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14 November 2003

Robert H. Salamon
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Asian Development Bank
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By email to: disclosure@adb.org

Dear Mr Salamon,

Please accept the following record of one experience of seeking information from ADB as input into the Asian Development Bank's ongoing review of its disclosure policies. This description of attempting to engage with the ADB – through the Bank's NGO Center and through the Private Sector Operations Department – provides a practical example of where ADB policy and practice might be improved towards the goal of greater transparency, accessibility to information and overall disclosure. The example also provides a surprising chance insight into the potential for the NGO Center to be exceeding its public mandate through conducting covert surveillance of ADB critics.

This submission reflects SEEN's view that through the current review and redrafting process the ADB has an important opportunity to re-evaluate its transparency standards, and match its practice and project implementation with its policy commitments.

SEEN notes that communities and citizens have a right to timely information about projects and policies that affect their lives and, as a public institution, the ADB has a responsibility to operate in a transparent manner.

1. Attempt to ascertain information about the proposed BLCP Power Project, Map Ta Phut, Rayong Province, Thailand, and potential ADB involvement in the project, September 2003

ADB has listed the Summary EIA for the BLCP Power Project on the ADB site since some time earlier this year. The full EIA is not so accessible. Also absent from the ADB site was:

1. the timing of the consultation / comment period;
2. any indication of what ADB was being asked to provide by way of support for the project, and;
3. a tentative date at which the Board would consider involvement of ADB in the project.

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Over a period of three weeks in September this year I attempted to find out information relating to the three issues above. This involved multiple emails to ADB staff in the Private Sector Operations Department and the NGO Center. Initial email requests to the Private Sector Operations Department failed to secure adequate responses – anonymous emails containing no answers to questions.

I resorted to telephoning the Multilateral Development Banks Liaison Officer at the Australian Agency for International Aid in Canberra, Australia, who suggested trying the NGO Center as a way to elicit an adequate response from PSOD. This led to a reply from PSOD indicating that someone would take a look at my inquiry and get back to me. Again, the communication was anonymous.

After another week passed I resorted again to the telephone, calling PSOD direct in Manila. I was eventually put through to a Principal Investment Officer, Infrastructure Finance Division of PSOD who was most helpful on the phone. The following week I received a reply to my inquiry by email.

My request for information had been rebuffed initially as being related to commercially confidential material which ADB could not release without authorization of the concerned company. Of six questions posed, two related to ADB directly and were unrelated to any confidential material. These were eventually answered by PSOD staff. Answers to the other questions were ultimately obtained from various industry media sources, as suggested by PSOD staff.

The information request was a relative straight forward matter. Further, I am ideally placed to access ADB information, being an English speaker and having ready access to communication technologies (phone, fax and email). It is therefore worth noting the practical difficulty at this attempt to access even basic information from ADB. The experience also raises questions of accessibility of information for communities that may be affected by ADB operations. With this in mind we call upon the ADB to consider and adopt the following measures:

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. All documents pertaining to regional initiatives and transborder programs and projects should be made available in languages and formats that allow greatest possible ease of access to information by project affected peoples, and / or those whose livelihoods and ways of life will be impacted by change brought about by the project. Projects or technical assistance grants which focus on national policy change and related 'governance' programs should also be translated and disseminated as widely as possible to all identified, perceived and anticipated stakeholders.

Meetings of the Board of Directors: Meetings of the Board of Directors should be a matter of public record. Full transcripts of meetings should be disclosed in a timely way. Agendas, tabled papers and information pertaining to material decisions to be taken at the Board meeting should be made available prior to the meetings, again with narrowly drawn exceptions. Exceptions should be noted in public communication.

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

Country Strategies: All country strategies should be disclosed in draft form and at least 60-90 days should be provided for public comment. Final draft country strategies should be disclosed when they are sent to the Board of Directors for approval.

Project Identification and Project Preparation: A general description of a project/loan should be disclosed as soon as the ADB starts spending staff time on its preparation. These should be regularly updated throughout the preparation, implementation and post-implementation phase – especially where significant changes have been made to the project design and /or implementation.

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

Where documents are suppressed from public disclosure for reasons of commercial in confidence regarding private sector involvement, there should be a public note made of the request, rationale provided for lack of disclosure and proactive measures undertaken between the Bank, borrower and (where approved) private sector partners, to provide as much information as is deemed acceptable given perceived business confidences. As a principle, ADB transparency standards should apply equally to public and private sector operations, and as such the ADB Board should seek to assure the public that ADB management discretion to interpret the Disclosure Policy would not be abused to lessen accountability and transparency of operation. In this light, a presumption in favour of disclosure should never be limited where the Bank's safeguard policies are of relevance.

Consultation and sharing of information with local communities affected by ADB-financed projects, as well as with other stakeholders is likely to enhance the quality of ADB-financed operations. As an organisation owned by governments, the ADB is accountable for its use of public moneys and has an obligation to be responsive to its stakeholders –Governments *and* citizens.

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 such as baseline studies, technical or ecological studies, accident prevention and response plans, endangered species protection plans, etc).

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

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

Compliance and Monitoring: The ADB's disclosure standards should be guided by a strong "presumption of disclosure." 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.

Accessing information: 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.

Sufficient, accurate, and detailed information about a project should be proactively provided by the ADB to all members of affected communities in manner and language/s in common usage, in order that communities are in a position to maximise their informed understanding of the project. This should include information about the land that will be affected by the project, the anticipated social, environmental, health, gender and cultural impacts of the project, how negative social impacts on female and male community members and disadvantaged or vulnerable groups can be avoided, or the manner in which they are proposed to be addressed.

Meaningful participation: A key related aspect to information disclosure is that once people have access to information (at any and all stages of the project cycle, or program development) there is an expectation that decisions being made about the design, the viability and the options/ alternatives of projects/ programs will be informed by the views of all stakeholders - including project affected peoples and communities, through participatory processes. If people are to be informed and engaged, and participate in development decisions, a reasonable expectation and responsibility would be that the ADB and any project partners (public and private) will 'hear and act' on the voice of those who have rights to be involved through their status as stakeholders and affected peoples.

The ADB has recognised and/or implied the rights to participation in a variety of policies, strategies, development papers etc – including the Policy on Indigenous Peoples 1999, the Poverty Reduction Strategy 1999, the Water Policy 2001 and the Environment Policy 2002.

Also of relevance here are the findings of the World Commission on Dams 2000. From the core values, through the rights and risks approach and to the agenda for implementation; the WCD policy framework centralises informed decision making and participation of those whose rights are most affected and to those at greatest risk from the development. The ADB has currently made some assessment of how ADB projects prepared and implemented in accordance with the Bank's own policies and guidelines align with the findings and recommendations of the WCD. (See http://www.adb.org/NGOs/adb_responses.asp.) Again, this review process, provides an opportunity for the Bank to ensure that its disclosure policies strengthen informed and meaningful participation and the voice of project affected and interested peoples and communities in Bank project implementation throughout its operations..

A strengthened and comprehensive information disclosure policy would see the ADB develop the policy framework, operational directives, procedural mechanisms *and cultural shift* to encourage and reference not just the first three 'stages' - transparency, access to information and accountability; but also give due diligence to ensuring meaningful choice, comprehensiveness and non-alienation.

Other matters: Emphasis should be placed on rigorous and consistent public disclosure for TAs and other non-loan and pre-project related information and ADB supported studies.

The on-forwarding of requests amongst ADB staff identified as responsible for a project – due it is assumed, to personnel/role changes - leaves request for information unanswered.

Web addresses and related project documentation should be regularly updated as responsibilities shift within Departments, and as staff leave the Bank.

The ADB should develop and encourage mechanisms for project affected communities to be able to seek information and analysis from independent sources other than the ADB regarding the potential impacts of the project on their lives.

We hope these measures and observations are considered and reflected in the ADB's new disclosure policy.

2. Serve/Surveillance?: the purpose of the Office of External Relations and the NGO Center

The attempt to gather basic information for the purpose of greater understanding of the BLCP Power Project and the ADB's potential involvement also provided a chance insight into the potential for the NGO Center exceeding its public mandate by engaging in a covert surveillance role.

According to the ADB's website, the Bank created the NGO Center to:
strengthen cooperation with civil society actors and to respond to their concerns.
The Center serves nongovernment organizations, including community-based organizations, peoples groups and foundations, as well as trade unions.¹

One email received from ADB staff also accidentally included copies of internal ADB communication generated by my information request. Included was a communication from a staff member from the OER/NGO Center to PSOD staff asking that:

when PSOD [Private Sector Operations Department] receives queries for documents/information from NGOs, please copy me and Bob Dobias, Head, NGO Center, to assist OER and the NGOC in tracking civil society interest in ADB projects/issues, and *to anticipate potential critiques that may reach the media or other public fora.*² (emphasis added)

Frankly this chance insight into the approach of ADB staff in the unit specifically charged with facilitating NGO interaction with the ADB suggests cause for substantial concern. We would welcome, through the process of the ADB's ongoing review of its disclosure policies, some indication that the ADB regards the NGO Center as a facility for efficient and timely communication and not as a cynical tool for monitoring the ADB's critics.

We hope that the opportunity of this chance insight is also able to be realized by the ADB and in so doing contributes to a new and better disclosure policy and practice.

Yours sincerely,
(delivered electronically)
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¹ <http://www.adb.org/NGOs/ngocenter.asp>

² The problem identified through this example is of the culture of the NGOC, the OER and perhaps the ADB overall, not a failing of a lone staff person. Note for example that the staff person concerned asks not only for intelligence on NGO interest in ADB activities but also that the same intelligence is copied to other staff within NGOC. As such I've withheld from this submission the name of the OER/NGOC staff person concerned. The email correspondence is on file and available if required.

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