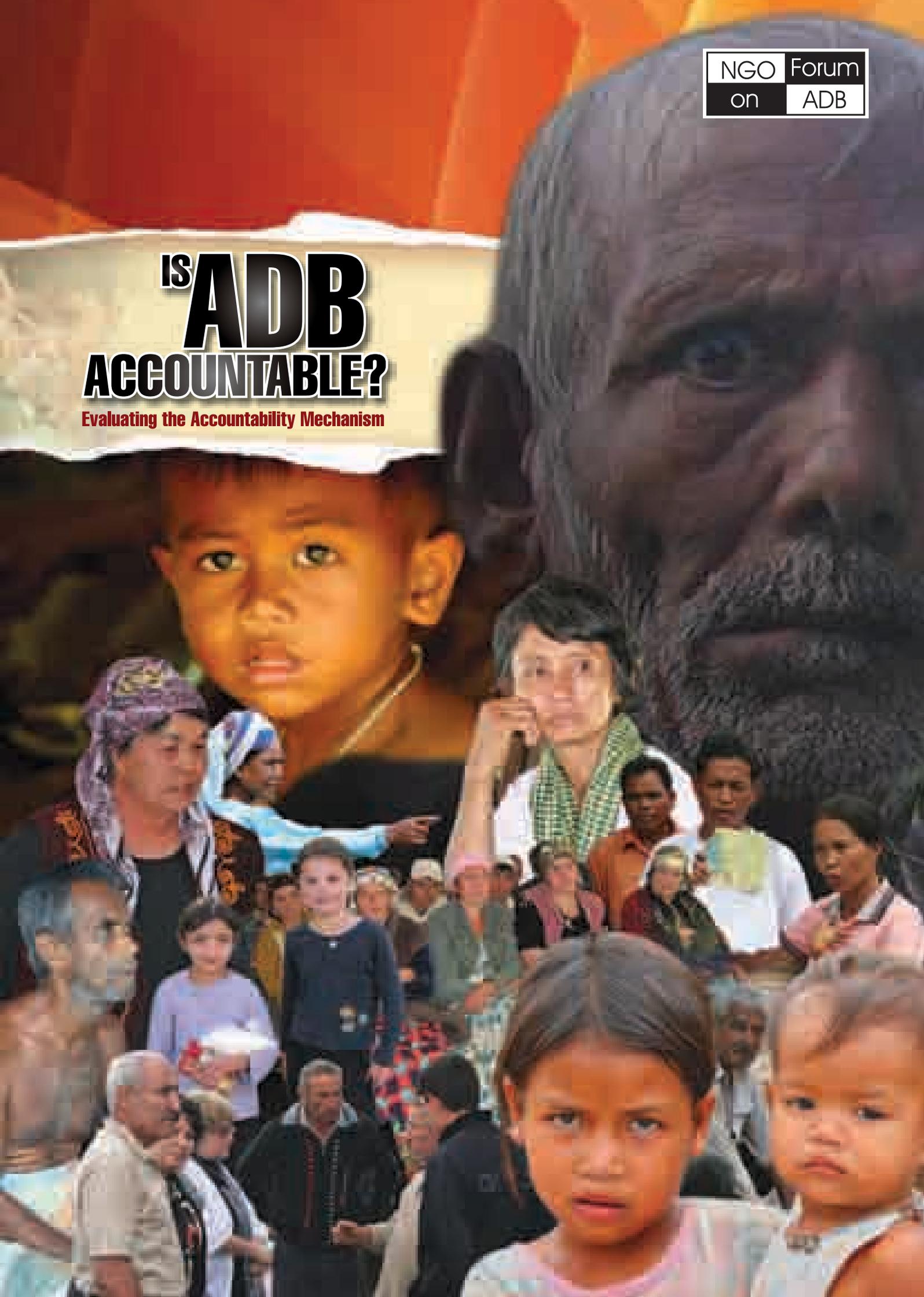
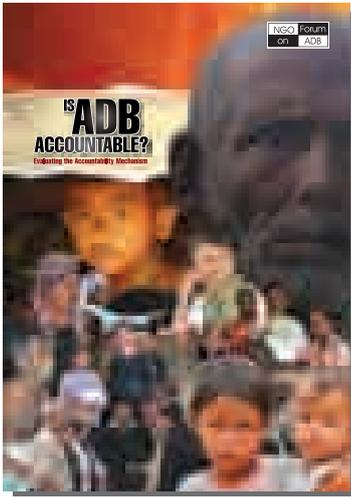


# IS ADB ACCOUNTABLE?

Evaluating the Accountability Mechanism





## Is ADB Accountable: Evaluating the Accountability Mechanism

December 2011

### ACKNOWLEDGMENTS

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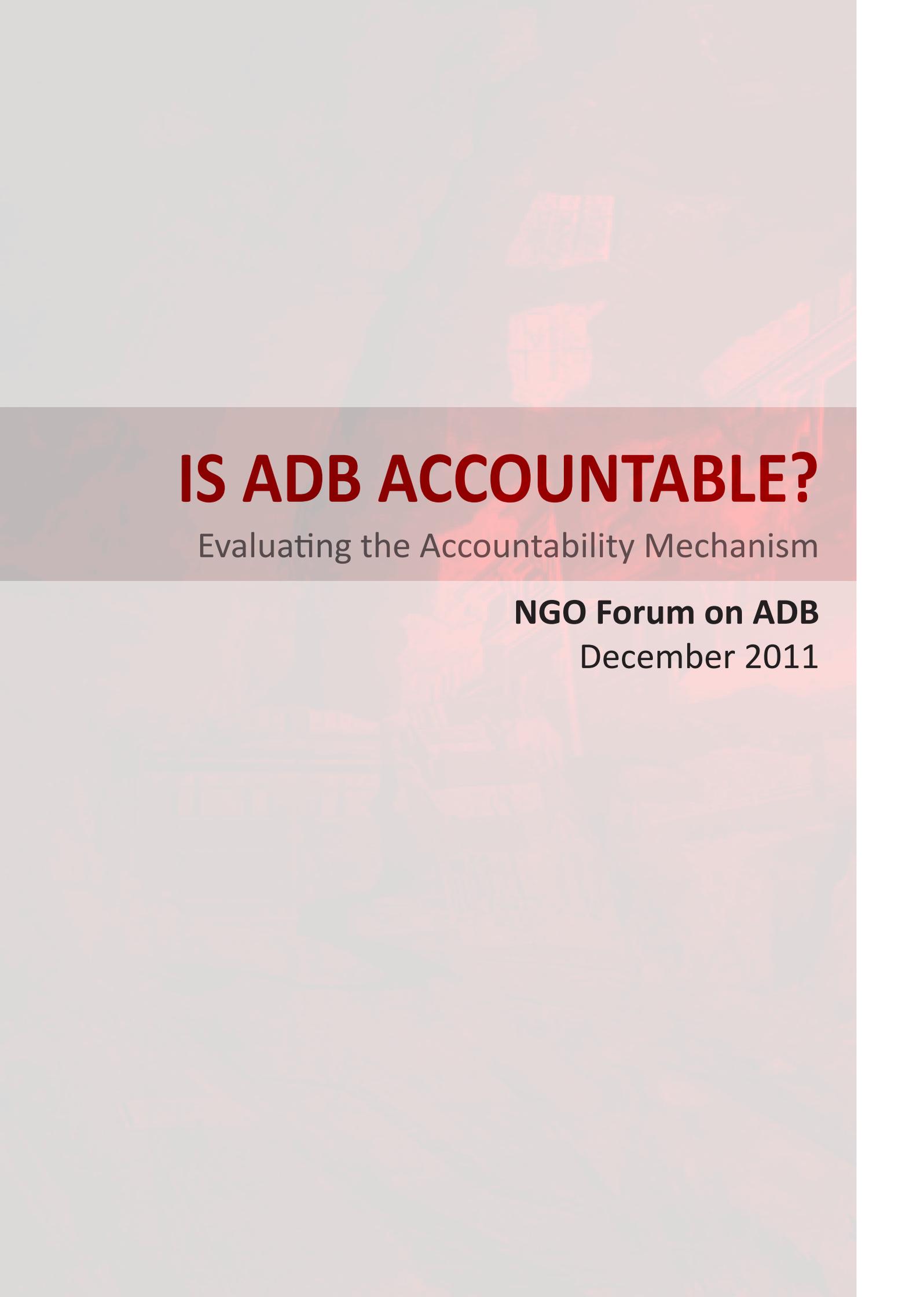
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# **IS ADB ACCOUNTABLE?**

Evaluating the Accountability Mechanism

**NGO Forum on ADB**

December 2011

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# Abbreviations

|         |   |
|---------|---|
| ADB     | Asian Development Bank  |
| AfDB    | African Development Bank  |
| AGM     | Annual Governors Meeting  |
| AM      | Accountability Mechanism  |
| ARUM    | People's Alliance for Citarum                                   |
| AZRM    | Azerbaijan Resident Mission                                     |
| BIGS    | Bandung Institute Governance Studies                            |
| BOD     | Board of Directors  |
| CA      | Central Asian   |
| CAREC   | Central Asia Regional Economic Cooperation                      |
| CEA     | Central Environmental Authority                                 |
| CFBT    | Circulating Fluidized Bed Technology                            |
| CHR     | Commission on Human Rights                                      |
| CRP     | Compliance Review Panel   |
| CSOs    | Civil Society Organizations                                     |
| CWRD    | Central and West Asia Department                                |
| DENR    | Department of Environment and Natural Resources                 |
| DOH     | Department of Health  |
| EA      | Executing Agency  |
| EBRD    | European Bank for Reconstruction and Development                |
| EIA     | Environmental Impact Assessment                                 |
| EMIS    | Educational Management Information System                       |
| EMP     | Environmental Monitoring Plan                                   |
| ESPR    | Education Sector Reform Project                                 |
| FDC     | Freedom from Debt Coalition                                     |
| GBAO    | Gorno-Badakhshan Autonomous Oblast                              |
| GHG     | Greenhouse Gas  |
| GoI     | Government of Indonesia   |
| GSS     | Gama Surakeema Sanvidhanaya                                     |
| IADB    | Inter-American Development Bank                                 |
| ICWRMIP | Integrated Citarum Water Resource Management Investment Program |
| IDB     | Islamic Development Bank  |
| IP      | Indigenous People   |
| IR      | Involuntary Resettlement  |
| KARM    | Kazakhstan Resident Mission                                     |
| KEPCO   | Korean Electric Power Corporation                               |
| KEXIM   | Korean Export and Import Bank                                   |
| KRuHA   | People's Coalition on Right to Water                            |
| KSPC    | Korea Electric Power Company – Salcon Power Company             |
| JICA    | Japan International Cooperation Agency                          |

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|       |   |
|-------|---|
| LARC  | Land Acquisition and Resettlement Committee |
| LARP  | Land Acquisition and Resettlement Plan      |
| MDBs  | Multilateral Development Banks              |
| MFF   | Multitranches Financial Facility            |
| MW    | Megawatt                                    |
| MOE   | Ministry of Finance                         |
| MOF   | Ministry of Education                       |
| MOTC  | Ministry of Transport and Communication     |
| NGO   | Non-Governmental Organization               |
| NEDF  | National Education Development Framework    |
| OCR   | Office of the Compliance Review Panel       |
| OSPF  | Office of Special Project Facilitator       |
| OWRPO | Oil Workers' Rights Protection Organization |
| PCP   | Public Communication Policy                 |
| PCR   | Project Completion Report                   |
| PIU   | Project Implementation Unit                 |
| PJEC  | Philippine Earth Justice Center             |
| PPTA  | Project Preparatory Technical Assistance    |
| PRC   | People's Republic of China                  |
| PSCs  | Power Sales Contracts                       |
| PTAs  | Parent-Teacher Associations                 |
| RAR   | Review and Assessment Report                |
| RDA   | Road Development Authority                  |
| ROW   | Right of Way                                |
| RM    | Resident Mission                            |
| RP    | Resettlement Plan                           |
| RRP   | Report and Recommendation of the President  |
| SEIA  | Summary Environmental Impact Assessment     |
| SPC   | Salcon Power Corporation                    |
| SPF   | Special Project Facilitator                 |
| STDP  | Southern Transport Development Project      |
| TEPO  | Temporary Environmental Protection          |
| TJRM  | Tajikistan Resident Mission                 |
| TOR   | Terms of Reference                          |
| UNHRC | United Nations Human Rights Commission      |
| WTC   | West Tarum Canal Rehabilitation             |

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# Demanding ADB's Accountability: **A Distant Mirage**

*By Dr. Avilash Roul  
Executive Director, NGO Forum on ADB*

Accountability is a major pillar of effective development and governance. However, even with the knowledge of this age-old wisdom, many governments and public inter-governmental institutions have been evading this very responsibility in the guise of the greater common good. As a result, from 2010 onwards, we have been made witness to the following world events: the April Revolution in Kyrgyzstan; the Arab Spring in the Middle East, North Africa and Western Sahara; the Occupy Wall Street movement in Washington D.C.; the non-violent protest of Anna Hazare in support of the Lok Pal Law in India; the impeachment proceedings against Supreme Court Chief Justice Corona in the Philippines; Prime Minister Gilani's head on collision with the Supreme Court of Pakistan; the street demonstrations in Greece; the December anti-Kremlin rallies in Moscow; the November Candle Light protest in Korea and so on. All of these events have sent across one loud message to the world: be accountable!

In our time, the world has grappled with a multitude of crises -- economic, food, energy, climate change, water -- and above all, governance crisis. Under such dire situations, institutional reforms and reviews are the optimal requirements for both national and international institutions, including multilateral development banks (MDBs) such as the Asian Development Bank (ADB). The Bank, which has been a major development public institution in Asia and the Pacific, has started reviewing/revising its Public Communications Policy (PCP) as well as its Accountability Mechanism Policy. Thus, it is very clear that accountability and transparency issues must take greater urgency and importance for both governments and citizens participating in the entire development process.

The review of ADB's 2003 Accountability Mechanism (hereafter AM) is not to make an attempt to validate an effective mechanism that supposedly addresses and resolves the problems caused by Bank-funded projects, policies and programs (3 Ps). It revolves and ends with one issue: the visit of AM's designated official/s to a country where the ADB funds its 3 Ps. Given this assumption regarding the visits of AM-designated official/s, ADB began its review process unlike the way it reviewed its other policies.

After the seven-year existence of this avatar, there have been many indicators distinctly showing that the AM has been alien to project-affected people, for whom the mechanism was solely established. The Accountability Mechanism provides an avenue

to convey their grievances and identify the harms they experienced as a result of ADB operations.

However, it must be noted that the AM has been profoundly dependent on civil society organizations (CSOs) for its usefulness. Even a member of the ADB Board of Directors can actually file a complaint in the Compliance Review Panel (second phase). But in the past seven years, we have not seen any case filed by a member of the Board of Directors in the second phase. In addition, the ADB Management always tries not to see their activities under the two phases/functions of the Accountability Mechanism.

Despite a policy review up its sleeve since 2006 (as presumed to occur after three years upon implementation, and due to reasons only known to the ADB governing structures), the comprehensive review only commenced in 2010. The delay in the AM policy review begs the following questions: Was it due to the low number of cases filed in both the Office of the Special Project Facilitator (OSPF) and the CRP, the two functions under the AM? Or was it because of the prolonged Safeguards Policy review? Was the Bank trying to send out the signal that it has become a more transparent and accountable institution compared to other MDBs? And therefore, by showcasing its comprehensive reviews of both the PCP and the AM in the same year would result in the Bank receiving more Asian Development Fund (ADF)?

The 2010 announcement of ADB President Haruhiko Kuroda in Tashkent -- one of the least-known venues for respecting human rights and freedom of speech -- at the 43<sup>rd</sup> ADB Annual Governor's Meeting regarding the review of the AM is the starting point of how the AM review process would have follow through.

The Joint Board Management Working Group of the Review of Accountability Mechanism was created and was comprised of four (4) Executive Directors and Alternate Executive Directors and ADB's Managing Director General. The composition seems to rationalize the review of the AM by underscoring the two interlinked phases of the Special Project Facilitator (SPF) (appointed and reports to President/ADB Management) and the CRP members (appointed by and report to the Board of Directors). If this has been the *raison*

*d'être* for the policy review, there should have been equal representation from the Management and the Board in the Joint Working Group. However the Damocles' sword in the form of 'mission visit' has been hanging on the AM. Therefore, it is the Board members, representing the 67 member-countries, who must make decisions throughout the AM policy review process. Barely three weeks after Kuroda's announcement, the Joint Working Group met on May 21, 2010 to decide on the terms of the review process.

To ensure an objective and credible review, the Joint Working Group recommended appointing two internationally-recognized experts as external consultants to prepare the Policy draft after consultations with various stakeholders. But, much emphasis was given to shareholders in order to ensure that both external experts would be sensitive to 'shareholder's interests'. This is the second pointer of how the review process would have moved on in the succeeding months. The proposed timeline started with the establishment of the Joint Working Group in April 2010; and by the Bank's calculation, the new Accountability Mechanism would have been approved by March 2011. Unfortunately, the process has exceeded another year.

Given the importance of the present AM Review, NGO Forum on ADB has actively engaged the Policy Review Secretariat, consultants including series of ADB sponsored consultations, and the Chairperson of the Joint-Working Group from time to time.

Forum's direct involvement on the 2003 AM dates back to 2002. Since then, Forum is the only organization that has been closely monitoring the implementation of the AM, as well as facilitating more than dozen of cases filed before both phases of the AM. With its long, rich experience on this Mechanism, the Forum network facilitated the inclusion of affected people and their concerned representatives to become directly involved throughout the review process. These affected people led Forum's engagement in the review process have been from commenting on the AM drafts to participating in ADB-sponsored consultations to meeting with senior ADB officials.

Forum's engagement in the review process began with an inquiry on the details of the review

process, which resulted in a meeting with the AM Review Secretariat. Interestingly, on that same day (July 5, 2010), the Bank posted the timeline and review process on its website. Forum also met with the consultants in August of the same year at the Bank headquarters. Forum made a number of suggestions on the review process, including a public consultation in Central Asia where most of the AM cases filed were ADF-assisted projects.

After submission of written comments on the 2003 AM, the consultants headed to receiving comments during multi-stakeholder regional consultations. One would rather call these public consultations as 'feedback channels' (not multi-stakeholder consultations) for its structure, process and outcomes. While the Terms of Reference prepared by the Joint Working Group mentioned four (4) inter-related issues to be examined under the review, the consultants found 12 major issues. On top of these issues was the so called "mission visit" or 'site visit'.

The ADB website information on the AM review was not always updated. For example, the Pakistan venue for the South Asia consultations was shifted to Colombo. But for more than one month, the venue in Pakistan was still hovering on the Bank's website.

The original four in-country consultations were transformed into four regional consultations that involved much confusion as well. Pakistan barely missed the opportunity to hold a consultation due to the massive flooding it experienced in 2010. Later the venue was shifted to Colombo where the case of the Southern Transport Development project (STDP) is the only project to carry the reputation of having undergone the 1995 Inspection Function (old Accountability Mechanism) and both stages of the 2003 AM. Central Asia was deprived of such consultation; though ADB invited Forum members from the region to the Manila consultation upon our suggestion.

The Bank-sponsored public consultations in Manila started with two groups that addressed 12 questions posed by the consultants. Topmost of which was "what is your opinion about site visits". Other than Forum members, no other participants would be well-versed about the issue on 'site visits'. Many of the invited participants were not quite knowledgeable or completely aware of the role and

function of the AM. Was such multi-stakeholder consultation, rather feedback process a way to get rid quickly of other emerging/arising regarding the AM policy implementation? To be fair, the consultant tried to accommodate Forum's suggestions that they meet with affected people who filed the cases in the country/regional consultations. This was to get more concrete views on the gaps and challenges of the 2003 AM implementation.

Beyond the regional consultations, there have been many informal discussions with CSOs including only specific invitation to Phnom Penh-based NGOs by the ADB Cambodia Resident Mission. The Bank's intention not to miss any opportunity to get feedback from all stakeholders was a welcome step. The public consultations, I would rather put it formally, culminated in a formal public discussion at Forum's CSO Panel Discussion at the Hanoi ADB AGM on May 3, 2011. And very recently, the R-Paper, which is the draft version that will be presented to ADB Board of Directors for approval, was released. The most burning question is: Is it in the right direction?

There have been many "goof-ups" in the review process. The release by the Joint Working Group of the first draft Working paper for review by the Bank's Board of Directors could be the most controversial. For instance, the Joint Working Group surprisingly managed to release the first W-Paper two days after the last day of submission of written public comments. However, with the constant and strong pressure from the Forum, the Joint Working Group decided to release a 2nd W-Paper for public comments.

Accountability has been an issue in major borrowing countries like China, India, Indonesia, Pakistan, Uzbekistan, Cambodia and Viet Nam. India is marred with high corruption cases as evidenced by one social activist who has been instrumental in bringing to fore a legal mechanism. Similarly, the National Assembly of Pakistan has been in discussion to pass a law that would make funds more transparent and accountable. Interestingly, the representatives from these countries in the ADB have been reluctant to allow an Accountability Mechanism that is faithful to its letter and spirit. 'Business as usual' is basically what the Bank requires from such governments; but not to make accountable the ADB for its operations and the concerned implementing agencies in the

said countries. The increasing power and influence of these emerging shareholders should not, in any way, destabilize the Bank as a public institution in terms of being accountable to and respectful of the rights of affected people in Asia and the Pacific. These emerging shareholders must fully accept that having increased power comes with high responsibility and accountability to the citizenry of their respective countries.

If all the MDBs are consulting each other to know what are the "lessons learned" in terms of avoiding stricter regulations, it is better that they conduct a review of similar policies simultaneously or at a particular time. It should not be one after another since it would be easy for them to debunk "the reality-bites-type-of-questions" by citing other MDBs as examples. Most donor members are equal in strength and in terms of money/resources in all MDBs, and are represented by their respective governments. If all MDBs, as comrades in projects and programs that eradicate poverty on Earth and, really appreciate the harmonization of their respective policies, then they must also be comrades in policy-making using identical calendars.

The Bank has been constantly and cooperatively working with member countries where it lends money. The system of transparency and responsibility differs from country to country. And this is the reason why there is a need for a stronger Accountability Mechanism: for the affected

communities to resort to AM in order to minimize/mitigate the harm that they have faced, currently facing or will be facing due to a project or program-sponsored by the Bank.

Accountability Mechanisms are essential to the credibility of MDBs. While noting the fact that the accountability of the ADB does not exactly end with this mechanism, still the AM must adhere to the very principles of accessibility, transparency, independence and effectiveness.

ADB, and other MDBs such as the World Bank, European Bank for Reconstruction and Development (EBRD), African Development Bank (AfDB), Inter-American Development Bank (IADB) will not lose should they approve and implement a set of stronger policies ensuring greater accountability to local communities affected by their operations. The communities are in real agony. They suffer from ill-designed projects and programs. They are frustrated with development projects that were not inclusive enough to allow them to participate and have their say.

This publication is a collection of a number of cases that have passed through the AM process. This recounts the missed and lost opportunities of the ADB in becoming the leader in institutional accountability and transparency among all MDBs. People have been suffering. Shall we wait for another review of the Accountability Mechanism? ■

# ADB Accountability Mechanism: Handling the Symptoms But Not the Disease

By Tea Soentoro,  
Former Advocacy Coordinator, NGO Forum on ADB\*

*Note: In November 2009, the ADB conducted a briefing session with civil society organizations regarding its Accountability Mechanism. This activity was a prelude to the 2010 to 2012 Accountability Mechanism policy review. \*Tea Soentoro, then the Advocacy Coordinator of the NGO Forum on ADB, wrote about how the briefing went and what could be expected from the Bank's review of this policy.*

What is the incentive for affected people when their case is filed before the ADB Accountability Mechanism?

This was one of the significant questions raised during a briefing session on this policy that was hosted by the Office of Special Project Facilitator (OSPF) and the Office of the Compliance Review Panel (OCRP) for civil society groups on November 19, 2009 at the Discovery Suites, Manila. Robert May, the Special Project Facilitator (SPF) and Bruce Purdue, the Secretary of OCRP, made a presentation on the Accountability Mechanism. [1] Also present in the session were Rusdian Lubis, Chair of the Compliance Review Panel (CRP), Tony La Viña, member of the CRP, and other Bank staff. About 15 representatives from Manila-based NGOs, including Transparency International, Affiliated Network for Social Accountability in East Asia and the Pacific, World Wildlife Fund, Philippine Rural Reconstruction Movement, Legal Rights and Natural Resources Center, Public Services International and the NGO Forum on ADB, attended the session. That question, raised after a two hour-discussion, might reflect a skepticism on the Mechanism because of the following: narrow scope of the policy's terms of

reference (TOR); difficulties in defining immaterial harms and long-term impacts; its site-specific corrective measures without touching the project as a whole; and its incapability to restore the lives of uprooted affected people.

As mentioned by Lubis, the briefing session was part of ADB's Accountability Mechanism outreach program to civil society groups. After Manila, other briefing sessions will be held in Jakarta and Sidney (or Melbourne). It seems that these two offices need a pro-active approach because only a small number of cases have been filed since 2003. This matter can be perceived as ADB doing the job well. "This is a matter of existence, too" Purdue said "... and therefore it might downsize the offices..."

Since the Board approved the Accountability Mechanism in May 2003 and took effect in December of the same year, the OSPF has received only 24 complaints. Out of which, 15 cases were found not eligible because they were not addressed first to the Operation Department before going to the Mechanism; eight (8) cases were found eligible; and one (1) case is still under review. Meanwhile, only three (3) claims have been filed before the

OCRP. However, May felt encouraged that most of the 24 OSPF complaints were submitted during the past two years. He said it shows some improvements due to their active outreach and also because more NGOs are working with affected people.

May's statement still did not answer a question raised regarding their assessment as to why only a few cases have been brought to the Accountability Mechanism. It seems that these offices are ignorant of various reasons that could have led to the said situation such as the lack of information on the part of affected people regarding the Accountability Mechanism. These affected persons are not aware that they can file grievances before the ADB.

Furthermore, most borrowers are not informed about this Mechanism. Even ADB consultants and project staff are not informed. In addition, the affected people also fear their oppressive governments. That is why they do not want to show their disagreement to a project. The lack of confidence in the Accountability Mechanism as a way to solve project-related problems in favor of the affected people is another reason for such a situation.

Though the Accountability Mechanism handles the grievances of affected people that have been caused by ADB projects --from infrastructure to co-financing and financial intermediaries-- the scope of case handling is too narrow. The Mechanism only looks at direct and material harm caused by a project and targets cost-effective solution. Regarding a question on how to define or quantify material harm related to damage or loss of cultural site, the Bank's answer was *"...it is a matter of interpretation... the material harm can be defined broadly to include such damage or loss..."*

Another question that the ADB did not answer pertained to a project's immaterial harm and long-term impacts as exemplified by the ADB's Sharia Banking Project. The Bank is indirectly promoting the compliance to Sharia Law by Muslims. [2] In a country such as Indonesia, Sharia Law is a manifestation of rising Islamic fundamentalism that targets women to force them to comply with the law, and therefore leads to gender injustices. May said *"... I really don't know how to answer the question, and need to look at the case when it comes to me..."*

However, Purdue said that he was not sure that the ADB is not allowed to be involved in projects with religious dimension. He said the ADB is not allowed to intervene in the political affairs of a country; though he was aware that the Sharia issues are becoming a political matter in a country such as Indonesia. Lubis added that the Accountability Mechanism is not the right venue to address this issue.

The issue on eligibility was raised particularly for projects that have already been closed--after the submission of the Project Completion Report (PCR)--but the harm to people is still on-going. Just like in the case of the privatization of the power industry in the Philippines. Even though the two offices are aware that some projects have longer impacts beyond the submission of the PCR, they have to work within the terms of reference of the Mechanism. The role of the OSPF is only limited to facilitating or mediating a problem that evolved directly from a project. Purdue said, once the financial stake is out, nothing more can be done. Therefore, a participant suggested that the scope of the Mechanism should be broadened by covering the continuing damage of a project and the scope of damage itself.

Regarding sanctions for non-compliance of a project vis-a-vis a policy of the ADB, they said the ADB is responsible for the project, not for the individual persons. According to Purdue, there are many factors that cause non-compliance. It could be some departments at the ADB or it could be the borrowers. So, there is no sanction or punishment to individuals. He continued that the significant change is to admit the problem and to make it more accountable. Furthermore, Purdue said that the CRP cannot cure non-compliances to the policy, but they look for solutions to correct them.

La Viña added that the ADB will act accordingly on the recommendations from OSPF and OCRP to solve a specific problem. Therefore, it should be kept in mind that the Accountability Mechanism is about correcting the problem that has occurred at the project level and that there is no mandate to stop the project. On the other hand, the Bank cannot prescribe what governments should do. The ADB will not interfere with governments, but it can only give recommendation because it is a matter concerning the sovereignty of the countries. A

reaction to this statement came from a participant who said the sovereignty issue is a false issue. In the contract of the privatization of the power industry with the Philippine government, for example, the ADB required a particular policy reform. This was a clear evidence that ADB had intervened to the government's sovereignty. A double standard is in practice.

The Accountability Mechanism has two separate but related phases ---the Consultation Phase under OSPF and Compliance Review Phase under OCRP--- according to Purdue. The SPF is for problem-solving at the project level, and once the problem is shifted to addressing a policy of the Bank, it is then brought to the CRP (as it is about Bank's compliances with the policies). He emphasized that the CRP is not an appeal panel of the consultation phase (if the complainants are not satisfied with the results of the consultation). For example, if complainants go to CRP because the compensation rate is lower than what they have expected, the case would be declared not eligible. The complaint process starts at the consultation phase. The SPF would look for solutions first. Then it can be continued to be filed before the CRP. Not only project-affected people, but the ADB Board of Directors (BOD) can also file a complaint. However, they can go directly to CRP without going through the process of the SPF.

Furthermore, Purdue explained the institutional arrangement of the Accountability Mechanism: the SPF reports to the ADB president; the CRP as an independent panel reports to the BOD. The ADB President is the chair of those two entities-- the Management and the BOD. This explanation

invited a response from a participant about the President's conflict of interest. The integrity, independence and output of decisions were questioned due to these dual positions. *"The best system cannot help if the people in it are corrupt,"* said a participant who is a judge. Purdue responded that this position is stated in the Bank's Charter and has never been amended, though it can be done. However, he said, there is system of check and balance and there are more approaches to accountability.

Many issues raised during the briefing session are key points for the forthcoming review of the Accountability Mechanism. However, Purdue said that they have yet to determine the date; but for sure, the review will be done next year (2010). The Board will decide on this soon, and the ADB Management will do the review. The briefing sessions are the start of the ground work for the review.

However, it still remains open whether the review is capable to: (i) fill in principle gaps as raised during the briefing session; (ii) make the new Accountability Mechanism more accountable and responsible to project-affected people by restoring their---material and immaterial, direct and indirect, short and long term---loss of livelihoods; and (iii) be open for a possibility to review a whole project once it is proved to be harming people. Otherwise, the Mechanism will continue to serve its existing purpose, which is an image-polishing of the ADB as accountable to people. Furthermore, this financial and development institution will again miss the point of being truly accountable and responsible. ■

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#### Endnotes:

- 1 More information about OCPF at [www.adb.org/spf](http://www.adb.org/spf), and OCRP at [www.compliance.adb.org](http://www.compliance.adb.org)
- 2 Living complies with Sharia law is among others pray 5 times a day, fast during Ramadan (fasting month), Muslim dress code for women (head cover), zakat (donation) and borrow money from Sharia financial institutions.

Generation dependence: Their only source of income is at stake.

## INDONESIA

# ARUM's<sup>1</sup> Advocacy: Integrated Citarum Water Resource Management Investment Program

By L. Diana Ross  
Arimbi Heroepoetri  
Members of ARUM

### Background of the Project

The water crisis in Indonesia has become a burden to the Indonesian people. Water has become like a product of luxury that one has to pay for with a high price. This condition is reflected in testimonies of urban people. Umi from Bekasi states: *"In order to get clean water, I have to pay between Rp 1,000 to Rp 2,000 per bucket, which I usually use only for cooking. I use salty water when taking a bath and for washing clothes."*

To address this problem, the Asian Development Bank (ADB) came up with a project entitled, *"Integrated Citarum Water Resource Management Investment Program"* (ICWRMIP). The grant for the preparation stage amounted to US\$ 1.7 million. The program loan amounts to US\$ 500 million.

ICWRMIP is a 15-year program designed to provide solution to the multiple and inter-related concerns of water supply sustainability and water quality degradation in the Citarum (West Java, Indonesia) River Basin. The basin covers an area of 13,000 square kilometers and is home to more than nine (9) million people. It is considered as one of the most strategic and important basins in Indonesia as it supplies 80 percent of Jakarta's water needs; provides irrigation to about 240,000 hectares of agricultural land; and serves as host to fisheries. It also provides water supply to industries and generates 1,400 megawatt (MW) of electricity. The

river basin has 11 protected forest areas which are significant for the conservation of biodiversity because they are among the most intact areas of forest remaining in Java.<sup>2</sup>

ICWRMIP was supposed to be approved in September 2007. However, the project got approved in December 2008 without any formal explanation about this delay.

The 269-kilometer-long river is also a source of drinking water for the 25 million residents of Jakarta and West Java provinces. In addition, it also supplies electricity to Java Island (consisting of five provinces) and Bali Province.

The water supply from the Citarum River, however, is now contaminated with heavy metals. Siltation, sedimentation and pollution also affect the river. The pollution and sedimentation come from upstream rivers in Situ Cisanti situated at the foot of

Mount Wayang in South Jakarta. The upstream river in Situ Cisanti is a combination of seven springs where clear water comes from. Water is actually contaminated 700 yards from the Situ Cisanti as it is used as dumping site for cows' feces.

The river flows along 279 miles to the mouth of the river in Muara Pantai Merdeka, Muara Gembong District, Bekasi, and West Java. It also runs through dense settlements --- Tarumajaya Village, Kertasari District, and Bandung Regency --- predominated by vegetable and dairy farmers before it ends at Java Sea. As a result, the river's strategic function in relation to national interests has been heavily damaged.

This biggest and longest river in West Java will be used for hydropower in Saguling Reservoir (with a capacity of 700 to 1,400 MW), Cirata Dam (1,008 MW), and Jatiluhur Dam (187 MW). These hydropower plants will supply electricity to the interconnected networks of Java Island and Bali, which are home to nearly half the population of Indonesia.

Citarum's contaminated water is also used for fisheries and around 420,000 hectares of irrigated agricultural land in the districts of Bandung, Bandung City, West Bandung Regency, Cianjur, Purwakarta, as well as the national rice barns in the districts of Karawang, Subang, and Indramayu.

In January 2008, Indonesia-based non-governmental organizations (NGOs), namely ELAW Indonesia, debtWATCH Indonesia, and BIGS (*Bandung Institute Governance Studies*) found out through the ADB website that the ICWRMIP would be approved in December 2008, even without any proper public consultation.

Alarmed with the situation, these NGOs together with other groups like Perkumpulan Boemi, and KRuHA (*People's Coalition on Right to Water*) met with ADB's Southeast Asia Department at the Manila headquarter on March 26, 2008.

The NGOs asked for clarification about the loan proposal, raised issues pertaining to information disclosure and questioned the public consultation that did not involve potentially-affected people and other stakeholders.

Regarding the project's environment categorization, an ADB official had this to say: *"It does not really matter at the end whether it is category A or category B, as long as we've done what needs to be done."*

The NGOs disagreed with and criticized this statement because it contradicts the Bank's Environment Policy. They cited Paragraph 54 of the Environment Policy which states: *"A project's environment assessment category is **determined by the category of its most environmentally sensitive component**, including both direct and indirect impacts."*

Similarly, they referred to Paragraph 55 of the Policy, which states: *"The process of determining a project's environment category is initiated by the regional department sector division, which **prepares a project environment screening checklist**, taking into account the type, size, and location of the proposed project."* The NGOs said the project would affect more than nine (9) million people who live in seven districts and two cities around the river basin.

The ADB loan and grant for ICWRMIP started in 2004. The Bank approved a US\$ 1million technical assistance (TA-4381 INO: Integrated Citarum Water Resources Management) for the project's preliminary research. There were also a series of grant mechanisms until the US\$ 500-million loan agreement (Multi-Tranche Financing Facility: 37049-01) was approved on December 4, 2008.<sup>3</sup>

The loan allocation for the first phase of ICWRMIP will be used for, among other projects, the West Tarum Canal Rehabilitation (WTC). WTC is a 68.3-kilometer canal where the water from the Citarum River flows. This will be used as the main source for irrigation, industrial purposes, and household needs of Karawang, Bekasi, and Metropolitan Jakarta. The first phase amounted to US\$ 50 million.

The findings of NGOs from the field have revealed that ICWRMIP is prioritizing the drinking water supply to Jakarta over the need for water allocation to agricultural lands in Jakarta, Bekasi, and Karawang Districts. These are home to hundreds of thousands of paddy farmers.

They also questioned why the first tranche of the ICWRMIP, specifically the WTC, started in the downstream of the Citarum River rather than in the upstream.

### **Involuntary Resettlement Policy vs. Involuntary Resettlement Plan of ICWRMIP Phase I**

One of the duties of the Government of Indonesia (GoI) for securing the ADB loan was to develop a Resettlement Plan (RP) for Phase I of ICWRMIP (that is meant to rehabilitate the WTC).

The said RP should comply with ADB policies such as the Involuntary Resettlement (IR) Policy of 1995 and Public Communication Policy (PCP) of 2003.<sup>4</sup> On August 11, 2008, the Bank published the ICWRMIP Resettlement Plan submitted by GoI on its website in order to get inputs from Indonesian citizens.

ARUM criticized<sup>5</sup> the draft RP and submitted their analysis to the ADB Operations Department and to the ADB Board of Directors on November 2008. This analysis was re-submitted at the ADB Annual Governors Meeting (AGM) in Bali, Indonesia in May 2009.

Some of ARUM findings on the draft Resettlement Plan were as follows:

- Since the canal passes through three districts: Karawang, Bekasi, and Bekasi City, there will be thousands of affected people that must be resettled by this project. The Involuntary Resettlement Plan Draft for West Tarum Canal rehabilitation identified 872 households that would be displaced. ARUM recommended that the identification of affected persons should not be based in terms of household, but rather on individual/per person basis. Consequently, the potential affected persons will be much more than 872 people. ARUM also questioned why the RP did not list or include other potential affected persons like the shopkeepers along the canal estimated to number around 2,000, as well as the farmers in Jakarta and Karawang.
- Ambiguity of the Mechanism in regard to land scarcity and ownership issues.
- No guarantee in restoring the livelihood of affected people since there were gaps in

measuring the compensation. The Social Implementation Strategy was unclear and thus, unacceptable.

- Resettlement process was vague and not participatory.
- Inadequate information disclosure for the public and lack of space for consultation, especially for families listed as affected. One of ARUM's findings disclosed that the local government did not acknowledge the details of the project and the RP at all.

### **Public Consultation**

The ADB stated in the first phase of the Project Preparatory Technical Assistance (PPTA) of ICWRMIP that they conducted a *"beneficiary consultation meeting"* on June 14, 2005 in Bekasi District for stakeholders in the downstream areas (attended by 25 people). Another one was conducted on June 16, 2005 in Bandung District for stakeholders in the upstream area (attended by 38 participants).

Inputs from both consultations were analyzed by their team and the so-called stakeholders in the River Basin Area in a meeting dated July 4 and 5, 2005 in Jakarta (attended by 71 participants).

ARUM did not get a proper explanation from the Operations Department regarding their basis in selecting the participants. ARUM also found false signatures in the attendance list.

There was no genuine public participation since the start of the environmental assessment. The processing of documents, including the environmental impact assessment (EIA), should have included all stakeholders and the wider public. This did not follow the spirit of disclosure in the Public Communications Policy (PCP) of the ADB<sup>6</sup>, to wit: *"...ADB will proactively share its knowledge and information about its works with stakeholders and the public at large."*

Nevertheless, only a few people have been involved in this process. At least, this has been admitted by ADB in its document. Three *"beneficiary consultation meetings"* were conducted on the following dates: June 14, 2005; June 16, 2005; and July 4 to 5, 2005 in Bekasi, Bandung and Jakarta, respectively. These meetings were only attended by a total of 134

participants. This, of course, is far from being adequate and does not comply with the spirit of disclosure as stated in the PCP.

Public information disclosure, which means providing people, especially affected people, access to project documents that have a bearing in their lives and livelihoods, is strictly regulated by Paragraphs 74 and 75 of the PCP, and also by Paragraph 64 of the Environment Policy.

Our experience, however, has proven that important documents are only disclosed through the ADB website if and when there is a demand. Even though the documents were available in the web, there was no single complete document that properly acknowledged the impacts on affected people, directly and indirectly. Regardless of such web information, the people in charge of ICWRMIP failed to answer the basic questions that we have raised. These are some examples: Who will gain the project benefit/s? What will exactly be done to the main river? How will it be managed? Who will be responsible and fully in charge? Though documents are available in the website, majority, if not all, of the affected people do not have access to computer and the internet.

### **First Complaint Filed Before the OSPF Was Rejected**

Our last meeting with the then ICWRMIP project officer in Bandung, in June 2009, ended with the team's promise to give several not-yet-disclosed documents. One of the documents given to us contained updates by the Review Mission on the project (dated June 30, 2009). This document stated that the WTC resettlement will only be implemented in 2010. But our field monitoring work confirmed that displacements had occurred thrice since July 2009. Such displacements were a clear violation of the principle of the ADB's IR Policy. The displacement also affected a number of those who were included in the list of affected people in the disclosed document. They have lost their houses and lands for agriculture use and other means of livelihood. We provided our submission, based on our on-the-ground findings, to the OSPF on December 8, 2009. OSPF acknowledged and registered it on December 11, 2009.



*ARUM members undertaking a field investigation.*

As a network of NGOs, we are already familiar about ADB's Accountability Mechanism (AM). The first case from Indonesia came from Kalimantan Province and was related to the Community Empowerment Rural Development Project. The group documented their experiences and this became our main basis in using the AM. After having tried to question the project and its flaws with GoI, the project management, and also several levels of ADB officials, including the Board of Directors, we finally decided to go through the ADB Accountability Mechanism.

The first time we filed a complaint was in December 2009. At that time, one of the members of the network, who was based in Bekasi registered the complaint. They sent a Power-of-Attorney and a letter to the Office of Special Project Facilitator (OSPF) through email, which mentioned the series of meetings that we had with every relevant offices. They proceeded with the mission of eligibility check on early January 2010. The facilitator came and visited the field also in the same month. The OSPF informed us by registered mail that the case was ineligible because, according to them, we have not yet brought the problem to the Operations Department. They simply ignored the fact that we have been communicating with the Operations Department concerning project-related problems since its early stage, even way before approval by the Board of Directors.

We decided to re-submit the case considering that there is no provision in the AM prohibiting anyone to file the same complaint under the same case, and given that evictions were still ongoing in the

field. After a series of discussions with the affected people, some of them decided to give us their authorization to file the complaint before the OSPF. But in this complaint, we attached the physical documents, such as ARUM's submission on the RP, proof of delivery of documents to relevant officials (government and ADB), public petition, and proof of communication with the ADB Management over the years.

The Accountability Mechanism National Workshop that was organized by debtWATCH Indonesia supported by the NGO Forum on ADB, in August 2010 in Jakarta, reconfirmed ARUM's intention to reuse the AM with regard to the ICWRMIP case. ARUM continued to do several more consultations with affected people. We also met with ADB's lead official of ICWRMIP and the Indonesian Resident Mission Country Director.

### **Second OSPF Complaint Was Found Eligible**

We sent the complaint of the affected people through email and via registered mail. In January 2011, after an eligibility check mission, the OSPF notified us through email and registered mail that the case was found eligible. They also requested a meeting with the complainants. Aside from that, they visited and checked with other affected people (beside the complainants). They also paid a visit to the head of the village.

From the very start, ARUM and the complainants have requested that the latter's identities remain confidential or undisclosed to guarantee their security. Hence, in the detailed description of the case, the names of the complainants and their home addresses were not posted in the ADB website.

From the onset, ARUM has built a consensus on how to communicate with the complainant. In that sense, a representative regularly communicated the progress of the case to the complainant. This was needed in view of the complainants' psychological condition brought about by their displacement. They have been living in poor conditions. They do not have a decent place to live in. They do not have access to potable water, communication facilities and electricity.

The ADB also conducted a series of consultation with the stakeholders of ICWRMIP, as follows: the

complainants, ARUM as representative of the affected people, the Indonesian Resident Mission of ADB, local government, and a department related to the Citarum River under the Public Works Ministry. The documents containing comments of stakeholders can be seen in the ADB website.

The OSPF has been optimistic that they can act both as facilitator and mediator to settle the existing conflict. As a result, the complainants began to feel so restless since the OSPF (through their facilitator and also through the hired mediator) kept on coming back to them to ask the same set of questions. But they never gave the displaced people any clear response with regard to their complaints, particularly proper compensation.

The restoration program has remained unclear since there was no proper consultation. We are confused about the baseline data that they used in identifying the affected people who would be part of the restoration program. This also meant that they have simply ignored what is written in the ADB policy that states that all potential affected people should be asked about their current/existing livelihood; and that they be provided information about the corresponding livelihood restoration. Collected information as such should serve as basis in crafting the restoration program plan. We have repeatedly questioned the Bank about this. We have been waiting for their answer until now.

The first tranche of ICWRMIP covers only the downstream section of the river basin. Even prior to the project's Board approval, we have been questioning the Bank's consultation process. The OSPF has limited the scope of the complaint and the problem-solving process related to the issue of resettlement. The way in which the OSPF conducted the consultation phase has shown that they only want to deal with the three complainants. This contradicts what they had earlier promised. That they would push for the registration of the 872 displaced households as affected persons in the RP. The OSPF has not taken enough initiative to look into the wider scope of the project's impacts. This is an indication that the project contradicts its name: integrated water resources management.

The OSPF did not take into consideration all the issues of the affected persons. They have asked for proper compensation for their old houses. However,

the OSPF kept on telling them that they do not have any power to provide compensation. One clear example was when these displaced persons requested for some kind of an emergency scheme, given that the current place where they stay is far from water and sanitation access, the OSPF kept saying that the matter was already beyond their mandate. Likewise, they admitted that they cannot even tell the ADB Management to be accountable for any mishandling of the project. That they can only facilitate the problem-solving process. That they cannot do anything to provide any comfort to the complainants and other affected people while the process is on-going.

### Lessons Learned and Recommendations

Basically, ARUM has not been satisfied with the ways and approaches of the OSPF in handling the complaint. According to the OSPF, they treat the complainants as an equal party with the Indonesian Resident Mission, local government, and the body under the Ministry of Public Works (BBWS). But it would be better if the OSPF treat the poor conditions and bad experiences of these broken-spirited people with more sensitivity and urgency. The Bank has frequently ignored or left out project-affected people in relation to its decision-making process, as conveyed in ARUM's comments to the RAR of ICWRMIP case in the Bank's website.<sup>7)</sup> To cite an example, there has to be a special agency that will ensure that regulations favorable to affected people are applied, both at the ADB and government levels. Furthermore, there needs to be a clear mechanism of coordination between the project management agencies. This line of coordination, particularly with regard to the submission of complaints must be clarified to the public, especially the affected people.<sup>8)</sup>

Furthermore, ARUM stated that support must be extended to:<sup>9)</sup>

- The complainants' wish to be prioritized over and above other persons affected by evictions in the resolution process; and
- The complainants' request for compensation for all losses they have incurred from the time of the evictions to the end of the negotiations.

The OSPF had hired the local mediator and translators as OSPF's liaison to the complainants and other parties in Indonesia. There had been two mediators hired and two translators. The first mediator was discontinued from the case due to his insensitive speech and action during the early stage of the problem-solving phase. The second mediator, however, merely performed his tasks based on what was told to him by the OSPF. He did not give the feedback of the complainants to the OSPF regarding some issues raised by the latter. Hence, ARUM found out that the Special Project Facilitator (SPF) had received the wrong information (and the wrong nuance) with regard to the complainants' reactions and opinions. This resulted in the discontinuance of the second mediator's services. Meantime, we learned that one of the translators has taken the role of the SPF's liaison.

In terms of scope, the OSPF's work is mainly focused on the complainant. Unfortunately, the OSPF could not expand its work to include proactively checking on the problems of other affected people. In this connection, we suggest that the Bank come up with a system that would enable the OSPF to proactively check on the conditions of the other 872 households. We view this matter as a clear indication that the ADB has not only failed to foresee the overall social damage (in terms of massive displacement) that this project would cause; it has also failed to put in place a mechanism that would urgently respond to the needs of the affected people, let alone potentially affected people. In this case, the OSPF was not responsive enough to address the affected people's needs. Instead, they have relied solely on the implementing agencies' capacity to respond to the problems of the affected people. Clearly, this was a subtle way of removing the responsibility from the ADB to correct and be responsible to the damages that ICWRMIP Phase I has inflicted on local communities.

The Special Project Facilitator is very strict in following every step of the Consultation Phase as it is written in the AM Manual. The SPF is also restricted when it comes to addressing even the basic problems/concerns of affected people, as well as allaying their restlessness in a humane way.

There were several interesting recommendations from the OSPF. However, they offered no concrete recommendations on how to solve the problems of the displaced persons/households. What was written in Review and Assessment Report (RAR) was basically the conduct of the multi-stakeholder meetings.

Last but not the least, not every meeting was recorded formally and officially. There were no official minutes of meetings that would show agreements reached among the representative (ARUM), complainants, and the OSPF. In spite of several requests from the complainants to get a copy of the minutes of meeting, the request has yet to be provided by the OSPF. With the way the OSPF has handled the case, the Accountability Mechanism needs to be strengthened in favor of addressing the needs and issues of the affected communities. As it

is meant to be the problem solver, in part to hold the ADB accountable, the SPF should have the capacity to proactively pick up the case(s) found on the field, which could cover not only the affected people, but also potentially affected people. This would only happen if the AM allows the SPF to cover not only the complainant(s) or requester(s).

In addition, the Accountability Mechanism should have a human face instead of a purely mechanical/technical process. By listening to their voice, the SPF would be able to pay more attention to and identify/address the urgent needs of the affected people and potentially affected people.

*In essence, one has to bear this in mind: Who needs cellphones if one has lost his/her home? Who needs modern gadgets when he or she has no access to clean water and electricity? ■*

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#### Endnotes:

- 1 ARUM (People's Alliance for Citarum)

People's Alliance for Citarum (ARUM) is a network of Civil Society Organizations and Individuals who are concerned with the Citarum River, so that this river could be used for the people's welfare, as mandated by Article 33 of the Indonesian Constitution (UUD 1945). ARUM has done monitoring work on ICWRMIP since February 2008. ARUM has engaged with the National Planning Bureau, Ministry of Public Works, Office on Citarum River (BBWS), as well as the ADB Management as part of our efforts to get information related to the ICWRMIP implementation plan. ARUM has done analyses of project documents related to ADB operational policies. ARUM has also done field work to monitor the implementation of the project. ARUM is supported by KRuHA (Koalisi Rakyat untuk Hak atas Air), debtWATCH Indonesia, Koalisi Ornop Jabar, E-LAW Indonesia, Perkumpulan Boemi, Walhi West Java, Pergerakan, Inisiatif, PSDK, PBAL, P3MS, Yayasan Lestari, and other individuals.

- 2 <http://pid.adb.org/pid/LoanView.htm?projNo=37049&seqNo=01&typeCd=3>

- 3 Source: <http://www.adb.org/Projects/summaries.asp?query=&browse=1&ctry=INO&sctr=3000&sctr=3800&sctr=3900&stat=1&type=1&type=2&type=3&type=4>

- 4 Up until now, ADB has made 35 policies, for complete one can be seen in <http://www.adb.org/Development/policies.asp>

- 5 The report was made by L. Diana Gultom (debtWATCH Indonesia), Arimbi Heroepoetri (E-LAW Indonesia) and Hamong Santono (KRuHA), and supported technically (edited) by BIC. Rezki Wibowo from Transparency International Indonesia supported the Anti Corruption Framework, while Prof. Wijanto Hadipuro from Soegijapranata University supported IWRM analysis.

- 6 Public Communication Policy (PCP) ADB, 2005

- 7 <http://beta.adb.org/sites/default/files/ARuM-comments-english.pdf>

- 8 Ibid.

- 9 Ibid.

## PHILIPPINES

Hounded by Controversies:

# The Visayas Base-Load Power Project

By Jose Aaron Pedrosa, Jr.  
Secretary-General, FDC-Cebu

### Project Background

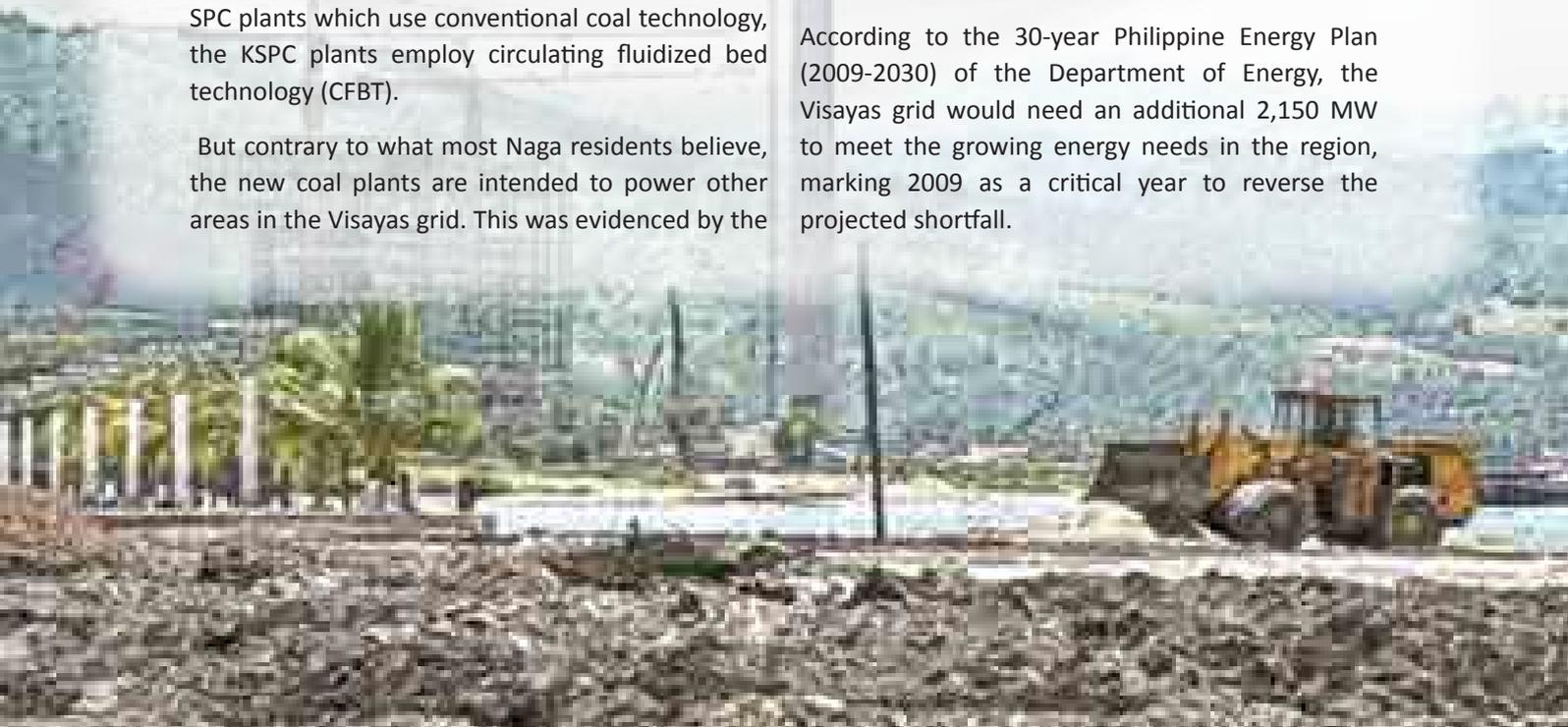
The *Visayas Base Load Power Project* is a joint venture private sector project of the Korean Electric Power Corporation (KEPCO) and Salcon Power Corporation (SPC), now jointly called KSPC, that will put up a 200-megawatt (MW) coal-fired power plant in Naga City in the Province of Cebu. The Project also involves the operation of this coal plant that sits on a 100,000 square meters of land in the *barangay* (district) of Colon.

Situated 20 kilometers away from the provincial capital of Cebu City, the KSPC plants have been built within the residential area of Naga City proper and are proximate to schools, government offices and the Naga Parish Church. In addition, the new coal-fired power plant is located across two 50-MW coal plants operated and managed by SPC. Unlike the SPC plants which use conventional coal technology, the KSPC plants employ circulating fluidized bed technology (CFBT).

But contrary to what most Naga residents believe, the new coal plants are intended to power other areas in the Visayas grid. This was evidenced by the

power sales contract (PSCs) entered into by KSPC with electric cooperatives in Leyte and Negros. This means that the 28 *barangays* of Naga City will have to source their power from other generating plants. This also means that for Naga's population of 95,16 the benefit, if any, of hosting the coal plant does not include power supply.

According to the 30-year Philippine Energy Plan (2009-2030) of the Department of Energy, the Visayas grid would need an additional 2,150 MW to meet the growing energy needs in the region, marking 2009 as a critical year to reverse the projected shortfall.



It was in this context that the Asian Development Bank (ADB) approved KSPC's US\$ 120 million loan to finance the construction of the plants in 2009. The loan comes in addition to the US\$ 100 million loan KEPCO secured from the Korean Export and Import Bank (KEXIM).

### Project-Related Issues

Since 2003, various Cebuano groups, including Freedom from Debt Coalition (FDC)-Cebu and its member organizations, have expressed strong opposition to the establishment of a coal-fired power plant in the province. KEPCO originally trained its sight on nearby Panay Island only to be rejected by the people there and by the Provincial Government. Unlike the officials of Panay Island, Cebu's officialdom facilitated the construction of the coal plant in the province, hence, the bid to put up a coal plant in the island found fruition.

The resistance was mainly anchored on the health and environmental effects posed by the construction and operation of coal plants. An FDC-Cebu study, *"Financing Naga's Coal-fired Power Plant,"* cited other issues related to social acceptability, economic viability and mechanisms internal and incidental to the operation of the KEPCO coal-plant. The study used KSPC's environmental impact assessment (EIA) as a reference point.

Under the Philippine Environmental Impact Assessment System (Presidential Decree 1586) and reinforced by subsequent issuances from the Department of Environment and Natural Resources (DENR), social acceptability is a core component in the EIA. Hence, public consultations and scoping are held in the process.

In a survey conducted by FDC-Cebu majority of Naga residents, while aware of the existence of the KSPC coal plants, are uninformed as regards the impact and effects of such plants. Meanwhile, a focus group discussion with select Naga residents disclosed that even residents of Colon (the site of the KSPC plants) were not consulted about the project.

Another bone of contention is the economic viability of the project. While it is true that coal

plants have a shorter commissioning period, there is no guarantee that it will be cheaper in the long run. Under KSPC's summary environmental impact assessment (SEIA), about 90 percent of the coal will be imported. The coal requirements will be mainly sourced and shipped from Kalimantan, Indonesia, which is known for its fine grade coal. KSPC's coal will be supplied by *PT Kideco Jaya Agung*, *PT Kasih Industri* and *PT Surya Sakti Darma Kencana*. Qualified local suppliers will also be tapped for the coal requirements of the plant

FDC-Cebu has argued for more investment in renewables because unlike coal plants, the supply for clean power fuels (i.e., wind, hydro, tidal, etc.) is infinite. Coal plants only appear to be more viable than renewables because costs are externalized as explained by Professor Glen Martin Green of the USC Biology Department.

The so-called "clean coal technology" offered by CFBT is also a myth. Engineer Vic Obando, one of the project-affected persons, explained that the technology used by KSPC cannot arrest the emission of carbon dioxide (CO<sub>2</sub>), a greenhouse gas (GHG) that is the leading cause of Climate Change. The same is true for a host of other GHGs such as carbon monoxide, sulfur oxide, etc.

Another issue raised against the project is the coal plant's lack of a coal ash disposal facility. Even after it was inaugurated by President Benigno Aquino III on June 28, 2011, the place has no coal ash dumping site yet.

In addition, the proposed secured landfill contracted by the Cebu Provincial Government is currently under litigation for indiscriminate dumping of coal ash. The Memorandum of Understanding inked between the Cebu Capitol and KSPC for the lease of a 25-hectare dumpsite (for US\$ 1 per ton of coal ash) was rescinded when it was discovered that more than 80 percent of the area was submerged. Under Philippine laws, submerged lands belong to public domain and thus could not be made subject of conveyance. That the Cebu Capitol was able to



purchase the said parcel of land for PhP 98 million is now a matter pending before the Office of the Ombudsman.

Further, a temporary environmental protection (TEPO) has been issued by the environmental court of Mandaue City prohibiting the dumping of coal ash outside the premises of both SPC and KSPC plant sites.

In December 2010, FDC-Cebu filed a request before the Office of the Ombudsman Visayas to investigate the irregularities surrounding the purchase of the proposed coal ash dumpsite. It must be noted that the request was on top of the existing complaints filed by environmental groups and anti-corruption crusaders.

In the same month, FDC-Cebu also lodged a complaint before the Commission on Human Rights (CHR) in Region 7 to investigate possible human rights violations as follows: (i) for disenfranchising the community in the public scoping process; (ii) for sidelining human rights in the project contrary to what has been mandated by the Department of Interior and Local Government; (iii) for the indiscriminate coal ash dumping around Naga and (iv) the consequent health and environmental hazards posed by the operation of the KSPC plants as violative of the constitutional right to a healthful ecology.

As of this writing, CHR-7 is preparing its endorsement to the Ombudsman for the filing of criminal charges against concerned elected and appointive officials.

On several occasions, all these issues have been brought to the attention of ADB officials. Still the Bank decided to approve the US\$ 120 million loan application of KSPC in December 2009.

## Efforts Related to the Accountability Mechanism (AM)

FDC-Cebu conducted a study on the KSPC's compliance with the EIA proces joint undertaking with the NGO Forum on ADB, it was completed September 10, 2011.

The study employed a three-pronged approach: (i) conduct of focus group discussion with select Naga residents; (ii) conduct of a perception survey in Naga; and (iii) holding of a roundtable discussion with a panel of experts. This approach was complemented by research work on the ground and a series of validation fora in three academic centers in Cebu City, namely University of San Carlos, Cebu Normal University and University of the Philippines Cebu College.

Several meetings with ADB representatives were held:

1. Meeting with Mary Abad of ADB and NGO Forum on behalf of FDC-Cebu on September 23, 2009 requesting for a monitoring visit by the project officer on two matters: the identified site for coal ash disposal and indiscriminate coal ash dumping of SPC.
2. Meeting with Mary Abad and her team with a number of residents regarding the following issues: identified coal ash disposal site, non-disclosure of project information/documents such as EIA, lack of consultation in the beginning of the project, and other adverse impacts of the project.
3. A letter was sent to ADB President Haruhiko Kuroda dated December 2009 outlining the issues raised by the community regarding the project.

*Conveyor belt is ready to unload Indonesian Coal prior to the Coal Plant construction*





*Land of Controversy: Local communities discussing their uncertain future in view of the controversial Coal Plant.*

4. Meeting with Ms. Kurumi Fukaya, ADB Principal Investment Specialist, together with other specialists about the issue of coal ash disposal, specifically the identified Balili property.

In the said meetings, FDC-Cebu was able to raise several issues and concerns surrounding the ADB-financed project. Despite this, there was no definitive position or statement from the ADB representatives as to whether the matters raised would be addressed.

Since FDC-Cebu is part of the NGO Forum on ADB network, the former was able to access information on the experiences of other Forum members in their engagement with ADB's Accountability Mechanism (AM). FDC-Cebu then consulted with Naga residents whether they were interested to formally elevate their issues before the ADB through its AM.

In February 28, 2011, Naga residents represented by FDC-Cebu filed a complaint before the Office of the Project Facilitator (OSPF) via email. Appended to the complaint were (i) the minutes of the Meeting with Fukuya; (ii) Letter to ADB President Kuroda; (iii) Naga Comprehensive Land Use Plans; (iv) Notice to Sue; (v) Bishop of Bacolod's Letter to the ADB President; (vi) FDC Cebu Study with Appendix; and (vii) Department of Health's (DOH) Memo on the hazards of coal ash/dust.

The petition of the Philippine Earth Justice Center (PEJC) against the indiscriminate dumping of coal ash was also mentioned in the complaint and

included as one of the attachments that would be provided at a later date.

The transmittal of the complaint marked the first time that FDC-Cebu and the complainants communicated with the OSPF. On March 1, 2011, the Special Project Facilitator (SPF), communicated through a cellphone call to confirm the complaint's registration. He likewise announced the possibility of a visit to Cebu to talk to the complainants. The acknowledgment was also sent via email and registered mail.

Five days later, the SPF, his staff and an interpreter (who was requested by FDC-Cebu) met with the group in Cebu. They oriented the latter about the AM process in general and the processes relative to the Consultation Phase. They also furnished printed materials to FDC-Cebu. On the other hand, the SPF received the PEJC petition at the meeting.

On March 7, 2011, the OSPF team together with FDC-Cebu met with the complainants in Naga City. The meeting was preceded by a tour around the coal ash dumping areas. The group also attempted to enter the premises of the (Balili) coal ash disposal facility in Tinaan, Naga but they were barred by the guard on duty.

At the meeting, the OSPF explained the AM process to the complainants as well as verified their respective identities. They also verified the authenticity of the complaint.

On March 17, 2011, the SPF personally informed FDC-Cebu about the eligibility of the complaint. A

formal notice was sent later. The fact of registration was immediately relayed to the complainants who were elated with the outcome.

The OSPF disclosed that a mediation team would be sent to Naga for the problem-solving process. FDC-Cebu met with the complainants to discuss preparations for the meeting with OSPF.

On April 11, 2011, the OSPF, accompanied by mediator-consultants from CoRE Group Foundation, met with FDC-Cebu and the complainants in Naga City. But before proceeding to the meeting with the complainants, the OSPF and the CoRE consultants met first with a KSPC representative.

At the meeting with the complainants, the consultants began their explanation of the mediation process by citing their supposed credentials and background in mediation.

Throughout the meeting, it was observed that the CoRE consultants were not able to read the entire complaint including the attachments in full. For example, they asked the complainants to provide proof pertaining to the issue on health problems associated with the operation of the plant. The health data provided by the local health unit was appended to the complaint for reference. The complainants also resisted the idea of meeting with government officials as this would defeat the confidentiality accorded to them by the OSPF.

Two days after, the complainants sent an email to the SPF manifesting their disappointment with the mediation process and the conduct of the CoRE consultants. They also informed the SPF of their decision to withdraw from the mediation.

Within a day or two after the meeting, some of the consultants visited at least two of the complainants at their places of residence. One of those visited disclosed that the consultants tried to discredit FDC-Cebu as being unqualified to represent them. This was interpreted by the complainants as an attempt to divide them. The gesture of offering presents (in the form of cakes) to the complainants during the said visit was interpreted as an attempt to influence the mediation.

On April 28, 2011, the Review and Assessment Report (RAR) was personally delivered by the OSPF staff to FDC-Cebu and all the complainants. The report was in both English and Cebuano languages. It contained the proposal from the OSPF to pursue mediation and conduct capacity-building activities with the complainants.

The complainants have insisted that they be furnished with the RAR ahead of the project proponent for them to be able to comment. But as explained by the SPF, the report will not be modified even if the complainants differed with it. The same was true for the final report. Hence, the complainants decided not to have the RAR and the final report posted on the Bank website at all.

The final report was release on June 16, 2011.

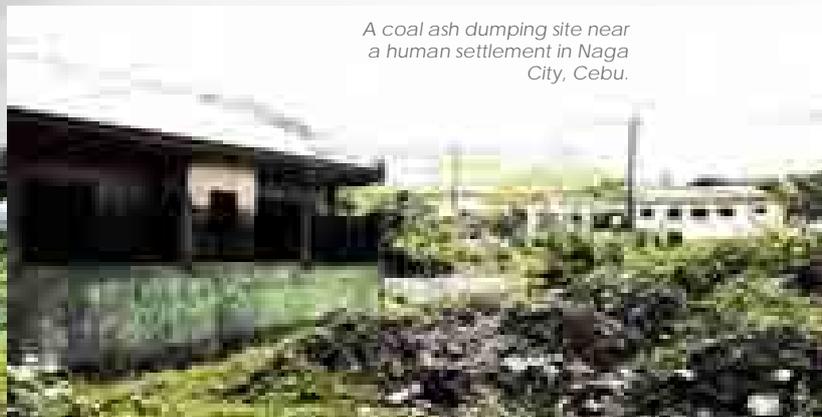
### Status of the Affected Communities to Date

There were only two instances when the OSPF officially met with FDC-Cebu and the complainants. These occurred on March 7, 2011 and April 11, 2011. The meetings only included the actual complainants to the case. The larger community, especially those

*The Coal Plant dumps toxic coal ash in a residential area).*



*A coal ash dumping site near a human settlement in Naga City, Cebu.*



situated near the KSPC coal plant facility and the coal ash dumpsites, were not a party to any of the meetings.

### Comments/Recommendations /Lessons Learned

Whether or not the OSPF was effective in addressing the concerns raised in the complaint could hardly be answered since there were only two meetings conducted. The RAR, while acknowledging the legitimacy of the concerns, prescribes capacity building and a series of consultations with all stakeholders.

As aptly raised by the complainants in the April 11, 2011 meeting, the discussion should have happened seven (7) years ago when the plan to build a coal-fired power plant was still in the drawing board. What the complainants were yearning for were: (i) disclosure of all pertinent project documents and information; (ii) the conduct of an alternative EIA for them to be fully informed of the effects of the coal plant operation and the mitigation measures that KSPC would employ and; (iii) on a higher plane, holding individuals accountable for the possible violations of relevant domestic laws. Clearly, problem-solving through capacity building and consultations is a prognosis on the wrong direction.

In short, the Consultation Phase was not responsive to the issues raised by the complainants.

The OSPF should, as a matter of policy, avoid devolving the task of mediation to consultants who are rather bent on only striving for good mediation/settlement than actually arriving at viable solutions to complaints raised. That the CoRE consultants spoke to KSPC ahead of the complainants and came ill-prepared to the meeting reflected their scant regard for the complainants. The attempt to influence the mediation process by singling out complainants, paying them house visits, and offering

them simple tokens, highlights the seeming lack of independence and integrity of the entire process.

### Compliance Review Panel (CRP) Case

Having forgone the Consultation Phase, the complainants proceeded to CRP by filing a request for compliance review before the Office of the Compliance Review Panel May 25, 2011. The same was acknowledged and registered on June 2, 2011. The request was found eligible on June 20, 2011.

The prior intervention of OSPF proved wanting since most of, if not all, the issues raised were at the policy level. The decision to extend a loan to KSPC, despite all the issues raised, as well as having exhausted all ADB channels to caution the Bank against approving the said loan, was a matter that concerned the ADB itself and for which it must be held to account for possible infractions of its own rules and policy. This was the reason why the complainants decided to pursue the Compliance Phase of the AM.

On May 15, 2011, upon the request of FDC-Cebu which represents the complainants, the NGO Forum on ADB held a seminar on the operational policies of the ADB that are relevant to the KSPC project in Naga City. This was to determine whether or not there was a violation of the Bank's policies during the preparation and construction of the project. A general discussion on the AM was also provided to apprise the complainants of the possible remedies available to them.

The complainants were also able to gather signatures in support of their call to hold ADB accountable.

Attached to the request were the OSPF attachments as well as the signatures and documents that were issued during the consultation phase.

At present, the complainants await the conduct of the monitoring visit by the CRP. ■

# Confronting the Roadblocks to the Bishkek-Torugart Project

(CAREC Transport Corridor 1)

By Maya Eralieva, NGO Forum on ADB

## Introduction

The Asian Development Bank (ADB) is one of the frontrunners in regional cooperation and integration in Asia-Pacific and sees its catalytic role as significant in the region's growth and prosperity. The Bank aggressively postures itself as a coordinator for economic cooperation in the different sub-regions, including Central Asia and South Caucasus. Since the launch of the Bank-initiated Central Asia Regional Economic Cooperation (CAREC) in 1997, economic cooperation in the region has been focused on transport, energy and trade facilitation. And in keeping with CAREC's objective of promoting economic cooperation and facilitating trade, road infrastructure projects are requisites.

The *Bishkek-Torugart Road Project* is part of the *CAREC Transport Corridor 1*. This is an important regional route that links Kyrgyz Republic with the People's Republic of China (PRC) and other Central Asian (CA) countries, Russia and further Europe.<sup>1</sup>

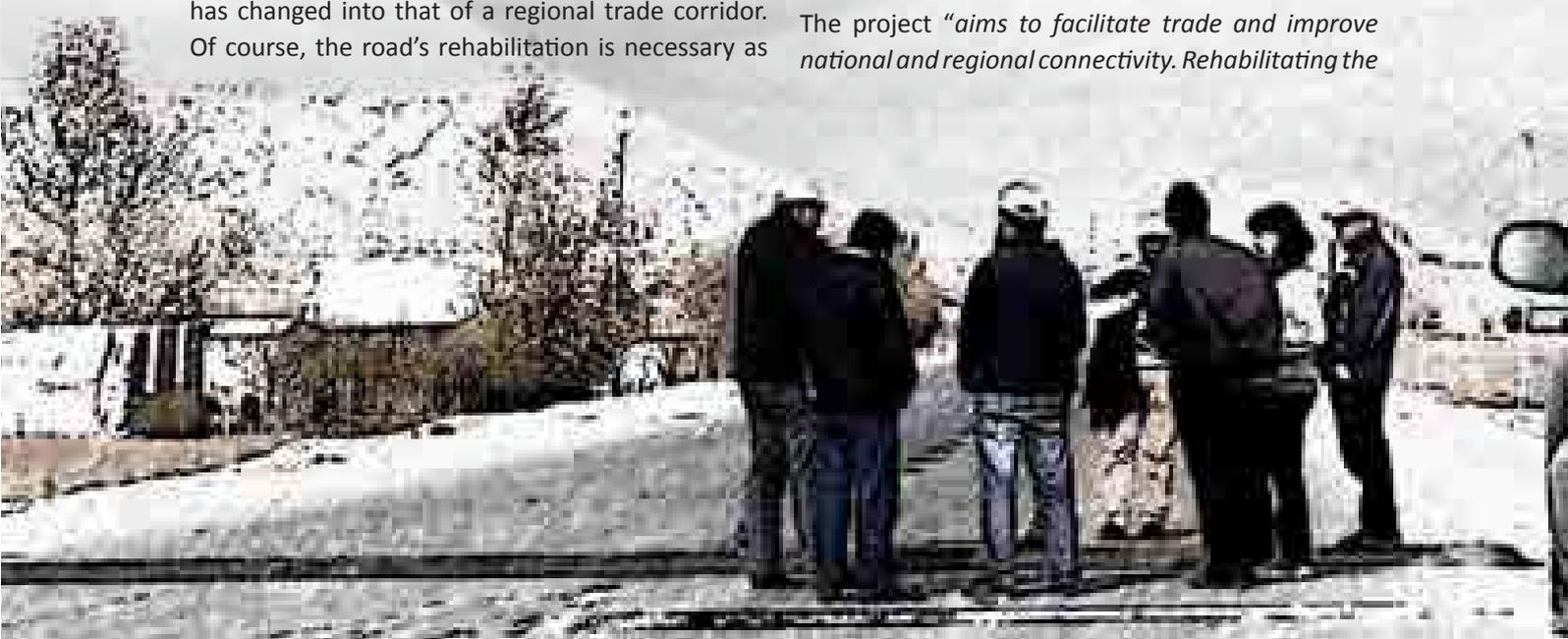
Given that the Bishkek-Torugart Road had national and oblast importance in the past, today its role has changed into that of a regional trade corridor. Of course, the road's rehabilitation is necessary as

it was totally destroyed due to frequency of heavy freight, increased number and volume of cargo, as well as delays in its maintenance. Many but not all were happy with the project.<sup>2</sup>

## Background of the Bishkek-Torugart Road Project

The project *"aims to facilitate trade and improve national and regional connectivity. Rehabilitating the*

NGO Forum discusses the new road safety measures with contractors and MOTC representatives.



*road will increase speed and reliability of passenger and freight flows and create business opportunities in the adjacent area, one of the poorest parts of the country. The investment will also cut transport costs. The Project's primary impact would be increased regional trade, particularly between the Kyrgyz Republic and the PRC, which will lead to less poverty in the Naryn oblast. The whole road rehabilitation will cost approximately US\$300 million.”<sup>3</sup>*

Under the Country Development Strategy on Transport Sector Development 2007-2010, the Kyrgyz government identified the Bishkek-Torugart road stretch for rehabilitation. ADB is the lead partner in developing the transport sector in the Kyrgyz Republic. The 500-kilometer road project is expected to be completed in 2012. The executing agency is the Ministry of Transport and Communications (MOTC). The Investment Projects Implementation Department is the Project Implementation Unit (PIU) in behalf of the recipient (represented by the Ministry of Finance). ADB's Transport and Communications Division of the Central and West Asia Department (CWRD) is the loan administering division.

In its social and safeguards assessment, the Bank has claimed that the project has limited or no impact in terms of Involuntary Resettlement (IR) and Indigenous People (IP). However, the NGO “Bugu-Maral” identified several people affected by the project. They have requested for compensation for lost shops, destroyed trees, and relocation costs, which include measures to restore their former living standards. According to an affected person, “We did not know that the government finally decided to rehabilitate Bishkek – Naryn road until construction works started near our village. We did not think that our shops would somehow be an obstacle for construction of the road. If I knew that it would be such way, I would not buy the shop and take a loan to run it. Now, I do not even know how I

*will pay the loan, as my shop is not working and do not have my other job.”*

The complainants tried to resolve the issue with the PIU and Executing Agency (EA) together with the ADB Project Coordinator. The letter, containing the concerns of affected people, was submitted to ADB Management in July 2010. The response from PIU, however, was that the shop owners were not eligible to be compensated according to Kyrgyz laws.

Having received such a response from the Kyrgyz Government, and with the guidance of NGO Forum on ADB, the affected people filed its first complaint before the Office of the Special Project Facilitator (OSPF) on September 7, 2010. After receiving no response from the OSPF, the affected people filed the complaint for the second time on September 20, 2010. After 63 days upon filing of the complaint, the OSPF staff visited the project site and met with the affected people. In November 2010, the complaint was determined as eligible.

### **Engaging with the Bank's Accountability Mechanism**

On August 24, 2010, “Bugu Maral”, an NGO based in Naryn and a member of the NGO Forum on ADB, helped affected people send their concerned letters to MOTC and ADB project coordinator. Since the issue was urgent (the affected people were only given a few days to demolish their buildings), and with the project coordinator on vacation, the complaint letter was sent to the ADB Transport and Communications Division director. The ADB officer responded that MOTC would handle the issue and informed the project-affected people to wait until August 31, 2010. The official response from MOTC came on September 7, 2010. Below was their response to some of the issues contained in the complaint:

Affected people living along the road attend a public hearing on land acquisition relative to the Bishkek-Torugart Road Project.



Question # 2: *“Mr. X willfully occupied and planted trees on 80 kilometers of land that belongs to the Government. Based on Act dated August 26, 2010, Mr. X obliged to let go the land for the widening of the road.”*

Question # 3: *“The shop located at the bus stop of Kara-Bulung village (on the right side of the road) was constructed on January 23, 2003. The renting period for the shop lapsed on January 23, 2008 and the renting agreement was not extended. According to Kyrgyz Government Decree) dated August 26, 2010, the shop building should be demolished and without compensation provided to the owner. This is in compliance with Kyrgyz Republic legislation.”*

Question # 4: *“The shop “Bakhtier” located at bus stop of Kara-Bulung village (on the left side of the road) was constructed on June 11, 2008. Unfortunately, the rental payment for the land was not paid to the local transport department, where the shop is located, in the years 2009 and 2010. Since there were violations on the rental agreement, based on the Decree dated August 26, 2010, the shop building should be demolished without compensation provided to the owner. This is in compliance with Kyrgyz Republic legislation.”*

Upon receiving such a response from the MOTC, the complainants decided to send their complaint to the OSPF in September 2010. The complainants raised the issue of loss of property due to the road improvement project. OSPF acknowledged receipt of the complaint on September 22, 2010.

To determine eligibility of the complaint, OSPF fielded a mission (first mission to project site) in Kyrgyz Republic. The mission took four days (from November 5 to 8, 2010). The OSPF confirmed that the complainants were losing property because of the road project. On November 12, 2010, the OSPF declared the complaint eligible.<sup>4</sup>

The Consultation Phase is designed to involve all stakeholders (ADB management, executing agency representatives and affected people) to find solution of the existing problem stated in the complaint. The solution should be based on consensus and be cost effective. In order to resolve the complaint within a very short time period (given that the problem was so evident and clear) OSPF decided to shorten the consultation process and organized a multi-

stakeholder meeting during OSPF’s second mission to the country. The multi-stakeholder meeting took place on December 6, 2010. An “agreement” to be signed by all parties, where the course and timeline of action plan has been designed, was prepared during the meeting.

Despite OSPF’s constant communication with the Kyrgyz Government through the MOTC all throughout the consultation period, coupled with a special briefing on Safeguards conducted by specialists for the MOTC, the Ministry did not support or sign the said “agreement.” The government’s excuse was that since the “agreement” is to be signed by the Kyrgyz Government with an international institution like the ADB, then the “agreement” has to undergo ratification by the Kyrgyz Parliament (which was freshly elected at that point).<sup>5</sup>

In January 2011, the affected people received the Review and Assessment Report with the Course of Action and proposed schedule. They were supposed to get compensation before the end of March 2011. But, this Course of Action was not also implemented. The Kyrgyz Government decided to go with its own way based on Kyrgyz legislation and established an intergovernmental commission tasked to make an assessment of the affected people’s property. The findings of this commission have not been disclosed until now. The only information disclosed was that more affected people have been identified.

On April 14, 2011, after the “forth” OSPF mission (“fourth” since the originally scheduled third mission in January 2011 was not supported by the Kyrgyz Government. Thus, the OSPF postponed it to April 2011.), the affected people received the new Action Plan. The new schedule of compensation payment was on October 2011.

The new Action Plan also stated that the Prime Minister of the Republic would set up an interdepartmental commission tasked to: (i) prepare a list of properties that falls into the right of way (ROW); (ii) prepare a report of the agreement with the At-Bashy District Council (where affected communities are located); and (iii) submit their conclusions to the Government. The Chairperson of this commission was the State Secretary in MOTC.<sup>6</sup>

The commission went to the project area and prepared a list of properties. They concluded that a

total of 31 persons have been identified as affected people, including the three OSPF complainants. The impact has been identified in two sections of the road: from Kilometers 409 to 411; and from Kilometers 417 to 419. The OSPF gave its assurance that all 31 affected persons would be treated equally during the Land Acquisition and Resettlement Plan (LARP) preparation and implementation.

The Course of Action mentioned that MOTC and CWRD have been in close contact over the last few months to assure a timely LARP preparation and implementation while at the same time allowing road construction to resume in sections without impact. MOTC and CWRD agreed that no construction would take place in the two impacted sections until the LARP implementation has concluded and compensation has been paid. Meanwhile, a resettlement specialist has been recruited to support the MOTC safeguards team in the preparation of the LARP.

CWRD was assigned to provide support to MOTC in the preparation of the LARP, and conduct capacity building. MOTC was supposed to follow the requirements as provided in Kyrgyz laws and regulations, and as specified in the ADB Policy on Involuntary Resettlement (1995). The LARP implementation schedule was agreed between CWRD and MOTC and was part of the course of action.

The affected people have complained that tension in the village was growing due to threats from the PIU staff (they were told that the village would be left without a new road). In view of this, concerned parties have suggested additional activities to support the timely preparation and implementation of the LARP; improve communication; enhance understanding; and provide involved persons with skills needed in the LARP process. These activities took place in the second half of May 2011 and included:

Two 2-hour orientation sessions for members of the interdepartmental commission on: (i) the ADB Safeguards Policy Statement; (ii) the grant agreement between the Government of the Kyrgyz Republic for the project; (iii) the ADB Accountability Mechanism; and (iv) principles of communication, disclosure of information, and conduct of meetings.



*Forum staff and interns stand in front of an affected person's new shop. They visited the project site to interview some of the affected people.*

Two ½-Day orientation sessions for the two impacted communities, local leaders, elders, village organizations, members of the village council, the local police, members of the interdepartmental commission based in Naryn, members of the provincial (oblast) advisory committee,<sup>7</sup> the provincial (oblast) ombudsman,<sup>8</sup> district (raion) parliament members, and local NGOs on: (i) the ADB Safeguards Policy Statement and the Accountability Mechanism; (ii) the grant agreement between the Government of the Kyrgyz Republic and ADB for the project; (iii) Kyrgyz laws and regulations; (iv) principles of communication, disclosure of information, and conduct of meetings, and; (v) the design, status and deadlines for the road construction.

One-day training for commission members, the MOTC safeguards specialists and other participants (to be specified) on communication and negotiation skills.

Two -day training sessions for the two impacted communities, local leaders, elders, village organizations, members of the village council, the local police, members of the interdepartmental commission based in Naryn, members of the provincial (oblast) advisory committee, the oblast ombudsman, district (raion) parliament members, and local NGOs on communication and negotiation skills.

## Lessons Learned

Eleven months from the original date of complaint submission, the shop owners and tree owners finally received their compensation. We believe that all of them underwent and experienced a good learning process. Although both the independent evaluation of the property and the public hearings on LARP have involved outspoken affected communities, there are still a number of remaining gaps and challenges that face the affected people. And these should urgently be heard and addressed by the decision-makers.

We believe, too, that this case was also a significant learning experience and exposure for the MOTC itself. The Ministry was able to implement ADB safeguard requirements without violating or conflicting with Kyrgyz legislation. We sincerely hope that because of this entire experience, future development projects (especially those funded by the Bank) would become more inclusive of the

participation/involvement of different stakeholders, most especially the affected communities, in the decision-making process. That the fundamental rights and welfare of affected people must be respected and upheld by proponents and implementers of development projects.

We would like to think, likewise, that the ADB Management has somehow benefited from this complaint. From our viewpoint, the relations between the Kyrgyz Government and ADB have evolved into a better understanding of their respective systems, requirements and processes. Although the running cost for the continued site visits, meetings, communication and consultations with all concerned parties have actually been a hundred times higher than the compensation for the affected persons, we think that the crucial learnings gained from this entire process by all stakeholders outweigh the expenses that have been incurred. ■

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### Endnotes:

- 1 Report and Recommendation of the President to the Board of Directors: Proposed Loan to the Kyrgyz Republic for the CAREC Transport Corridor 1 (Bishkek-Torugart Road) Project 2. Manila. Loan 2533-KGZ <http://www.adb.org/Documents/RRPs/KGZ/42399-KGZ-RRP.pdf>
- 2 "Bishkek-Torugart Road: A Conflict Between Safeguard and Country System Approach" by Ulan Naamatbekov, December 19, 2010  
<http://www.forum-adb.org/inner.php?sec=4&id=199&b=1>
- 3 <http://pid.adb.org/pid/LoanView.htm?projNo=42399&seqNo=01&typeCd=3>
- 4 <http://beta.adb.org/site/accountability-mechanism/complaint-registry-region?region=central-west>
- 5 "Bishkek-Torugart Road: A Conflict Between Safeguard and Country System Approach" by Ulan Naamatbekov, December 19, 2010, URL: <http://www.forum-adb.org/inner.php?sec=4&id=199&b=1>
- 6 The decree is dated 24 February 2011 in Kyrgyz and Russian language and is shown in attachment 1 together with an unofficial English translation.
- 7 The provincial advisory committee is a local mechanism established as part of the UN Peace Development Program in the Kyrgyz Republic, trained in conflict analysis, conflict prevention and reconciliation, headed by the governor of a province and including among others members of civil society, media, law enforcement and the provincial ombudsman.
- 8 Under the Kyrgyz Constitution 2003, ombudsmen have been established at national and provincial levels. Their responsibilities include the protection of citizens' rights.

*A shop of one of the affected people that has not been registered and is not functional.*



# Will CAREC Transit Corridor Give Safe Passage to the People and Livestock of Zhambyl Oblast?

OSPF conducts a mission on the project site to determine eligibility of a complaint and to meet with communities living along the road.

By Maya Eralleeva, NGO Forum on ADB

Considered as the largest infrastructure program in Kazakhstan to date is the Central Asia Regional Economic Cooperation (CAREC) Transport Corridor I (Zhambyl Oblast Section) Investment Program. Otherwise known as the *Western Europe–Western People’s Republic of China (PRC) International Transit Corridor (MFF 0024-KAZ)*,<sup>1</sup> this investment project seeks to improve the country’s road system with the construction of bypasses and new alignments to make the corridor suitable for international traffic. The program would catalyze sustainable economic growth, capacity development, and private sector development, as well as foster physical infrastructure development, institutional development and policy reforms according to project proponents.

## Background

Leading this massive undertaking is the Asian Development Bank (ADB), which has teamed up with the Islamic Development Bank (IDB) and the Japan International Cooperation Agency (JICA) in financing the 480-kilometer road network improvement in the southern part of Kazakhstan. The entire Transit Corridor I Program has a total investment package of about US\$ 6.7 billion. For the Zhambyl Oblast Section alone, the ADB, IDB and JICA are jointly funnelling about US\$ 1.48 billion in funds, of which the ADB’s share amount to US\$700 million. This investment program will come through a multitranche financing facility (MFF) that was approved on November 12, 2008. The other

financiers of the entire road corridor development program include the World Bank and the European Bank for Reconstruction and Development (EBRD).

On December 30, 2008, ADB approved the loan’s first tranche amounting to US\$ 340 million for the improvement of the 125-kilometer highway between Taraz and Kordaz.<sup>2</sup> The second tranche of US\$ 187 million was approved on October 7, 2009 to reconstruct 79 kilometers of highway section. The Ministry of Transport and Communications (MOTC) is the executing agency, and the Committee of Roads under Ministry of Transport and Communications (MOTC) is the implementing agency. For Project II of the program, the Zhambyl Oblast Committee of Roads has been designated as implementing unit.

ADB's Central and West Asia Department - Transport and Communications Division is administering the program.

### **Case Filed Before the Office of the Special Project Facilitator<sup>3</sup>**

On November 5, 2009, the Office of the Special Project Facilitator (OSPF) received a complaint from Janaturmis Settlement, a village under the second tranche of the project.<sup>4</sup> The two complainants, representing at least 30 other affected villagers, raised the issue of the availability of two passages for their cattle as well as a bridge for their agricultural machinery, which they have requested during a public consultation in March 2009. Specifically, the complainants expressed concern on the following: having access to grazing pastures for their livestock; having a safe passageway for their equipment; having adequate flow of water from the south side to the north side of the road corridor where their village is located; and having safe access to the highway itself (that includes relevant road signs). According to the complainants, they have not been given enough assurance that the aforementioned requests would be granted. This was confirmed in a September 2009 meeting with the local government authority representative (Akim) who told the dwellers that he was not aware of such information. Further, the dwellers cited that they need to obtain more information about Project II of the CAREC Transit Corridor I Investment Program.

The non-government organizations (NGO) Taraz Press Club facilitated the complaint. The OSPF registered the case on November 10, 2009 and determined it eligible on December 3, 2009. A review and assessment was conducted from January 17 to 28, 2010.

### **Monitoring of Case against Project II of the CAREC Transport Corridor I Program**

The Monitoring Group undertook a number of visits to the project site, namely, Riskul, Merke and Baizak project sites. In May 2009, the group participated in public hearings that were conducted in Kulan and Merke settlements. Their findings were submitted to Road Department office in Jambil Province and the ADB regional representative. The report was also released to the local media of Taraz Town in Jambil Province.

In September 2009, the Monitoring Group continued with the monitoring process and attended a public hearing on the availability of the project's Environmental Impact Assessment (EIA) and the Environmental Monitoring Plan (EMP) to the local dwellers/residents along the highway. Project II, specifically, covers the road section of Kilometer 310 to Kilometer 404 in T. Riskul Merke rayon (territorial unit). The Monitoring Group also studied Kilometer 1004 to Kilometer 1123 along the Termez-Almaty highway. The Group also informed the local dwellers of their right to know about the negative impacts of the project and the corresponding mitigating measures.

### **EIA and EMP Documents Were "Eight Months Late"**

It is important to note that information related to the EIA and EMP documents was provided to local communities eight months after the first public hearing took place on January 13, 2009. Thus, the consultation participants from Kulan and Merke rayons were ill-prepared and not able to participate well in the discussions. They could not voice their recommendations, much less insist on any changes

in the documents that they have never seen nor read. They simply did not understand the full significance and implications of the public hearing.

Case in point: By September 23, 2009, not a single public/government office including the local administration offices, community libraries, rayon akimat, rayon justice department and rayon library had the EIA and EMP documents. The rayon library could not even access the documents from the website of the MOTC. Thus, the local dwellers were deprived of the opportunity to read and analyze these two important documents prior to the public hearings. With the absence of the EIA and EMP, officials from the local, rayon and country district levels could not provide reliable and satisfactory information to the affected villagers during these consultations.

The task group under the Jambil Province NGO Coalition for project civil monitoring cited the failure of project executors at the local level (representatives of departments and local executive authorities) to comply with the ADB Public Communication Policy (PCP), especially with respect to the public disclosure of the project's EIA and EMP. This violation of the PCP has resulted in poor awareness among local dwellers about the project. It had created misperceptions among them about the actual importance of the public hearings. Further, the non-compliance of the Policy had seriously undermined their participation in the implementation of the EMP during the road construction.

In view of this serious matter, the Monitoring Group approached the ADB Resident Mission in Astana and the Motor Road Committee under the MOTC. Unfortunately, they received no response from these offices. The Monitoring Group also requested the EMP Action Plan for the T. Riskul rayon in Jambil Province from the Ecology Department, Forestry and Hunting Territorial Inspection Department under the Sanitary and Epidemiology Control State Committee. This time, they received an official response. The Monitoring Group proposed that they be allowed to participate during contract-signing with the engineering contractors so that they could comment on the technical specification of such contracts. But the said proposal was ignored by the aforementioned offices.

## **Proposals of Local Dwellers Were Ignored**

The topics that were most comprehensible and urgent for these complainants were those that dealt with the development of cattle-driving areas and construction of passageways for agriculture machinery. But this had also become a bone of contention between the local dwellers and the project executors/implementers. During the January 13, 2009 public hearing conducted in the Kulan Settlement, local dwellers raised the issue concerning the number of cattle-driving areas in Janaturmis and Jaksilik villages in Turar Riskul rayon. Initially, there was a suggestion to install four (4) cattle-driving areas. But the local dwellers recommended six (6) by constructing additional two cattle passes. In turn, they were assured that their proposals would be taken into account.

However, in the hearing held on September 24, 2009, the dwellers got dissatisfied when they saw the road map containing only three (3) cattle-driving routes instead of four (4). They were also unhappy with the location of the said routes. Thus, the ADB procedural requirement for the construction of sufficient passages for animals in strategic, accessible locations as agreed upon in earlier hearings was ignored.

## **Taking the OSPF Route**

The issues raised by the local dwellers and the Monitoring Group remained unaddressed by relevant offices. The group, acting in behalf of the local dwellers, decided to elevate the matter to the Office of the Special Project Facilitator (OSPF), which is the problem-solving phase of the ADB Accountability Mechanism. Given that OSPF is responsible for the Consultation Phase, they felt that a dialogue with all parties concerned would lead to a satisfactory solution to the case.

On November 5, 2009, the OSPF received the formal complaint and had it registered on November 10, 2009. It found the complaint eligible on December 3, 2009. The review and assessment was conducted from January 17 to 28 in 2010. On February 10, 2011 all concerned parties received a copy of the Review and Assessment Report (RAR).

*A consultation meeting organized by the Bank's OSPF for civil society groups*

As contained in the RAR, the OSPF recommended to hold a consultation that would include the ADB Operations Department (project officer, environment specialist, and Kazakhstan Resident Mission [KARM] staff), the NGOs monitoring the ADB section, and the Committee of Roads. The consultation sought to: (i) explain the roles and responsibilities of the Operations Department (in project implementation, the Safeguards and the role of KARM); (ii) clarify the roles and responsibilities of MOTC and the Committee of Roads in the implementation of the project; (iii) explain the roles and responsibilities that the NGOs assume in the implementation of the project; and (iv) agree on a mode of cooperation within the context of these responsibilities.

### **OSPF's Official Response to the Complaint**

When the Monitoring Group sent their comments on the RAR, they were surprised to find out that the OSPF was not in any way obliged to accept comments and additional suggestions/concerns.

According to the OSPF, they do not accept additional issues that have not been included in the original complaint. (The Monitoring Group raised the issue on the relocation of roadside graves that the complainants were not able to mention in their complaint letter.) Moreover, the OSPF stated that the problem-solving phase does not only address the complaint, but also establishes the process. This includes a three-party communication agreement that must be used throughout the project cycle to address other issues as they come, and to improve cooperation and information-sharing in the future.

In addition, the OSPF also told the Monitoring Group that they were not allowed to do any media campaign during the consultation process. As NGOs/observers, they cannot publish or discuss any issue related to the problem-solving phase. The Monitoring Group considered this matter as contentious. As participants in the consultation process, they could decide which information should be released or not. The group also commented on the OSPF recommendation about the role and responsibilities of NGOs in the project implementation. Based on Kazakh legislation, all NGOs have their own by-laws (as approved by the Ministry of Justice) which determine their aims and objectives, functions, roles and responsibilities according to the Monitoring Group.

### **First OSPF-Organized Consultation**

The first of three OSPF-organized consultations took place on March 2, 2010 in the village of Merke, where the original complaint came from. Those who took part were the ADB Operational Department staff, MOTC representatives, villagers and the OSPF staff and OSPF local consultant. Two NGO representatives also joined as observers.

The confidential meeting discussed the requirements of the Janaturmis residents and the proposed solutions from executors/implementers. An official from the Committee of Roads under MOTC personally explained, by way of the road project map, how the project would provide convenience to the local dwellers and how their concerns would be addressed. He was seconded by the Vice-Mayor of T. Riskul district. They said they had been in

communication with the complainants/dwellers for five (5) months. That they conducted consultations and information sharing about the project that yielded positive reactions. They also said the complainants/dwellers have become more educated, responsible and active participants.

During the discussion proper, a local community leader spoke on behalf of the complainants/dwellers. Incidentally, the villagers were pleased to see the road map for the very first time. He talked about the cattle passes: (i) why they need them; (ii) where should they be located; and (iii) what should be their width/height. He urged the project executors/implementers to seriously consider their requests, which was resoundingly backed by the villagers present. After the local community leader's explanation, the road designer supported the villagers' suggestions. The designer said the cattle passes could be constructed without any difficulty since all the technical parameters as well as the road's mound and slope at the site would allow the passageways.

It should be noted that both the project executors/implementers and the local dwellers arrived at a unanimous decision. Per the agreement, an existing cattle passageway in the project would be expanded from two (2) meters to four (4). The second cattle passageway would be built with water pipelines and would be expanded from 1.5 meters to four (4) meters in width and 2.5 meters in height. This would allow the passage of agriculture machinery. In short, the villagers got two cattle passes, plus one passageway for agriculture equipment. Furthermore, the executors/implementers agreed to have an extra gravel road that will take their cattle to the passes, as well as allow the villagers' cars to go to the main road. The agreement was signed by all participants. The OSPF representative specifically promised that their office would strictly monitor the implementation of this decision. Meantime, another important result of the said meeting was that construction of additional roads have been promised, which would not be part of the project loan but would be at the expense of

*Being popular domestic animals in Kazakhstan, camels are a source of income for the country's poor communities.*



the Department of Auto-roads. Reportedly, the local dwellers/villagers were satisfied with the outcome of this meeting. A few local villagers even expressed appreciation that their opinions were considered.

### **Second OSPF Consultation**

On March 3, 2010, the second consultation was conducted in the town of Taraz with the participation of NGOs and ADB Operations Department staff. The meeting was facilitated by an OSPF-hired consultant and social specialist. The discussion centered on the following: (i) ADB Safeguard policies (i.e., Environment, Involuntary Resettlement); (ii) compliance with Kazakhstan's national legislation; (iii) advantages and disadvantages of MFF; (iv) project categorization; and (v) communication plan for the project executors and local dwellers. Suggestions on how to further partnership mechanisms were identified for discussion in the third OSPF consultation.

### **Third OSPF Consultation**

The final consultation was held on March 4, 2010. Representatives from MOTC joined the meeting. The consultation provided a good learning experience for both NGOs and department representatives who had no previous experience working with one another. All three stakeholders, Government-ADB-NGO, identified their respective roles in the project, modes for cooperation, and three-party informational support. The meeting produced mixed results in terms of consensus on major issues.

The basic disagreement, unfortunately, stemmed from the NGO participants, mainly due to the entry of new NGOs that joined the consultation at the last minute. The OSPF even agreed to a proposal of a new NGO participant to make a movie about the work of the OSPF.

### **Comments and Suggestions Regarding the Consultation Phase**

The problem-solving process and its procedures are lengthy, complicated and difficult for most stakeholders, both within and outside of the ADB. While there was not much difficulty in filing the complaint before the OSPF, the process from beginning to the final result (i.e., the signing of an agreement to revise the design) was rather long. While the OSPF is quite responsive, their process is very complex and time-consuming. It also demands greater involvement of people and parties concerned. Likewise, it is expensive (i.e., travel expenses of both the OSPF staff and the NGOs monitoring projects).

It is important to reduce the timeline and the stages of the problem-solving phase particularly the review and assessment step. It is best to simplify the consultation process and procedures especially during this stage because local villagers have a hard time understanding/following them. Shortening and simplifying the process would ensure the meaningful participation of local communities.

The first full investigation raised concerns about its independence, credibility and transparency. It also raised questions about the dissemination of information, as well as the effectiveness of the inspection itself.

Assistance to the local community in asserting their right to be heard in the implementation and realization of such large projects must be ensured by all parties concerned, especially the Bank and

other project proponents. The cumulative impact of negative issues on the local community such as corruption, non-compliance with ADB policies, human rights violations, violations of national/local environmental laws, health regulations and the like may increase exponentially over the years. There is also a need to influence or even pressure the executing and implementing agencies to immediately correct/address any violation related to the ADB-assisted project.

It is crucial for the ADB to expand the range of issues related to project impacts on local communities. During an OSPF-led investigation, a problem or issue that was not contained in the complaint letter might surface/crop up later on. In addition, local dwellers that were not knowledgeable enough about the Accountability Mechanism might become ready to talk about violations in the latter part of the Consultation Phase (i.e., during the review and assessment stage). The mechanism should not only be sensitive to this but must also be flexible. That in case new problems or more complaints arise while the Consultation Phase is on-going, the original complainants would be allowed to file a new complaint.

It is imperative that local NGOs and communities study and learn about the Accountability Mechanism. Similarly, it is imperative for the ADB to improve its outreach and information dissemination program in the countries where they operate. This would require a highly-focused and consistent approach. They should not just be limited to posting information on their website. Not everyone (especially local communities) has access to the internet as proven by the “inaccessible” EIA and EMP documents of the Project II of the CAREC Transit Corridor I Investment Program.

This complaint mechanism is very much needed by project-affected communities; therefore it is necessary to improve it. ■

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#### **Endnotes:**

- 1 <http://pid.adb.org/pid/LoanView.htm?projNo=41121&seqNo=01&typeCd=3>
- 2 <http://pid.adb.org/pid/LoanView.htm?projNo=41121&seqNo=02&typeCd=3>
- 3 [http://www.adb.org/Documents/SPF/KAZ-Complaint-Letter.pdf?bcsi\\_scan\\_7823DFCE46415F3E=45Q1SEqz0g9HP9N7DbW63ScAAAAfvT9h&bcsi\\_scan](http://www.adb.org/Documents/SPF/KAZ-Complaint-Letter.pdf?bcsi_scan_7823DFCE46415F3E=45Q1SEqz0g9HP9N7DbW63ScAAAAfvT9h&bcsi_scan)
- 4 <http://pid.adb.org/pid/LoanView.htm?projNo=41121&seqNo=03&typeCd=3>

# Education Sector Reform Project: School Rehabilitation Work Gone Wrong

By Saodat Saidnazarova, NGO Kalam  
Maya Eralieva, NGO Forum on ADB

## Introduction

One and a half decades after the Asian Development Bank (ADB) began operating in Tajikistan, the country has remained one of the poorest in Central Asia. Poverty is widespread as more than half of the labor force is without work. Tajikistan has one of the lowest per capita GDPs among the 15 former Soviet republics. Nonetheless, the ADB remains highly optimistic that the obstacles to its poverty reduction efforts will be surmounted.



Poor repair works. All new plastic doors cannot insulate the schoolchildren and teachers from the harsh winter season in the area.

Ironically, cumulative ADB lending to Tajikistan points out that social services (education, health and water supply and sanitation) ranks the least-supported sector. This represents a dismal five (5) percent of the Bank's total loans to the country since 1998. Unlike the energy and transport sectors, education and health are drastically underfunded. In fact, the *Education Sector Reform Project (ESRP)* was the only

loan extended under education sector. And yet, the ADB touted the project as having *"a direct positive impact on Tajikistan's poverty reduction strategy by improving equitable access to and completion of better quality primary and general secondary education and improved gender balance in school participation in the five pilot districts."*<sup>1</sup>

The ADB approved the US\$ 7.5-million loan on December 17, 2003. Implementation started on July 14, 2004. The project aimed to improve the quality, efficiency and equity of primary (grades 1–4) and general secondary education (grades 5–11), which included the rehabilitation of schools in five districts.

It had three components: (i) system efficiency and management; (ii) equitable access and completion; and (iii) quality improvement. The Office of the President of Tajikistan was the executing agency, and the People's Education Department, under Ministry of Education, was the implementing agency. The Bank released its Project Completion Report (PCR) in December 2010.<sup>2</sup>

On July 29, 2010, non-government organizations based in Tajikistan filed a complaint with the Special Project Facilitator. The complainants raised concerns about the sub-standard quality of



Repair works did not improve the condition of the school.



Project information about School №12 in Roshtkala, one of the rehabilitated schools under the ESRP.

rehabilitation works. OSPF received the complaint on August 5, 2010. The following day, OSPF acknowledged receipt and registered the complaint.

In August 2011, the complaint was determined eligible for the Consultation Phase. The following month, review and assessment of the complaint took place. The review and assessment report (RAR) was distributed to the complainants. On November 20, 2011, the complainants decided to carry on with the Consultation Process and provided comments on the RAR.

### ESRP Background

The Education Sector Reform Project (ESRP) aimed to support the Government's reform priorities in primary and general secondary education. Through this ADB-funded project, it is hoped that 90,000 children would have access to quality education.

According to the Report and Recommendation of the President (RRP) to the Board of Directors: *"The top down approach of strengthening the capacity of the Ministry of Education (MOE) to enhance efficiency, relevance, and equity in primary and general secondary education and the bottom-up approach of strengthening schools and rayon (departments) of education in 5 pilot rayons will help MOE to strike greater balance between central and local functions. A central focus of the Project on strengthening the educational management information system (EMIS) is expected to improve annual planning and budgeting critical to targeting resources to priority reforms and addressing inequities. This is also expected to significantly enhance MOE's capacity to monitor progress of its reform initiatives and to be more responsive to emerging needs."*<sup>3</sup>

The main objective of the Project is to support the MOE to develop and initiate a prioritized, costed national education development framework (NEDF) to improve efficiency, equity and quality of primary

and general secondary education. The Project will emphasize system efficiency and management improvement required throughout the education system in order to make the education system more affordable and sustainable. The Project will support policy and planning capacity encompassing key aspects of management efficiency (pedagogical renewal, financial management, and management reorganization). Improved efficiency in these system elements will support enhanced access and completion and improved quality.<sup>4</sup>

One of the project outputs of the ESRP was the rehabilitation of schools in five districts, including Roshtkala district in Gorno-Badakhshan Autonomous Oblast (GBO), where six (6) schools were rehabilitated, to wit: (i) school № 39 in Shoshbuvad village; (ii) school № 35 in Sizhd village; (iii) school № 26 in Roshtkala area; (iv) central school #22 in Mirshakar village; (v) school № 12 in village Tusen; and (vi) school #10 in villages Tavda of Roshtkala district in Badakhshan region. For the reconstruction of schools, a total of US\$ 2.5 million was allocated for the reconstruction of schools. This amount was in addition to the US\$ 7.5-million loan allocation for the implementation of ESRP.

### Issues Raised Against ESRP

The project though was fraught with issues. The complaint came from Roshtkala District, Gorno-Badakhshan Autonomous Region in Tajikistan. The complainants raised concerns about the lack of access to project information and the unwillingness of the implementing agency and ADB to release such information. The complainants claimed that there was no transparency in the execution of the project. All requests for project information from the local NGOs were either rejected or not responded to. Project information was not provided by the ADB Resident Mission and Project Coordinator. The ADB website only provided a single document about the project which was the RRP.

The complainants also identified a number of concerns related to the quality of the rehabilitation works for schools and the building of the district education department in Roshtkala. One glaring complaint was the low quality of school rehabilitation and construction works and non-compliance to local standards as evidenced in the following: (i) damaged



*After the repair works, school boards are still not fixed on the wall. Chairs are used to keep board in a vertical position, so teachers and children can use it during their classes.*

doors over a short period of time; (ii) damaged screed coats and wall plasterwork; (iii) damaged floors and roof leaks; (iv) damaged windows and walls; and (v) damaged electric equipment in the classrooms.

Additionally, the purchased furniture for the six pilot schools and Roshtkala Education Department were expensive and yet of very low quality. Even some of the equipment supposed to be granted to Roshtkala Education Department was not given, such as one unit of HP 1320 printer, one unit of desktop computer, two armchairs, and one vehicle “Niva.”

The complainants requested an investigation since the staff of the ADB Resident Mission (RM) never took any measures and never visited the project area.

The complainants with support of NGO Kalam tried to resolve the problems and addressed their concerns to the local government and Ministry of Education, as well as the ADB. NGO Kalam presented the facts of poor project implementation before the Resident Mission. They also requested the RM to visit the project site, which was situated in a very remote area and far from the capital of Dushanbe. However, their concerns fell into deaf ears. There was inaction on the part of the RM.

### **Engaging with the Bank’s Accountability Mechanism**

On December 19, 2007, the representative of the complainants sent a letter, which cited issues concerning the project, to the Bank’s Operations

Department in Manila and the ADB local representative. This letter was left unanswered. Again, the representative of the complainants sent two succeeding letters in March 2008 and June 2008, respectively, to both the lead project officer and the Resident Mission. The latter responded by simply sending the document – RRP (Report and Recommendation of the President), which was also available in the ADB website.

In June 2009, during an ADB consultation with NGOs over Tajik CSJS, the same representative once again visited the Resident Mission office and presented the issues surrounding ESRP. In the same meeting, the representative requested the ADB staff to visit the project site. Still, there was no action to their request.

On August 5, 2010, the people from Roshtkala District forwarded a complaint written in English to the OSPF. Attached to the complaint were signatures of the people in Russian. The OSPF acknowledged receipt of the complaint and registered it on August 6, 2010. The complainants expressed concern about the quality of rehabilitation works that were carried out in six (6) schools and buildings of the Education Department in Roshtkala. They also wrote that they have already raised the issue in the past.

From August 23 to 29, 2010, the OSPF sent a mission to determine the eligibility of complaint. The mission was comprised of the Special Project Facilitator (SPF), a leading specialist of the OSPF and a translator. OSPF promptly responded to the complaint and officially informed the complainants on September 2, 2010 that their complaint was eligible.<sup>5</sup>

A commission was established, which went thrice to the project site. From October 4 to 8, 2010, the working commission studied and assessed the rehabilitation works carried out in the schools and in the building of the education department of Roshtkala district.

The mission held a teleconference with representatives of the NGO Forum on ADB and NGO Tarakiet in Dushanbe. One conference was held in Dushanbe and one in Manila. The representatives of NGO Taraqqiyot accompanied the mission to the project site. The mission met with the director

of the NGO «Kalam», the head of district, school directors and the chairman of one of the parent-teacher associations (PTAs). They also met with the director of the project.

In the review and assessment report (RAR) prepared by the OSPF, it was noted that based on actual inspection by the working group (members comprised of representatives from the Ministry of Education (MOE), Ministry of Finance (MOF), regional and district officials, school directors and PTA heads, members of the Project Implementation Unit, former contractors, TJRM, a representative from Kalam, and the OSPF consultant as observer), the amount to be reimbursed by the contractor due to its poor execution of rehabilitation works was US\$ 196.61. And with the poor maintenance of the rehabilitated schools, compounded by the extreme weather conditions, the amount needed for restoration was US\$ 1,723.23. The Tajik government allocated an additional US\$ 8,453.99 from the state regional budget.

The explanation for the poor implementation of the project, as well as the erroneous estimation by the working group was wrong according to the complainants. If this was the case, it only meant, that the design of the school rehabilitation works was faulty from the start. It also showed that the supposed direct beneficiaries of the project were not properly consulted.

As stated in the RAR dated October 2010, the affected people, NGOs, ADB operational staff together with the head of the OSPF team went through a negotiation process to resolve the abovementioned concerns. The following were agreed upon by the concerned parties:

- Affected communities will receive all information about the project. To ensure transparency, an “information corner” will be created in each school to provide regularly updated information about budget allocation, costs and timeframe of work;
- New rehabilitation works in the amount

of US \$10,373.84 will be done in 6 (six) Roshtkala schools;

- Based on the achieved agreements, progress work will be reported in November and in January; participatory monitoring of the progress of rehabilitation work will be provided. Steering committee consisting of stakeholders will be formed and they will be authorized to undertake monitoring;
- Strong independent committee will be established to evaluate the completion of the additional work; and
- Joint facilitated monitoring and evaluation will take place in September 2011.

### Lessons Learned

The Joint Coordination Monitoring team was established to conduct assessment in September 2011. The NGO Kalam has continued to monitor the progress of the rehabilitation works. The following concerns have been addressed through the problem solving process:

- A safe environment for student learning was provided;
- Transparency in the planning, implementation and monitoring of rehabilitation work with communities has been ensured;
- Regular information on the rehabilitation works to PTAs, including budget details have been provided; and
- Construction work under favorable environmental conditions has been carried out.

Also, the complainants underlined the following recommendations/comments in the OSPF report:

- Provide all stakeholders with accurate information about the project.

- Establish and support meaningful and consistent relationships with other stakeholders, including NGOs. This did not happen during the project.
- Discuss possible allocation of funds directly with school principals and PTAs so that they can directly manage rehabilitation works.
- Translate the review and assessment report (RAR) into Russian language and provide it to school principals and department of education,
- Discuss the RAR with the complainants.

The complainants, together with the NGO Kalam, believe that if all of the aforementioned items would be considered and implemented by state agencies, then they are highly optimistic that the work would be successful and its contribution would be meaningful. Eventually, school conditions have been improved. The properties that “disappeared” were given or returned to the rightful owners.

It should be noted that this case was one of the rare examples wherein all concerned parties (government, donor agency, affected communities and contractors) sat under one table and discussed how to improve the project outcomes in terms of: more inclusive benefits, aid effectiveness, transparency in the decision-making process and accountability of the decision-makers. ■

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#### Endnotes:

- 1 Report and Recommendation of the President to the Board of Directors on Proposed Loan and Technical Assistance Grant to the republic of Tajikistan for the Education Sector Reform Project, Asian Development Bank, November 2003
- 2 <http://www.adb.org/Documents/PCRs/TAJ/37175-01-taj-pcr.pdf>
- 3 [http://www.adb.org/Documents/RRPs/Taj/rp\\_taj\\_37175.pdf](http://www.adb.org/Documents/RRPs/Taj/rp_taj_37175.pdf)
- 4 Ibid.
- 5 With the full content of the complaint, follow to the next link: <http://www.adb.org/SPF/documents/Complaint-Letter-TAJ-27Sep2010.pdf>

*No difference! The school's condition remains the same even after the repair works have been done.*



Melons for sale. One of the seasonal harvests from a productive land in Masally Region and a major source of income for the local dwellers.

## AZERBAIJAN

### Road Network Development Program:

# A Road to Hell Paved With Good Intentions?

By Mirvari Gahramanli, Oil Workers' Rights Protection Organization  
Maya Eralieva, NGO Forum on ADB

Despite deriving large income from oil export, the Republic of Azerbaijan continues to cooperate with International Financial Institutions such as the Asian Development Bank (ADB). Since joining in 1999, the country has received a cumulative loan amount of US\$ 660 million from the Bank.

### Project Background

One of the public sector projects being financed by ADB in Azerbaijan is an investment program that aims to improve Azerbaijan's road network in the north-south corridor and the east-west corridor. The country has a total road network size of 59,141 kilometers.<sup>1</sup> Also known as the *Road Network Improvement Program* under a multitranche financial facility (MFF) amounting to US\$ 490 million, the program was approved on September

28, 2007. The executing agency is AzerRoadService Open Joint-Stock Company under the Ministry of Transport.<sup>2</sup>

The first tranche of the program amounting to US\$190 million was approved on October 4, 2007. Project I or the Massali-Astara Motorway includes the construction of a new four-way (Category A) roadway from Masalli to Astara. The 59-kilometer road continues the Alyat-Astara Highway that extends to the border of Iran.<sup>3</sup> A favorable portion of

the loan is intended for reconstruction of secondary rural roads joining the highway.

Specifically, the Massali-Astara Motorway upgrades 240 kilometers of the existing M3 Highway from Alyat to Astara. One of the critical national north-south corridors, the existing M3 Highway, will play a vital role in moving goods and people from Russia (via Baku) to Iran after rehabilitation. Traffic between Baku and Alyat is currently about 10,000 vehicles per day (vpd), falling to 7,000 vpd after Alyat, and then ranging from 3,000 vpd to 5,000 vpd near the Iranian border. Cross-border traffic averaged about 44 truck movements per day during 1996–2003. Major transport corridors are the most expedient routes, and the shortest roads for both domestic and international movement of freight. If these corridors are upgraded to current international standards, the following advantages will accrue:

- (i) Transport duration will decrease substantially;
- (ii) Capacity of the corridor to access international markets will increase; and
- (iii) Equal conditions will be provided for all shippers.<sup>4</sup>

According to the Report and Recommendation of the President (RRP), the Project will facilitate socioeconomic development by increasing local communities' access to markets, job opportunities, and social services.<sup>5</sup>

### Affected Villages in the Massali-Astara Region

The Masalli-Astara region is located in the south of Azerbaijan. The population density in this region is one of the highest in the country. Given its subtropical zone, the highly fertile land cultivates a lot of vegetable produce that provides villagers a good source of income. During the Soviet era, in fact, the region was considered as a vegetable warehouse. In addition, subtropical plants are being raised here.

For the construction of the Masalli-Astara Highway, the government has to purchase tracts of land in the region. Several households and persons across 11 settlements namely Khil, Sarchuvar, Boradigyah,

Mollaoba, Turkoba, Yeddioymag II villages (all from the Masally Rayon); Boladi, Girdani, Liman, Urga, Shirinsu villages (all from the Lenkaran Rayon) have been identified as most likely to be affected by the express highway construction.<sup>6</sup>

### Non-Compliance of ADB Policies on Involuntary Resettlement and Public Communication

Although the construction of the expressway has started, there has been very little information available to the public regarding the project design, maps, and latest version of the Resettlement Plan. There is no available Draft Design and Monitoring Framework document in any of the affected villages. This runs counter to the ADB Public Communication Policy (PCP).

While the head of a village administration indicated that about 126 families and 21 hectares of agricultural lands would be affected by the expressway construction, the villagers and landowners were not given any information about the project, in particular the Resettlement Plan.<sup>7</sup> Further, the village head could not provide any project-related documents except for a handmade map of the whole road from Alyat to Astara. According to him, the information can only be accessed at the Agriculture Department's headquarter in the local rayon or at the Ministry of Transport and Communication of Azerbaijan.

Moreover, all project-related documents on the ADB website at that time were old and not updated. More than 1 1/2 years had passed but the information was still not updated accordingly. Affected villagers and their representatives who have access to the internet need updated information on the ADB website that is translated in Azerbaijani language.

Under Paragraph 34 of the Involuntary Resettlement (IR) Policy of 1995, it is a requirement that Safeguard Principles be upheld in the preparation and implementation of projects funded by ADB, to wit: *"ensure that displaced people receive assistance, preferably under the project, so that they will be at least as well off as they would have been in the absence of the project."* The Policy specified three types of assistance for IR as follows: *"(i) compensation for lost assets and loss of livelihood*

and income; (ii) assistance for relocation, including provision of relocation sites with appropriate facilities and services; and (iii) assistance for rehabilitation to achieve at least the same level of well-being with the project as without it.”

The situation at the project level, however, has been the opposite.

### **Landowners Forced to Sell Lands below Market Price**

Based on Azerbaijan legislation, the purchase/selling of land can only take place if and when justifiable compensation has been paid beforehand to the owners. That is not the case with this highway project. The Executive Authorities did not follow the lawful procedures relative to land acquisition. Not only were the owners offered inadequate compensation, they were not given any official notice, too. An auction conducted in the affected villages revealed that the amount offered to the landowners was way below market price.

To make matters worse, there was pressure from Executive and Law Enforcement bodies that forced a number of owners to sell their lands. Reportedly, local authorities forced landowners to sell and sign away the contract of their lands in exchange for inadequate compensation. They were only offered 2,500 AZN or manat (US\$ 3125) for one (1) hectare of fertile land. This very low selling price is less than the annual income of an average landowner. The calculation for landowners' compensation was carried out in accordance with the normative of 1998, which in effect has already been superseded by the adoption of the *“Rules for Calculating the Purchase Price of Real Estate for State Needs.”* This was approved by Decision Number 54 of Azerbaijan's Cabinet of Ministers on April 4, 2009. Thus, the land purchase for the highway construction violated both Azeri laws and the ADB IR Policy.

According to several villagers/peasants, some representatives from Azeroilservis have conducted meetings and consultations with their counterparts from the Municipality, Executive Authorities, and Law Enforcement bodies. But they did not meet with the landowners. Likewise, the affected villagers did not have or were not given any document related to resettlement as required by the Bank's Involuntary

Resettlement (IR) Policy and Public Communication Policy (PCP).

In mid-July 2009, most landowners signed some documents provided by local Executive Authorities. Due to illiteracy, a number of these people did not have full understanding and knowledge of the document they had signed. Meantime, other landowners refused to sign the document because they did not agree with the compensation amount.

Last year, these affected people were even made to submit their passports and other legal documents to Executive Authorities. It has become clear that local authorities got the consent of several affected people without going through the legal land acquisition process.

### **Testimony of “Aliev Elnur”: From 38,000 AZN to 2,500 AZN per Hectare of Land**

Mr. Aliev Elnur (the name has been changed for security reasons), an inhabitant of Sarchuvar village in Masalli region and a village municipality officer, disclosed that from 2007 to 2008, they were promised 38,000 AZN (manat) per hectare of acquisitioned lands. In south Azerbaijan, the land is more productive and fruitful, which generate income and livelihood for the local inhabitants. But at present, the Rayon's head Executive Authority has stated that they would only be paid 2,500 AZN per hectare.

According to Mr. Elnur, the villagers disagreed with the offered price because they would need more funds and resources relative to income restoration. (This matter can be referenced in the ADB IR policy.) Like other affected villagers, Mr. Elnur does not have other sources of livelihood apart from farming.

The project-affected villagers decided to bring the case to higher authorities. The chairman of the Municipality sent a letter to the President of Azerbaijan as well as to the First Lady, appealing for their help and intervention regarding the issue. The President responded by asking the Ministry of Transport and Communication to address the issues being raised by the villagers. Mr. Elnur said the President's response does not guarantee an immediate solution to their concerns because of the villagers' lack of trust and confidence in government institutions including the Judiciary. For instance,

another villager (who refused to be named) who owned a two-hectare land agreed to receive 820 AZN per hectare. He felt he had no other option but to sell his land at such a low price since he had no trust in the justice system to settle the compensation issue.

Sizin Azərbaycan Respublikasının Millət vəkili və Heydər Əliyev Fondunun Prezidenti Mehriban xanim Əliyevaya ünvanladığınız 01.07.2009-cu il tarixli teleqramınız «Azeryolservis» ASC - də aidliyyəti üzrə baxılaraq bildirilir ki, yolun tikintisi altına düşən pay torpaqlarının 1 hektarının qiyməti barədə Masalli rayon İcra Hakimiyyətində fəaliyyət göstərən komissiyaya müraciət edəsiniz.

### Testimony of “Ahmadov Nursultan”: Taking Advantage of the Villagers’ Illiteracy

Mr. Ahmadov Nursultan (the name has been changed for security reasons) has a big family comprising of seven people in the village of Sarchuvar. His sole income source comes from the corn, potato, tomato, onion, and hay that he grows on his two-hectare land. Annually, he and his family earn just over US\$5,000 per hectare. Given the productive land and appropriate climate, he farms the land three to four times a year to grow various produce. He said only a hectare of his property will be purchased for the highway construction. The equivalent compensation is only US\$1,000. He disclosed further that the government did not acquire the other half of his land because it lacks a legal title.

In mid-July 2009, Mr. Nursultan was made to sign a document that he had no full knowledge and understanding of. This was due to his inability to read and write. Now, he is seriously concerned about his uncertain future.

In both cases, we can see that Paragraph 34 (5) of the 1995 IR policy was not followed, to wit: *“affected people should be fully informed and closely consulted on resettlement and compensation options.”* In addition, Paragraphs 80 and 81 of the PCP were not applied, to wit: *“draft resettlement plan, final resettlement plan, revised resettlement plan should be available to affected people as brochures, leaflets, or booklets in local language.*

*For illiterate people, other communication methods will be appropriate.”*

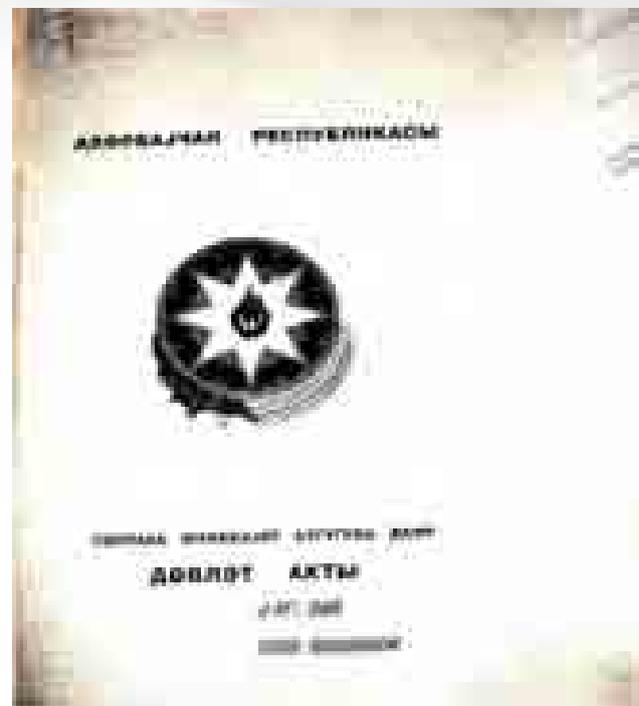
### Testimony of the “Lady from Liman”: No Information about Resettlement Plan

Speaking under condition of anonymity, an old woman residing in the village of Liman disclosed that in 2009, her family and 139 affected households were invited to a meeting with ADB representatives, chief engineer, and the head of local Executive Authority. They were told that their lands fall under the highway construction area and would soon be acquisitioned.

While ADB’s EIA guidelines, PCP and IR policy require public consultation and information dissemination, the project proponents failed to provide the resettlement plan to the affected villagers before the said meeting. According to the old lady, they still did not have any information regarding the scope of land to be acquisitioned as well as the corresponding amount of compensation. However, she said local government representative have collected legal documents on private property only.

### Landowners without Legal Titles

Meanwhile, some affected villagers who do not possess legal land titles have lost hope about being compensated. These people who failed to legally register their lands have been residing in their respective properties for more than 20 years. As recourse, they kept signing white papers provided by and upon the suggestion of local government authorities. This violates Paragraph 34 (7) of the



1995 IR Policy, which requires that *“the absence of formal legal title to land by some affected groups should not be a bar to compensation.”*

### Landowners/Affected Villagers File an OSPF Request

Unhappy with the compensation being offered to them, the landowners did not have any idea where to lodge a complaint. With the land sale contracts not officially documented, they could not go to the local courts. Furthermore, they believed that they will not get a fair judicial trial. They were also not informed about the existence of other mechanisms where they can officially complain.

Through the assistance of the Oil Workers’ Rights Protection Organization (OWRPO), a Baku-based NGO, the affected villagers sent a complaint letter to the ADB on September 3, 2009. The Office of the Special Project (OSPF) acknowledged and registered the complaint that was written in Azeri language on September 4, 2009.<sup>8</sup>

In their acknowledgment letter, the Special Project Facilitator (SPF), asked for the following clarifications: (i) how many persons were involved in the complaint; (ii) whether the OWRPO was acting as the representative for the complainants; and (iii) what efforts have been made to address the problems by the Bank’s Operations Department. The OSPF needed to determine whether the complainants have made any good faith effort to solve the problem/s with the concerned Operations Department before coming to them.

On October 5, 2009, the complainants responded to OSPF’s clarificatory queries and submitted a list containing 10 names of affected villagers/landowners including the organization that was given the authority to represent them. All complainants requested for confidentiality. OWRPO told the OSPF that they have raised the issues twice during their consultations with the Azerbaijan Resident Mission of the ADB (AZRM). OWRPO also submitted copies of its communication with the AZRM to OSPF.

The OSPF informed the complainants (through OWRPO) of a planned mission to Azerbaijan, as well as the requested mission clearance from the Government of Azerbaijan. The OSPF tentatively scheduled a meeting with the complainants on October 23, 2009 at the office OWRPO.

I would like to seek clarification on the following points:

1. How many persons are participating in your complaint? Please give us the names and addresses of all the complainants.
2. Are you acting as a representative for the complainants? Please note that if you are representing the complainants, we require evidence of authority to represent them.
3. Please describe the efforts you have made to address the problems first to the operations department of the Asian Development Bank that is responsible or supervising this project.

### OSPF Declared the Villagers Complaint as “Ineligible”

According to the OSPF, the complainants did not raise their concerns to Operations Department of the project. The SPF, as per 2003 Accountability Mechanism Policy, explained that *one of the requirements of the consultation phase of ADB’s Accountability Mechanism is that the complainants must first make a good faith effort to address their problems to the concerned ADB operations department. Since this has not yet been done, the complaint is not eligible at this time.*

Right after OSPF’s handling of the complaint, the ADB Mission arrived in Baku. They met and discussed the villagers’ issues with members of the NGO Forum. After which a mission was organized for the Masalli-Astara region.

The ADB mission met with the landowners and listened to their complaints. Another meeting was organized with the presence and participation of representatives from the ADB Operations Department. All parties concerned agreed that further actions to address the landowners’ problems would have to be jointly conducted. Representatives from the Operations Department promised to regularly inform OWRPO about the negotiation with the Finance Ministry that would increase the amount of compensation for the landowners. An initial budget of 20 to 35 million AZN has been allocated for this purpose based on preliminary estimates. Several consultations were conducted with representatives from the Operations Department, the Azerbaijan Resident Mission and OWRPO participating.

As a result of the joint efforts of the landowners and OWRPO, the compensation amount was increased from US\$ 3,125 to US\$ 9,000 per hectare of land. This would cover at least 400 landowners in the Masalli region.

### OWRPO Recommendations:

- ADB should seriously monitor the Client's implementation of Bank policies.
  - There is a need to improve the Bank's public relations strategy by adopting the ultimate goal to inform the public at the earliest stage of an ADB-funded project.
  - There is a need to hold public consultations concerning of ADB-financed projects that have significant environmental and social impacts. Ensure the transparency, openness in the conduct of public consultations.
- During the decision-making process on ADB-assisted projects, it is necessary to ensure the participation of NGOs that are actually engaged in these issues.
  - Ensure the implementation of complex environmental assessment for projects.
  - Ensure the translation of main documents into the national language that will result in the project familiarization of the public at the earliest stages; and the participation of the public in decision making process.
  - Conduct independent monitoring of possible negative social and economic impacts of the ADB project. ■

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#### Endnotes:

- 1 <https://www.cia.gov/library/publications/the-world-factbook/geos/aj.html>
- 2 <http://www.adb.org/projects/project.asp?id=39176>
- 3 <http://en.trend.az/news/politics/1861626.html>
- 4 <http://www.adb.org/documents/Environment/AZE/39176/39176-023-aze-eia.pdf>
- 5 <http://www.adb.org/Documents/RRPs/AZE/39176-AZE-RRP.pdf>
- 6 <http://www.forum-adb.org/inner.php?sec=13&ref=extras&id=134>
- 7 <http://forum-adb.org/docs/CAREC-paper-iron-fist.pdf>
- 8 <http://www.adb.org/SPF/registry.asp>

**STDP:**

# The First Acid Test of the Accountability Mechanism

By Hemantha Withanage  
Executive Director, Centre for Environmental Justice/Friends of the Earth Sri Lanka

*The future looks bleak for some of the displaced persons.*

This case is a decade-long saga with no clear happy ending in sight, in particular for the complainants against the *Southern Transport Development Project (STDP)*.

In 2011, the Compliance Review Panel of the Asian Development Bank (ADB) completed its final mission to the Southern Transport Development Project in Sri Lanka.<sup>1</sup> This is a 128-kilometer-long highway connecting Sri Lanka's capital Colombo and the southern City of Matara.<sup>2</sup> Jointly funded by the ADB and the Japan International Cooperation Agency (JICA), the project's total cost was over US\$ 800 million as against the initial cost estimate of just US\$ 260 million.

Since the Bank's adoption of its current Accountability Mechanism in 2003, the STDP case holds the distinction of being the first and only one to have gone through the entire process of the Policy. This involved the consultation phase under the Office of the Special Project Facilitator (OSPF) and the compliance review phase under the Compliance Review Panel (CRP). In fact, the STDP case dates back to 2001, when it was first taken up by the ADB under its old Inspection Function (the Policy that preceded the Accountability Mechanism).

## 1) Background

STDP was originally conceptualized in the 1960s by the Sri Lankan government. But it was only in 1992 that the foundation stone for the project was laid. The road project, however, did not have the required

Environment Impact Assessment (EIA). In 1994, the issue on the absence of a project EIA cropped up anew after the then newly-elected government laid six foundation stones along the trace identified by the Road Development Authority (RDA) through aerial photographs. Eventually, the project was abandoned due to public pressure resulting from the failure of project proponents to produce the requisite EIA as prescribed under local regulations.

In 1996, the RDA together with consultants from the ADB studied the road trace. Subsequently, an EIA report was published in 1999. During this period of assessment, the ADB consultants identified a separate trace which it called the ADB Trace. As a compromise, the two traces were merged into the so-called Combined Trace.



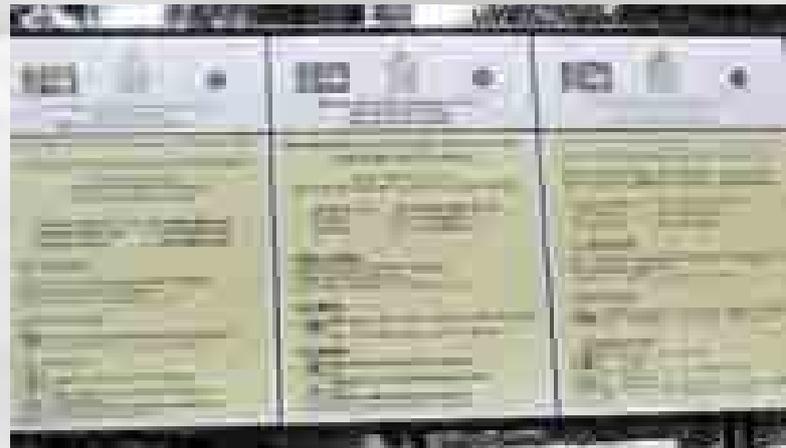
*Social issues remain unaddressed in a resettlement site for people displaced by the STDP.*

However, the Central Environmental Authority (CEA), which is under the Ministry of Environment and Natural Resources, conducted two public hearings on the matter. This resulted in the imposition of certain conditions related to the road traces. One specific condition was to alter the trace in Bandaragama (in the western part of the road) and in the Koggala area (in the southern part of the road) 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 said corridor. Further, the RDA started implementing the project without studying first the modified traces. This was in violation of existing ADB operational policies and procedures,<sup>3</sup> as well as Sri Lankan environmental laws. Compounding the matter was the non-inclusion, non-involvement of people and communities affected by the STDP during the conduct of the EIA. Basically, RDA denied them of their rights to participate in the entire EIA process. Some affected people have alleged that more than 40 kilometers of the road were not included in the assessment and studies conducted by RDA.

### 1.1) Displacement and Other Issues

This public sector project has been controversial primarily for displacing over 5,000 people. Moreover, some portions of the project did not follow the EIA process. As a result, the project caused a number of negative environmental impacts such as the filling of wetlands, destruction of biodiversity, and increase of flooding due to environmentally insensitive design.

The road construction had also led to some deaths. In August 2011, an 18-year old mother of a nine-month old child was killed. The fatality was a resident of Welipenna in Kalutara District. A flyrock hit and killed her while she was hiding away from an on-going rock blasting. The young mother was 150-meters away from the blasting site. Reportedly, the victim and other villagers had been told to only stay 100 meters away from the site. In another incident, a school boy who took shelter from the rain under a newly-constructed bridge was killed when the bridge collapsed. A committee created by government authorities found out that more than 30 bridges constructed under STDP and within the ADB's jurisdiction were demolished and rebuilt due to construction-related problems. These were just two (2) incidents out of more than 10 similar cases that came along with the STDP construction.



*Details of the ADB-funded projects where its co-financier is not covered by the Accountability Mechanism.*

### 1.2) Legal Cases

Since 1999, the affected people have appealed to Sri Lanka's Human Rights Commission, Court of Appeals, and Supreme Court. In 2004, the Sri Lankan Supreme Court decided that the human rights of affected communities have been violated and ordered the RDA to pay each person Rs. 75,000 as compensation. Nevertheless, the Supreme Court did not overturn the Appeals Court's decision not to change the road trace. This prompted the affected people to elevate the case before the United Nations Human Rights Commission (UNHRC) in 2004. The UN decision is still pending up to now.

## 2) Making the ADB Accountable

### 2.1) ADB Inspection Function

In 2001, the Gama Surakeema Sanvidhanaya (GSS) filed 11 inspection claims against STDP under the old Inspection Function. These complaints were dismissed by the Bank's Inspection Panel on questionable technical grounds. On February 11, 2002, the ADB Management officially responded to GSS' complaints, declaring such allegations as unfounded and not attributable to the Bank. Specifically, the Bank said the complaints leveled against them were not supported by sufficient evidence, and that GSS failed to demonstrate the "direct and material adverse effect caused by ADB."

We believe that both the ADB and the Government of Sri Lanka had missed out on a golden opportunity to rectify and address problems related to STDP at such an early stage. Not only because of some provisional loopholes contained in the old Inspection Function, but also due to their misguided and questionable attitude towards people and communities adversely affected by their so-called development projects.

### 2.2) ADB Accountability Mechanism

Undeterred, the affected people, led by the Joint Committee of the Affected People and with the help of local and international groups like the Sri Lankan Working Group on ADB, NGO Forum on ADB, Bank Information Centre, Environmental Defense, Friends of the Earth Japan, and Oxfam Australia, among others, filed a complaint before the ADB's Office of the Special Project Facilitator (OSPF). This was in 2004. Although the complaint was accepted and processed by the OSPF, the consultation phase bogged down during the mediation stage.

The OSPF-appointed mediator failed during the mediation meeting between the affected people and the project proponents mainly due to his wrong approach. Once again, the ADB

and the government failed to settle the dispute at this stage.

As a result of the botched mediation process, the affected people withdrew their case from the OSPF and discontinued the consultation phase. After which, they filed a complaint before the Compliance Review Panel (CRP) and a project review ensued. The ADB Board of Directors approved the Compliance Review Panel (CRP) report and recommendations on July 12, 2005.

Upon holding a series of site visits and consultations, the CRP was able to determine numerous violations and non-compliance of ADB Policies during the design and implementation stages of STDP. For instance, the CRP discovered that 72 percent of the road had been out of the scope of the initial project design. The Panel made 17 recommendations that resulted in several addenda to the EIAs. Fulfilling these set of recommendations took several years. Environmental monitoring, for example, remained a huge challenge for project proponents.

## 3) Comments and Recommendations

### 3.1) Independence of the OSPF and CRP Functions Is a Must!

*On-going construction of the STDP: What about us?*



We have observed that some ADB officials displayed partiality and prejudice for STDP whenever they dealt with affected people. We have noticed, for example, the bias of the former Special Project Facilitator (SPF) for STDP in our past dealings with him. On one hand, we have also observed that most of the Panel members/personnel have been sympathetic to the affected people.

We firmly believe that it is paramount to have people at the OSPF and CRP who are completely free from the pressure and dictates of the ADB and other external institutions. The independence of these two separate functions must be ensured and established so that a fair, judicious and time-bound implementation of the Accountability Mechanism could be carried out by all parties concerned. Likewise, it is crucial to ascertain whether the men and women who make up both offices adhere to a development paradigm that places utmost importance on safeguarding affected communities from the negative impacts of supposedly developmental projects. Based from our years of engagement with the Bank particularly on this Mechanism, it would be most expedient to always look beyond their qualifications on paper. We have witnessed how a former Bank official, who occupied a secretary-level position, proved lethal to the independence of the Accountability Mechanism.

### 3.2) Lack of Awareness Extends Beyond Affected Communities

This lack of public awareness has been a major drawback in the basic implementation of the existing Accountability Mechanism. We believe that the Bank's public outreach and information dissemination program on the Policy has been a failure. How can the ADB expect local communities to file a request or complaint when they have been kept in the dark about this Mechanism? We think that having an Accountability Mechanism information desk available in all project sites would greatly help disseminate information to all stakeholders, especially to affected communities. Providing affected people information about an ADB-funded project in advance is essential to make the Mechanism truly work.

This has even become a focal concern for us given that very few people in Sri Lanka are likely to have an idea about the existence of the Accountability Mechanism and how it works. It would not even shock us if there are RDA officials, or even Bank personnel at the Resident Mission who are not fully aware of the processes related to the Policy.

### 3.3) Compensation Package Favoring Non-Complainants

We note, on the other hand, that a better compensation package as guided by the ADB Involuntary Resettlement Policy was provided to a number of affected communities. While most communities that vacated their lands before the December 2006 deadline were pleased with their compensation, there were still some communities that have yet to receive the additional 25 percent compensation. Tellingly, these include the affected people who filed a complaint before the CRP.

In order to settle grievances and other issues related to compensation, the Sri Lankan government created the Land Acquisition and Resettlement Committee (LARC) in 2001. A displaced person is part of the composition of LARC. Project-affected people who were unhappy with the compensation may request the LARC or the Super LARC to address their grievances. While we agree that this approach tend to provide better compensation to displaced persons and communities, we think that it is still open to manipulation by politicians. We learned that this compensation scheme was initially applied by the government vis-a-vis the Colombo Outer Circular Road Project but was eventually discontinued.

### 3.4) Poor Environmental Monitoring Has Resulted in a New ADB Grant?

We have long advocated and fought for a better and just compensation package for the affected people. When we look back at our years of struggle however, we feel that less priority has been given on the critical environmental aspects related to an ADB project. As international and local campaigners against social and environmental injustice, we have always kept environmental issues firmly in the back of our

heads whenever we press for accountability concerning the major development projects of ADB.

STDP is a perfect example. The 128-kilometer stretch traverses diverse people, cultures, lifestyles, and beliefs. Given the magnitude and scope of this project, meeting the expectations and needs of displaced communities will never be an easy task. Most of the problems that the RDA faced were in-built due to the project's faulty design. For instance, one major problem that we have seen occurring is flooding in some sections of the road corridor. Along with the affected communities, a number of fellow environmentalists have conveyed this strong and loud message to the ADB and government officials on many occasions. But the proponents and implementers failed to address the said issues primarily because of cost considerations.

Now, we are faced with another ADB grant that is being considered by the Sri Lankan government in order to resettle more people to protect them from flooding. This could have been avoided if the some sections of the road had been elevated. Unfortunately, the sub-standard environmental monitoring and poor implementation of the environmental management plan had always been a major drawback of the STDP.

### 3.5) Unhappy Ending for CRP Complainants

The saga of STDP does not have a happy ending. Some of the affected people, especially their leaders, who filed the case before the CRP became targets of political harassment and persecution.

Many false allegations and accusations coming from political and government authorities have been leveled against them. Accused of being anti-development, their compensation had been cut where it was possible. Alarming, their lives have been threatened as well.

### 3.6) Lessons from the STDP Case

We take note of the situation in other countries where ADB has large-scale infrastructure projects in regard to the Accountability Mechanism. In a way similar to the Sri Lankan situation, we can understand why affected people in most countries do not utilize the Policy to make the Bank and the borrowing government accountable to project-related harm and damages.

The lack of basic information is the main hindrance. If affected people are fortunate to have been given ample information on the Policy, the tedious and cumbersome process poses a huge problem to them and their representatives. Another major deterrent is their fear of being targeted by government officials/authorities for harassment, persecution and intimidation. These are but a few major factors hindering the Accountability Mechanism from meeting its goal: providing solutions to the problems of ADB project-affected people, and addressing non-compliance of ADB and Borrowers with Bank policies and procedures. It is our firm belief that the ADB, which is undergoing a review of its current Accountability Mechanism, should always keep in mind the many lessons learned from the STDP case. ■

#### Endnotes:

- 1 [http://compliance.adb.org/dir0035p.nsf/attachments/5th%20Monitoring%20Report%20Corrected%20Based%20on%20Corrigendum.pdf/\\$FILE/5th%20Monitoring%20Report](http://compliance.adb.org/dir0035p.nsf/attachments/5th%20Monitoring%20Report%20Corrected%20Based%20on%20Corrigendum.pdf/$FILE/5th%20Monitoring%20Report)
- 2 [http://www.stdp.lk/about\\_us\\_index.php](http://www.stdp.lk/about_us_index.php)
- 3 <http://www.forum-adb.org/inner.php?sec=13&ref=extras&id=125>

## Annex



### **Forum comments on the Consultation Paper of ADB Accountability Mechanism Policy Review**

April 1, 2011

After a series of public consultations in six (6) countries led by External Experts it hired, the ADB released a Consultation Paper of Accountability Mechanism (AM) Policy Review titled, "*Further Strengthening the Accountability Mechanism*"<sup>1</sup> on February 4, 2011. This Consultation Paper contains a proposed revised AM by the Joint Board-Management Working Team on AM Policy Review.

The Accountability Mechanism of the ADB should be a policy that provides a mechanism to make ADB responsible to people affected by the adverse impacts of policies, programs and projects financed and/or administered by ADB. '*Further Strengthening the Accountability Mechanism*' as the draft title says could be understood as ADB having the intention to improve its current mechanism so that affected people would have better access in holding it responsible.

We welcome the intention of ADB to improve its current AM. This is reflected by the inclusion of some of the recommendations by the members of the NGO Forum on ADB submitted in writing in September 2010<sup>2</sup> and during the series of public consultations; particularly that the choice to go either to the OSPF or OCRP should be with the complainants.

However, the intention to 'further strengthening the Accountability Mechanism' is challenged by the lack of commitments by the Bank to become more accountable to affected people, dilution of terms and disregard of many recommendations which came out from the series of public consultations, particularly related to access of affected people to seek accountability from ADB, in the Consultation Paper.

Furthermore, we see that the Consultation Paper, on some aspects, loses sight of some key components of a genuine Accountability Mechanism, such as the separation between day-to-day operations problem solving, and the Accountability Mechanism as a separate independent mechanism. This might be a result of insufficient information being provided by the SPF, in particular, that have led to major omissions in the Consultation Paper; and the lack of clarity of the External Experts' Paper .

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<sup>1</sup> At: <http://www.adb.org/Documents/Policies/Accountability-Mechanism-Review/am-review-first-draft.pdf>

<sup>2</sup> At: [http://www.forum-adb.org/docs/Forum-AM-Review-Submission\\_15Sep10.pdf](http://www.forum-adb.org/docs/Forum-AM-Review-Submission_15Sep10.pdf)



It seems that ADB is trying to deny that there are problems caused by it financed or administered projects. This is manifested throughout the Consultation Paper by changing the terms complaints to requests, and complainants to requesters.

The following sections outline our remaining key concerns on the Consultation Paper on AM Policy Review, specifically on the policy's guiding principles, suggested new structure and process, and other issues derived from the Consultation Paper.

## 1. Objectives and guiding principles

### **Guiding principles and objectives promoting accountability to affected people are not addressed**

Though it claims *"to provide an independent and effective forum for people adversely by ADB affected people to voice and seeks solutions to their problems"* (para 116, p.29), the AM consultation paper is unfortunately serving the interest of the ADB. Only one out of four items pertaining to how the the AM is designed addresses the issue of the Bank becoming responsive to concerns of affected people (para 117, point i-iv, p. 29). There is no word in the objectives and guiding principles that the policy is to make ADB accountable to people who suffer from ADB financed and/or administered projects. Furthermore, this policy talks only about 'solution', but not 'justice' for people whose sufferings were triggered by ADB projects. It also implies that there is no sanction or consequences drawn from ADB for any misconduct in its operations. Therefore, the essence of the policy is then put into question.

### **Diluted terms – complaint versus request; complainants versus requesters**

In order *"... to ensure simplicity and distinguish these issues from general complaints that can be raised with any part of ADB, this Paper proposes that both cases received by OSPF and CRP be referred as 'requests' and the people asking for these processes be referred to as 'requesters' ..."* (para 111, p. 29).

The term complaint is different from request. A request is asking formally for something to be given and done especially as a favor or a courtesy; meanwhile, a complaint is a statement that a situation is unsatisfactory or unacceptable.<sup>3</sup> Changing the term from "complaint" to "request" is not all pithy because it negates the main point that the affected people are faced with a problem triggered by project financed or co-administered by the ADB. It is an intentional act to detach affected people from the problem they are facing.

There is no basis to change the terms complaint and complainants to request and requesters, respectively. This is a clear manifestation of the ADB's denial about problems in its operations on the ground.

#### Recommendation:

The terms complaint and complainants in the existing AM should be retained.

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<sup>3</sup> The distinction between 'request' and 'complaint' can be checked at many computer, web-based and hard copy dictionaries.

## **Disregard of indirect, cumulative and long-term impacts and non-material harms experienced by people**

This Consultation Paper disregards acknowledgment made by the External Experts for the AM Policy Review, which was based on input from the series of public consultations, that one or more persons can be directly harmed by indirect impacts of an ADB project<sup>4</sup>. Furthermore, the External Experts in its report urged ADB Working Team to clarify “... *the eligibility criteria so persons or groups that may be materially harmed by indirect impacts of the project can also file complaint...*”<sup>5</sup>.

This Consultation Paper ignored recommendations that came from the public consultations, Forum’s written submission and even from the External Experts by keeping the current provision that the AM will only deal with ‘direct and material harm’ (para 116, p.29; para 118, p. 29-30; para 137, p. 33; para 147-148, p.37; para 151, p.38). Similarly on the issue of non-material harm, this Consultation Paper ignores the recommendation from the public consultations to include the term “non-material harm” by only acknowledging ‘direct and material harm’ (para 16, p.29).

Making use of the outdated Environment Safeguard Policy of 2002 (para 27, p.8) as basis for recommendations involving indirect impacts shows unfamiliarity with the new Safeguard Policy Statement of 2009 that acknowledges the indirect environmental impacts.

Furthermore, para 27 (p. 8) of this Consultation Paper manifests such unfamiliarity with the SPS 2009 as it argues that there is no policy basis to extend the eligibility criteria to include indirect and non-material harms.

There is also no policy basis to reject this recommendation particularly as the new SPS includes the terms “indirect and cumulative impacts and risks.” The Consultation Paper should refer to the new SPS that already superseded the old Environmental Safeguard Policy of 2002. A policy should be created based on experiences in project implementation and of people affected by the project. This Consultation Paper clearly shows ignorance of said experiences.

### **Recommendation:**

The AM should consider experiences of affected people who are also facing indirect, cumulative and non-material harm, aside from direct and material harm. ADB should take in to consideration the concerns on continuing long term impacts (e.g. asbestos victims).

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<sup>4</sup> Van Putten/Husain, Independent Review of ADB Accountability Mechanism, a report submitted to Working Group of ADB, December 2010, para 75, p.26 at <http://www.adb.org/Documents/Policies/Accountability-Mechanism-Review/External-Experts-Final-Report.pdf>

<sup>5</sup> *ibid*, para 76, p. 26

Furthermore, this has to be in line and consistent with the new SPS of 2009. Otherwise, how would ADB be accountable to (indirect and cumulative) harms that are identified in the new SPS?

## **2. Structure of the AM**

### **Full choice for complainants**

The paper recognizes that "the AM should be driven by the demands of project-affected people. It should provide direct access to compliance review for project affected people." (para. 87, p. 23). We welcome this recognition, and the paper's recommendation of Option V: Full Choice for Requesters.

### **"Problem solving" role of the SPF**

The Consultation Paper seems to strongly believe that the SPF should be embedded in management/operational structures and therefore report to the Management. The Consultation Paper also prides itself on the ADB's unique approach to problem solving in an accountability mechanism, which applies both to private and public sector projects (para. 78; p. 21). This loses sight of the fact that the original idea behind having the "consultation phase" SPF-arm was in the sense of a mediator/ombudsman; not in terms of operational problem-solving. In practice, the SPF's approach to problem solving has often been biased towards supporting Management, both in proactive advice, and also in handling complaints.

#### Recommendation:

The SPF must be redesigned to ensure that it is an impartial entity. In solving problems raised by complainants, the SPF needs to be neutral to all stakeholders. To remove any real or perceived bias of the SPF, it is essential that the "problem-solving" function should be independent both from operations and from management, and similarly to the IFC's Compliance Advisor Ombudsman. There is no rationale for the SPF reporting to Management, and even less so for making it part of Management. The whole point in having an "Accountability Mechanism" – Redress Mechanism -- is to have an *independent* avenue for project-affected people to voice their concerns on a funded/co-administered project by the ADB.

### **Independence of both SPF/CRP and the Complaint Receiving Officer**

Independence of the AM means that SPF and CRP, as well as their staff members, cannot be part of the line management structure of ADB. While the Consultation Paper makes recommendations in regard to structure of the CRP; it does not address recruitment processes and criteria. Independence needs to be systematized better; and this should be done through the involvement of external stakeholders (CSOs and other interested parties) taking a role in

recommending candidates. Furthermore, if an employee of either the AM offices has a conflict of interest, that person will withdraw from involvement in responding to the complaint.

Another vital point for the independence of the CRP is that the Secretary must not be a level 10 (Management) position. The Chair should be the head of the CRP office, supported by a Secretary. In the past, there have been instances where the Secretary has inappropriately influenced the CRP process. If the Secretary is at a level 10, coming from a Management position in Operations, this is much more likely to compromise the independence of the Secretariat than a lower-level support position. The 2003 AM Policy has no provision requiring a level 10 position.

### **Day-to-day problem solving must be kept SEPARATE from AM to avoid conflict of interest**

There are a few instances in the Consultation Paper, where it draws on the importance of the SPF's role in day-to-day problem solving; and even some suggestions (e.g. role of Complaint Receiving Officer) to pass on requests to operations department. These indicate that the author of the paper (and currently the Board and Management) have really lost sight of what an independent Accountability Mechanism does (regardless of whether it is "problem solving" or compliance review). It must be independent. This must be rectified and redefined.

Paragraph 106 states that the "SPF and the CRP should explore all ways to fully utilize problem solving and compliance capacity at the country, project and operations department levels to improve efficiency and reduce transaction cost." This desire for streamlining undermines the independence of the mechanism.

For CRP, the scope of eligibility should be expanded beyond project-affected people. Environmental NGOs, taxpayers and other groups concerned should have a legitimate interest and stake, if an ADB project, for instance, would further threaten endangered species, or involved spending taxpayers' money.

During an investigation by the SPF, local communities usually only come to know about related problems and violations under the project. And since the SPF does not consider relevant problems other than what is specified in the complaint, it would then be necessary to write and file a new complaint. This Consultation Paper still does not include issues other than the ones raised in a complaint to be considered by the OSPF.

### **The Compliance Review Function**

Compliance Review process becomes very difficult and time consuming (240 days). And it is not mandatory for DMC to follow Board's decision to make project in compliance with the Bank's policies. (para 181, 187, 189-192).

### **Exclusion of complaints to OSPF:**

Para 150 (p.37-38) states that requests will be excluded if they are (point iv) about decisions made by ADB, the borrower or EA, or the PPS on procurement of goods and services, including consulting services.

#### Recommendation:

Decision made on this regard should be made available publicly.

Para 150 (p.37-38) states that requests will be excluded if they are (point ix) within the jurisdiction of ADB's Appeals Committee or ADB's Administrative Tribunal or relate to ADB personnel matters.

#### Recommendation:

The policy has to provide clarity about the said ADB's Appeal Committee.

### **Processing requests**

The Accountability Mechanism should not be the receiving point for concerns addressed to Management. Management should still respond, as its way of operating, to concerns raised by affected people.

Para 158 (p. 40) eliminates all possibilities to make complaints confidential as CRP will ask the Management to respond after receiving the complaint and before determining the eligibility.

Para 160 (p. 40), on the processing of request, Step 1. Receiving request explains the process that the complaint will sent to concerned operation department by sending "... a copy of the requester's letter to them" (para 160, p. 40). This would trigger a risk that the complaint is not confidential anymore. There is no guarantee that the operation department will not be forwarding the complainant's letter to governments and borrowers, and in contradiction with the confidentiality provision of the existing policy.

Para 176 (p.42) should state that if there is no consensus on the course of action, ADB should stop project financing, unless it would not be taken into compliance with ADB policies.

Another important point to be mentioned is the new requirement to address issues first not only to Operational Department, but also to a focal person for grievance handling. This makes Accountability Mechanism more unapproachable and difficult (para 107, p.27). The merging of local grievance mechanisms and the SPF's role is a problematic proposal. Local grievance mechanisms are put in place (as required by ADB's policies) by the local government.

This was a big issue during the Safeguard Policy Update, and it was then clarified in the SPS that it is not a prerequisite for complainants for the AM to have their concern/s addressed at the level of the local grievance mechanisms. The proposed merging of the roles of local grievance mechanisms, Operations Departments and the SPF, again demonstrates the lack of understanding of the role of the SPF within an independent Accountability Mechanism. Under no circumstances should the SPF delegate problem solving to Operations Department once a complaint has been received and deemed eligible. The SPF can facilitate with Operations, but should never delegate.

Recommendations:

- Local grievance mechanisms set up by a project must be kept separate from the SPF process.
- Handling the case at the level of the local grievance mechanisms is not a prerequisite for filing a complaint to AM.
- The AM should maintain the confidentiality clause; the complainants' letter and identity should be kept at the OSPF/OCRP. The operation department can receive notes about this, without receiving the complete copy of letter and identity of the complainants.

The Paper states that "... during in-country consultations in 2010, local communities expressed their desire for problems to be solved locally to expedite the process ..." (para 107, p.27). In contrary however, in many cases, local communities have expressed (to Forum and other NGOs) that the local grievance mechanisms are not working.

Recommendation:

Forum requests the full and complete documentation of these statements.

Para 103 of the Consultation Paper (p.27) states that AM should provide the opportunity for Management to respond before the eligibility of a request for compliance review is determined. This is a conflict of interest and undermines the CRP's independence.

In addition, the Consultation Paper proposes that the borrowing country should be informed about a request before its eligibility is determined. Compliance review ensures the Bank's compliance with its own rules, and this does not come with an obligation (it is out of scope) to inform the borrowing country, only if otherwise requested by the complainant. Moreover, compliance review ensures the Bank's compliance with its own rules. This means that to determine the eligibility of a request, it is out of scope that the AM considers whether the ADB has or continues to have leverage to influence change, and whether the problem-solving exercise will interfere with or be impeded by any other relevant process before a court, an arbitration tribunal, or a similar review body as stated in the Consultation Paper (para 169, p.41).

**Recommendation:**

OSPF/OCRP will notify the complainants, ADB management, President and the Board immediately in writing only if a complaint already has been determined as eligible and that SPF or CRP will undertake an assessment.

**The Complaint Receiving Officer**

It is “excessive” to add a Complaint Receiving Officer (CRO) (paragraph 141-142, p.35) to the structure of the AM. Affected people need a simple process in pursuing their complaints. CRO might extend to the bureaucracy of the AM because it is a structural and not a functional position. It will confuse affected people if they have to submit a complaint to the CRO (para 160, p. 40), but not to the OSPF and/or OCRP as the latter has been the known structure of AM.

The CRO is equipped with an authority to determine “... whether there have been prior good efforts ...” to solve the problem with the operation departments (point iv, para 141, p.35). Furthermore, CRO would contradict the confidentiality issues and free choice of the complainant as this position has the authority to send the complainant’s letter to the operation departments in the Step 1: Receiving the Request (para 160, p. 40), which is before the eligibility of a complaint determined. The independence of CRO therefore is crucial and questionable because CRO is a member of OCRP (paragraph 141, p. 35), and is still part of the ADB staff.

**Recommendation:**

A CRO should not be added to the existing AM structure. If there is a need for a person who will perform secretarial type work, then it should be a functional position, not a structural position built in the policy. Said position should only have ‘a-mail-box’ function.

**Reports of OSPF and OCRP**

In regard to issues of transparency (para 37-38, p.10) and participation (para 39-40, p.10), the scope of participation in the AM can be further enhanced. Complainants and all other stakeholders involved (management, governments, borrowers) should be given the opportunity to respond at the draft CRP report stage. The report can be sent to the parties concerned. The parties concerned may submit to the AM their opinions/comments on the contents of the report. The AM shall pay due respect to such opinions and, if he/she deems that the opinions contain matters useful for the monitoring of the project in question, may transfer the opinions with its recommendations to the Board. However, in para 105 (p.27) on streamlining process, the Consultation Paper states that commenting on OSPF review and assessment report should be simplified and should not be obligatory.

Experiences show that written comments from affected people also give and provide inclusiveness to the report. This also provides solid ground for

participatory decision-making process and elaborates trust between different stakeholders, thus promotes the credibility of the mechanism. There should also be an option for complainants to provide oral feedback, which should be documented verbatim.

Recommendation:

Affected people should be given opportunity to provide their comments to reports of OSPF and OCRP either written or oral.

Recommendation:

Both SPF and CRP annual reports on ADB policies implementation should be taken care of during any country partnership strategy approval or suggestions to make stronger country safeguard policies.

### 3. Other key concerns

#### Site visits

From the proposed Option III, there is not really much difference to the status quo. Unless the Joint Board-Management Working Team can work out a better back-up option, i.e. what is the fall back if in Option III, a site visit is still denied. The Team should look into auditing practices of other financing institutions (not MDBs). The argument that site visits undermine country sovereignty just does not appear logical, with an institution that gives money to another country. Any other crediting or financing institution would retain auditing rights.

The site visit is also a problem for the SPF, not just the CRP. This is where the paper has insufficient information, and the information provided in the table of the SPF cases on the Cambodia Highway One Project is misleading. It also does not state that the SPF review was desk-based work. The CRP's assessment in the China case was that "without a site visit it was unsafe to issue any findings or make any recommendations" (para. 19, p. 6). The paper does not comment or describe the fact that the SPF's assessment in HW1 was desk-based work.

Experiences particularly in Central Asia showed that the SPF could not exercise their tasks because the governments were reluctant in receiving them/their visits. This would hamper the process of SPF. For example, during a joint multi-stakeholder meeting organized by OSPF team in Kyrgyzstan, representatives from the Ministry of Transport literally exerted its influence on all discussions and agreement was not reached.

Recommendations:

- Site visits should be made a mandatory paragraph in loan agreements.
- Governments should provide space for SPF and/or CRP to do their work.

## Cut-off date

The Paper considers inputs from public consultations, including Forum's written submission, to extend the cut-off date of filing a complaint beyond the PCR. The cut-off date is now determined in the Paper as one year and more after the loan closing date (para 150, point vi, p.37). A reason for this provision was given in para 26, p.8, which was to improve the clarity of the cut-off date.

Unfortunately, this change has not fulfilled its purpose of having more predictable dates because of loan closing dates are also similarly not clear. The loan closing date is specified in each loan agreement<sup>6</sup> but this can be changed anytime based on the agreement of the ADB and the borrowers, and extended if there is a project delay in its implementation. Meanwhile, the PCR has its objectives to evaluate a project performance since the design up to its implementation and completion. This would include the loan disbursements<sup>7</sup>. *"... Commencing a PCR based on loan closing date may not be appropriate.."*<sup>8</sup> Furthermore, *"... a PCR is prepared 12-24 months after the completion, which is after its facilities or its components are substantially completed and are ready to operate (regardless of closure of its financial account)..."*<sup>9</sup> This provision does not say that the PCR is one year and more after the loan closing dates and also does not suggest to prepare PCR based on the loan closing dates.

The whole idea to suggest the cut-off date beyond PCR during public consultations and Forum's written submission is actually to give more time to see impacts and harm of the project to the people. In reality and more often, projects cause impacts and harm that would be realized in a longer-term period. To set the loan closing date as the cut-off date clearly limits the access of affected people to AM. Furthermore, this new cut-off date dilutes possibility to file a complaint under the program loans or MFF projects.

A case in point was one of the projects in Kyrgyzstan. It was supposed to be closed in 31 Dec 2009, but actual closing date was 31 Jan 2009, while money disbursement was completed two years after. This project was targeting legislation reforms, which have long-term impact, but with the new AM underway, affected people could not file a complaint, while direct and material harm could be justified.

Another case in point is complaint on the Power Sector Development Project in the Philippines. The complaint was declared ineligible since the PCR has been issued 25 days earlier.

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<sup>6</sup> ADB. Project Administration Instruction, PAI 4.05, revised August 2005 at: <http://www.adb.org/documents/manuals/PAI/pai-4.05-aug05.pdf>

<sup>7</sup> ADB. Project Administration Instruction, PAI 6.07A, revised March 2009, Project Completion Report for Sovereign Operations, at: <http://www.adb.org/Documents/Manuals/PAI/pai-607-partA.pdf>

<sup>8</sup> *ibid*, para 2, page 1 of 4: timing for PCR preparation

<sup>9</sup> *ibid*, para 3, page 1-2 of 4: determining project completion

### Recommendation:

The cut-off date should not be determined by the loan closing dates, but 10 years after the PCR. There should be no cut-off date for projects with long-term environmental and health impacts.

### **Who can file complaint?**

The Consultation Paper retains a provision that a complaint may be filed by two or more people (para 147, p. 37) despite recommendations from public consultations and Forum's written submission that anyone can submit a complaint. A reason given in this Paper: two persons requirement was intended to help filter out frivolous complaints (para 24, p.7). This is an unfounded argument and clearly shows that the provision is self-serving instead of promoting the spirit of accountability.

### Recommendations:

- The AM should develop a mechanism to filter out frivolous complaint rather than limiting access of affected person to seek accountability
- Anyone who affected by the project can file a complaint to the AM.
- There should be no condition of 'prior good faith efforts' by the complainants in resolving problems with the departments
- NGOs should not be restricted in filing complaints. Requests of (inter) national legal entities/bodies, whom statutes/by laws clearly set forth in their mission and objectives to protect international rights and/or the environment should be added to the list of parties, that can ask for a problem solving consultation or file a complaint (on behalf of affected communities).
- For CRP, the scope of eligibility should be expanded beyond project-affected people. Taxpayers have a legitimate interest in how a public institution spends their money; and other stakeholders, such as environmental groups, would have a legitimate interest, if an ADB project were to further threaten endangered species, etc.
- There should be no strict formal requirements for what to include in a complaint, it would be helpful for the AM if the complainants provide as much information as possible on what has been done by the complainant or affected parties to attempt to resolve the problem, including specifically any contact with ADB personnel, the sponsor, or host government. Complaints may relate to any aspect of the planning, implementation, or impact of ADB projects, including but not limited to:
  - Processes followed in preparations of a project;
  - Adequacy of measures for mitigation of social and environmental impact of the project; and
  - Arrangements for involvement of affected communities, minorities and vulnerable groups in the project, including the planning and design phase of projects).

### **Timelines for SPF and CRP:**

#### Recommendation:

Timelines for SPF and CRP should not be flexible. The existing AM requires complainants to wait for at least 77 days to receive the result of the eligibility of the case from the OSPF prior filing a case before the CRP. We welcome the provisions in the consultation draft that complainants should be able to file their requests directly either to the OSPF and/or CRP, contrary to the existing provision, and reducing the number of days of registering the eligibility of the complaint with seven days from its filing as against the existing 21-day period.

However, we reiterate that we are against the provision of an additional position, the CRO, as mentioned above, as this will undermine the independence and creditability of the AM.

### **Review Process:**

#### Recommendation:

Policy consultations of major policy reviews have, as general practice in the past, been held on draft W-paper; therefore W-paper should be made publicly available for comment.

### **Assessment of a project as a whole**

AM is designed to find a solution to a problem caused by a project, either through problem solving or by investigating non-compliance to policies. Non-compliance to policies will definitely affect the whole project. The existing role of the CRP should not merely be confined to providing specific project site solution where the complaint comes from. In order to make sure a comprehensive and adequate result or solution is provided, submitted complaint should be treated as the basis to review the whole project. ADB can stop further implementation of the project if they found major problems at the preliminary investigation of the both SPF and CRP.

### **Expansion to wider range of issues**

It is desirable to expand the range of issues. During investigation by the SPF, local communities only came to know about related problems and violations under the project. However, relevant problems other than specified in the complaint are not considered by SPF. Complainants are instead required to write a separate complaint.

#### Recommendation:

A complaint should be amended after submission, when new facts are found.

## **AM findings of project implementation failure and policy non-compliances:**

### Recommendations:

- In cases of non-compliance, AM will keep the audit open until the implementation of remedial action has ended and will continue monitoring the implementation of remedial actions, until full compliance.
- The CRP final judgments on non-compliance and remedial actions advised by management must receive full pledge support and backing by the President, by urging the borrower to agree upon implementation.

### **Information on AM Policy**

As the analysis in Forum's written submission, there is a tremendous lack of information on the AM in project components. The more frequent complainants under the ADB Accountability Mechanism come from Central Asian region. Table 3 on Complaint Received by OSPF by Region (para 15, p.4) shows that 17 complaints out of 32 came from Central Asia; and 3 complaints out of those 17 complaints were determined as eligible. According to Table 5 on Issues raised in Complaints 2004-2010 (para 17, p. 5), resettlement and information were the issues most raised in the complaints.. This Table 5 hides the fact that those resettlement issues were raised due to lack of information disclosure, consultation, and participation of affected people during project preparation stage.

The Forum and the public consultations recommended that information on AM must be included as a mandatory component of each ADB-funded or co-financed projects. Unfortunately, neither the Consultation Paper nor the current Working Paper on PCP Review include proper mechanism of information dissemination about AM and local grievance redress mechanism to affected people. Para 110 (p.28) of this Consultation Paper says that each Resident Mission (RM) should have a grievance redress focal person, but from the experience, most of the time, RM staff members are less aware about ADB policies and their requirements. There are also cases, when RM staff responsiveness to ADB-related activities were not adequate and were biased toward their respective governments. Under such circumstances, it is very difficult to avoid conflict of interest between ADB staff member involved in the project implementation and supervision, and their work with government officials. One of the main concerns raised by communities was the lack of trust to RM staff and the issue of confidentiality.

In the part G. Improving Awareness and Enhancing (p.28) AM awareness raising is intended more for ADB staff and borrowers, rather than for affected people or project beneficiaries (para 110-114; p. 28-29). To use AM as a tool for learning and development effectiveness (para 110, p.28) clearly shows the purpose of the AM as self-serving to the interest of the ADB. This learning for ADB staff and borrowers is too expensive for affected people because it costs them their lives and livelihoods.

Outreach on AM to ADB staff and the public (para 135, point ix, p.33; para 140, point iv, p.35) will be conducted. This would be a good measure for ADB staff,

borrowers and the public; but not for affected people. There is no provision in the Consultation Paper on measures to inform affected people on the AM though reports of OSPF/OCRP, input from public consultations and Forum's written submission showed that one of the major problems is lack of information on AM to affected people.

Recommendations:

- Information about AM should be provided in a manner that is accessible to local people, and made available in every local language.
- ADB must take a pro-active approach in disseminating information about AM to affected people; the Operation Department (OD) should have a mandate to inform affected people about the AM at the time when the OD introduced the project to affected people.

**Lack of trust among affected people**

AM should be very concerned about the different political realities and sensitivities in the member countries. Affected people fear their respective oppressive governments. This is one of the reasons why they do not show their objection or their disagreement to a project, not to mention file complaints against a project implemented by the government or a private sector project supported by the government.

The AM in its provisions mentions that the SPF or CRP will keep the identities of the complainants confidential if requested. However, in some cases the complainants feel that they have been intimidated by executing agencies because they filed complaints. In such situation, women in particular, are vulnerable as targets of physical and psychological harassment. Many affected people believe that because of non-confidentiality of their complaints, they were treated badly and/or unfairly by the executing agencies.

Recommendation:

Forum's written submission and input from public consultations mentioned this issue and recommend a provision in AM Policy protecting affected people from harassment once their complaints are known to governments or borrowers. To reiterate the previous recommendation, there should be a clear stated provision in the AM policy to protect the affected people and the corresponding responsibilities of the AM in this regard.

**Financial Intermediaries, Co-Financing and Private Sector Operations**

The Consultation Paper does not clearly define the application of AM on financial intermediaries or on co-financiers when it comes to private sector operations. The AM must expand its mandate on co-financing projects as well as on Financial Intermediaries.

Recommendation:

To reiterate a recommendation from previous Forum's written submission, AM

should define clearly its application to financial intermediaries and co-financier. Furthermore, private sector, financial intermediaries and co-financier activity, should be considered as ADB-assisted projects, and people can ask the SPF for problem solving or file a complaint in case they think they are adversely affected by such.

Similarly, the Accountability Mechanism (both SPF and CRP) should apply, just like as provided by the SPS, to “all ADB-financed and/or ADB-administered sovereign and non-sovereign projects, and their components regardless of the source of financing, including investment projects funded by a loan; and/or a grant; and/or other means, such as equity and/or guarantees” (Safeguard Policy Statement, para. 48, p. 15).

#### **4. Conclusion**

The ADB should acknowledge that the AM is created because there are problems in the Bank’s operations. Problems should be acknowledged as problems. Approaching the problem by merely changing terms with vague and diluted languages only sidesteps the real solution to the problem.

The AM should be created for the purpose of being accountable to people who are suffering from problems triggered by ADB-financed and administered projects, and help them find solutions. Unfortunately, the Consultation Paper only serves the Bank’s interests, which diminishes the AM into the Bank’s image-polishing purposes and responds to its efficiency- driven agenda, limiting affected people’s access to holding the ADB accountable.

If “further strengthening the Accountability Mechanism” is truly wanted, then the Joint Board-Management Working Team on AM Review has to show greater commitments to making the Bank more accountable by considering inputs and recommendations from the public particularly from affected persons in drafting the upcoming W-Paper.

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**The NGO Forum on ADB is an Asian-led network of civil society organizations and community groups that has been monitoring policies, projects and programs of the Asian Development Bank. The Forum does not accept funds or any other grants from the ADB.**



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