

BANKwatch

CRITICAL PERSPECTIVES FROM THE NGO FORUM ON ADB

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Beyond Accountability Mechanism



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Editorial

Accountability Means Responsibility

From a parochial view, despite the dependence of Asian Development Bank (ADB) on the market to raise funds for its ever-increasing activities, having the finance ministers or treasuries of member countries constitute the Board of Governors still makes the Bank a public institution. Ideally, a single dollar spent for any activity of ADB must be transparent and accountable not only to citizens of donor countries but to the citizens of borrowing countries as well.

While the Bank has been spearheading the aid effectiveness discussion with other financial institutions during this global crisis, the Bank has also been evading both macro- and micro-analysis of its project effectiveness. There is not much talk about its own Accountability Mechanism (AM) policy for implementation.

After seven years of existence of its new avatar, there are many indicators which show distinctly that the AM has been alien to project-affected people, for whom solely the mechanism has been established as an avenue to convey the grievances and harms experienced as a result of the institution's operation. However, the AM has been profoundly dependent on CSOs for its usefulness. Even the Board Members who can request for a review of the case in the Second Phase (Compliance Review Phase), is not aware of this privilege that they have. Additionally, Management always tries not to see their activities under the two phases of the mechanism.

ADB has been reviewing its 2003 Accountability Mechanism this year via a process which is not only short in span but also served as a fallback from previous policy reviews such as those of the Safeguard and PCP policies. Within such a fast-paced review which tantamounts to an evasion of a concrete suggestion by many to rewrite the policy itself, many affected communities with the help of CSOs, especially NGO Forum on ADB, have tried to convey their suggestions to the review team. Of late, the review team has opened avenues to gather any comments on its policy.

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, which provides an opportunity for the affected communities to resort to AM for minimizing the harm they have faced or will be facing due to a project or program sponsored by the Bank.

Accountability mechanisms are essential to the credibility of international financial institutions (IFIs). A mechanism must adhere to principles of accessibility, transparency, independence and effectiveness. Do remember that accountability of the Bank does not end with this mechanism.

The Board of Directors, which is now part of the Joint Review Working Group, has the last say to make the Bank more accountable and responsible for its activities on 'poverty reduction.'

Dr Avilash Roul

Asking A Blind About Colors

Accountability Mechanism (AM) Review Consultation in Manila

By Tea Soentoro

Our group discussion was attended by three representatives from the Philippine government, two representatives of a Philippine bank, two representatives of the Cambodian government, one from Ausaid, one from the Cambodian Housing Rights Task Force, one from Philippines' PSI, one from Focus on the Global South Philippines, one lawyer from Greenpeace Philippines and four members of NGO Forum on ADB, including myself. The observers include the OSPF (Bob May), OCRP (Rusdian Lubis and Bruce Purdue), one of the consultants (Maartje van Putten) and an ADB staff. I could say that only members of the NGO Forum on ADB have a solid understanding of the AM.

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One of the major issues during the AM Review Consultations -- whether in Manila or those previously held in Jakarta and other places -- is the lack of information on AM among the affected people. This actually applies not only to affected people but, as could be seen from the consultations, also to government officials in general and the executing agencies in the private and public sector in particular.

suggestions on a policy review if she/he does not know much about the policy, does not understand how it works, and has no experiences in dealing with its implementation?

An example is the discussion on the issue of the 'ADB approach of site visit' (Consultation Question 2). Officials of a Philippine bank said that since they already went through an accountability assessment by the government, a site visit will raise concerns from their sub-project borrowers. The Philippine officials from the Public Works and Highway Department that worked on six (6) highways said that there are regular monitoring checks by the government. These stakeholders therefore said that there is no need for site visits. Those reasons clearly showed that they have little understanding of the ADB accountability mechanism, and what the difference is between the accountability mechanism and project monitoring. When it was explained that the AM site visit is not to check all the Bank's and government's projects but only to check a particular ADB project on its compliance in terms of implementation, they agreed that a site visit is mandatory and must be put in the loan agreement.

AM is Not Effective and Adequate to Help Affected People

Participants agreed that the lack of information and lengthy procedures are the major issues related to the non-effectiveness and inadequacy of the current AM.

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This lack of information naturally led to the lack of understanding on AM. Therefore, it was pointless for the AM review consultants to ask the participants in the AM Review Consultation in Manila for detailed suggestions on how to improve the AM. How you can ask someone for detailed

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‘ Additionally, the NGO Forum suggests that any group (local, national, regional and international) can submit complaints even though they are not part of the affected people, as long as they can provide an analysis on the impacts of the project on the environment or on human rights at a larger scale. This is very important at every stage of the process, whether during project design, project preparation or implementation. ’

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Lack of Understanding about Accountability and the Discussion on the Cut-Off Date

Lack of understanding on AM, particularly on the ‘accountability of ADB to affected people,’ was also evident during the discussion about the cut-off date for filing. The issue was limited to the compensation aspect only. Thus, a narrow perspective was used in dealing with the issue of cut-off date. A Philippine government representative said that the people should be informed about the cut-off date and about compensation issues.

A similar opinion was expressed by a Cambodian government representative. His perspective focused on the cost issue when he said that the Project Completion Report (PCR) should be the cut-off date. According to him, when the implementation stage is done, the project implementation account likewise closes, and therefore money is no longer available

to pay for the remedies once the complaint goes beyond project implementation. The repayment of loan and interest to ADB has another account, he said. However, as Maya Eralieva of NGO Forum countered, the remedies can be drawn from the loan repayment account to ADB. After this rejoinder, the government representative could no longer say anything.

Other participants agreed that PCR should not be the cut-off date considering the continuing, non-material and long-term harms of a project. The power privatization in the Philippines and the Madrasah Education Development Project in Indonesia were provided as examples to show those harms. The suggestions then are for the cut-off date to go beyond PCR until the loan agreement is finished, and for the remedies to be drawn from the loan repayment to ADB.

Confidentiality Issue

However, a case in Indonesia shows that the confidentiality of the complainants could not be assured by ADB. A breach of trust was committed against the affected people. It is suggested therefore that AM provide an internal mechanism to deal with breach of trust and the confidentiality issue.

No Quantifying of Affected Persons

In the discussion on the eligibility criteria of AM, some suggestions were raised. It was proposed that anyone can file a complaint, and that the number of complainants should not be limited to two (2) persons and more. Another suggestion was to acknowledge that an affected person is an affected person, whether it was because of direct or indirect harm. Still another was to expand the scope of harm to include continuing and non-material ones.

Furthermore, financial intermediaries and co-financing have to be exclusively phrased in the scope of AM to be consistent with the new Safeguard Policy Statement.

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“ This lack of understanding in AM manifested as well in the other questions raised by a Philippine bank official, a government official, as well as Cambodian government representatives. For example: Can executing agencies also use the AM if they have issues/problems with the ADB? ”

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Why is AM needed when affected people should be discussing the issues with their own government? Can a national mediation mechanism be used instead of AM? The discussion on these issues confirmed that the lack of information and understanding has made the AM an ineffective mechanism to help affected people.

Furthermore, the small number of complaints to OSPF and OCRP is an indicator of the non-effectiveness of AM. A participant commented that this reflects a mindset among ADB staff that the AM is not an issue to be taken seriously. Therefore, an analysis of the small number of complaints should be included in all documents of the AM, and the mindset of related ADB staff should be examined. Furthermore, the ADB staff should be part of the learning process on AM. A sanction mechanism should also be put in place for those who are not complying with AM policy.

Some suggestions to address the problem of lack of information are: information on the AM as a mandatory section in all project documents, including the budget appraisal and the loan agreement; information on AM for affected people in their local languages; information dissemination on AM in project sites conducted in the local languages, using various means such as project consultations, leaflets, brochures and information boards, among many others.

One suggestion is to shorten the procedure by letting affected persons choose in which process they want to file the complaint – OSPF or OCRP -- and to make those processes simultaneous.

One other example to further the suggestion about a simultaneous process: a complaint filed to OSPF was deemed non-eligible because the project has not been implemented yet. This contradicts the provision in the AM that indicates the period of filing to cover the whole project cycle. But what the OSPF seemed to be saying is that affected people should have perceived the violation to occur during project implementation since AM cannot be applied to situations at the project design and preparation stage. Furthermore, problems related to project design and preparation are mostly related to policy compliance. However, complaints on policy violations submitted to OCRP cannot be acted upon because it should go first to OSPF which covers policy implementation. This shows a loophole in the AM. To address this, anyone should be free to choose which office to submit a complaint to, and a complaint should be allowed to get processed simultaneously, and not in sequence.

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“ Furthermore, problems related to project design and preparation are mostly related to policy compliance. However, complaints on policy violations submitted to OCRP cannot be acted upon because it should go first to OSPF which covers policy implementation. This shows a loophole in the AM. To address this, anyone should be free to choose which office to submit a complaint to, and a complaint should be allowed to get processed simultaneously, and not in sequence. ”

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ADB Accountability Never Starts and Ends with its Accountability Mechanism

By Maya Eralieva

Aigul Jumasheva and Kyzykul Ibrayeva (names are changed) were waiting for the Office of the Special Project Facilitator (OSPF) specialist, with their table full of food, in one of the regions in Kyrgyzstan. It is Kyrgyz tradition that whoever comes as a guest will be given full hospitality and provided with everything the hosts have. And if there is nothing, they will borrow from relatives and neighbors to show that their life is under control. Kyrgyz families hide candies and cookies from their own kids, but when a guest comes, they put out everything they have on the table. This time, the situation was no exception. These two ladies were waiting for the OSPF mission since they filed a complaint on September 7, 2010. They were quite happy. It took 63 days for OSPF to come to the project area and interview project-affected people. They thought their concerns will be addressed now.

Unfortunately, as it was explained by the OSPF specialist, the OSPF's role is to facilitate solutions to the issues as described by the different stakeholders, and to initiate and guide the consultation process.

“The OSPF does not intend to provide any definitive judgment, an evaluation of any stakeholder group or individual, or a set of expert recommendations on how the issues should be solved. Instead, it intends to assist the stakeholders better understand each other's goals and concerns, and to help them consider options for addressing those concerns.”

Timeline of AM Review and Consultations

Phase 1 – Public Invited to Comment on Current Accountability Mechanism Policy (web-based):
June – September 2010

Phase 2 – In-Country and Interim Consultations:
September – November 2010

Phase 3 – Public Invited to Comment on the Draft Revised Policy (web-based):
December 2010

Locations and Dates of AM Policy Review Consultation 2010

Colombo	30 September to 1 October
Tokyo	28-29 October
Washington DC	2-4 November
Frankfurt	8-9 November
Jakarta	11-13 November
Manila	15-16 November

Bishkek - Torogart Road

Photo by Maya Eralieva NGO Forum on ADB

Now, Aigul and Kyzylkul need to wait for another two months in the hope that their predicament will be resolved. In the meantime, they continue to suffer as a result of the ADB-financed project.

According to poor villagers, the shops to be affected are their sole source of income. They were never informed beforehand about the project as required by the ADB resettlement policy. They were never informed and involved in a consultative process. No appropriate income restoration program with the objective to improve or at least restore their productive base was established. There is no planning, implementation and monitoring program with involvement of resettlement and social sciences, and people affected. On the contrary, the affected people continue to be pressured by the government as a result of the complaint they filed to the ADB OSPF office. The government continues to be against the new resettlement plans. Given this situation, it seems that neither the government nor the ADB has any intention of meeting its avowed common objective to eradicate poverty. Based on just a few examples of their poor treatment of the affected people, they are far from fulfilling their declared principles and commitments.

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“The biggest problem of this policy is that it is too bureaucratic and too formalized, and expects complainants to direct their concerns to implementing/executing agencies which ADB calls the local grievance redress mechanism.”

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Sometimes, addressing problems under local grievance redress mechanisms and court system takes years to solve and is very time-consuming. In the meantime, ADB creates new financial modalities such as the multitranche financing facility (MFF) to satisfy its clients’ needs, which has aggravated the process of filing of complaints.

Under each project, ADB puts in the grievance redress mechanisms. However, local people do not trust in the arbitrariness of government entities, as



The shop to be demolished

Photo by Maya Eralleeva

well as in the local court system. Usually, when affected people do not agree with the compensation package, government officials tell them to simply file a case in the court. Here two issues arise: one, the country safeguards system does not comply with international standards; and second, not enough faith in the accountability systems of individual countries such as existing judicial systems leads to the marginalization of the society among developing member countries (DMCs). Although laws on access to information, civic codes and administrative codes provide the general public with avenues for appealing in court any unlawful refusal, many citizens prefer not to file claims with the courts as it is common belief that executives control the judiciary.

This strongly suggests that the use of the country system poses many challenges. It is true that the Paris Declaration emphasizes the need for country systems to be strengthened, and that only when the country system complies with international standards can it be implemented. However, in reality, the process of empowering and transferring to country system is going very slow due to the lack of political will from the governments and to weak commitments.



The second shop to be demolished

Photo by Maya Eralleeva

Higher Management Official from the Bank said that the two shops in the village are very small in amount and the project has the money for compensation, but government officials are fighting for every single cent. From private to general -- this should be the principle of the government as it protects individuals rights. Kyrgyz Government should protect the country's interest, which will lead to its development, thus coinciding with ADB's main mission in the region. But it seems that the Kyrgyz Government is not committed to follow this.

Between 1996 and present, six key dimensions were identified in the Kaufmann-Kraay-Mastruzzi Worldwide Governance Indicators based on the World Bank's long-standing research program. These dimensions are: Voice and Accountability, Political Stability and Lack of Violence, Government Effectiveness, Regulatory Quality, Rule of Law, and Control of Corruption.

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Based on this World Bank approach, ADB has identified four basic elements of good governance: accountability, participation, predictability and transparency.

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Does the ADB Accountability Mechanism (AM), together with its other policies, provide good governance? Does the ADB Accountability Mechanism give the space to make ADB and government accountable to people? Is there transparency in ADB?

The ongoing ADB AM review process presents evidence that the abovementioned questions merit a "no" answer. Most of ADB clients -- the private sector representatives and government officials -- do not know much about the Accountability Mechanism. How much more the affected people from ADB-financed projects? This has come to be because of ADB's usual approach to projects which is "leave it and forget it," together with "doing business" approach.

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From the ADB's Aid Effectiveness Report in 2009, the following were rightly mentioned: increase aid efficiency; the need to strengthen ownership and alignment; projects should be results-oriented, but not only for the sake of project implementation; and last but important point, increase mutual accountability and transparency of ADB and governments.

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The Way Forward

Unfortunately, all commitments are only on paper, and no real implementation has been done. So far, information about ADB's activities in the Central Asia and Caucasus (CA&C) region are available only in English and mostly on the ADB website, while totally zero information are on governments' website. There is an urgent need to develop the capacity of the DMCs, improve the transparency and predictability of ADB's assistance; improve access to information in the countries, and respond to disparities in performance of the ADB projects for more productive and inclusive outcomes.

Based on the findings by affected people and from OSPF field visits, the implementation approach of the project should be modified, and attention to information dissemination, consultation, and participation should be increased. Stakeholders feel that, overall, the project will benefit from these changes, and its implementation will be improved.

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Approaching ADB's Accountability Mechanism Review as a German Civil Society Organization

Observations from the In-Country Stakeholder Consultation in
Frankfurt am Main, Germany, November 2010

By Rosalyn Hoppe

The in-country consultation for European stakeholders took place in Frankfurt am Main, Germany on November 8, 2010. There were 21 participants from France, Germany, the Netherlands, Sweden, Switzerland, and the UK among others, as well as seven individuals from ADB staff and management, and two independent experts.

What's at Stake for Germany?

As the third biggest non-regional shareholder, Germany holds 4.32% of total shares of the Asian Development Bank, with the United States and Canada coming in first and second, respectively. Until 2009, Germany has contributed \$2.37 billion in capital subscription, and \$2.07 billion to special funds since joining in 1966 (Asian Development Bank & Germany Fact Sheet, 2009). As such, they are an important stakeholder when it comes to project financing and implementation, as well as in terms of procurement and consulting matters. As a sidenote: Mr. Eduard Westenreicher is currently Germany's Executive Director at ADB and also chair of the Working Group on the Accountability Mechanism Review which consists of four Board members and one member from the Management.

NGO Engagement in the Review and the Mechanism Itself

From June till September 2010, ADB invited the public to comment on the current policy. NGO Forum on ADB and its members were already

filing or facilitating complaints in terms of ADB's policies, programs and projects for several years. In 2009, out of the 13 cases, four were filed by Forum members. In September 2010, NGO Forum on ADB submitted the following issues to the Accountability Mechanism (AM): lack of information, limited scope of AM for people who were 'directly affected materially and adversely,' possibility of filing a complaint (for example, local or international NGOs or CSOs should be allowed as well) to both SFP/CRP, transparency, project assessment, cut-off date for non-eligibility, immediate response rather than a lengthy process, lack of trust among affected people, effective monitoring, investigation and function of SFP/CRP, and corruption among other issues. German Asia Foundation, which is a member of the NGO Forum on ADB, has also been present at the in-country consultation in Frankfurt.

Some Observations (following the draft summary of AM Frankfurt Consultation, 25/11/2010)

- Both independent experts were aware of NGO Forum's contributions.

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“ The discussion mainly focused on procedures (if and how the mechanism and its bodies work) rather than on social or political issues (lack of trust, information dissemination among affected groups, example of Fouzhou, China). ”

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- Both government representatives from Germany and Sweden representing their respective ministries of development and cooperation were present, making it highly probable that the process and outcome of the review are acknowledged on the government level.

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“ Several participants were vaguely familiar with ADB’s AM, but most of them had knowledge of other IFIs’ approaches to accountability. ”

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Specifically, the experience of the European Investment Bank (EIB) management served as an example for the group discussion, e.g., preference on whether it could go on mediation or compliance review phase, final judgment where case is most suitable by EIB – problem-solving or compliance review, decision on a case-by-case basis on whether approaching operations department is necessary, preferences on a balanced mix of former Bank staff and external appointments of staff for the mechanism, strong relationship with the Management was proven to be very useful.

- As before, the group was presented with 12 guiding questions to comment on, not all of them were discussed in-depth. There was no division into working groups, so the discussion went as follows:

- Do you think the 2003 Accountability Mechanism has been effective and adequate?
 - o Efficiency should be linked to how long it takes for AM to resolve cases
 - o Relationship with other multilateral development banks (MDBs): Harmonization of mechanisms
 - o Relationship with Borrowing Countries: Issue of ownership/responsibility
 - o Expanding options for complainants to either SPF or CRP
 - o International Conventions: Compliance to Aarhus Convention (2001)
- What is your view on ADB’s approach to site visits? Should it be mandatory in the loan agreement?
 - o Different functions between SPF and CRP
 - o Precedence effect
 - o Address broader issues on the system of incentives and sanctions
- What issues, if any, do you have when bringing a case to ADB’s Compliance Review Panel? Is the mechanism accessible to affected people? Has the information on the mechanism been effectively disseminated? What is the level of awareness of the mechanism?
 - o Few complaints due to the complex system and/or the mechanism itself remains unknown to potentially affected people; volume comparable to those addressed to IFC
 - o SPF reactively, not actively, approaching concerns raised by affected groups
 - o Ensuring confidentiality of complaints
 - o Translation to local language
- Is the accountability mechanism independent?
 - o Building trust in and openness of the Mechanism
 - o Better monitoring and feedback
 - o Bank staff vs. recruitment from outside (see EIB experience above)
 - o Trade-off between independence and effectiveness
- These questions were mainly discussed: Are the eligibility criteria for filing a complaint sound? How can ADB simplify and streamline the existing procedures?
 - o Simplify mechanism: It was noted that the process for filing complaints

- should be made as easy as possible for affected groups. The current model is too time-consuming to be effective. There should be less emphasis on eligibility (at the first stage) and more on complaints being taken seriously.
- o Discussion on whether AM could go beyond direct and material harm to include indirect and non-material impacts of projects
 - o Cut-off period for filing complaints: Some participants contended that complainants should be able to file a complaint even after a PCR has been issued. The rationale given was that the Bank has a duty to monitor projects while the loan is still being repaid.
 - o Unclear relationship between SPF and OCRP: Discussions focused on the relationship between SPF and OCRP. There was consensus that a closer structural interaction between these two AM windows should be established.
 - o Prior efforts in solving problems with the Operating Departments (ODs): There was an active discussion on the cases which were ineligible because of a lack of prior efforts to solve problems with ODs. Questions were asked whether approaching OD should be mandatory in all instances. Feedback was sought on what happened to these cases. Experts clarified that operations departments have provided information on the cases referred to them by OSPF. Information details tend to be uneven; while some departments provided detailed and in-depth information, other departments supplied patchy information.
 - o Example given for alternative mechanism: Installing a so-called gatekeeper as intermediary between SPF and beneficiaries or using an ombudsman
- What do you think about building a country's own safeguard systems and processes to conform with those of ADB? What are the implications of country systems on the accountability mechanism?
 - o ADB has a role to strengthen country systems: It was suggested that ADB raise country systems and standards as part of its commitment to the Paris Declaration agenda.
 - What are the broader impacts of the AM on ADB's approach to project selection and decision-making?
 - o Dual impacts of AM: No more complex projects; becoming more risk-averse to avoid cases being brought to AM; lessons learned from AM cases could lead to better project quality, with increased staff incentive to make projects more environmentally and socially sound
 - o Short- and long-run effects: EIB shared its experience that there may be a short-run effect of risk aversion wherein Management would want to avoid "problematic" projects; in the medium- to long-term, the existence of a complaints mechanism has led to better-designed projects. For instance, more serious environmental and social assessments were made, and the staff began to initiate more meetings with NGOs. In this respect, the mechanism has contributed to a change of culture within EIB.
 - What are the cost implications of the mechanism for the borrowing countries?
 - o Indirect cost of AM: For a borrowing country, the cost is not about the operating costs of AM, but rather the cost to ensure that safeguards requirements, including adequate compensation, are met by governments; other indirect costs include reduction in project scope; e.g, reduced coverage of a road project which affects more population than number of complainants
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- “In sum, the outcome of discussions may be similar to previous consultations, as a lot of the issues raised by participants were already known to the panel. It has to be noted that the emphasis of the discussions was on re-modelling the functions.”**
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German Asia Foundation: German NGO Working Group on the Asian Development Bank

Although several controversial issues were raised by European stakeholders, there is still further need to monitor and evaluate the ongoing review. Moreover, German NGOs and CSOs should be aware of the positive and negative effects of ADB-financed projects and complementary accountability measures. Thus, the NGO Working Group on ADB was established in 2003 as an information, lobby, knowledge hub for German NGOs/CSOs. Its mission is to engage and intervene in the policies, programs, and projects of the Asian Development Bank (ADB) that affect life, life forms, ecosystems, as well as the welfare and livelihood of peoples and communities in the Asia and Pacific region. There have been more or less active collaborations among individuals and organizations working on ADB in Germany/Europe. To date, three NGOs continue to work together on these issues: German Asia Foundation, BothENDs and urgewald (the latter, mostly in regards to World Bank and ADB interrelations). In

order to effectively raise further public awareness on ADB's influence on the development of the Asian region, it is important to strengthen and find new partners in this field of work in Germany and abroad. Please contact the author of this article, Ms. Rosalyn Hoppe, coordinator of the NGO Working Group on ADB at German Asia Foundation, if you are interested in collaborating or contributing to the Working Group.

For further information on German Asia Foundation at Asia House, see www.asienhaus.de/english/index.php

For further information on the NGO Working Group, see FOCUS ASIEN (2003): A Handbook on the Asian Development Bank, No. 16, p. 73-74, ISBN 3-933341-24-8, accessible via www.asienhaus.de/public/archiv/focus16.pdf

Rosalyn Hoppe is the Coordinator of the NGO Working Group on the Asian Development Bank at German Asia Foundation.

AM Policy Review

Background. At the 43rd Annual Meeting of the Board of Governors of ADB in Tashkent in May 2010, the President of ADB announced that ADB would undertake a joint Board Management review of its AM.

A joint Board and Management Working Group has been established to undertake the review comprising four Board members and the Managing Director General. Two international external experts, Dr. Ishrat Husain and Dr. Maartje van Putten, have been engaged to assist in the review. The review includes a public consultation process, involving face to face discussions with stakeholders and seeking comments from the public through a dedicated AM review website. The Strategy and Policy Department (SPD) is providing secretariat services to the Working Group.

Objectives and Issues. The objective of the review will be to review the experience since 2003 and examine the scope for improvements in the AM. The review will be broad based and will include, among others, the following aspects:

1. Analysis of the effectiveness and adequacy of the AM in the light of its historical perspective, objectives, and the principles as contextualized in the 2003 policy.
2. Evaluation of ADB's experience with the AM since 2003, reflecting the changing context of ADB operations, especially the adoption of Strategy 2020.
3. Comparison and analysis of ADB's AM with other relevant comparators.
4. Consultation with stakeholders including the public, project affected people, governance, ADB Board members, Management, operational staff, nongovernmental and civil society organizations.
5. Addressing of key issues arising out of the analysis, comparison, evaluation and consultation.

Source: www.adb.org/AM-REVIEW

Protest and Consultation

By Pieter Jansen

It was in reaction to the huge protest movement against the Narmada dams in India, and the growing international attention, that the so-called Morse Commission, which was appointed by the World Bank (WB), conducted the first independent review of a WB project.

Then, in 1993, the World Bank board created the Inspection Panel, partly in reaction to the experiences with the Narmada Project, to encourage improved Bank application of its own policies.

The Asian Development Bank (ADB) followed suit with its own Accountability Mechanism (AM). And now (quick jump in time), ADB is in a review of its mechanism and therefore invites NGOs for consultations.

For the ADB consultation of civil society held in Frankfurt, representatives of the German, Swiss and Swedish governments were present, as well as some officials from other European development banks and consultancy firms.

Besides some donors agencies, Asienhaus, Urgewald, Both ENDS, and Bern Declaration were invited to bring in the voice of project-affected people.

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“ In general, the ADB receives little attention from civil society, media and policymakers. Manila is a bit far for most people. This despite the fact that, combined, the EU members would have a voting power greater than Japan’s or the US’.”

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The atmosphere was friendly in the entourage of the Frankfurt Hilton five-star hotel. One pleasant observation was that the officials and policymakers from the different banks and governments took a quite progressive stand on several issues such as the eligibility of complaints.

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“ It was noted that lodging complaints should be made as easy as possible for the affected groups. It was further noted that the current model is too time-consuming to be effective. There should be less emphasis on eligibility (at the first stage) and more on complaints being taken seriously.”

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Every complaint should be addressed carefully. Even if a complaint is deemed non-eligible, complainants still do not deserve to be brushed off. Instead, they need to be seriously attended to in their search for solutions to the problems.

What can be learned then from the Narmada history? NGOs nowadays get invited by the institutions because NGOs have easy access to communities. It is relatively cost-effective and efficient for these institutions to approach NGOs. Before the 1990s, many NGOs had ties with protest movements, but had little technical competence. Since then, the NGOs now face the danger of being long in skills and knowledge but short in political movement backing.

To some extent, NGOs now occupy the spaces of participation. There is a saturation of NGOs but the element of activism that is strongly identified with them may no longer be present. There are no more demonstrations outside the meeting rooms either.

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‘The accountability mechanism treats affected people as clients of the Bank. People are not treated as citizens with the right to participate in politics and in decision-making about economic development, project and policies. Rather, they are clients (not self-chosen though).’

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Narmada showed that effective campaigning generally combines protest actions with the assessment of the processes of governments, project developers and financial institutions, as well as critical engagement with policymakers.

One cannot escape politics. Even if one decides to stay away from the political arena, politics will still find anyway way to get to a person. This is what affected people experience when their house is demolished to give way to a highway or a dam, and in return are offered to follow a procedure of the very same institute that financed the demolition of their livelihood. In NGOs lies the task to politicize and open up political spaces, and to make the voices of the vulnerable people count as citizens with political rights.

Pieter Jansen is IC member of NGO Forum on ADB and working for Both ENDS on IFI-related issues.

Some of the major ‘technical’ issues are discussed below:

- Distrust must be overcome in order to tackle the relative lack of use of the mechanism.
- From the perspective of a rights-based approach, each individual complaint has to be addressed (in an equal way).
- Install a so-called gatekeeper as an intermediary between SPF and beneficiaries; or an ombudsman, if necessary.
- Local 'grievance redress mechanisms' cannot replace the Special Facilitation and/or Accountability Mechanism, but might create confusion since they form one extra avenue to engage the Bank. (besides contact with operational management, special facilitator, accountability mechanism).
- Germany and Switzerland clearly want to maintain a strong Accountability Mechanism despite the implementation of a country systems approach.
- China's reluctance to allow a fact-finding mission to Fuzhou can have far-reaching consequences, and is seen as a threat to the Mechanism. Fuzhou, at the moment, very much divides the Board. Diplomatic talks are ongoing.
- Some member countries complain that maintaining the AM is very expensive, thus, driving up project costs.
- For some Central Asian countries, the Aarhus convention might have some relevance in the context of AM.

The Tokyo Consultation on the ADB Accountability Mechanism

By Yuki Tanabe

On October 29, Asian Development Bank (ADB) held a public consultation on the revision of ADB's Accountability Mechanism in Tokyo, the capital city of the largest donor country of ADB. This consultation is one of the many conducted around the world, representing the first step in the revision process. In this consultation, participants from the government, development agencies, private sector, academe and civil society actively discussed key issues at the ADB Institute office in Tokyo.

The ADB Accountability Mechanism was established in 2003 through a comprehensive reform of the old Inspection Function of ADB. The current mechanism has a two-step procedure which includes: 1) a problem-solving mechanism called "Special Project Facilitator (SPF)" and 2) an independent compliance review mechanism called "Compliance Review Panel (CRP)." This was established in order to address the social and environmental problems resulting from ADB-funded projects, and to investigate compliance of ADB policies.

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“However, one issue raised in the Tokyo consultation was that only 3 cases were actually reviewed by the CRP out of the 27 cases filed to the Accountability Mechanism since 2003. Therefore, there was a fundamental question on whether ADB's policy compliances were ensured in most of ADB-funded projects, or many non-compliance cases were just blocked by the SPF process at the beginning stage since no one can file a complaint directly to CRP under the current Accountability Mechanism.”

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In addition, based on the SPF procedures, affected people do not have an opportunity to know what the minimum requirements are since the ADB



In Khulna-Jessore Drainage Rehabilitation Project in Bangladesh, the complaint was rejected by Special Project Facilitator, since the Project Completion Report has been made.
File photo/NGO Forum on ADB

Safeguard Policy Statement (SPS) includes the minimum social and environmental requirements which ADB and borrowers/clients have to follow, and SPF does not have the mandate to investigate whether the compliance is met or not. Therefore, before the problem-solving phase starts, ADB should provide an opportunity for affected people to know what the minimum requirements are. Direct access for affected people to the compliance review should be ensured in the future mechanism (See Figure 1).

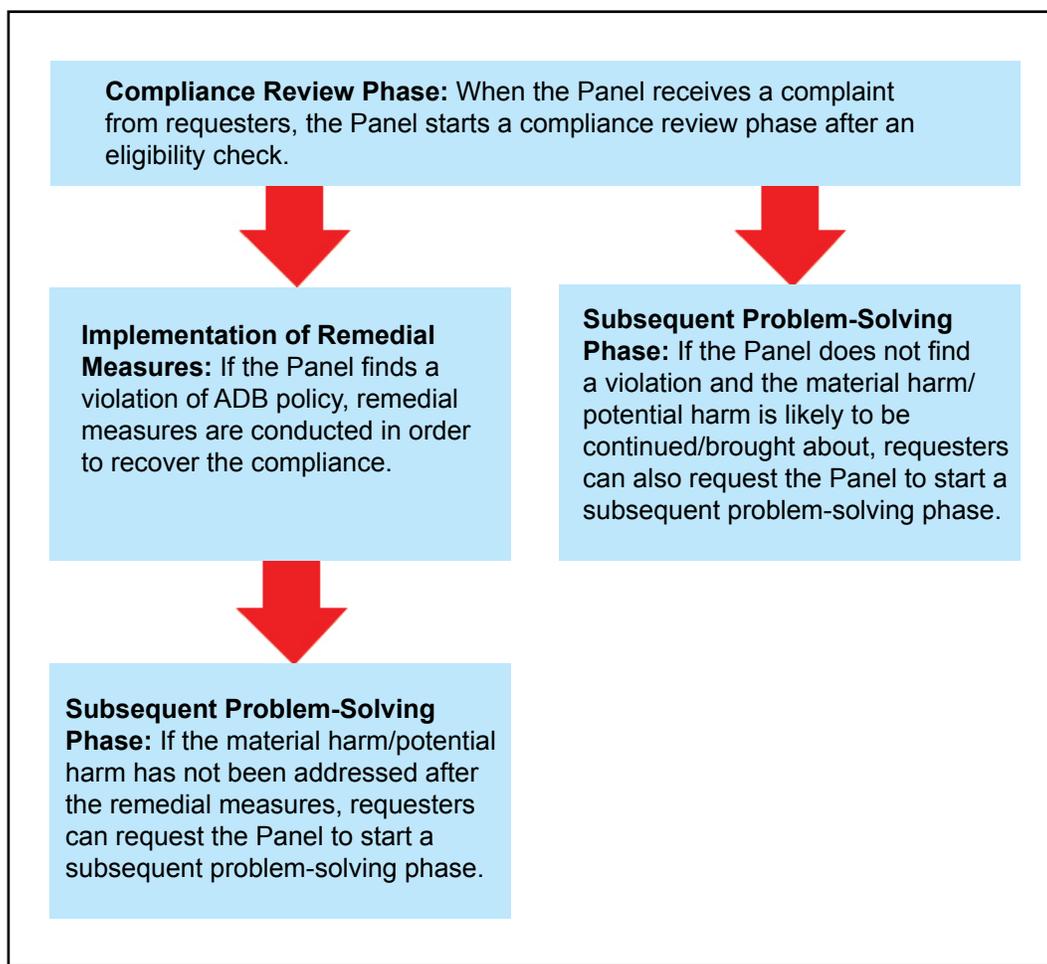
On the other hand, “full compliance of ADB policies” does not always mean “no problem on the ground.” Thus, the problem-solving mechanism should be a subsequent and subsidiary tool for two situations: 1) when the material harm/potential harm has not been addressed after the remedial measures, or 2) when the CRP does not find a violation and

the material harm/potential harm is likely to be continued/ brought about. The problem-solving should not be facilitated by an internal body like SPF, but by an independent body from the management like CRP.

In the discussion in Tokyo, ADB responded that the above idea was quite new and considerable for them. The structure of the Accountability Mechanism is also one of the critical issues in the revision among the ADB staff. The first draft will be made available soon, and there will be significant attention on how ADB will reform the Accountability Mechanism.

Yuki Tanabe is IC member of NGO Forum on ADB and working for Japan Center for a Sustainable Environment and Society (JACSES).

Figure 1: A Proposal on Structure of Accountability Mechanism



People's Welfare over Profit!

By Job Bordamonte

One of the leading member organizations of PALAG Mindanao (Power Alternative Agenda in Mindanao),¹ the Lanao Power Consumers Federation (LAPOCOF), filed a formal complaint last September 14, 2010 to the ADB-Office of the Special Project Facilitator after undergoing the very tedious process of making a final copy of the complaint against the devastating impact of a financed loan program worth \$450 million under the so-called Power Sector Development Program (PSDP).

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Unfortunately, ever since they started official communication with ADB in August 8 until the said date of submission, no one from ADB even bothered to inform them that a completion report has already been done and received last August 19, making it clear that their initiative was in futility. Thus, ADB easily declared the “ineligibility” of the complaint due to non-compliance to the prescribed period in filing one.

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In relation to this, the NGO Forum demands that ADB go beyond the narrow basis for the “25 days late submission issue” and instead address the fundamental concerns of the people in Mindanao as articulated in the complaint filed by LAPOCOF.

Voices from the Community Should be ADB's Main Concern

Let us take a closer look at the most substantial issues and concerns of the people in the Philippines with regards to their electric power industry reform program courtesy of the ADB loan-financed program.

PSDP is part of a complete program arrangement previously called the Power Sector Reform Program

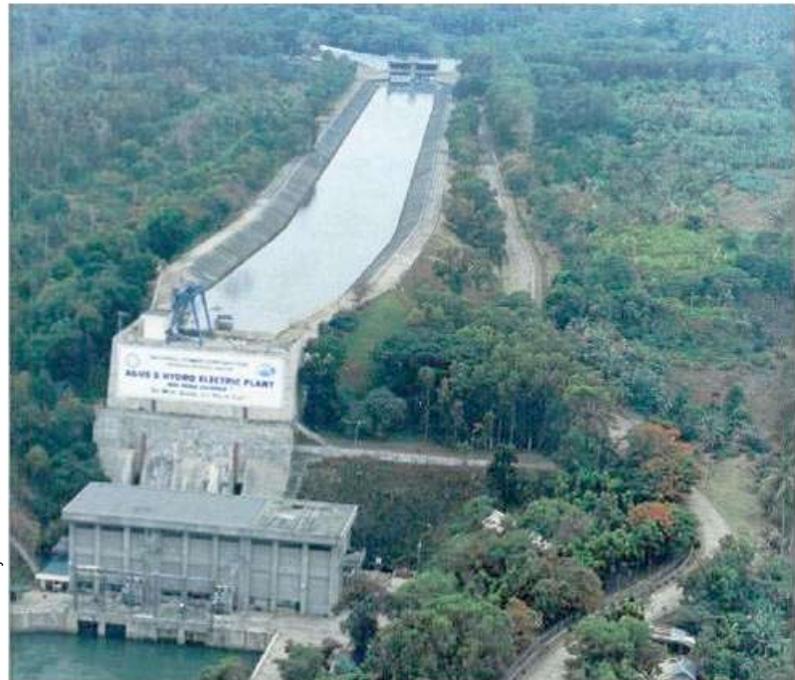
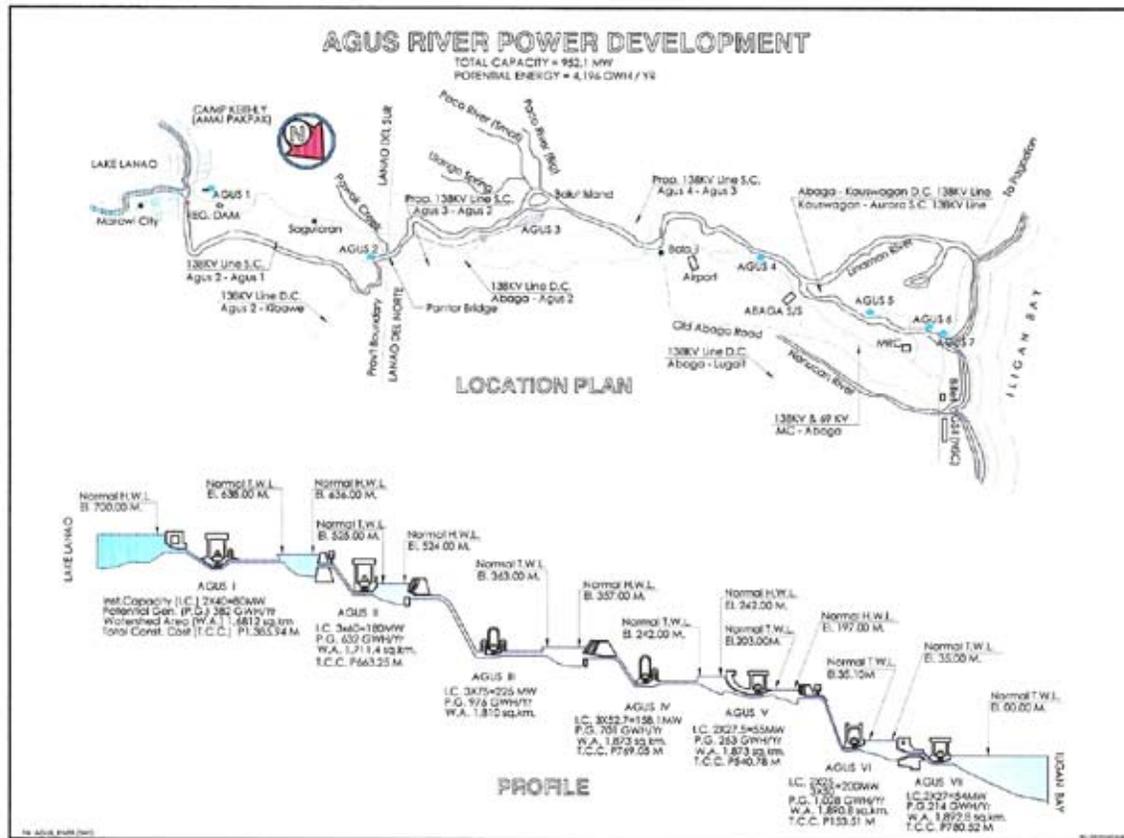


Photo courtesy of Job Bordamonte



(PSRP). The said loan policy program, which was implemented by the different power agencies of the Philippine government, was primarily used to implement the restructuring and privatization of the electric power industry. Both programs have already been completed but have totally failed to address the lingering problems of the industry such as continuing high power rates, inefficiency, insecurity over power supply and the huge debts of the National Power Corporation (NPC).

A research study published by Freedom from Debt Coalition (FDC), convener of PALAG Mindanao, shows the many glaring failures and blunders of this policy program.²

In the Generation Sector, privatization failed to usher in a competitive environment since it merely succeeded in dismantling state monopoly and transferring ownership and control to a few private players. The new players who came in are few in number. Most of the privatized generation assets landed in the hands of a few oligarchs who were already deeply entrenched in the power sector way before the Electric Power Industry Reform Act (EPIRA) was enacted.

- There were many instances where bidding for particular plants failed because of anomalies and backdoor negotiations which undermined the public interest. These include the securities and guarantees on returns given to power investors even before they bought the power plants, examples of which are the guarantees to get transitional supply contract on distribution utilities and a minimum selling price to include the fixed and operations costs. These under-the-table deals not only undermined the intended competitive nature of the power market but also undermined consumer rights through bloated rates.
- Also, the huge potential of Renewable Energy (RE) sources in the country is being left in the hands of the private sector when it is the State which has the primary responsibility, as a signatory to the international agreement under the Kyoto protocol, to fight against global warming.

The Distribution Sector privatization effort has been equally mired in scandals one after another. The spectacular display of power involving a few of

the most prominent business people is but a mere hint at how EPIRA is helpless to remove the monopolies in the electric industry, and instead provides opportunities for other powerful oligarchs not yet in the power sector to become major players.

- The case of MERALCO is the most glaring example of this. In 2008, the government, through the use of GSIS funds, attempted a power grab in the Board of MERALCO to oust the Lopezes from their control of the company. Undaunted by its failure to get rid of the Lopezes, the government then sold its shares to San Miguel Corporation – whose line of business primarily includes beverages and food – in another attempt to ease out the Lopezes. The scandal was capped by the Lopezes striking a deal with telecom magnate Manny Pangilinan to finally secure their place at the helm of the company.
- In addition, EPIRA was enacted without a clear conceptual framework for democratizing the ownership and control of the Rural Electric Cooperatives (RECs). The RECs are most relevant to the people since ordinary consumers own them – at least on paper. However, due to

the set of regulation policies and performance standards required by the Energy Regulatory Commission (ERC), the RECs which are financially problematic are now being lined up for privatization. This scheme is called the Investment Management Contract (IMC) which is being used as a vehicle to further push RECs towards privatization. FDC believes that another way is possible.

While in the **Transmission Sector**, not only did the privatization of TransCo fail in securing efficiency, it also entailed tremendous revenue losses to the government and jeopardized our national security.

- TransCo was an asset to the government, generating an annual income of fifteen billion pesos (Php15 billion). In privatizing TransCo, a 25-year concession was granted to the National Grid Corporation of the Philippines (NGCP), which is a consortium of three power companies, at a bid of \$3.95 billion. With an annual income of at least Php15 billion, TransCo could earn for the government some P375 billion for 25 years, while it would only earn P126 billion (\$1=P42) if the concession contract was bid at \$3 billion, or Php252 billion if the bid was at \$6 Billion.



This also meant that the system operation of some 21,319 circuit kilometers transmission lines with broadband capacity was going to be managed, to a large extent, by a power firm owned by another sovereign country. To add to the consumers' woes, in granting a franchise to the privatized TransCo, the Philippine Congress, with the approval of then President Arroyo, watered down the prohibition against the cross-ownership of transmission with distribution and generation. This effectively allowed the Philippine business groups associated with the National Grid to engage in their own power plays – no doubt at the expense of consumers.

Why WESM Won't Work

- Because no real de-monopolization has taken place in the industry, creating competition through the Wholesale Electricity Spot Market (WESM) system has also become a failure – apart from the fact that the electricity market in the Philippines is too small. WESM's

market operator, the Philippine Electricity Market Corporation (PEMC), had admitted in its 2007 report that the market remains highly concentrated as big players (PSALM, Lopez and Aboitiz groups) were able to manipulate both the supply and demand side of the market. Needless to say, WESM would not work in a very small yet monopolized market, more so under the regime of EPIRA where cross-ownership is allowed and where rules and procedures are tailored fit to allow market to be manipulated.

In light of these, FDC reaches out to different local organizations such as LAPOCOF as well as other organizations, in order to push for the overhauling of the current power industry framework and demand accountability from ADB in its continuing role in making public utilities an arena to serve the interests of its client-beneficiary – the profit-driven private sector.

Job Bordamonte is the National Coordinator of the Freedom from Debt Coalition (FDC) National Advocacy against Privatization of Essential Services and Commons (Power Campaign).

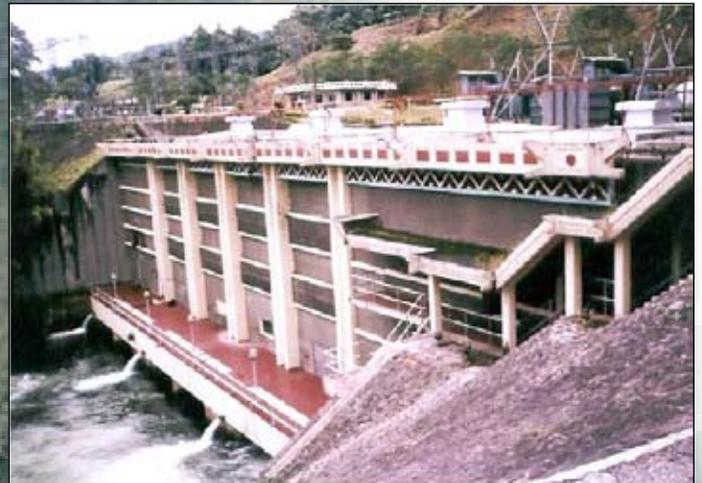
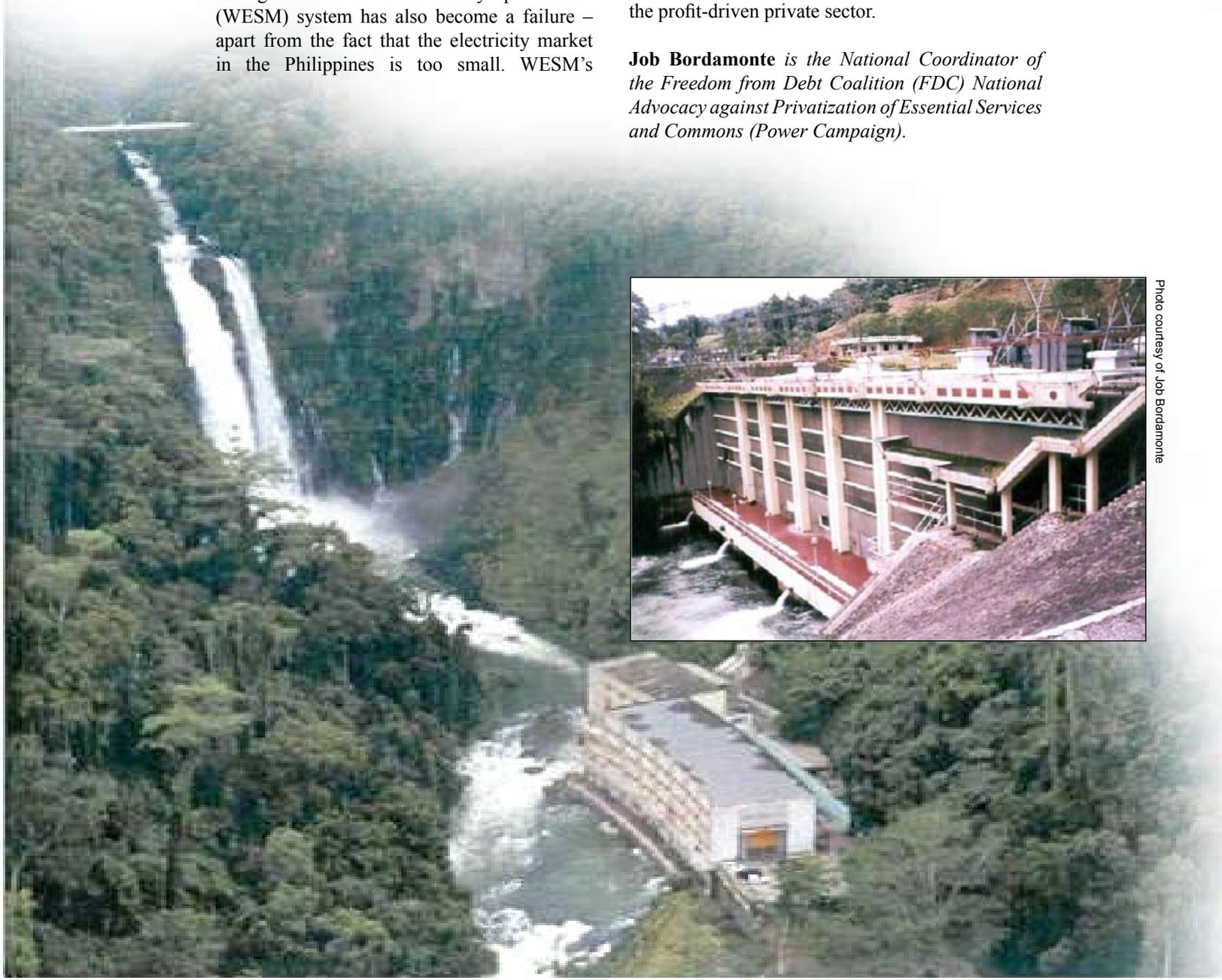


Photo courtesy of Job Bordamonte



About LAPOCOF

The Lanao Power Consumers Federation (LAPOCOF) was borne out of the impotence people felt with regards to the sudden surge of electricity rate spawned by the imposition of the Power Cost Adjustment (PCA) in 2000. The PCA was charged to consumers to offset the spiraling cost of NPC operations due to the Independent Power Producers.

LAPOCOF is a non-government organization (NGO) composed of several sectoral, religious, and concerned individuals organized for the protection of consumer rights and welfare. It has recognized that signature campaigns, rallies, media attention and coverage do have a place in the attainment of the goals of its advocacies. However, it has decided that these strategies are not enough. It has adopted, as one of its main policies, the board room or corporate type of advocacy which is to study, scrutinize, analyze data and present alternative plans, programs and solutions.

To pursue our objectives, we tried, and will continue to try, to avoid being an obstructionist. We will act as a support mechanism for governance and as a complementary group to existing institutions such as the government, non-government and religious organizations working for the welfare of the community at large.

From our extensive past, ongoing and future plans for advocacies and activities, the organization has assembled a rich human resource of highly qualified, dedicated and efficient experts in the legal, technical, financial, academic and social fields.

We have no funding from corporations, government entities and funding agencies. Our work and outputs are the contributions of volunteers.

We do get secretarial support from the Office of the Gender-based Association for Development–Iligan (GAD-ILIGAN) an affiliate of the Mindanao Commission on Women (an NGO). We also get assistance in terms of transportation and accommodation to out-of-town public hearings and consumer meetings from either the local government of Iligan, our Congressional Office and other NGOs and POs.

By
Dr. Melchora J. Ambalong
President
LAPOCOF

¹ PALAG Mindanao members: Association of Lanao Gender and Development Advocates, Inc. (ALAGAD); Alternative Forum for Research in Mindanao (AFRIM); Association of Consumers of Electricity in Bukidnon (ACE Bukidnon); Bukidnon IP Provincial Consultative Body; Consortium of Bangsamoro Civil Society (CBCS); Consumers Alliance – Misamis City; CSSH/MSU Marawi; Freedom from Debt Coalition (FDC); International Alert; Kalimudan Foundation Inc. (KFI); Konsumanteng Kagay-anon Inc.; Lanao Power Consumers' Federation (LAPOCOF); LGU Maramag, Bukidnon; LGU Valencia, Bukidnon; LGU Quezon, Bukidnon; MSU/IPDM; Napocor Employees Consolidated Union (Necu); Napocor Employees and Workers Union (Newu); NORMECA/AMRECO; Partido ng Manggagawa (PM); PKKK Malaybalay (Alliance of Urban and Rural Women in Bukidnon-PKKK, Malaybalay; Social Action Center, Diocese of Malaybalay

² PAID Magazine "Dark Power Rising": Assessment of the Nine Years of Power Reform Program in the Philippines (www.fdc.ph)

Coping with the Bank's Accountability Mechanism: Accountability Beyond Information Disclosure and Participation

By Abby Don

One Board approved the creation of an Accountability Mechanism (AM) in May 2003. The mechanism is currently under review, which the Asian Development Bank (ADB) expects to complete by the second quarter of 2011. The mechanism provides an avenue for project-affected people to lodge their complaints and requests for review where they believe that a project violates ADB policies and procedures.

The Asian Development Bank (ADB) mentions “transparency” and “participation” in the review of its AM. In fact, this is in keeping with the rationale establishing the Inspection Function (then Inspection Function Policy in 1996) as stipulated in the 1995 Board paper, and continues to apply to the accountability mechanism, to wit, “establishment of the mechanism is consistent with ADB’s policy of encouraging transparency and accountability in its operations” and “establishment of the mechanism complements ADB’s policy of allowing greater public access to ADB documents and publications, as well as ADB’s increased emphasis on beneficiary participation in the formulation and implementation of projects.” Additionally,

These pronouncements though raise questions surrounding the assumption that there is a semblance of symmetry and balance among all stakeholders with regard to relations and decision-making.

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“How do you actually reconcile the assumption given the diverse interests and varying degrees of influence of entities involved? How do you address the challenge of “being fair to all stakeholders when accountability and power relations are inextricably linked?”

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“One of the four guiding principles in the establishment and operations of the ADB Accountability Mechanism is “be responsive to the concerns of project-affected people and be fair to all stakeholders.”

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In reality, it is not a leveled playing field and relations are not on equal footing. This is exemplified in the NGO Forum on ADB’s submission to the ADB AM review wherein it underlines that on the basis of more than 40 ADB-funded projects monitored by the Forum, eleven of which were registered under

the AM, two major facts were noted – the lack of information about AM and its procedures among project-affected people and the lack of trust and confidence among project-affected people in filing a complaint to the ADB in resolving their grievances.

On the basis of these findings, it could be gleaned that there is still a wide gap in terms of how project-affected people [and they are stakeholders as well] are seen in the context of development efforts in general, and development projects in particular.

Four projects filed by Forum network members under the AM [Southern Transport Development Project (STDP) in Sri Lanka, Highway One Road Project in Cambodia, Khulna-Jessore Drainage Rehabilitation Project in Bangladesh, and Melamchi Water Supply Project in Nepal] validate the relatively weak efforts on public consultations and disclosure. Seemingly, transparency and

participation are unevenly applied, depending on the stakeholders involved. Project-affected people are not mere beneficiaries or recipients of “development projects.” This is unacceptable and goes against the grain in a system that allegedly upholds the interest and welfare of the people, especially those who are affected by their projects and policies. How the AM operates is but a reflection of how sincere and determined the Bank is in upholding the very same principles it says it espouses – transparency, participation, fairness and effectiveness.

If the direction the ADB wants AM to go rests on these fundamental principles, then a (re)shaping of its political will is extremely needed. It all comes down to genuine commitment to act for a broader stakeholders’ interest. What is needed is an accountability mechanism that is beyond selective information disclosure and token participation, and nothing less of a genuine article.



The Southern Transport Development Project in Sri Lanka.
File photo/NGO Forum on ADB.