

External Consultations to Review the Draft Public Communications Policy

Consultation with the NGO Forum on the ADB

17 March 2004

ADB Headquarters, Manila, Philippines

Summary of Discussion

INTRODUCTION

Mr. Robert Dobias, Head of the Asian Development Bank's NGO Center (NGOC), welcomed members of the NGO Forum on the ADB to the Bank. He gave a brief overview of activities undertaken by the NGOC over recent months and highlighted upcoming regional meetings and opportunities during which ADB staff and NGOs will dialogue. Dobias explained that, as previously agreed with the NGO Forum, an effort would be made to reach agreement in a common record of notes on the meeting. (According to Sameer Dossani, the issue of note-taking was raised, but there was no decision to produce common notes).

Mr. Bart Édes, Senior External Relations Officer, ADB, introduced the draft Public Communications Policy (PCP), providing background on the review process leading to the draft policy's development. He also highlighted changes that the proposed policy would bring to ADB's information disclosure and dissemination activities, including in the context of the project design and implementation.

Mr. Édes also outlined the overall consultation process, which will include face-to-face discussions with diverse stakeholders in at least 12 countries. He emphasized that the draft PCP is subject to change, and will remain a draft until the Board of Directors approves a final version.

Mr. Geert van der Linden, Vice President (Knowledge Management and Sustainable Development), ADB, addressed participants, and invited their feedback on the document.

Ms. Cindy Malvicini, ADB Consultant to the policy review, then asked participants to share their impressions, critiques, and experience regarding transparency and disclosure, and/or write their comments on cards provided.

COMMENTS FROM THE PARTICIPANTS ON THE DRAFT PCP

Following is a summary of participants' spoken and written comments, and ADB's clarification where appropriate:

Title of the document

- Some participants questioned whether the policy's title represents a shift in thinking. The PCP title is confusing as it does not include "disclosure." ADB does not have a system to reach out to the local communities who will be using the information and who only obtain information if they fight for it.

ADB Clarification: The title reflects the broad vision of the policy. There is no intent to diminish the importance of disclosure, which is addressed substantively in the document. The policy was

written with the objective of reaching out, explaining ADB better, engaging stakeholders, and improving consultations. ADB will consider specific suggestions to change the title.

- Suggestions for a different title: Disclosure of Information Policy, or Public Information and Communications Policy.

Information About Completed Projects

- ADB should release all documents and other information about a project, at least after the project is completed.
- Most problems encountered by ADB are caused because information does not reach the grassroots. Often, local people have to fight with the government to obtain information.
- 12-24 months after completion of project is too long to wait for the Project Completion Report (para.100, Page 33)

ADB Clarifications. The draft PCP includes a section on historical information. Documents that under the current Disclosure Policy would be treated as confidential would, under the PCP, be available after a certain number of years. In particular, Para 123 provides for historical information to be made available 20 years after its issuance. However, if a document would have been available if it was published when the PCP was in effect, but could not be disclosed under the existing policy, then it would be available 5 years from the document's date of issuance.

- Stakeholders should not have to wait 5 years before a document is released. When a project is officially closed, all related documents (if confidential, etc.) should be released and not be subject to archive provisions.
- Everyone must have the same information for projects under inspection through the Accountability Mechanism.

Accessibility (General)

- Before a project agreement is made, information should be widely circulated because advocacy NGOs may not be consulted.
- Advocacy NGOs should be included in the Depository Library Program.

Role of Resident Missions

- A participant from Kyrgyzstan has requested documents from KYRM but claims that the Resident Mission does not disclose information without first talking with ADB HQ. The role of ADB's RMs needs to be strengthened, and RM staff should be more knowledgeable about the Bank's activities. When requesting a hard copy of the draft PCP, KYRM staff said they did not have anything.
- An Indonesian participant stated that sometimes it takes IRM too long to find and provide requested non-classified documents. In some cases, they say they have to wait for ADB HQ to send these documents and they do not hear from the RM even after several months.
- A participant from India remarked that the Resident Mission in Delhi doesn't have the time to speak with them and doesn't know how to dialogue with them. This is a major problem if they can't even enter the RM office.

Web site

- A participant from Sri Lanka remarked that it is very difficult to find the draft PCP on the web, when searching under Communication.
- Is it ADB's practice to change the name of a project? There was a project on ADB's web site that was postponed but has now disappeared (specific example was not provided)

- ADB should list all documents by type and category for easy access.
- It should be easy to find a loan number.

ADB Clarification: The URL for the web page on the policy review is <http://adb.org/disclosure>. There is a prominent link from the ADB web site home page. Ways of making ADB's web site more user friendly (e.g. easy access on the web for documents pertaining to a particular project) are being looked into.

Cost of providing documents

- Participants are concerned about whether ADB will charge for documents. \$10 is too high.
- It is understood that there is a cost involved, but NGOs don't require glossy publication or color copy. A simple photocopy will do.

Translation

- A participant from Sri Lanka, displaced by an ADB-assisted road project, said that the road is 128 km long and along this stretch there is but one 1 computer, which she owns. There are 2 English-speaking people, she being one of them. How does ADB get people to even find out what they are entitled to in terms of resettlement? If ADB does not empower people through knowledge and in their own language, it will never achieve anything. Then all its poverty reduction efforts become poverty creation. People don't know how much they are entitled to and what they should be compensated for. How then does ADB's resettlement plan work? Though its policies are wonderful, actual implementation will not happen until ADB translates into local languages, however much it costs.
- Some NGOs receive information through the NGO Forum and can browse the Internet for information. Other NGOs have difficulties accessing information that is in English and not in the local language. ADB should provide for more translations (not on a case-by-case basis).
- ADB must provide documents in at least the official and national language of member countries.
- ADB should ask governments to translate documents into the local language, perhaps including this as a requirement under the loan agreement.

Government documents vs. ADB documents

- There is often confusion about the ownership of documents. What is the difference between government documents vs. ADB documents and how is this addressed covered in the policy? Examples of certain documents cited as government documents include strategy reports, mid-term reports, etc.

Contracts between contractor and government

- What power does ADB have over time to disclose contract documents after these are signed (specifically, cost benefit analysis)? Nepal's law grants access to these documents, but does ADB comply with domestic legal providence? What does the policy where a country's national constitution or law requires access to information?

Board documents

- Board transcripts and summaries should be disclosed. Board minutes may be insufficient as they may not contain enough information.
- 3 types of Board minutes should be disclosed: the minutes themselves, summaries of discussions, and the official transcripts.

Policies

- R Papers should be disclosed prior to Board consideration.

- One participant said that he does not understand the language “no later than Board approval” in para 82. It provides an opening that doesn’t exist, and it is loose. Another participant surmised that the language is kept vague and obviously does not *require* release.

Drafts

- Can ADB impose the same disclosure policy on Government (as in the case of the resettlement compensation policy)? ADB should *insist* that certain documents be made available prior to project decision or at anytime. In most cases, the decision has been made but the documents are still not available.
- PRPA (para 80, page 19): the draft document should be open to public discussion prior to government signing.
- All draft CSPs need to be disclosed in the policy (not just case-by-case).
- Draft RRP for public and private projects need to be disclosed.
- Most ADB documents are released after Board approval and/or review. Out of 30 basic documents identified, only 4 items are disclosed before Board approval/circulation. Environmental documents are made available to the general public at least 120 days before Board consideration of the loan or significant changes in project scope. This practice of not releasing other draft documents contradicts ADB’s “presumption of disclosure” and its policy of participatory consultation of stakeholders in the evolution of an ADB program, project or policy, especially at an early stage of development. ADB is not disclosing at the proper time and must be more proactive.
- Extend environmental disclosure “120-day rule” to other overarching policies like poverty alleviation and core labor standards to all programs, projects, and policy developments.

Project Information Documents

- Conditionalities of TAs and loan/grant TORs should be disclosed to all stakeholders consistently in the time frame described.
- Update project and program profiles consistently and within time frames prescribed.
- Ensure that the policy clarifies what documents should be disseminated (e.g. TA reports should be widely circulated).
- Feasibility studies should be disclosed.
- All papers for all NGO consultations should be made available well in advance if ADB would like them to be involved in meaningful dialogue.
- Before project implementation/signing, documents (e.g. mid-term review report, etc.) for public consultation should be widely circulated and a deadline for comments should be given.

Accountability

- ADB should hold persons accountable when they fail to disclose, e.g. the head of the originating department or office who determines the disclosure, or the Board whose decision for circulation was awaited.

Monitoring

- Participatory monitoring of the project by project beneficiaries (the poorest) is necessary.

Environment

- On environmental assessments, community consultations should be given first priority.
- Environmental assessments should be disclosed.
- Project/program loan contracts between ADB and the government should be disclosed.
- Ensure that the Resident Missions complies with the Environment Policy requirements.

Private sector information

- Participants commented that they have had problems obtaining private sector information related to project and government implementing agencies, especially on environment and social monitoring.
- More private sector documents (contracts, concession agreements) should be disclosed
- All information on a private sector project should be available (not only the summary).
- Private sector RRP's should be disclosed.
- Some participants raised concerns that requiring project sponsor consent for RRP's and the Summary of Project Information will result in those documents not being disclosed.
- Disclosure requirements for the private sector should be the same as that of the public sector.
- Project profiles should be updated consistently in the timeframe described.

ADB Clarifications: Mr. Alfredo Pascual, Director, PSOP, ADB, was invited to respond to comments on private sector issues. He explained that ADB-assisted public sector projects do not operate in a competitive market. Private sector projects, on the other hand, do operate in competitive markets. Information provides competitive advantage and there is a need to preserve fair competition in the market. ADB therefore refrains from disclosing market-sensitive information

Pascual also noted that there is a need to protect information that belongs to the project sponsor. Such information is provided to ADB with the understanding that it will not be disclosed and that this will be use so that credit decisions on whether to provide a loan can be made. In addition, ADB enters into confidentiality agreements with clients, where in ADB gives its legal commitment to protect the information provided by clients. If such confidential information is disclosed to the public without the consent of the provider of the information, ADB is liable under the confidentiality agreement. There is a need to be conscious of ADB's legal obligations as well. This does not mean, however, that ADB avoids disclosure of information that the community should know. For example, if a project is environmentally sensitive, we are subject to the same rules that apply public sector projects. A Summary Environmental Impact Assessment must be disclosed to the public at least 120 days before the Board considers the project. If a resettlement or indigenous peoples planning document is required under ADB's safeguard policies, we include this among the documents disclosed to the public at least 120 days prior to Board consideration of the project.

The draft PCP requires the Summary of Project Information to be posted at the same time as the summary environmental assessment for environmentally sensitive projects.

Private sector RRP's are confidential under the current policy, but are proposed to be made available to the public under two conditions – (1) consent of project sponsors and (2) removal of confidential information, including market sensitive and business sensitive information. ADB plans to separate confidential information from non-confidential information so that the RRP's can easily be disclosed.

- The participant noted ADB support to reform the Philippines' power sector, stating that ADB should disclose information to enable the public to assess the electricity rates people have to pay. The terms "confidential" and "business sensitive" must be discussed. What information hampers competition? What information do the public and government agencies require to determine fair tariffs?

Pascual stated that there is a need to involve project sponsors in the process of deciding what would be disclosed. Sponsors who are beginning to recognize the points raised will be more open to disclosure. He referred to a voluntary subscription by a number of international banks to the Equator Principles and said there is voluntary effort on the part of international banks to subscribe to principles that are sustainable, that protect the environment, and voluntary compliance with the environmental guidelines of the World Bank and the IFC. Information that is probably of greatest interest to NGOs would be that affecting the community/people and the environment and this would be disclosed. Financial information, such as revenues earned, would be removed from RRP's before they are disclosed.

List of Documents Not Disclosed

- Participants remarked that they need to know ADB's criteria for public access (e.g. what is confidential, what is for the public, what is not for public). This should be translated.

ADB Clarification: Para 129 of the draft PCP identifies the constraints to disclosure. Para 75 refers to documents that are made "publicly available" (anything "publicly available" is available thru ADB's web site and/or ADB's offices in countries). Where slow Internet time and cost of web access is a problem, a hard copy can be obtained from ADB.

- It was suggested that, for the consultations in April-July, a list be provided of all documents and types of documents that will not be disclosed (Negative List).
- The draft PCP should also contain a breakdown of document types and documents that will *not* be disclosed.

General comments

- Keep all draft PCP elements intact but ADB needs to go much further.
- Amend "information also provided ... as appropriate" – this is undefined and gives leeway to interested parties to avoid disclosure.

Next steps and concluding remarks

Mr. Édes stated that this has been a very helpful meeting with specific examples of real concerns. ADB is currently accepting written comments on the draft policy thru 28 May. Beginning in late April, public consultations will begin in mostly developing member countries. A copy of the schedule has been provided and is on ADB's web site. He invited everyone to participate again and to inform ADB of other persons they think should participate in these consultations.

He added that ADB wants to create an environment where participants can comfortably express themselves and so in certain countries where a workshop will be held, the draft PCP will be translated (e.g. into Bahasa for the Jakarta workshop, and into Russian for the Bishkek workshop). He concluded the meeting and thanked all for their participation.

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LIST OF PARTICIPANTS

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