

Recommendations for the Review of ADB's Disclosure and Information Policies

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Mekong Watch**

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1 Introduction

These recommendations have been written as an input for the review of Disclosure and Information Policies of the Asian Development Bank (ADB).

We, Japanese NGOs that have been monitoring negative impacts of the ADB's operations, have called for greater accountability of the ADB for two reasons.

One is that the ADB is a public institution using Japanese taxpayer's money, and we have the rights to know the ADB's operations, from the policy level to the project level. The Japanese government is the top donor to the ADB, and we are especially concerned about how our money is used in terms of the impacts it is making at local level.

The second reason we demand greater accountability is due to the significant influence of the ADB's operations on the environment and people's livelihoods in developing countries. While the ADB's funding, especially for large-scale infrastructure development, have negatively affected local people's lives, these people have often been excluded from decision-making processes, and they have not had access to important information in the formulation and implementation processes of ADB-funded projects. They are important stakeholders of ADB operations whose rights to access information relevant to their environment and livelihoods is too often neglected. This information should be communicated to stakeholders in forms and languages understandable to local people to facilitate their participation in decision-making processes.

We urge the ADB to incorporate the following recommendations into the new policy to ensure greater transparency and accountability of the ADB, and to promote informed stakeholders' participation in the ADB's operations.

2 Institutional Framework

2.1 Weakness of the current policy

We agree with the general principle in the Policy on Confidentiality and Disclosure of Information (the Policy), which stated, "the Bank should instill among its staff 'a presumption in favor of disclosure of information' in the absence of the constraints described earlier." These constraints are clearly defined in the Policy. The Operations Manual (OM) section L3 also stipulates the implementation arrangements for the Policy, including responsible institutions and timeframes to respond to information requests.

However, our experiences with information requests show that the ADB's responses to information requests are inconsistent, unsystematic, lengthy and unaccountable. The following are several examples of difficulties we have had in requesting information from the ADB.

- Information requests for documents (e.g. Loan Agreements that were signed after 1995 or summaries of Initial Environmental Examinations) were rejected while the Policy and the OM state such documents should be available to the public.
- In some cases, it took longer than one month to get responses to our information requests from the ADB. The Policy states the ADB office will provide responses to the requests within 22 working days.
- In other cases, our requests for information were just ignored until we sent reminders. In some of these cases, the ADB said, "the mail server was down" after they received

the reminders.

- Most of the ADB's responses rejecting our requests did not state the reasons for not disclosing such documents, while the Policy and the OM stipulate that such reasons should be provided.
- There is no way to check if the documents classified as confidential by the ADB actually fallen into categories described in para.3 of the Operational Procedures (OP) in the OM. This implies that ADB staff have discretion to classify documents without any checks and balances.

2.2 Proposed Organizational Structure

These experiences clearly demonstrate the immediate needs for institutional reforms at the ADB regarding information disclosure requests. A new policy should create an institutional framework containing following components to deal with these requests for information.

- **Information Disclosure Unit (the Unit)** should be established under the Office of General Council (OGC). The Unit should process all information requests, including identification of the requested documents, review of classification done by the original departments, and response to requests in written form within a certain time period. This Unit should be independent from the Office of External Relations (OER), because part of OER' mission is to 'improve awareness and understanding of ADB's role and operations,' and it may have conflicts of interest when it is necessary to release certain documents that could damage the reputation of the ADB.
- **Resident Missions (RMs)** should be responsible for providing project and program specific documents and country-related documents to the stakeholders in the countries where RMs are located. RMs should fulfill two additional functions to facilitate local access to ADB documents: (1) to support local people's information requests to the Unit, including providing translation support for such requests, and (2) to translate the documents described later In this paper. Each RM should have at least one Information Officer who would be responsible for the implementation of the disclosure policy.
- **Information Disclosure Review Panel (the Panel)** should be established as an independent body. The Panel would receive complaints regarding violations of the new information disclosure policy and review them, and make recommendations. Such recommendations should be made public immediately. The precise of institutional framework of the Panel needs further consideration. The options include (1) a Panel that is appointed by and makes recommendations to the President, (2) a Panel that is appointed by the President and makes recommendations to the General Council or the Unit, (3) a Panel that is appointed by and makes recommendations to the Board of Directors and (4) the Compliance Review Panel established under the Accountability Mechanism could perform this function.

Such a body is essential to modern information disclosure mechanisms. Not only developed countries but also some of the ADB's developing member countries (DMCs), including India, Pakistan, Philippines and Thailand, have mechanisms where people can file appeals against decisions of non-disclosure. It has significant importance for the ADB because there is no judicial court where people can file a case against the ADB's violations on the disclosure policy.

2.3 Requests for Information

The ADB's information should be available to all stakeholders. It is important to give due consideration to the needs of project affected people. To enhance the accessibility of ADB documents and facilitate informed participation of affected people, the process of information requests should be very easy to use.

To make this process accessible to affected people, the following reforms are needed.

- **Means of requests:** Filing of information requests should be allowed by mail, fax, e-mail and hand delivery.
- **Language of requests:** The requests should be allowed to be filed in English or any of the official or national languages of ADB's DMCs. When the requests are filed in languages other than English, the Unit and relevant RMs will be responsible for translation.
- **Anonymity:** The identities of the requesters should be kept confidential to prevent any reprisals by project proponents or other agencies.

2.4 Proposed Process and Timeframe

As described above, the ADB's responses to information requests are unsystematic and slow. There should be a rigid time frame and format for the responses to information requests.

- **Contents of requests:** The requests should include a description of the information that the requesters need and the contact information of the requesters. The requesters should not be required to provide the exact names of the documents they are seeking. A description of the information they seek should be enough.
- **Notification of receipt:** Requesters should be notified by the Unit that it has received their request for information within 3 working days of receipt.
- **Identification of documents:** The Unit, with support from other departments/offices, should identify which documents requesters want based on the information in the requests. The Unit should ask for clarification or additional information from the requesters if necessary to identify the documents.
- **Review of original classification:** The Unit should review any decision made by the original departments to classify information. If the documents are originally unclassified, the documents should be disclosed. If the documents were originally classified as confidential, the Unit should review its classification and, if necessary, make appropriate changes to disclose the documents in consultation with original departments.
- **Partial confidentiality:** If documents contain both classified and unclassified information, such documents should be categorized as partially confidential. Partially confidential documents should be disclosed after removing only the confidential information.
- **Responses to the requests:** After the review, the Unit should respond to requesters in writing, with the following information: (1) which documents were identified based on the description in the request, (2) degree of confidentiality of each document, (3) the reasons for classification if any of the identified documents are classified as confidential or partially confidential, and (4) the way to file a complaint regarding the Unit's decision. The response, together with copies of the disclosed documents, should be sent within 30 days from the actual receipt of the request.

2.5 Complaints to the Information Disclosure Review Panel

As stated earlier, the current ADB information disclosure mechanism does not have a mechanism to ensure compliance with the Policy. ADB staff have the discretion to classify information as confidential without any scrutiny from outside. The Policy fails to ensure the accountability of the disclosure system of the ADB, even though the objective of the Policy is to ensure the accountability of the ADB. The current Accountability Mechanism accepts complaints regarding violation of the disclosure policy only from those who are directly affected by ADB projects.

It is especially problematic that decisions by the ADB staff cannot be examined by any judicial mechanism. While many information disclosure laws around the world allow requesters of information to file complaints to administrative procedures and to courts, neither way is available for those who are refused access to ADB documents.

As a public institution, the ADB should establish a compliance mechanism for the information disclosure policy. We propose establishing the Information Disclosure Review Panel as stated earlier. Several options of such mechanism should be considered in the first draft of the new disclosure policy.

3 Documents Subject to Disclosure

The current policy lists certain types of the documents that are automatically subject to disclosure. While the list worked well as a baseline for the ADB's disclosure level, a much wider range of documents should be disclosed considering their importance. Below are some of these documents.

3.1 Information on Policy Formulations and Revisions

Civil society organizations have been interested in the ADB policy formulations and revision processes, especially concerning safeguard policies and accountability policies. However, the ADB does not have any rules that require such process to be transparent and participatory. As a public institution, the ADB's policymaking processes are public concerns, and they should be as transparent and participatory as possible.

We appreciate that the review of the Inspection Function involved the most participatory process in the ADB's history. Three drafts of the policy were released to the public for comments, and 10 consultations were held both in DMCs and donor countries. This precedent should become a standard for good practice in ADB's policy-making processes.

To facilitate meaningful participation by civil society in policymaking processes, the following documents regarding policy formulations/revisions should be disclosed.

- **Notification of policy formulations/revisions:** When the ADB decides to formulate new policies or review existing policies internally or externally, such information should be disclosed to the public through the ADB website in order to allow stakeholders to input into the processes.
- **Draft policy papers:** At least one draft of new or revised policies should be disclosed for public comments before working papers are prepared.
- **W-papers and R-papers:** Working papers and recommendation papers should also be disclosed at the same time that they are circulated to the Board of Directors.
- **External Comments and Management's responses:** All external and internal comments received on the draft policy papers should be disclosed with the Management's responses to such comments as attachments of working papers and recommendation papers.

3.2 Board related information

The transparency of the Board of Directors, the decision-making body of the ADB, has been a major concern of civil society organizations. Both proposals for Board approval and minutes of Board meetings have been totally secret. This is our particular concern because once the Board approves policies or projects, it is very difficult for stakeholders to provide the information precisely relevant to the Board's decision when asking for withdrawal of such

decisions.

In most countries, the proposals to and deliberations of the highest decision-making bodies are open to the public. Any bills, budget or other proposals to such bodies are disclosed when they are submitted for approval, and the minutes of the meetings are also public documents. There is no compelling reason why the ADB should not follow this standard of accountability of the highest decision-making bodies.

We also have the right to know how the Executive Director represents our country in the ADB, as taxpayers to the Japanese government.

The ADB's member countries should immediately address this issue. We propose that the following documents should be disclosed. Section 9 of the "Rules of Procedure of the Board of Directors of the Asian Development Bank" should be revised accordingly.

- **Proposals for Board Consideration:** All proposals for Board consideration (including those circulated to the Board on non-objection basis) should be disclosed on the website at the same time they are circulated to the Board (21 days before Board consideration)
- **Minutes and Summaries of Board meetings:** The minutes and summaries of Board meetings should be disclosed.
- **Board Work Plans and Schedule:** The work plans and schedule of the Board should also be disclosed on the ADB website.

3.3 Project Specific Documents

The disclosure of project specific documents has been a particular concern to project affected people and NGOs monitoring the negative impacts of ADB projects. While some project information, including project profiles, summaries and full text of EIA and IEE, RRP and Project Completion Reports are available from the ADB, more documents should be made available to the public. Following are examples (not an exhaustive list) of documents that should be released to the public.

The ADB should make a list of all the types of documents that are produced through project formulation, processing and implementation, and consider whether such documents can be disclosed or not. Such list should be attached to the first draft of the new disclosure policy with proposed classification and reasons for it.

- **Reports produced by ADB's Technical Assistance:** Currently, most of the reports produced by the ADB's Project Preparation Technical Assistance (PPTA) are not available to public except for environment-related documents. Feasibility Studies and other technical details of projects are often classified as confidential at the requests of governments concerned. Because these reports are produced by using public money, they should be subject to disclosure.
- **Back-to-Office Reports/Aid Memoirs:** At the implementation stage, very limited information is available from the ADB. At least, Back-to-Office Reports and Aid Memoirs produced in the course of project implementation should be disclosed for public scrutiny.
- **Environmental Monitoring Reports:** The Environmental Impact Assessment (EIA) process does not end by producing EIA reports. It is equally important to monitor how mitigation and compensation measures written in the EIA have been conducted, and whether there are unexpected impacts caused by the projects. To ensure the people's participation in the implementation stage, environmental and social monitoring reports should also be disclosed to the public.

3.4 Information of Private Sector Operations

Very limited information is available regarding private sector operations of the ADB. The ADB should adopt at least the same standard as the International Finance Corporation, which discloses Summary of Project Information and environment-related documents.

4 Translation

The issue of language has been a major barrier for project affected people to access ADB's documents. While affected people have the right to know how projects and policies will affect them and what their rights are under the policy framework of the ADB, they have experienced difficulties in getting such documents in languages they understand.

To facilitate affected people's informed participation in the decision-making process, a comprehensive policy on translation should be included in the new policy. The following documents should be translated into languages understandable to affected people. Translated documents should be available both on ADB website and at the RMs. The RMs should be responsible for translation of such documents.

- **Project Profiles:** All Project Profiles should be translated into languages understandable to affected people.
- **Environment-related Documents:** Important documents regarding environmental and social considerations in projects, including EIA/IEE reports and their summaries, environmental monitoring reports, resettlement plans and indigenous development plans, should be translated into languages understandable to affected people. These documents should be translated both in draft and final forms to guarantee informed consultations with stakeholders. The cost for the translation and provision of these documents should be included in the project cost. The lists of original and translated documents should be included in the Project Profiles.
- **Safeguard and accountability policies:** To facilitate affected people's understanding of their rights under the ADB's policy framework, all safeguard policies and accountability policies (including disclosure policy, anticorruption policy and accountability mechanism) should be translated into languages understandable to affected people.

Abbreviations

ADB	Asian Development Bank
DMC	Developing Member Country
EIA	Environmental Impact Assessment
IEE	Initial Environmental Examination
PPTA	Project Preparation Technical Assistance
RM	Resident Mission
RRP	Report and Recommendation of the President
OER	Office of External Relations
OGC	Office of General Council
OM	Operations Manual
OP	Operational Procedures

Contact Information

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