

बुलाक मञ्चना २१३५, ६० न्युप्लाजा मार्ग, पुनर्वासिडक, काठमाडौं, नेपाल
फोन: ४४२९७४९ • फ्याक्स: ०९-४४९९६९०

G.P.O. Box 2125, 60 New Plaza Marg, Patalbhadak, Kathmandu, Nepal.
Tel: 00977-1-4429741 • Fax: 00977-1-4419610 • E-mail: wafed@nc.net.np



जल तथा ऊर्जा
उपभोक्ता महासंघ नेपाल

Water & Energy Users'
Federation - Nepal

Embargo date
May 1, 2004

Special Project Facilitator
Office of the Special Project Facilitator
Asian Development Bank
6 ADB Avenue, Mandaluyong City
Manila, Philippines

**Ref: Request for the investigation of policy non-compliance in
Melamchi Water Supply Project (MWSP)**

Dear Sir/Madam:

First of all, we would like to welcome the new accountability mechanisms that the Asian Development Bank has put in place – both the Office of the Special Project Facilitator (SPF) and the Compliance Review Panel (CRP). We hope that the people affected by ADB-funded projects will have better security and protection of their rights and interests contrary to the past.

The case that we are bringing into your investigation today is related to the Melamchi Water Supply Project (MWSP) funded by the Bank and other donors/lenders. This project intends to divert the Melamchi River to Kathmandu, the capital of Nepal, for drinking water supply from one watershed to another – the inter-basin transfer.

We, the undersigned representatives, are directly affected individuals and groups both in Melamchi and Katmandu Valleys. As local group and a national federation of water and energy users and communities, we also represent the wide interests of the people and the communities adversely affected and would be affected by the MWSP.

In the past, we held series of meetings, discussions and correspondence with the ADB officials, both in Kathmandu Office and Manila Headquarters regarding the various issues of concerns and the non-compliance of Bank's policies (*see the attachments*). These issues and problems of non-compliance and the expected remedies can be summarized as below:

1. Access to information

In the first place, there has been no availability of critical information and documents to the claimants and others in an adequate manner before the project was finalised. All the major decisions were made about the MWSP without the release of such information and

meaningful public participation. Some information provided during the project implementation process also found not sufficient. The lack of availability of information in local Nepali language has also remained a major problem for the affected people and the families to fully understand the gravity of impacts to their rights and interests and the mitigation plans, except a few leaflets describing the project and the 'benefits' that it would bring. The problem is that the majority of the people both in Melamchi and Kathmandu Valley do not understand English language.

Expected remedies:

The release of all critical and relevant project documents and information in local language as to the satisfaction of the claimants before the project implementation, including the feasibility studies and options assessments, cost-benefit analysis and agreements with the donors/lenders as well as the lending conditionalities that may adversely affect our rights and interests now and in the future.

2. Environmental Impact Assessment

The main problem about the Environmental Impact Assessment (EIA) is the process and methods of these studies in the absence of basic information and documents in local language in a timely manner. There also have been serious flaws in the EIA process. It seriously fails to study and incorporate all the environmental/ecological impacts by the project on the local ecology as well as the local livelihoods, e.g. the effects on the agricultural land in Palchowk 4. The suggested mitigation plans are also grossly inadequate.

Expected remedies:

There is an urgent need to provide the main EIA documents in local language and their scientific review by independent experts, including the claimants. There is also an urgent need to identify the lacunae in the present EIA and conduct a participatory, supplementary or another study incorporating the neglected/left out areas of present and future social, cultural, ecological and economic impacts and mitigation, including local training and employment. We also demand for the construction of the bridge in Chanaute only after re-routing the access road through Chanaute Bazaar to avoid the high cost as well as to safeguard the Bazaar from indirect displacement.

3. Land acquisition, compensation and resettlement

The land acquisition, compensation and resettlement process and related activities have been grossly arbitrary. There was and still is the lack of minimum standards to be made applicable to all the affected persons and the families when making decisions about who to displace, how and where. The displaced families have not been given adequate time to move and resettle and there has been no reasonable offer for resettlement. The payment of cash compensation in an arbitrary manner has been the main practice. The project also failed knowingly and intentionally to assess all the direct and indirect impacts by the project activities and provide adequate compensation and relocate them, e.g. the effects and displacement of the traditional *ghattas*, water mills and electricity-run economic activities.

Expected remedies:

In the absence of a clear national policy or guidelines for resettlement and rehabilitation of project affected families and/or peoples, there is an imperative for a complete and rigorous review and assessment of the land acquisition, compensation and resettlement process, and there has to be a sufficient provision for compensation and relocation or resettlement of affected persons, families and income-generating cottage industries, including compensation to the loss of future income as applicable, e.g. the permanent loss of employment. The rehabilitation aspects of this package must be very carefully examined to ensure that displaced families are not worse off with the project.

4. Indigenous peoples

There has been a gross denial of the rights and interests of the indigenous peoples who are and will be affected by the project – both directly and indirectly. They include the *majhis* (traditional fishermen/women) in the downstream as well as the majority *Tamang* communities in Melamchi Valley.

Expected remedies:

There has to be a separate study of the effects on the traditional livelihoods of the indigenous communities in Melamchi who are and will be affected by the project activities directly and indirectly. There must be a guarantee of free, prior and informed consent about their displacement and mitigation plans.

5. Social Uplift Programme

The Social Uplift Programme (SUP) has been grossly criticized and rejected by the claimants and other affected communities in Melamchi Valley. The problem with the SUP is the lack of adequate consultation and involvement of the local people throughout its planning, implementation and monitoring. The SUP has been largely consultant-imposed from the top. The SUP seriously fails to address the local needs, the local priorities and the locally-managed democratic process. It also fails to include the most neglected and marginalised communities, both socially and economically, in the SUP and integrate it into the overall short-term and long-term local development activities, the trafficking-prone *Tamang* communities suffering mainly from the worsening social and economic conditions and cultural exploitation.

Expected remedies:

The SUP document must be provided to the local people in local language and re-design it by applying the free, prior and informed consent of the local people and the communities who are supposed to benefit from this.

6. Agriculture

The project has seriously affected the agriculture system in the Melamchi Valley due to the construction of the access road(s) through the most fertile land by the bank of the Melamchi River although it could be avoided to a greater extent. The loss of small and large scale irrigation canals after the diversion of the Melamchi River will have further loss in food security, including the adverse effects in local ecology and bio-diversity. There is also a question of inadequate investigation on the downstream impacts of the

river diversion to the long-standing agricultural lands of the indigenous people and others in Melamchi Valley.

Expected remedies:

There is an urgent need to re-assess the agricultural system and water consumption pattern/needs, both now and in the future, and guarantee the minimum flow of water all the time. The water right of the local people and the communities, especially the local and indigenous peoples, must be guaranteed through a legally binding agreement and whether the proposed 'minimum' flow is actually the needed minimum flow has to be determined after a constructive and representative scientific debate and discussion in public. The present and future, direct and indirect economic loss should be adequately addressed by properly compensating the affected/would be affected farmers from the loss of irrigation canals and facilities.

7. Forestry

The Melamchi Valley is rich in community forestry. The project has caused and will cause serious impacts in some community forests. The current problem is the lack of adequate arrangement for the continuing access to and management of these forests..

Expected remedies:

There has to be a proper assessment of the community forestry loss and adequate compensation has to be offered to the communities who are benefiting from these resources.

In the case of the effects of the MWSP in Kathmandu Valley with its mix largely urbanized, migrant and semi-rural population with a very burgeoning lower income segment due to the long-standing situation in the country, there are perhaps even more serious problems than in Melamchi Valley. However, the main demand of the claimants with regards to Kathmandu Valley is the release of all documents and information relating to the MWSP, including all studies on options assessments, recent studies on water optimization and management, and lending agreements, including grants.

We are pleased to note that the Bank and the project officials, including the officials at the Melamchi Water Supply Development Board (MWSDB), His Majesty's Government of Nepal, were open in discussing issues and maintaining active communications during this period. But our main problem throughout these meetings and correspondence is that they largely ended up as the "public relation" and "damage control" exercises rather than addressing the actual problems and ensuring compliance.

On our side, we, with great amount of patience and efforts, gave the Bank unique opportunities, as well as the MWSDB for this matter, to correct the policy violations and ensure compliance. In our letter of 29 March 2004 in Nepali, we requested the Bank to urgently address the issues and problems caused by the MWSP which we also copied to SPF, but we failed. We also submitted a joint memorandum to the Bank and other donors on April 19 to address the problems of non-compliance during the Joint Review Mission (JRM), held in Kathmandu on April 19-27 and provide us some satisfactory remedies. In addition, we also made our sincere requests to the Bank as well as other donors to arrange a meeting with us and other affected people and the communities during their field visit

in Melamchi Valley, and if possible, in Kathmandu before or after the JRM meeting, but we failed.

Furthermore, instead of finding solutions to these problems through face to face meetings during the JRM, we faced a situation in which the Bank officials together with MWSDB officials and other donors linked our untiring efforts of dialogue and negotiations to the general civil society meetings and public relation exercise. When we raised the issue of how, we, the claimants, have different concerns as directly affected stakeholders continuously engaged with the Bank since June 27, 2003 as regards to other non-governmental organisations who may have other concerns in MWSP, we were criticized for conducting "grossly inappropriate and misleading" activities which we totally disagree (*see the letter, dated April 27, 2004 by Mr. Keiichi Tamaki, Senior Urban Development Specialist/Mission Leader, ADB and others*). We, unfortunately, were compelled to consider this letter as an example of the complete breakdown and ineffectiveness of our efforts of ensuring policy compliance but the desire of getting engaged in serious accusations and *fake* civil society representations in relation to our directly affected rights and interests.

As a last resort to our efforts of finding solutions to the affected people and the communities in Melamchi and Kathmandu Valley, we generously accepted a sudden visit of Mr. Edward M. Haugh, Jr, Director, Social Sectors Division, South Asia Department, who was joined by Mr. Keiichi Tamaki, Mission Leader and Peter Logan et al of ADB's Nepal Resident Mission at our office on April 28, 2004 and expressed our concerns. But, unfortunately, this meeting also ended up with a strong feeling of lack of needed seriousness, particularly on the part of the Mission Leader and the ADB's Resident Mission staff. At one point, when we raised the issue of our requests for separate meeting with the claimants and other directed affected/engaged stakeholders, we were accused of trying to establish a "monopoly" in civil society engagement, and we refused.

Apart from these unpleasant pettinesses, we did elicit two extremely important admissions from the ADB team led by Mr Haugh. First of all, the team did admit unanimously that the technical basis of the Melamchi diversion was founded on an "inexact science" and that one can never be sure about these flow calculations and measurements from year to year. This was an important admission as the concerned communities of Melamchi have been raising precisely this very same issue of the exactness of these figures and what they will mean for them and the environmental needs once the project is commissioned.

Secondly, the team also clearly stated that the water needs of Melamchi, particularly the needs of those who depended on the river below the point of diversion, had priority over the needs of Kathmandu. This was the ready admission of the project management when a pointed question to this effect was asked by Mr Haugh. These two admissions lead us to be, in our turn, very puzzled why the Bank's management team has behaved in a very inflexible and disingenuous manner for so long; and is still continuing to do so when such issues as have been raised by the Melamchi communities and the claimants are admittedly quite valid and warrant further examination.

To conclude, we are now fully convinced that the Bank officials and the project staff are only interested in meetings and correspondence as a public relation exercise as they do to

other groups, and not address the specific issues and problems of Bank's policy violations. We are also fully convinced that there will be more dirty politics to divide the civil society and affected groups as we have clearly seen in the past two weeks. It is also our full understanding that the issues and problems related to the Bank's policy violations and any satisfactory remedies through meetings, correspondence and even any facilitation by your Office will not result to our satisfaction and policy compliance as it appears now.

We, therefore, would like to request you to thoroughly investigate the above claims and provide us the most satisfactory solutions. But at the same time, we firmly believe that some of these issues and problems of the Bank's policy violations in the MWSP are beyond the capacity of the SPF. We have done all that we could with the great amount of patience and trust for about a year on a continuous basis with the Bank Management and the project officials. However, we faced a complete breakdown of the dialogue and gave up any hope for satisfactory solutions through communications (*please see the letter to us by the Bank and other donors dated April 27, 2004*).

For further details, please refer to various attachments enclosed herewith regarding the outcomes of previous meetings and communications.

The claimants,

Gopal Siwakoti 'Chintan
Co-ordinator, WAFED
and affected person in Kathmandu Valley

Hasta Pandit
Representative, Melamchi Local Concern Group
and affected person/family
Ichowk VDC 6, Melamchi Valley

Ram Bahadur Khadka
Representative, WAFED, Melamchi Branch
and affected person/family
Palchowk VDC-4, Melamchi Valley

Pitambar Bhandari
Chairperson, Federation of Community Forest
Users Nepal (FECOFUN), Sindhupalchowk District Branch
Kiul VDC 3, Melamchi Valley