of the most controversial projects in the 43-year history of the Asian Development Bank. We have experienced many hurdles in fighting for the safeguards and access to information related to the STDP, which connects Colombo and Matara in southern Sri Lanka. The 128-kilometer, six-lane highway was designed in 1992 and subjected to an environmental impacts assessment in 1999. This is a joint project funded by the Asian Development Bank and the Japan Bank for International Corporation (JBIC). Total funds so far spent for the project have reached more than US\$800 million, although the initial estimate was only US\$260 million.

The project was disputed by the local communities and civil society organizations due to the unprecedented environmental damage, unacceptable design, non-transparent decision-making process, lack of accountability, and violations of the ADB policies. The project was subjected to the OSPF process and the Compliance Review which brought some changes to the design and improved the compensation package. The case was subjected to a number of court cases and also referred to the United Nations Human Rights Commission.

Access to Information

The process to obtain information on the project, resettlement and compensation, environmental status, ADB mission reports and even participation in consultation, was an intense battle for almost half a decade. Affected communities were unable to engage in project advocacy without the support of concerned public interest organizations and experts.

It is worth gaining knowledge on some community experiences on their struggle to engage in decision-making and access to information from the ADB, which has a policy for public communication, and the JBIC and National Government which has no policy for public communication and disclosure.

The Resettlement Implementation Plan (RIP) was released in English (in 2003) although over 90% of the Affected People (APs) are not able to read and understand the language. Even the English RIP was released after much pressure and countless requests from Joint Organization of the Affected Communities on Colombo Matara Highway (JOACMH). The RIP was released in Sinhala (the most used local language), in a much shortened form, almost a year after the release of the English report, as a result of pressure from JOACMH.

According to the local people, maps of the Expressway, for which the loan had been granted, were not available in detail to the public at any time.

When the second Inspection Request was upheld, the Economic Internal Rate of Return (EIRR) seemed marginal for projects of this sort. ADB refused to issue their method of calculation or comparative data.

After the Inspection Request and visits by both the Committee headed by the Office of the Special Project Facilitators' representative and the Inspection Committee, the ADB commissioned another Environmental Impact Assessment Report (EIAR) in 2006. This report did not follow the procedure of the Sri Lanka EIR and was not freely available to the public. Eventually, the ADB stated that it was available on the internet.

At the time of the OSPF appointed mediation in 2005, there was no adequate information on compensation and safeguards.

The local people have no internet facility in the area. This is still a luxury for many local communities. According to Mrs. Heather Mundy, an affected woman, *"It was unfair for the ADB to put everything on the Internet and expect the public to find out. It is incumbent on the ADB to ensure that its information policy is implemented correctly, not on paper."*

People also faced problems with accessing information from JBIC, which is co-funder to the project. The communities ask whose policies will prevail in co-financing projects such as this.

When the first Inspection Request was made, the ADB Board turned it down in defiance of the independent member, based on the strange premise that 'a completely unrelated organization had brought and lost a case challenging the EIA in the Sri Lanka Appeal Courts.' The location of the project was actually denied by senior officers of ADB. The lawyer who instituted this action offered to meet the team that was making the investigation. The request to meet the ADB team was turned down.

Affected people attached to JOACMH wrote over 100 individual letters to the President of the ADB which were acknowledged. However, the questions raised have not been answered thereby denying an early opportunity to look more closely into the environmental and social issues created by the project and initiate necessary changes.

There were instances of recordings of meetings going missing. Further, reports by ADB personnel are not available to the APs who had participated in meetings with them.

What are the Barriers?

The above experience shows that there are many barriers to experiencing the positive approaches of the Public Communication Policy 2005 and previous disclosure policies.

Barrier 1- Lack of Accountability of the Implementing Agencies

With regard to my recent request to the ADB resident mission and the Road Development Authority, with a copy to the ADB Public Information and Disclosure Unit (Info Unit), the

ADB resident mission sent me a detailed response. However, the RDA only sent me a one-liner email stating that, “*You are kindly advised to refer to www.adb.org web site for any information referred therein.*”

This indicates that implementing agencies are not always serious about the disclosure policies of the ADB. Lack of interest, lack of capacity and lack of policy understanding contribute to the failure.

Barrier 2- Lack of Translations

Resettlement of more than 3,500 families was a major component of the STDP project. Affected people requested a Resettlement Plan in year 2000 and it took more than two years to receive an English copy. It took more than one more year to obtain a Sinhala translation of the plan.

Barrier 3- Blocking of Access to Decision-Making

Documents such as EIA, Resettlement Plan, and Resettlement Package are the most critical information for decision-making. STDP is a good example of both ADB and the RDA failing to provide such information on time.

Barrier 4- Failure of Automatic Disclosure

People must have certain information such as how ADB makes decisions and who should be the contact persons, policies and procedures, and country and project work. However, communities affected by STDP had no such information. There was no local mechanism to share such information at the project level.

It was unfortunate that the basic information of the project was used for political propaganda rather than for providing actual information about the negative impacts.

Barrier 5- Lack of Gender Sensitivity

The project’s Social Impacts Assessment did not properly analyze the gender impacts and did not provide such information for decision-making. Families with single mothers, elderly people, and families with school children had difficulties in making decisions due to lack of information on where they will be relocated or what adjustments they have to undergo.

Barrier 6- Lack of Cohesiveness

The ADB and JBIC, as lenders and selectors of the contractors, were not conscious of the fact that their policies are based on international guidelines that seek to ensure sustainable lending which does not increase poverty. The RDA as the implementing agency was unaware of the policies and principles of Access to Information. Therefore the principle of

separation between the lending agency and the implementing agency should be robustly maintained.

Barrier 7- Lack of ADB Staff Support

Although the ADB policy is clear, some Bank staff were still not willing to share the reports.

Barrier 8- Lack of Capacity of the Local Community

Local communities often lack the capacity to actively exercise their rights. Unless they have a clear idea of what ADB provides under Access to Information, it will be hard for the communities to think what information they need. It is important to give a list of documents available so that the local communities can expect such documents on time.

They should ensure that the maps and detailed plans of their projects are easily accessible to the public and that all information are in the language of the country. The internet, fax and other forms of electronic information are not available in the geographical areas they are developing. If indeed all these sophisticated facilities were available, they would probably not need 'ADB Style' development in the first place.

G. Armenia's Road to Perdition

Astghadzor Village is nestled in the mountainous region of the Vardenis district of Gegharkunik Marz in the Republic of Armenia. The village also touches Lake Sevan, the largest single inland water body in the South Caucasus region. The 5000 or more inhabitants of the village are trying to find the link between one of Asian Development Bank's supported road rehabilitation projects and the rationale of its implementation.

The ADB and the Ministry of Transport in Armenia has decided to rehabilitate the much dilapidated Soviet era roads with a total of 222.8 km consisting of 24 different road links in 4 out of Armenia's 11 marzs, namely Gagharkunik, Ararat, Kotayk, and Armavir. Of the 222.8 km, 76.5 km are located in Gegharkunik Marz. The M-11 Astghadzor link which is 3 kilometers at length is connected to the Astghadzor community.

The problem is that the executing agency and the Bank has limited public consultations on the project. "The rehabilitation of the road project was not discussed with us even with our head of the local administration," quips a villager in the Astghadzor. The villagers have been mute bystanders from the start of the road construction. "If we need rehabilitation of our road, we need better work, not like this one," adds another villager.

The villagers are only observers of earth movers and rollers from morning to dusk. The local administration has been kept at bay on this project. The official of Ministry of Transport which is implementing the project once came to the village and talked to the contractor, not the villagers.

The construction of the road appears to be a highly corrupted when we look at the material used, design, and the safety measures undertaken by the authority. The road is cracked even before its completion. As we observe, the villagers do not have any grievance mechanism.

H. Road to Ply: ADB Faults on Sharing Information in Kazakhstan

On a November 2009 morning, dozens of police stormed the community of Merke in Zhambyl Oblast in Kazakhstan to demolish some trade outlets people. It was only at this point when the residents learned that a road project was about to be constructed. This road is funded by the Asian Development Bank (ADB).

It was claimed that public hearings were held on the proposed on the US\$1.9 billion road that aims to connect the Chinese border up until the Caspian Sea. While it is true that announcements on public hearings were made on the newspapers *Znamya truda*, *Ak jol* and *Korday mayk*, these were not inclusive. Those that were conducted in January 2009 were only limited to officials of government agencies, local governments or *akimiats* and teachers but not the residents whose livelihoods would be severely affected by the project.

Moreover, no project-related documents such as environment impact assessment (EIA), poverty and social assessment nor the more basic project information sheet were distributed. The author of draft EIA also failed to present even some key findings. This is contrary to the loan agreement between the ADB and the Kazakh government which obliges the latter to follow ADB's environment, involuntary resettlement and public communications policies, among others. project covenants stipulate that "the borrower shall cause the Project to be carried out with due diligence and efficiency and in conformity with sound administrative, financial, engineering, environmental and social safeguards, and road maintenance and operational practices."

The Regional Road Corridor "West China-West Europe" is co-financed by the European Bank for Reconstruction and Development, Islamic Development Bank and World Bank. Despite its huge size and cost, the project has been confusing to civil society groups. It is not clear which road section is financed by a particular institution. There is no data on the institutions that must be held accountable for the forced displacement around the Zhambyl road section, for instance.

Four government agencies are most likely to have more information on the project, given their mandates. These are the Department of Highways, Offices of District and Rural Authorities, District Departments of Justice and the libraries. Yet nothing could be squeezed from them. The Department of Highways is based in Almaty, which is difficult to be accessed for affected residents who do not have US\$20 to spare for transportation.

The executing agency also failed to produce necessary documents for the land acquisition of existing properties of affected people. The only piece of evidence which affected people have is an ordinary letter issued by the head of Merke's local administration, which has no legal power. "This can't be the basis for land acquisition and demolition of existing people's property", quipped one affected person.

It also does not help that available information on the project could only be accessed through the internet. As Svetlana Koshelekova of the organization, Taraz Press Club remarked, "the executing agency and ADB usually refer only to the ADB website as the

main source of information, without considering the fact that the population in some villages don't know what internet is." She asserted that project documents should be available in school libraries at each village covered by the project. Such documents must also be translated into the local language.

The affected communities sought the much-needed pieces of information from the ADB. Despite several attempts, none was heard from the bank. This forced villagers of Janaturmys to file a complaint before the ADB's Office of the Project Facilitator through the bank's Accountability Mechanism.

The findings of the ADB affirmed that there were indeed violations on information dissemination both by the ADB and the executing agency. Because of this complaint, a mission was organized, allowing the residents to articulate their concerns directly to the ADB.

While the Accountability Mechanism worked for the affected communities, the question remains, does one have to go through a more complicated process for simple bits of information?

I. CSOs Hit ADB Communication Policy on Bishkek Heating Plant

One of the largest civil society networks in the Central Asia and Caucasus region questioned the relevance of the touted public communication policy of the Asian Development Bank (ADB) in relation to issues surrounding a controversial Bishkek heating project. The groups were incensed at the recent refusal by the ADB to make public information linked to the Power and District Heating Rehabilitation Project (PDHR) in order to avoid straining or severing ties with the Kyrgyz government.

The decision by the ADB has created a wide fissure of distrust between the ADB and civil society groups who have decided in response to expose the hypocrisy and duplicity of ADB policies. Organized as the Central Asia and Caucasus Working Group on the ADB, the network of non-government organizations denounced the move by the ADB and reminded the multilateral institution of the importance of genuinely fostering civil society participation in matters of public interest. “Civil society has a central role to play in monitoring and stopping possible wrongdoing masquerading as development.” said Zulfia Marat of the Bureau on Human Rights and Rule of Law, a member of the regional network monitoring ADB activities.

The long gestation period of the ADB co-financed PDHR project took eleven years before it was completed. It has created an eerie silence among ADB officials according to the regional network. Civil society groups sensed irregularities in the implementation of the project after initial investigation on the PDHR. Digging deeper to determine the source of possible anomalies, the groups requested certain information from the Public Information and Disclosure Unit (InfoUnit) of the ADB in Manila in April. The Information Unit responded on April 10, however, by refusing to disseminate the requested information, in accordance, officials said, with the ADB’s Public Communications Policy of 2005. The Information Unit, being the secretariat for the Public Disclosure Advisory Committee (PDAC) as well as the ADB’s information sharing and disclosure program, advised the NGOs to submit instead a request for review on the denial of information to the PDAC.

While the NGOs filed the request as advised on April 28 to the PDAC, the latter inexplicably received the letter only on May 15, 2008 via the ADB Board of Directors. Asked to explain the irregularity, the Information Unit said “We are still investigating why your letter didn’t reach the PDAC email box on the 28 of April. According to our Office of Information Systems and Technology, a possible reason could be a problem on network connection at the time the email was sent”. Riled NGOs described the explanation given for the delay as “not only strange but a complete joke in this technologically advanced age.”

On June 13, the NGOs received the final response from PDAC: “[A]fter carefully considering the request the PDAC has concluded that the reason given for denying your request (that is, the exception specified in paragraph 126.3 of the policy) was valid. In addition, PDAC has concluded that the documents requested also fall within the scope of paragraphs 126.1 and 126.2 of the policy (concerning internal and other information relating to ADB’s deliberative and decision-making processes)...”.

The regional NGO network reacted saying the PDAC, “had no justification for its existence in the end, despite all its long procedures.”

The PDAC, which reports directly to the President of ADB, has created an oversight body to interpret, monitor, and review the disclosure requirements of its communication policy. ADB policy says “if a requester believes that a request has been unreasonably denied, or that the Policy has been interpreted improperly, a request for review may be submitted to PDAC.” Marat disagreed and said “PDAC is just an additional filter and it’s role is to protect ADB’s interest.”

The implementation of the project of PDHR began in 1996 under the auspices of the state energy company Kyrgyz National Energy Holding Company. It was undertaken with the help of co-financing provided by international donors such as the World Bank and the ADB, which put around \$27.48 million in the project’s co-financing fund. The project completion period was originally slated for four years, from December 1996 to October 2000. However, completion of the project was delayed until December 31, 2007.

According to the project design, at the end of the implementation, the capital of Kyrgyz Republic should have been equipped with a modern, fully functional heating plant. Instead by the end of June 2007, the government adopted a law that allowed the privatization of the Bishkek Heating Power Plant (HPP). The government has also failed to provide any project-related documents, including the final outcome of the project, to the public. “Even just on this simple matter,” said Marat, “the ADB has failed to adhere to its public communication policy.”

J. Evading Information Disclosure: Dubious Agriculture Development Project by ADB in Kyrgyzstan

In the South of the Kyrgyz Republic, a farmer sells watermelon for 10-30 som (US\$0.22-US\$0.66) a piece. Meanwhile dealers sell the same watermelon for 50-70 som (US\$1.1-US\$1.5). The same price difference applies to other important commodities such as corn, rice, grain sunflower, clover and cotton. But this should not have been the case, with the abundance promised by the country's loan with the Asian Development Bank (ADB).

The US\$31.2 million Southern Agriculture Area Development Project aims to make small farms across Kyrgyzstan more productive and profitable. Although the project was approved in 2004, the project was only rolled out in 2007. Just less than two years through its implementation, the project was cancelled at the beginning of 2009 without any explanation from the ADB.

Some are saying that the bank was unhappy with the executing agency. But for the meantime, most farmers are still living in poverty and members of Water Users Associations (WUA) across the country are living in anxiety.

The project initially consists of advisory assistance to farming communities. But the farmers are largely unaware of project. Meanwhile, WUAs are not certain of the project's budgetary allocations. This, even as WUAs have been made to contribute US\$1.9 million to the project's total cost.

"It was discussed that we will start repaying the loan together with the water tax which would be from 500 som (US\$11) up to 850 som (US\$19) annually for each household," said WUA members in a project village. The head of Bek Abad Suu WUA in Atabekov Ail Okmoty Suzak *rayon* or region, Abdykerim Abdyjaparov is not aware where such money is going. Despite their role in the project, WUAs were not notified of the project's cancellation. In fact, the WUAs were informed by the government's regional departments that the project would begin in the fall of 2009.

Center Interbilim sent a letter to Kyrgyzstan's Ministry of Agriculture, requesting an explanation for the cancellation of the project as well as information regarding the project's spending in the last two years, the role of the Kyrgyz government in the project's cancellation and the repayment schemes. Center Interbilim also requested for a copy of the Project Completion Report, since the project has been closed already.

To the surprise of the organization and the communities, the Ministry of Agriculture responded, saying that the project was completed in November 2008, with the funds channeled to the country's energy needs.

This case shows that there is no transparency and accountability on both institutions, the Kyrgyz government and the ADB.

K. A Story from Dashtibed Village: Saga of ADB's Impacts on Peoples' Lives in Tajikistan

As summer heralded an abundant harvest for 2009, with the rain showers during the last spring, most Tajik people just found themselves lucky especially with the continuing global food crisis that year. Farmers are still dependent on a Soviet-era irrigation system, preventing them to plant and harvest more. It is for this reason that in 2005, the Tajik government borrowed US\$22.5 million from the Asian Development Bank (ADB) for the rehabilitation of irrigation systems and people's better access to potable water supply.

Although the project's goals were strategic, the people are not fully aware of it. Moreover, the residents who are supposed to benefit from this project initially had no knowledge of the ADB's involvement. Some 262,000 people live in the areas covered by the project. Of these, 53,000 can be considered poor.

In a Project Administration Memorandum prepared by the ADB Mission team leader P. Bozakov and ADB Mission member L. Francisco, the bank claimed that it conducted public consultations. But during an NGO-led monitoring activity, residents asserted otherwise. Neither the ADB nor the local executing agency ever organized a public consultation especially with the supposed direct beneficiaries of the project.

Local organizations eventually asked the ADB for information about the project. Despite several requests, the bank kept on directing them to its website, which could not be accessed by people in the villages.

According to the Reports and Recommendations of the President of the ADB (RRP), under the subproject Irrigation and Drainage Infrastructure in Vahdat District, the following must be done: the rehabilitation of the Rohati Main Canal, Headworks, and Structure Protection (\$440,000); the replacement of siphon on the Rohati Main Canal (\$696,000); and the rehabilitation of Dashtibed Canal Headworks and Protection Works (\$214,000). In 2009, the monitoring team did not find any signs of implementation of any of these tasks.

As one of the residents of Rohati, Said Umarov remarked, "We don't know about the project and we didn't know that ADB allocated more than US\$1 million for Rohati village. If we knew, we would have already asked the executing agencies about it." Villagers like Said have never met anyone from executing agency nor the ADB at the project site.

Similar tasks were supposed to be completed in Dahtibet village in 2008. But as of this writing, the irrigation canal has not yet been opened to the public. The same story line is happening in Vahdat, Farkhor and other districts.

L. Kindness But Not for Keeps

For nearly two decades, teachers and parents of pupils across Mongolia thought that they have so much to be thankful for. So much that they could not complain of otherwise odd and expensive donations that have found their way to the schools' doorsteps.

Take for instance the Shoovdor school which boasts of a laboratory with neatly arranged Erlenmeyer flasks of varying sizes. But on second look these could not be heated to produce compounds chemistry classes for they are made up of plastic. Ninth-graders also get the chance to learn more about the development of a fetus for two hours in a year using a teaching aid that cost some US\$5000. Expensive tools likewise greet anyone who would have the chance to attend a hairdressing class in Bulgan aimag school. A hair dryer has a price tag of at least US\$128, a skyrocketing figure compared to same hair dryer that is available in a local market for as low as US\$6.

In 2009, Mongolians finally brought together the odd puzzle pieces of generosity. But instead of being grateful and contented, they were surprised to find out that they are not "fortunate," as the Asian Development Bank (ADB) reported. They learned that the pristine tools in the laboratories, the colorful teaching aids and the expensive parlor gadgets, among many others are not for keeps. These are loans from the ADB.

Since 1991, the ADB has invested US\$700 million in Mongolia's education sector to make the latter at par with international standards. The Mongolian Education Sector Development Program (MESDP) has three phases, which were mostly focused on secondary education across 21 cities and provinces including the capital, Ulaanbaatar.

Since 1991 too, people have been kept in the dark on the nature of these funds, preventing them to intervene even in the use of these funds.

Despite the money that has been poured into the program, there have been signs of inappropriate spending at the very least and corruption at the most. It was observed that some lessons and their corresponding teaching aid were too simple for six-year old Mongolian children. Meanwhile, other materials just draw so much questions on hygiene. Mattresses made of foam and covered by a thin sheet of cotton easily become damp given the country's climate and therefore unsuitable for sleeping. English and computer lessons were also mainstreamed to a fault.

In a monitoring mission led by Consumers' Right Protection Foundation, it was learned that the ADB paid attention in the implementation of the project at the beginning. But as the years went by, the Bank's own monitoring activities became more and more relaxed and the management reins were held more firmly by the Mongolia-based Education Development Program (EDP).

In April 2009, the Foundation was rebuffed by the EDP as the former requested documents regarding MESDP. As Oyuntuya Gotov, leader of the organisation shared, "[It] said the project is a joint activity of the Mongolian government and the ADB. Therefore an NGO has nothing to do with it, [that] we have no right to evaluate their work." After three months of negotiation, the executing agency began explaining the project.

In November 2009, after the monitoring mission, Consumer's Right Protection Foundation released its telling findings to the public, which learned for the first time that the MESDP is borne out of a soft loan that has to be paid after 20 to 30 years.

The monitoring team also pointed out gender gaps even as the project aimed to have greater school attendance among girls and greater women participation in the education sector. Although women are concentrated in the field of education, the Ministry of Education is led by men, a scenario that is reflected in the very set-up of schools. As one woman teacher in Bulgan aimag remarked, "All high-level administrative workers are men. They usually participate in overseas events in order to [gain] experience but they cannot see what we need. I think it would be far useful if ordinary teachers participate in such events."

Moreover the manner of investing an enormous resource in the MESP has not translated to ideal gains such as higher income through better career opportunities and better health status. In 2009, most 35,799 university graduates were concentrated in trade and business courses, leaving a dearth of human resource in technology and electronics. Sixty per cent of labor-age people remain unemployed. The number of students who are dropping out is also on the rise. In 2009, 5,400 children between six to 14 years old left school.

While the monitoring team agreed with the relevance of the project when it was introduced in 1991, it asserted that the results have not been proportional to the resources that have been invested in the project. This gap not only lies on the soundness of the activities. In fact much of it stems from the lack of transparency between the EDP and the ADB, on the one hand and the target communities and the larger public, on the other hand.

M. Runs on Azerbaijan's Silk Road: Double Trouble of Disclosure of Information in Co-Financing Project

A sense of history re-emerges in Azerbaijan. Such interest is not sparked by a discovery of a relic nor a study of an ancient craft. Instead it has been fueled by the drive towards regional economic integration that seems exciting but remains questionable.

The East-West Highway primarily aims to rehabilitate the road network of Azerbaijan, especially the part that connects the country to Georgia. Its major financial investor, the Asian Development Bank (ADB) touts the project as a recovery of the ancient silk road that connected Asia to Europe. As it reported, "Although international traffic on the East-West highway is currently small, the corridor has the potential to become an important transit route."

ADB shoulders nearly 56 per cent of the total project cost of US\$93.2 million, which is also co-financed with the Islamic Development Bank (IDB), Saudi Fund for Development and the Azerbaijan government. Approved in 2005, the project has four components: the improvement of 127-kilometer two lane road that includes the section near the Azerbaijan-Georgia border, the improvement of 10 local roads that together span 65 kilometers; policy reform on the transportation sector; and the facilitation of movement across the border.

While 75 per cent of the current 500-kilometer East-West Highway is in poor condition, the project appears necessary as ADB believes, its social cost extends far beyond ADB's expected benefits that amount to at least US\$71.8 million.

Signed on 1 June 2006 and declared effective on 27 October 2006, Azer Road Service Open Joint-Stock Company (ARS) informed the ADB that the cost of civil work would be doubled from the appraised cost. It cited sharp increases in prices of fuel, utility services, and major road construction materials.

Due to increased project cost, the ARS and ADB decided to cancel the bidding for the civil works contract for the Ganja bypass section on 16 November 2010. Both likewise restricted the scope of another component of the East-West highway, the reconstruction of the Qazakh—Georgian border section. To cover the other components that were left out, ARS and the ADB invited the Inter-American Development Bank (IDB) and a Korean private company to invest some funds.

In August 2009, the Public Association for Assistance to Free Economy (PAAFE) found that some residents from six villages of Nemetabad, Aran, Semedabad, Gorabli, Borsonlu and Dalimamedly in the Yevlakh-Ganja road section would be affected since the rehabilitation of the road would entail additional tracts of land.

Although surveys were done in some villages, the residents were not informed of the implication of the road project on their houses and sources of livelihood. Worse, where construction has already commenced, parcels of land have been bulldozed without paying

any compensation for the landowners, not to mention about informing those affected people.

According to local communities, between March and April 2009, representatives of the Ministry of Transport visited the villages of Nemetabad, Aran, Semedabad, Gorabli, Borsonlu and Dalimamedly to measure the areas that would be affected by the road project. They also obtained copies of land titles of landowners who live in these areas. However the landowners are still in the dark on the extent of the project, including the necessary plans on resettlement and compensation.

To evade the responsibility of compensating affected residents, the local administration of the Aran village demolished extension structures such as bath houses and stalls for animal husbandry as well as small shops in 2008. This series of demolition has made residents more vulnerable to disease and danger as drainage systems have been left open and electricity transmission lines too close to the remaining houses.

Meanwhile, on the morning of 14 August 2009, residents of the Borsunlu village noticed that a 40 to 50-meter strip along the highway was unearthed, prompting them to organise themselves and head to local authorities and demand an explanation. The deputy of the local administration indeed responded by ensuring residents that a resettlement plan and a compensation package was being prepared.

Against this backdrop, PAAFE requested the ADB to supply information about its co-financiers based on Loan Agreement 2205-AZE, Schedule 6, Para10 on Safeguard Policies and Co-financing. The Loan Agreement enshrines that the Government shall (a) inform the Co-financiers in writing of its obligation to comply with ADB's policies and the steps that it will take to comply with such policies, and (b) immediately inform ADB if any Co-financer objects to the Government complying with either ADB's *Policy on Involuntary Resettlement* or its *Environment Policy*. All project activities financed by the Co-financiers shall be implemented in accordance with ADB's Policy on Involuntary Resettlement and Environment Policy.

Unfortunately, the PAAFE received the following response from ADB“(i) The provision you quoted from Operations Manual is about the disclosure of information on official co-financing in RRP. You can refer to the RRP disclosed in ADB web. (ii) Yes, IDB-financed section also follows ADB's safeguard policy. But that doesn't mean the monitoring reports such as environmental protection report, due diligence report for involuntary resettlement, and environmental assessment report should be prepared by ADB. These reports are prepared by IDB-financed construction supervision consultants. ADB-financed technical assistance for project preparation prepared initial environmental examination and resettlement plan for both roads but subsequent monitoring reports are prepared separately by concerned financiers. IDB has not provided us with those monitoring reports. (iii) Same way, since Yevlakh-Ganja road is implemented by IDB, IDB reviews its implementation.”

As Zohrab Ismayilov of PAAFE asserted, “For the people, there are alternative places for highways and crossroads which can have less effect on property owners, who are not sure whether they would be able to rebuild houses and other buildings which have been built in prominent places of settlements for many years.” However, the PAAFE filed the case of violation of information disclosure under Office of the Project Facilitator of ADB’s Accountability Mechanism to find a suitable answer. Unfortunately, the case was declared ineligible.

This case shows that the necessity of making information available even on a project that is co-financed. At the end of the day, these are still ADB projects that must be subjected to the bank’s policies, including the PCP.

Part V. Recommendations

Our recommendations take as fundamental basis our assertion that the people have a right to information held by ADB. Our right is not just founded on justice, reason, and progressive values. It is also supported in law. It is not contested that the ADB, like similar international financial institutions, has international personality. Being subject of international law is not only about possessing rights, it is also about being bound by obligations incumbent upon them under general rules of international law. One of these is the obligation to recognize and respect the people's right to information.

In claiming our right to information, we are guided by a framework that adheres to the following values:

1. The right to information and communication is an integral part of the democratization of the institution, and of good governance. Instruments for widespread social participation, now more and more being recognized as necessary in the process of democratization, can only be effective if information of public interest is no longer left exclusively in the hands of public bureaucrats.
2. Communication should always be two-way, and not used as a tool to show and impose power. Thus, the flow of information cannot be discriminatory. It must overcome nationality, class, ethnicity, religion, social segmentation, and gender boundaries and conflicts.
3. The flow, means and tools of information and communication should respect the culture specific modes, gender disparities, and means of communication.
4. Any information and communication regime should promote equity. It must help to marginalize power centers and restore parity. It should take affirmative action to reach women and the vulnerable groups.
5. Information and communication policies should be for the global common good, and not biased towards any actor in the public domain. They should recognize and be oriented to respect collective rights more than individual rights.
6. Information and communication should not be treated as commodities and means of propaganda. What we need is real information, that is, useful, practical, and capable of helping people make informed opinion on issues – not propaganda.
7. Two very basic elements of a responsive information and communications policy are voluntary disclosure and accountability.

A. Recommendations from the Community Consultations

Community members and representatives emphasize a number of expectations during the consultations with respect to the PCP. It is essential for them that they be made aware of a project affecting them early on, starting from its conceptual stage. There is a need for gender-sensitive consultations on projects at local and national level, particularly relating to land acquisition process, implications of land use change, and status of land during project plan and implementation. Financing a project in a particular area should come only after acknowledging the classification of the affected area and its environmental, social and gender impacts. The community requires complete information in a language that they understand. There is a need to develop information mechanisms at the local level that secures continuing flow of information to affected people as well as accommodation of local representation throughout the project. The ADB and the government implementing agency or private sector sponsor must be collectively responsible for providing information.

(1) Recommendations related to information on projects

- Affected people must be provided complete project information

Complete and detailed project information must be provided to affected people. This includes, among others: RAP, entitlements, Consultation and Resettlement Procedures, ROW and COI, mitigation plans and monitoring framework; project designs and maps, detailed engineering design (DED) and detailed project report (DPR); asset measurement lists; clear information about benefits and disadvantages of the project to the communities and environment; full report on the EIA. Such information must be updated regularly.

- Information must be provided in timely manner.

Information must be made available starting at project preparation phase and before decision to support the project is made. Information (especially RAP, ROW/COI and EIA/EMP) must be updated and posted on the website of the ADB. There must be early notification on community concerns such as resettlement. The applicable operation manuals have to be discussed with the communities. Information has to be taken up in dialogue with communities, starting with the concept paper of the project and on to the country strategies paper, draft of the PPTA, and other relevant information.

- Information has to be accessible to the affected communities.

Affected communities should be adequately notified about the project. Available consultation processes, through information brochures/leaflets/bulletins at project site, community radios, public

places such as mosques, churches and schools, and government facilities should be realized. Resident mission and executing agencies should train local government officials to provide communities with information. Feedback mechanisms should be in place, such as through community meetings, use of complaints box, etc.

- Information should be provided in simple terms and in a language understood by the communities.

(2) Recommendations regarding exceptions to information disclosure

The list of exceptions in the PCP must be reduced. Denial of access to information must be adequately justified. There should be specific and clear definition of terms in the exception, such as “business confidentiality”.

(3) Operations manual of any policy should be subject to public consultation in its drafting process

(4) ADB should introduce an independent appeals mechanism.

B. Recommendations from Central Asia and Caucasus Monitoring Groups

(1) All development project information and documents should be in the local language.

(2) Project-related documents should be available in project areas, like in local administration offices, community libraries and school libraries. Other related information should be available, such as on people’s right to access information, resettlement rights, property rights and process of looking for justice and court appeal mechanism.

(3) Information has to be provided in timely manner and directly to affected communities. Executing agencies and the ADB usually refer only to the website for requested information, without considering the fact that the population in some villages do not even know what the internet is.

(4) The list of exception on PCP must be reduced.

(5) Clear explanation should be given in case access to information is denied.

(6) The information of the implementation of the projects must be periodically provided through national and local press both in electronic and print media.

(7) Aide memoires should be publicly available.

(8) PDAC structure has to be changed to be more independent

(9) Project information (EIA, EEI, project aide memoires, loan agreements) on co-financers should be available as well on the ADB website and the executive agencies' websites.

(10) In each project site, ADB should establish information centers where all beneficiaries and affected people can receive the information they need. Announcement about these information centers should be placed in the press.

(11) The PCP needs to have a mechanism that ensures its implementation, including a complaint mechanism to utilize when it is not implemented.

C. Recommendations Relating to Private Sector Operations and Financial Intermediaries

ADB should make it mandatory for the following information to be made publicly available for all private sector operations, including financial intermediaries:

1. Company name (including names of companies held by FIs).
2. A copy of the by-laws of private sector project and subproject companies.
3. Domicile of each company and subproject.
4. Physical location of managers and operations of projects and subprojects.
5. Categorization of each subproject (i.e. category A, B, C).
6. Full draft and final EIA, IEE, resettlement plans, indigenous peoples development plans, Environmental Assessment and Review Frameworks, available 120 days prior to Board consideration of a project or ADB "clearance" of subprojects or FI investment in subprojects.
7. Detailed descriptions of ADB supervision processes including the number, duration, location and detailed description of site visits for each private sector project and subproject, regardless of type of finance.
8. Detailed descriptions for each private sector project and subproject, including PEF projects and subprojects:
 - The manner, form and results of consultation with project/subproject-affected communities;
 - The location for local access to environmental and social project/subproject information, the manner and language in which such materials have been made available to affected communities;
 - Copies of contracts for private sector and subprojects including those clauses specifying the environmental and social requirements contractually required by the ADB. Given that ADB safeguard requirements are public information, the safeguard portions of the contracts should not trigger confidentiality or privacy requirements;
 - A description of the extent to which the ADB
 - Serves on the Investment Committee or other committee of any private sector projects or subprojects

- Serves on the board or in capacity as director in any private sector project and subproject
 - Has “veto” rights over the choice of subprojects for each private sector project, including FIs
 - Has “veto” rights over the choice of co-investors in each private sector project and subproject
 - Has the right to examine the identities of co-investors and the sources of their funds for each private sector project and subproject
 - Has the right to examine any and all company by-laws, documents, books, registers and accounting records of private sector companies and subprojects, including portfolio companies (subprojects) held by FIs
9. A record of the financial performance of each subproject within each FI and of each FI, subprojects aggregated;
 10. A record of the amount of ADB funds utilized for each project and subproject and the amount of funds from other sources;
 11. A record of the identity of the other sources of funds for each project and subproject (identities of investors);
 12. A record of due diligence measures undertaken to ensure that the funds provided by other investors come from legitimate and legal sources;
 13. A description of the number of proposals received and evaluated, and summaries of the competing proposals received, for each private sector project, including newly- established investment funds.

D. Other Recommendations

Track-changes version of draft revised PCP

We request that when the draft revised PCP is made public for comment, a track changes version be provided which compares it to the existing PCP.

Provision of OM, Handbooks, Guidebooks, etc.

Given the importance of the PCP Operations Manual and any handbooks or guidelines provided to staff regarding PCP implementation, we urge the ADB to make the draft OM and handbooks and guidelines for implementation available to the public for comment and to the Board prior to a vote on the new PCP.

Archive of cancelled PIDs

Given the importance of retaining publicly available records of projects, including those considered and abandoned by the ADB, we request the establishment of a searchable on-line archive of PIDs which have been cancelled or removed from Board consideration. For example, West Seti PIDs suddenly disappeared from the ADB website. There is no public record left of Bank-proposed plans. If the project comes back to life (perhaps if a similar project from the past is to be implemented), it may well be important to be able to dig up the old plans which were abandoned.

Change confusing definition of “publicly available”

Under the definitions, “publicly available” means available on ADB’s website. This definition is misleading. The confusion is apparent when we look at the reference to “publicly available” in paragraph 154, in relation to heading #2 immediately before it, referring to “exception-based requests for information”. The paragraph seems to imply that documents not identified as publicly available (available on the website) are “exception-based”. This contradicts the disclosure presumption. We recommend that availability on the website be referred to differently, and ‘publicly available’ should mean documents and information that should be made available to the public in any form.

Translations

The PCP should strengthen its provisions on translations. It should facilitate requirements for producing documents, such as requirement for translation of a minimum, specifically identified set of documents/information into local language for the project affected or the general public to know about project, policies and strategies.

- end -

Acknowledgement

The NGO Forum on ADB would like to thank the following contributors to this report:

- The participants in the February 2009 Manila PCP workshop.
- The participants in the three Community Consultations in Yogyakarta (Indonesia), Siem Reap (Mekong Region), and Dhulikhel, Nepal (South Asia).
- The PCP Facilitation Team: Souparna Lahiri (Member, National Forum of Forest Workers and Forest People), Hemantha Withanage (Executive Director, Centre for Environmental Justice), Isagani Serrano (President, Philippine Rural Reconstruction Movement), Kay Leak (Executive Director, Conservation & Development Cambodia), Red Constantino (Executive Director, NGO Forum on the ADB), Tea Soentoro (Advocacy Coordinator, NGO Forum on the ADB), Maya Eralieva (Central Asia and Caucasus Coordinator, NGO Forum on the ADB), and Nepomuceno Malaluan (Member, GTI Executive Committee).
- The participants in the 2009 and 2010 Forum Annual Meeting.
- Case studies contributors
 - Irfan Zamzami, Amrta Institute for Water Literacy, Indonesia
 - Hikmah Diniyah and Wardarina, Solidaritas Perempuan, Indonesia
 - A Sisah, NGO Forum on Cambodia, Cambodia
 - Hemantha Withanage, Centre for Ecological Justice, Sri Lanka
 - Kazi Zaved Khalid Pasha Joy, Coordinator (CEO), Initiative for Right View (IRV), Khulna, Bangladesh
 - Maya Eralieva, NGO Forum on ADB
 - Nina Somera, NGO Forum on ADB
- Report from the Central Asian and Caucasus groups:
 - Maya Eralieva, NGO Forum on ADB, has consolidated four years of group experiences of ADB project monitoring in Central Asia and Caucasus region for the following:
 - Rural Road Sector project - Bardukh Gabrielyan (NGO “Environmental Survival), Armenia
 - Massali – Astara Express Highway Construction project, , Mirvari Gahramanli (Oil Workers Rights Protection Organization), Azerbaijan
 - East-West Highway Improvement Project, Zohrab Ismailov, (Public Association for Assistance to Free Economy), Azerbaijan
 - Power Transmission Enhancement Project, Razi Nurullaev (Society of Democratic Reforms), Azerbaijan
 - Western Europe–Western People’s Republic of China International Transit Corridor] (Zhambyl Oblast Section) Investment Program—Tranche 2, Svetlana Koshelekova (NGO “Taraz Press Club”), Kazakhstan
 - Power and District Heating Rehabilitation Project, Zulfia Marat (Kyrgyz Bureau on human rights and rule of law), Kyrgyzstan
 - Community based infrastructure service sector, Anara Dautalieva (“Taza-Tabigat”), Kyrgyzstan

- Southern Transport Corridor Road Rehabilitation Project East-West Highway Improvement project, Asel Kuttubaeva, Center “Interbilim”, Kyrgyzstan
- Southern Agriculture Area Development Project (Project number: 31196; Loan number: 2314-KGZ),”, Asel Kuttubaeva, Center “Interbilim”, Kyrgyzstan
- Mongolian Education Sector Development program (MESDP) I, II and III project, Oyuntuya Gotov (Consumer’s right protection organization), Mongolia
- Integrated Development of Basic Urban Services in Provincial Towns”, Urantsooj Gombosuren, Centre for Human Rights and Development (CHRD) and Urantulkhuur Gombosuren (People’s Coalition on Food Sovereignty (PCFS), Mongolia
- “Agriculture Sector Development Program”, Urantsooj Gombosuren monitored by Centre for Human Rights and Development (CHRD) and Urantulkhuur Gombosuren (People’s Coalition on Food Sovereignty (PCFS), Mongolia
- Rural Development Project - Sergey Vorsin (Development Center), Tajikistan
- Road rehabilitation project Dushanbe - Kyrgyz border-, Valli Saerabekov (NGO “Buzurkmehr), Tajikistan
- Education sector reform of republic of Tajikistan” - Saodat Saidnazarova, NGO “Kalam”, Tajikistan
- Irrigation rehabilitation project - Parviz Umarov (NGO “Civil Society Support Center”), Tajikistan
- Comments and suggestions from the following Forum members:
 - Sergey Vorsin, Development Center Tarakkiet, Tajikistan
 - Bakhadur Khabibov, Consumers Union of Tajikistan
 - Svetlana Koshelekova, Taraz Press Club, Kazakhstan
 - Silva Adamyan, Center of Bird Lovers, Armenia
 - Uranstooj Gombosuren, Center of Human Rights and Development, Mongolia.
 - Wardarina Thaib, Solidaritas Perempuan, Indonesia
- Stephanie Fried, Ulu Foundation, for the analysis on private sector and financial intermediaries
- The copy editors: Angela Don (Secretariat of NGO Forum on ADB), Elaissa Mendoza, Rosario Gonzales