

# Whether Or Not ADB's Accountability Ends With The CRP: The Saga Of The Sri Lankan Highway

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## Introduction

The Board of Directors of the Asian Development Bank approved the Compliance Review panel (CRP) report and its recommendations on 12 July 2005. This was in response to a complaint made by the joint organization of the affected communities on the Colombo- Matara Highway which is also referred to as the Southern Transport Development Project (STDP), Sri Lanka. The ADB's Compliance Review Panel, which was established under its new accountability mechanism in 2004, conducted a series of visits and consultations; and found that there were many violations of the ADB policies during the design and implementation of the project. The CRP initially found that 72% of the road is out of the scope of the initial project design.

The saga of the Southern Transport Development Project starts in 1969 with the proposal of the Road Development Authority (RDA) to link Colombo, the capital of Sri Lanka, with Matara, a major city in the southern province. However, the recent story starts with the RDA's initiative in 1992 to fill the paddy fields from the southern end without any environmental impact assessment (EIA). However, this was abandoned due to pressure from environmental groups to comply with the law. This issue popped up again in 1994 with the new elected regime laying six Foundation Stones along the trace identified by the RDA through aerial photographs. This process is known as an RDA trace. This was again abandoned due to pressure to produce an EIA under the local regulations. The main reason for this radical approach was because it was discovered that the lack of development in the Southern Province was one of the reasons for the youth uprising in the southern part of Sri Lanka in 1972 and 1988.

Since 1996, the RDA studied the road trace together with the ADB consultants and an EIA report was published in 1999. During these assessments, ADB consultants identified a separate trace which is called the ADB Trace. As a compromise, the two traces were merged into the so-called Combined Trace. The Central Environmental Authority (CEA), however, imposed certain conditions after having two public hearings and one condition was to change the trace in Bandaragama (in the western part of the road) and in the Koggala area (in the southern part of the road) in order to protect the two big wetlands known as Bolgoda and Koggala. An EIA was completed for a three-kilometer corridor, but when the trace was changed it jumped beyond the corridor. The RDA started its implementation without

studying the changed traces, violating the ADB policies and Sri Lankan environmental laws. They also denied newly affected people from participating in the EIA process. According to the affected people, more than 40 kilometers of the road were not in the studies. Also, the CRP initially found 72% of the new trace is out of the scope of the documents presented to the ADB for approval.

Since 1999, affected people have been appealing to the Human Rights Commission, the Sri Lanka Court of Appeals, and to the Supreme Court of Sri Lanka. In the beginning of 2004, the Sri Lankan Supreme Court decided that these communities' their human rights have been violated and ordered the RDA to pay Rs. 75,000 as compensation for each person. However, the Supreme Court did not intervene to change the Appeals Court's decision not to change the road trace. These affected persons finally went to the United Nations Human Rights Commission in 2004 and the decision is still pending up to now.

## Dark Age of ADB's accountability

It was found that a number of ADB policies have been violated by the ADB management as well as the RDA during its design and implementation. There were corruption allegations against certain ADB and RDA officials. Construction and resettlement was initiated with police intervention. Some people were arrested when they obstructed the surveying. Some were threatened by government officials and by politicians. Although people made representations to the ADB country office and the

Japanese Bank for International Corporation (JBIC), these institutions made no attempt to correct these problems.

Affected people living along the proposed highway made eleven complaints to the ADB's Inspection Mechanism in 2001<sup>1</sup>. However, the ADB rejected all the complaints on different grounds. By this time there was no actual project implementation and there was no resettlement. A claim on the STDP was the second complaint made to the ADB under the inspection mechanism.

### **Uncompleted mission of the OSPF**

Affected people made the first complaint to the Office of the Special Project Facilitator (OSPF) under the new accountability mechanism in 2004. After having a series of consultations, OSPF appointed an International Mediator to settle differences among the parties. This mediator, however, vanished after only one meeting. He decided to close the mediation after the tsunami devastation. Based on his uncompleted effort the OSPF decided to close the OSPF process.

The SPF promotes consensus-based problem solving, seeking agreement among all parties in identifying matters in dispute, ways to resolve the problems, and the time frame required.<sup>2</sup> However, the affected people question whether the mediator appointed by the OSPF gave his best effort to seek this agreement.

According to the 2004 Annual Report, the OSPF is guided by the principles of enhancing the ADB's accountability in developing assistance; being responsive to the concerns of project-affected people and treating all stakeholders fairly; reflecting the highest professional and technical standards in its staffing and operations; being independent and transparent; and being cost-effective, efficient and complementary to the other supervision, audit, quality control, and evaluation systems at ADB.

However, OSPF cannot be proud about following these principles in the STDP claim. They failed to come up with any settlement even after several months. The OSPF failed to initiate any dialogue between the two major parties.

The Annual Report states incorrectly, "however, all parties agreed to improve the land acquisition and resettlement process".

### **CRP process a new hope**

When the affected people found that the OSPF is no longer helpful, they decided to make the complaints to the CRP while the OSPF continues the process. This seems to be a wise decision. After having a series of consultations and visits, the CRP produced its draft report and then their final report.

The CRP found that many of the issues raised by the requesters since 1991 are valid. The CRP final report states that management cannot be satisfied with the quality of the EIA completed in 1999 and the ensuing Environmental Findings Report (EFR) for the ADB section. They also state that "the Galle access road has not received an adequate review of its environmental impacts, and some stretches of the Final Trace well away from the Combined Trace need more attention. Public information and participation in the environmental review process has been inadequate since late 1999." They also found that the ADB was out of compliance before Board approval because no gender analysis was done, although the Report and Recommendation of the President (RRP) stated that the project had significant impact on women. After Board approval, the commitments made for special gender action plans have not appeared in the implementation or monitoring details of the Project.

They state that both the benchmark analysis in the project documentation, as well as the monitoring system that has been developed to date, come to the conclusion that the Project cannot be considered in compliance with this Operation Manual(OM) until further steps are taken.

Since the CRP found that various policies and commitments have not remained in compliance over time, especially with regard to resettlement, the failure of management to restore compliance is, by itself, a matter of non-compliance with the Operation Manual Section 40 since many of the issues involved commitments made with Board approval, as in the RRP and the Loan Agreement.

The loss of compliance with this OM Section derives in part from the shifting of the traces, along with an absence of analysis of the Galle access road. The emphasis of the OM, however, is on the vulnerability of certain population groups and households, which need to be identified and assisted throughout the process to ensure they are better off after the Project is completed. The weakness of the Management Information System (MIS) and the rudimentary income restoration program are serious breaches of compliance that will pose major challenges to bring the Project back into compliance with this OM.<sup>3</sup>

The CRP concludes that compliance with this OM Section has been problematic since Board approval, with the significant shifts of the trace without public participation. The CRP is also concerned about management's inattention to independent monitoring and the need for supporting performance in the areas of compensation and resettlement. The CRP has identified a number of major changes in the project that might normally trigger a review by the operations department, and believes that the project is out of compliance until a formal determination on the change of scope issue has been settled.

### **CRP Recommendations**

The CRP made a series of recommendations which include assessing the environmental impacts of the Galle access road and any stretch of the ADB section on the Final Trace (FT) which is different from the Combined Trace (CT). This includes consulting project-affected people, ensuring the incorporation of the environmental impact assessments, and the recommended mitigation measures of any stretch of the ADB section on the FT which is different from the CT and of the Galle access road in the Environment Management Plan (EMP) for the Project. They also require that all affected persons (APs) be fully compensated by actual payment before they are moved, assistance in the income restoration program and the establishment of households and assistance in establishing well-staffed monitoring of resettlement activities by an independent institution.

The Board agrees with the recommendation to the CRP to produce a course of action with timelines on the implementation of these measures for the CRP's monitoring and reporting to the Board by 31 August 2005.

### **Whether ADB is really accountable**

This is a one hundred twenty eight (128) meter long six-lane highway and the project will relocate over one thousand three hundred (1300) families which is equivalent to more than six thousand (6000) people. About one third (1/3) of the people who have relocated are suffering many resettlement issues. People in the Bandaragama and Akmeemana area are still fighting to save their villages. There was no EIA conducted on these areas which cover more than forty (40) km.

The ADB denied accepting the complaints made to the inspection mechanism in 2001 on the same grounds. If the ADB investigated the complaint in 2001, many of the

project-related problems could have been settled as the project was not on the ground during that time.

It is a question of who takes the blame for this misconduct. We can blame the ADB and its management or the Sri Lankan government and the RDA, but who shares the sufferings of the project affected people which resulted due to this misconduct?

The ADB and the RDA officials behaved with no respect to the affected communities. They only helped and believed the government officials and corrupt politicians. The ADB's officers never took responsibility for their misconduct and they have never been punished for their failures. Instead, the officers who were involved in these violations have already been promoted.

Can the ADB be satisfied with the level of their accountability unless without letting the responsible officers pay for their mistakes? Can the ADB be happy with their level of accountability unless they correct the problems they have committed since 1999?

If the ADB wants to be more accountable they have to change their lending policies and stop target-oriented lending. They must enforce their safeguard policies on involuntary resettlement, and environment.

In this case the ADB and RDA officials were blamed for corruption. Instead of satisfying the first round of the tender they gave the opportunity for the Kumagai Gumi to resubmit a tender. Kumagai Gumi was offered the construction although they didn't get it. It was reported that the Head of the ADB's Resident Mission was involved in this game. In the final analysis, it is apparent that because the ADB is not fully committed to accountability or transparency, it in effect enables and encourages corruption, which in turn delivers unsustainable projects. It is our experience in Sri Lanka that the ADB is not concerned whether or not its safeguard policies are complied with, nor is it even interested in whether its loan covenants are met.

While it is not possible for me to show that ADB personnel are corrupt in receiving money or benefits personally, what is clear is that the corruption in our country and of the overseas contractors is in practice assisted and empowered by the ADB's practices and lack of priority in addressing this issue. The ADB currently has only very weak tools or mechanisms to control this corruption.

Our experience in the STDP case is that the ADB Accountability Mechanism consultation phase listens only

to the government and the executing agency and does not try to stop the breaches of safeguard policies or corruption. ADB is very poor in addressing corruption.

It has been heard that the ADB is going to conduct an analysis to see the root cause of what went wrong with the Samut Prakarn Waste Water Project in Thailand, the Chasma Irrigation Project in Pakistan and the Southern Transport Development Project in Sri Lanka. But can this reverse the sufferings of the affected people?

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**Endnotes:**

<sup>1</sup>The ADB's first Inspection Mechanism was established in December 1995 under its Inspection Policy. As a result of the inspection claims on the Samut Prakarn waste water project in Thailand and STDP, the ADB decided to review its inspection policy and came up with its new accountability mechanism on 12 December 2003 under its new policy approved on 29 May 2003. Under this policy, Office of the Special Project Facilitator (OSPF) and Compliance Review Panel (CRP) was set up directly under the ADB President.

<sup>2</sup> Annual Report 2004- Office of the Special Project Facilitator.

<sup>3</sup> Final Report of the Compliance Review Panel.



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