

Comment on ADB's 1994 Disclosure and Information Policies

TO: disclosure@adb.org

FROM: Charmaine Rodrigues
Right to Information Programme
Commonwealth Human Rights Initiative

DATE: 11 November 2003

Dear Sir/Madam,

I am writing from the Commonwealth Human Rights Initiative (CHRI). CHRI is an independent, non-partisan, international non-governmental organisation, mandated to ensure the practical realisation of human rights in the countries of the Commonwealth.

I work on CHRI's Right to Information Program. We are dedicated to advocating for the right to information in the Commonwealth, as well as assisting countries to develop good RTI laws and to implement them.

Please find attached a submission from CHRI in response to the ADB's current Transparency Review. Please do not hesitate to contact me if you wish to discuss this submission or if we can be of any other assistance.

CHRI believes that it is crucial that the International Financial Institutions, including the ADB, should lead by example and themselves enforce proper standards of transparency, accountability, participation and therefore good governance. We firmly believe that a comprehensive disclosure policy based on the principle of maximum disclosure is a positive first step in the right direction.

Good luck with the Review. We hope our comments [below] are useful.

Kind regards

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Robert H. Salamon
Principal Director
Office of External Relations
Asian Development Bank
PO BOX 789
0980 Manila, Philippines

11 November 2000

Dear Mr Salamon

Please accept the following recommendations as input into the Asian Development Bank's (ADB's) ongoing review of its disclosure policies. These recommendations reflect our belief that the ADB needs to fundamentally re-evaluate its transparency standards.

Communities and citizens have a right to timely information about projects and policies that affect their lives. The ADB should operate on the basis that public participation in decision-making processes is crucial to legitimate outcomes which are genuinely locally-owned. Although many of the International Financial Institutions, including the ADB, maintain that they are responsible only to the governments who sit on their Boards, as a public institution funded by public monies, the ADB has a responsibility to operate in a manner that is transparent to the ordinary citizens to whom it is ultimately responsible. States' universal legal obligations to entrench the right to information apply to the bodies they create collectively, just as they apply to bodies they create on their own, such as national public bodies.

We call upon the ADB to adopt the following measures:

GENERAL

Maximum Disclosure: The ADB's revised disclosure policy should draw from the UNDP's disclosure policy and articulate a fundamental overarching principle of maximum disclosure. This principle should include a requirement for proactive information disclosure to the public.

Minimum exceptions: The principle of maximum disclosure should be subject only to minimal exceptions. Drawing on the principles developed by Article 19, CHRI endorses the position that refusal to disclose information is legitimate only where the refusing body can show that the following conditions are met:

- the information relates to a legitimate aim listed in the law/policy;
- the disclosure threatens harm to that aim;
- and the harm to the aim is greater than the public interest in having the information disclosed.

Decisions to refuse disclosure should be subject to appeal to an independent body empowered to compel release. Processes for appeal should be timely and cost-effective.

Simple procedures: Procedures for accessing information should be developed with a view to ensuring that the poor and/or illiterate are not effectively excluded from utilising the ADB Disclosure Policy. Costs should be minimised. There should be no cost for applications nor for the time taken for staff to provide information; if any, only the actual costs of reproduction should be passed on.

Compliance and Monitoring: The ADB should appoint an independent Information Ombudsman in order to monitor the policy's implementation and receive complaints from citizens who feel that they

have been wrongly denied information.

Public Information Centers: Documents pertaining to ADB operations in a given country should be readily available through ADB offices in the country concerned and offices in the project area. The ADB should develop a strategy to ensure that people affected by an ADB operation are able to easily access all disclosed documents.

SPECIFIC

Meetings of the Board of Directors: The meetings of the Board of Directors should be a matter of public record, subject only to a very narrowly drawn set of exceptions. Agendas and other papers should be released and disseminated prior to meetings to facilitate public comment and full transcripts of meetings should be disclosed in a timely way.

Institutional Policies and Strategies: All internal ADB policies and strategies should be released publicly in draft form and adequate time provided for public comment. Final drafts should be disclosed when they are sent to the Board of Directors for approval.

Translation: Documents pertaining to ADB operations in a given country (such as country strategies and project documents) should be available in the national languages of the country concerned.

Country Strategies: All country strategies should be disclosed in draft form and at least 60-90 days should be provided for public comment. (NB: Of course, all country strategies should be designed on the basis of public participation throughout the strategy development process.) Final draft country strategies should be disclosed when they are sent to the Board of Directors for approval.

Project Identification: A general description of a project/loan should be disclosed as soon as the ADB starts spending staff time on its preparation.

Project Preparation: Detailed information on the evolving agreements between the ADB and the borrower around a given project (Aide Memoires) should be disclosed. Updated documents should continue to be made available throughout the life of the project.

Social and Environmental Documents: All social and environmental documents (Environmental Impact Assessments, Resettlement Action Plans, etc) should be available before project appraisal and no less than 120 days prior to approval. This includes, *inter alia*, supporting documents referenced in EIAs (such as detailed environmental studies or mitigation plans used to justify conclusions in EIAs (e.g. baseline studies, technical or ecological studies, accident prevention and response plans, endangered species protection plans, etc.)

Project Appraisal: Detailed project descriptions (Report and Recommendation of the President) should be disclosed in draft form prior to project appraisal.

Project Approval: Final project descriptions (the final drafts of the Report and Recommendation of the President) should be disclosed when they are made available to the Board of Directors for consideration, and no less than 30 days prior to project approval. All final project descriptions and loan agreements should be disclosed.

Project Implementation: Project supervision reports (Back to Office Reports) and social and environmental monitoring reports should be disclosed during project implementation.

Financial Intermediaries: Social and environmental monitoring reports for all ADB-supported financial intermediaries should be disclosed, including a list of all subprojects/onlending activity and all publicly available documents related to those subprojects/onlending activity.

Private Project Contracts with Host Governments: When projects are being developed on the basis of long-term contracts between private sponsors and host country governments, such as

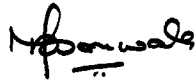
power or oil and gas projects, the ADB should condition its approval upon the ex-ante disclosure of those contracts. When those contracts supercede or amend that country's environmental and social laws, ADB should require public participation in the development of those contract provisions.

Operational Budget: The ADB should disclose a detailed operational budget.

Private Sector Operations: ADB transparency standards should apply equally to public and private sector operations.

We look forward to seeing these measures reflected in the ADB's new disclosure policy.

Your sincerely

A handwritten signature in black ink, appearing to read 'M Daruwala', with a horizontal line underneath the name.

Maja Daruwala
Director

FCRA Registration No. 231 650671; Registration No. S-24565 under Societies
Registration Act; Registration No. D.I.T. (Exemption)/94-95/C-390/94/417 U/S 80-G
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