

RESPONSE OF ADB MANAGEMENT TO THE GSS REQUEST FOR INSPECTION OF THE STDP, SRI LANKA

(Excerpts from original document dated February 2002. Management's Response provided detailed rebuttal to issues raised in GSS request including those of incorporation of social dimensions, environmental considerations, dissemination of information, good governance and transparency, economic analysis, benefit monitoring and evaluation, gender and development and processing of loan proposals.)

Part II NO BASIS FOR INSPECTION REQUEST

Section C. Actions Not Attributable to ADB

Paragraph 20:

"...the Requester is attempting to use the Inspection Process to reargue the failed challenge to the CEA (Central Environment Authority) in Public Interest Law Foundation v. CEA and Road Development Authority (RDA), C.A. Application No. 981/99. In that case, the court of Appeals of Sri Lanka in a judgment dated November 20, 2000 rejected a challenge to the CEA's decision approving the Project trace recommended in the EIA Report..."

Paragraph 21:

"Consideration of the requester's allegations against CEA are outside the scope of ADB's Inspection Policy and Inspection Procedures since these do not entail acts or omissions by ADB but alleged acts or omissions by an agency of the Borrower."

Section D. Absence of Evidence to Support Allegations

Paragraphs 23-24, Box 2.2. Examples of Allegations without Supporting Evidence

"Allegations of Non-compliance with Involuntary Resettlement Policy

- no evidence to support allegations that ADB staff failed to ensure that displaced persons were at least restored their former living standards
- no evidence is provided of alleged ADB failure to provide assistance to the Project Sponsor in social preparation
- no evidence is provided of alleged ADB failure to allow adequate time for differences between the Project sponsor and affected persons to be resolved
- no evidence is provided that ADB's alleged failure to adopt and implement the objectives and principles of the involuntary Resettlement Policy, and to build implementation capacity
- no evidence is provided of ADB's alleged failure to review involuntary resettlement during implementation.

Allegations of Non compliance with Governance related policies

- no evidence is provided on ADB's alleged non compliance regarding providing support to public sector management, promote participation, cooperation with NGOs, and transparency
- the only evidence of non compliance with procurement procedures is hearsay from local newspapers"

Paragraph 27

"Since the ADB loan cannot be declared effective until the Borrower has complied with Section 6.01 (b), the ADB loan proceeds remain unavailable for disbursement to commence implementation of the project."

[Section 6.01(b) refers to a provision in the loan agreement which requires a resettlement Implementation Plan satisfactory to the ADB, "based on a final highway alignment and detailed measurement surveys shall have been approved by the Borrower."]

Section F. Misinterpretation of Involuntary Resettlement Policy

Paragraph 37

"...the Request assumes that minimization of resettlement for a particular area is the overriding objective of ADB's Involuntary Resettlement Policy to the exclusion of other factors such as environmental considerations. However, this is not so (emphasis added)....ADB's Involuntary Resettlement Policy para. 34(i) states that *'Involuntary Resettlement should be avoided where feasible'*"

Paragraph 39

"There should be no further consideration of the Request since it not only fails to show non compliance by ADB with ADB's Involuntary Resettlement Policy, but also attempts to undermine the balance in ADB's Involuntary Resettlement Policy as supported by the CEA. It should also be noted that further consideration of the Request under ADB's Inspection Policy could undermine the legal framework in Sri Lanka and the contract between ADB and Sri Lanka."

Part III **ALLEGED NON COMPLIANCE WITH ADB POLICIES AND PROCEDURES**

Section B Paragraph 43

"Since detailed design and selection of the final alignment was to be carried out under subsequent engineering services after approval of the Project...the alignment considered in the Report and Recommendation of the President (RRP) consisted of a 3-4 km wide corridor in which the final alignment was expected to be located. This generally encompassed the combined trace and the original trace, and was consistent with the CEA ruling on reverting to the original trace in the requester's area...It was expected that the final alignment would include some modifications to reduce the resettlement and environmental impacts and to minimize Project cost in accordance with the technical standards adopted for the road."

Part IV **CONCLUSIONS**

Section A, Paragraph 103

"The Requester does not provide evidence of authority to represent its alleged constituency, many of the allegations do not concern acts or omissions by ADB, the allegations against ADB are not supported by sufficient evidence, and the requester is unable to demonstrate direct and material adverse effect caused by ADB. Management submits that these multiple grounds for ineligibility cumulatively warrant a BIC recommendation of "clear ineligibility" with regard to the Request."

*Excerpts prepared by:
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