

WATER AND ENERGY USERS' FEDERATION-NEPAL (WAFED)

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President
Asian Development Bank
Manila, Philippines

Secretary
Ministry of Water Resources
His Majesty's Government of Nepal
Singh Durbar, Kathmandu

Ref : Request for a review of ADB policy compliance in the case of Kali Gandaki 'A' and Melamchi projects in Nepal and undertake necessary remedial actions in the case of both projects

Dear Mr. President and Mr. Secretary:

I am writing today to request a review of ADB's policy compliance with the 144 MW Kali Gandaki 'A' Hydroelectric Project completed in 2002 and the proposed Melamchi Drinking Water Supply Project, and undertake necessary remedial measures. For your information, these concerns have also been expressed by a delegation of the local affected people and their representatives during a joint meeting with ADB and Melamchi project officials held at the ADB Country Office in Kathmandu on last June 12.

I very much hope that you will give higher consideration to the issues and concerns raised below and take appropriate measures before considering further the implementation of the Melamchi project.

For your kind information, WAFED is a national network of local concerned groups and activists composed of affected peoples and interested concerned groups in the field of water and energy development issues in Nepal. Established in 2001, WAFED has been actively involved in Nepal in promoting various policies, laws and framework adopted by the Government of Nepal, the financial institutions, the donor countries and agencies as well as international human rights and environmental instruments as part of Nepal's binding obligations, including the criteria and guidelines of the World Commission on Dams as they are relevant and appropriate in Nepal.

Likewise, WAFED is a member of the Dams and Development Forum of the UN Environment Programme (UNEP). It is also a member of the National Task Force on the development of guidelines for water and energy (dams) development in Nepal which is set up by the Ministry of Water Resources and is now being co-ordinated by the World Conservation Union (IUCN-Nepal) with the financial support of the DDP-UNEP. In

addition, WAFED also hosts the regional secretariat of the South Asian Solidarity for Rivers and Peoples (SARP) established in Kathmandu by the international consultation on Water Resource Development in South Asia and the Report of the World Commission on Dams held on December 8-10, 2002 in Kathmandu.

It may also be useful for you to note that I have been active in monitoring various water and dam projects in Nepal in the past decade. Our campaigns in the past have led to the cancellation of the country's most controversial Arun III project in 1995. We were also able to have some commitment of the ADB for a better performance in the Kali Gandaki 'A' project which did not materialise in the later stage.

About my own background, I am a lecturer of human rights and environment at Tribhuvan University (Nepal Law Campus) and Kathmandu University (Bachelor in Development Studies at National College) respectively for the past seven years. I am also a public interest lawyer specialising on many constitutional, human rights and environmental issues nationally and internationally.

Problems relating to the Kali Gandaki 'A' Project

1. We supported the Kali Gandaki 'A' on the ground that all the lessons learned from Arun III would be applied but it never happened. We stopped our campaigns against Kali Gandaki 'A' believing in the promises made by the then ADB President and project officials that environmental mitigation plans would be fully implemented and properly monitored. However, we are now realising more and more that it was a serious mistake to let the ADB and the government of Nepal go easily without further campaigning and monitoring of the project.
2. Kali Gandaki 'A' was implemented with a lot of false promises to the local people and the country as a whole. The local people were completely denied of critical project documents and information, let alone the timeliness and the language of such documents and information. Even the requests for information by the local elected bodies were repeatedly dismissed. Our attempts in Kathmandu of obtaining the basic project documents and information never had any success.
3. In the later stage, the project was implemented with no local or outside monitoring. Those who were critical of the project locally and those who were demanding full compliance with the environmental mitigation plans and other programmes were bribed, harassed and co-opted. Several of these local people were even arrested, detained and charged under Nepal's most notorious Public Offense Act. Their case is still pending at the local administration. Their land certificates are yet to be returned to them which they deposited to secure their release on bail since they did not have the required cash.
4. During the project construction period, we were virtually prevented from entering not only into the project area, but the whole Shyanja District by the government and the Italian construction company, Impregilo. I myself was arbitrarily and

illegally arrested twice together with my colleagues by the police from Mirmi (the dam site) and Galyang (the powerhouse site) and left in a bus park in Pokhara unattended. The first incident was related to our organising of a study tour of college students and social activists from different parts of Nepal. The second incident was related to the holding of a multi-stakeholder workshop aimed at providing inputs to the World Commission on Dams (WCD) study in which Kali Ganadaki 'A' was presented as the most successful project by the Nepali government.

5. In the final stage, the project was constructed under a routine presence of government security forces. There were also reliable reports of bribing of the local, district and regional police officers and the manipulation of local government officials. Local people complained that they never saw ADB officials at the time of their official visits as they used to hide away from them. This situation clearly reflects how non-transparent and unaccountable the ADB and the Government of Nepal have been in keeping their original promises and being accountable to the project beneficiaries.
6. When we asked to the Impregilo Company about its compliance with ADB policies as well as the project EIA reports and mitigation plans, we were told that they, in fact, had nothing to do with such policies and guidelines since the Company is not bound by them. At one point, the chief of environmental division had once confessed that they were far behind the schedules in implementing the mitigation plans and other development programmes. The Nepal Electricity Authority (NEA) officials used to say that they seemed helpless to monitor the social and environmental compliance by the Company and other sub-contractors since they did not have any power to take punitive measures, but only make comments and suggestions which did not make much sense.
7. With regards to the performance of the Impregilo Company, we were told that its main interest is profit and the completion of the project as soon as possible, and nothing else. When asked about the compliance and accountability to the head of the Company in 1998, we were further told that the Company had nothing to do with the ADB policies and guidelines, and that it was also not bound to follow any Nepali or international or even Italian laws, for example, the case of treatment of labourers and other forms of unethical business practices.
8. I visited the project site and met with the local people again on May 28 last month which was after the completion of the project. This time, I was with the team of journalists from BBC World Service (Radio) who were interested in doing a story on social and environmental compliance by the ADB, the construction companies and the Nepali government. I am providing you the following observations based on the information and opinion of the local people that I gathered during this trip:
 - a. The local people feel betrayed by the project and made helpless with a dark future. Their scarce land is gone. There are no economic activities

and they have no alternatives. They have not seen any significant progress in the post-project situation in economic and development terms except, they have a motor-road but they *cannot eat it* (in their own words)!

- b. The promises made by the project were not fulfilled. Even the small number of displaced *Bote* Indigenous Peoples have not been properly compensated and resettled. There is no adequate implementation of fishery programmes which was supposedly meant for their regular income and livelihood support. With regards to what the local people could actually benefit from such a huge project, the living conditions of *Bote* children speak for themselves. These children do not even have a permanent primary school. The one being run in the area through local private/collective efforts is on the verge of collapse since it cannot raise anymore funds. They do not have any land for farming. They also did not receive any compensation for the land where they used to live since the actual owner of the land was a local government school which took all the compensation that it received from the project. So these *Bote* people have become virtual landless, homeless and jobless.
- c. Some of the few houses that were built for some *Bote* families have no electricity supply, no toilet or running water and no other basic facilities which we all take as granted. These houses are so badly constructed that they could collapse anytime during the monsoon or any short period of time. There is also a fear that the hanging bridge built over the river and on their land could collapse due to its poor quality construction.
- d. With regards to the life of the dam, its underground structure is already facing water leakage. The local people were already warning of it long before it actually happened just within a year of its completion. This issue is about the quality of the construction work of the Impregilo Company. Many of us already know that this Company has a long track record of building low quality dams, and practice corruption in different parts of the world.
- e. It was further learned that the project also has failed to release the agreed amount of water downstream. The river is almost dry when there is no "sufficient" water in the river to generate the full amount of 144 MW. The effects of this river dry up have yet to be assessed and documented.
- f. The new fear that the local people have now is the government' s plan to acquire most of the remaining fertile/agricultural part of the land at Mirmi village for the Royal Nepal Army. The reason given to them is that they need it for the security of the dam. If it happens then these local people will be the victims of the same project twice! If it is really a need for any reason then there are enough concrete buildings that are virtually left

abandoned after the completion of the project and also with the huge amount of land in the surroundings.

9. The basic argument here is what the local people have got out of this highly advertised and politicised project by the ADB, the government as well as the Japanese Overseas Economic Cooperation Fund (OECF). What is important here to remember is that the OECF and the ADB officials before the launching of the project were garlanded by the local people as the Gods who were going to deliver them the heavenly development, but now they feel cheated! This project does badly if we judge its performance by applying the very basic indicators of "good governance" and "development", and the real benefits to the local people are few.
10. At the national level, the project has caused a huge increase in electricity tariffs. Another ridiculous aspect of this project is the government's new plan of selling most of the electricity to India when it was purely meant for domestic consumption initially. Nepal is known for its huge water resources but less than 18 per cent of the population has no access to electricity. Those having access to electricity also pay one of the highest electricity tariffs in the region. Furthermore, there is no comprehensive target for when all the Nepalis are going to get the electricity from their free water and at what price. We can never call it "development" but destruction of their resources and the demolition of their dreams.

Problems relating to the Melamchi Project

The problems with the Melamchi project are that it is facing similar problems as to the Arun III and Kali Gandaki ' A' . These observations are based on the facts gathered during a recent four-day field visit (May 16-19) organised for the students of National College of Bachelor in Development Studies, the WAFED representatives and a group of journalists from Kathmandu.

1. The project officials working in the Melamchi valley confessed that the local people had not been provided with any basic project documents and information during the feasibility study and EIAs. This remains the case even today. The project has not produced any documents or information kits in any language, let alone the Nepali language, explaining both the positive and negative aspects/impacts of the project for wider public dissemination. There is neither any information centre in the project site nor in Kathmandu office where one can have access to basic and critical project documents and information. We have been able to obtain the EIA reports only after making a lot of extra efforts and by threatening them of legal action and yet they are only available in English language.
2. With regards to public participation in decision-making about project-related matters, for example, survey of the land required for access road, land acquisition, the process and amount of compensation and resettlement, the EIAs, the

development of Social Upliftment Programme (SUP), etc., the local/affected people have not been informed in advance or consulted on these matters. Some groups were formed in most of the project-affected villages under the concerned Village Development Committees (VDCs) known as *Sthaniya Paramarsha Samuha* (Local Consultative Groups) but they were never consulted or involved in decision-making processes. In the first place, these groups were also not formed democratically. Secondly, these groups were never given any specific tasks and thus remained inactive until they got dissolved automatically upon the dissolution of all the local government bodies by the government in 2002. The elections of these bodies are not expected in the near future to come due to the on-going political crisis in the country. And, there has been no alternative plan for the reformation of such consultative groups. The other independent local concerned groups or communities have often been criticised for being too critical to the project and also labeled as "anti-development" forces.

3. One can now imagine how the EIAs had been conducted in the absence of basic project documents and information in any language, and with the complete denial of the basic right of the local people to public participation and involvement in the project in an open and democratic manner. More seriously, the EIA reports that we have studied and analysed do not discuss how the assessment processes took place. The EIA reports also fail to cover even the directly affected or would be affected paddy fields on the reverse side of the river which could be damaged or washed away anytime during the monsoon due to the diversion of the river-course caused by the construction waste.
4. In addition, the EIA reports also fail to undertake any comprehensive assessment of how much water is really needed for the continuing sustainability of the livelihood of the people in the Melamchi valley, the guarantee of food security and the ecological/environmental sustainability. It also does not address the future-need of additional water for the valley which will be required to meet the demands of the growing population and possible industrial or agricultural growth.
5. The fundamental question here about whether Nepal should go ahead with the Melamchi project is how much water in fact will be available in the source of the inter-basins river diversion to serve the need of the "thirsty" people in the Kathmandu valley. There is also no clear forecast of how much water will really be needed in the Capital in 10, 20, 30 or 50 years time since there are no other rivers in the pipeline which could be diverted to Kathmandu when needed! The fact is that no river(s) could fulfill the demands of the water-need of Kathmandu if the current pattern of internal and external migration/immigration is to continue to flow, and if the current pattern of highly centralised development plans and activities are not reconsidered towards more decentralisation and re-allocations. The local people of the Melamchi valley are also warning of major water-sharing conflict that will arise, particularly during the dry season. To avoid any future conflict over the issue of water right and ownership, they are demanding a clearly

defined legally binding document before any further commissioning of the project.

6. With regards to the questions relating to land acquisition, compensation and resettlement, the affected people of the Melamchi valley are experiencing the most arbitrary form of unilateral decision-making on the side of the project. In the first place, these people knew nothing about the project till the construction of the access road began in front of their house, and it was all before any survey or any compensation scheme to their property. Once they knew about the project then they immediately raised questions and launched a series of campaigns for detailed information about the project and the compensation/resettlement plan. Ultimately, they were able to have the survey of their land and assured of compensation. But the problem became more serious when the project decided to construct the access road through the most fertile land in the valley which could easily be avoided by taking the road through alternative routes in different places. In addition, the project also failed to fix and apply universal criteria for all those who were equally affected and displaced accordingly. As a result, it has created a lot of tensions and conflicts in the neighborhoods and in the communities. Upon visiting these places and talking to them, one could easily see how random and arbitrary the process of land acquisition and the compensation has been there.
7. Concerning the resettlement plan, the people are not given the choice of whether they prefer land or cash. They have been asked to take the cash and leave or face the consequence of forcible displacement. In some cases, the amount of cash compensation has also been found as inadequate for resettlement in a new place. Instead, the displaced are asked to leave their houses within a very short period of time from the date of public notification when it easily takes more than six months of time for them to find a new place and fully resettle also with the construction of new houses and so on. However, we have been told by the affected people, mostly the women, that they are already receiving threats from the project of the use of the army if necessary and that the bulldozers will be following the army in very soon! This kind of threatening environment is not uncommon in Nepal given the political situation that Nepal currently has and the way that the army and the police have been used in the recent past to suppress any local voice of opposition or resistance. The on-going construction of a huge army complex in Melamchi bazaar clearly gives us a strong reason to believe that the government is prepared to implement the project by all the hooks and crooks and that some of the local people even could fall the victims of becoming Maoists which means to anything from arrest to death. If this is the kind of development environment that the ADB and its other Japanese and Nordic partners are also taking about then we must think about saying NO to the project.
8. Regarding the direct benefits or any benefit-sharing incentives from the project, it is not very clear how the local people will be benefiting from the project, e.g. training and employment, winning tenders in construction work, participation in the implementation of SUP, and finally the issue of allocation of certain amounts

of profit from the project. At present, the local people are demanding for the sharing of at least 10 per cent of profit as a token of "gift" from the "thirsty" people of "rich" Kathmandu. This sharing of 10 per cent benefit, in fact, is also something which is already provided for by the Local Autonomous Act. According to this, the local government bodies will have a right to demand for such benefits. So it is important that this issue of benefit-sharing is legally formalised as also mentioned in the ADB President' s loan approval report to the Executive Board.

9. Another staggering aspect of the project in Melamchi valley is the destruction of several irrigation canals constructed through ADB loans. The ADB must take full accountability of the economic as well as the opportunity costs of the displacement of these canals, cancel the loans and arrange for adequate compensation and reparation for Nepal. There are also problems relating to the continuing operation of local water mills and they will disappear once the water is diverted to Kathmandu. The alternative will be to have a clear and strict legal provision for the regular supply of water as it would be required in the valley for all these purposes, or proper compensation to these mills also for their future income-loss.

10. Back in Kathmandu valley, generally speaking, people are only told that they have no options for water but to wait for Melamchi diversion – does not matter at what economic and social costs for the country. The people in Kathmandu are, in fact, made addicted to the word "Melamchi" as if it is synonymous to drinking water for those who are thirsty enough! The ADB or all other donors and loaners are no different in this propaganda. For some, Melamchi has become like a World Cup that one must win to get the Gold Cup. The people in Kathmandu are neither informed nor consulted about what is actually happening in Melamchi valley and what all the related issues are for them to be concerned with, e.g. the cost of privatisation of water supply system and the price of the water itself to the "consumers" (with the Melamchi water coming to Kathmandu, one has to become a wealthy consumer to drink water and it will not be sufficient just to live as a human being!). There have been no public hearings or debates about the options that are already available in Kathmandu or the way that the project needs radical reforms and the way that the business of privatisation could be avoided for greater benefit of both the people and the government. There have been some isolated indoor meetings but they do not necessarily fulfill the public debate requirement and thus do not provide any legitimacy to the project. What is needed here in the case of Kathmandu valley is a fully transparent process of decision-making on issues relating to:
 - What alternatives or option assessments have been made before deciding the Melamchi as the only best option for the drinking water in the Kathmandu valley?
 - What are the major policy and institution-related problems in water management system in the valley?

- Whether the privatisation of the Nepal Water Corporation and the water itself in a sense is a good idea to address the present "crisis" of drinking water?
- Who will be the private sector and what will be its *modus operandi* (we hear that they are all going to be multinational corporations and not the Nepali companies in tender-bidding)?
- Why the "donors" are rejecting the idea that the Melamchi water could be managed by the five municipalities of the Kathmandu valley as a public service rather than selling water as a commodity, and also run it in "profit" for cost recovery unlike the sole profit-motive of the transnational corporations?
- What are the other lending conditions that Nepal will be obliged to comply with and what are the impacts that they would have in the overall economy of Nepal and debt servicing? etc.

Our Initial Demands and Recommendations

On Kali Gandaki ' A' Project

The Government of Nepal and the ADB must:

1. Review the whole performance of all project components during the implementation of the project which will be lessons learned for the future, like in the case of Melamchi.
2. Undertake a post-project Environmental and Social Impact Assessment (ESIA), including of those directly and indirectly affected areas that were not covered previously.
3. Develop and implement various measures to ensure that people are adequately compensated for their losses, and to implement economic, social and environmental programmes, including compensation and/or reparation.

On Melamchi Project

The Government of Nepal and the ADB must:

1. Release all project documents and information for the local people and the interested public (both in Melamchi and Kathmandu valleys), also in Nepali language.
2. Review and re-do the EIA with full information and public participation in advance to gain the prior informed consent of the local people, particularly for taking their water to Kathmandu.
3. Fully apply the existing ADB' s policy on compensation and resettlement, water, environment etc., including relevant Nepali laws and Nepal' s international human rights/environmental obligations that defend the interests of the people and the ecology.
4. Explain and ensure both direct and indirect benefits to the local people as well as for the country as a whole.
5. Finalise and implement the SUP only after the direct and meaningful involvement of all the affected communities and the local government bodies and with their

- prior approval as against the current top-down and high-cost urban consultant-led approach.
6. Create strong, independent and representative monitoring of SUP and other project-activities so that the problems like of Kali Gandaki ' A' will not be repeated.
 7. Fully respect and apply the relevant WCD criteria and guidelines and other international framework to improve existing ADB policy standards and procedures throughout the project.
 8. Give up the idea of privatizing the water and/or relevant institution(s) and guarantee an access to water as a human right in an affordable price – not for profit but as a public service.
 9. Release all option assessment reports, if it was ever done properly, and allow for their an open and public discuss and debate before implementing the project as the only best option for water supply in Kathmandu valley.
 10. Conduct a comprehensive and independent scientific study on whether the inter-basin river/water diversion is a good approach at all.

Possible Consequences of HMG/ADB Silence on Our Demands

We strongly warn that any negligence or non-compliance on the part of both Nepali government and the ADB on our demands will be:

1. The filing of a claim before the ADB Inspection Function anytime soon demanding for policy compliance.
2. The launching of national and international campaigns against the project.
3. Total opposition to "privatisation" of water supply system in Kathmandu valley and/or related institutions in any form, e.g. the drama of public-private partnership, unless local solutions to the involvement of local private sectors or co-operative methods are applied.

We very much hope that you will give higher consideration to all the issues as initially raised above, and not try to dismiss our demands as something coming from "anti-development" camp! All the actors of Melamchi project should clearly understand that these issues are not unique to Nepal alone but are common in nature worldwide, thus we will also resist them worldwide. On the other hand, Melamchi project could also provide an opportunity for the ADB and the Nepali government as well as other donors to honestly apply the lessons to be learned from Arun III to Kali Gandaki ' A' and help Nepal towards achieving real development and not destruction.

Please contact us for any additional information or clarification that you will need. We will certainly be supplying you more reports and documents of our assessments of both the Kali Gandaki ' A' and Melamchi project as and when we feel necessary before going to the ADB Inspection Function if so required.

In trust,

Gopal Siwakoti ' Chintan
Co-ordinator

cc:

Secretary, Ministry of Finance, Kathmandu
Secretary, Ministry of Population and Environment, Kathmandu
Secretary, Ministry for Housing and Physical Planning, Kathmandu
Melamchi Drinking Water Development Board, Kathmandu
Representative, Asian Development Bank, Kathmandu
Representative, NORAD
Representative, SIDA
Representative, JBIC