

**Comment on ADB'S  
2<sup>nd</sup> Draft Public Communications Policy (version 25 October 2004)**

TO: disclosure@adb.org

FROM: Toby Mendel, ARTICLE 19, United Kingdom  
Jennifer Kalafut and Mishka Zaman, Bank Information Center, USA  
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DATE: 24 November 2004

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Dear ADB disclosure team,

Please find attached comments (click [here](#) to view comments) from a number of civil society organizations on second draft Public Communications Policy (PCP) of the Asian Development Bank. We look forward to seeing these comments reflected in the PCP Working Paper. A response to these comments can be directed to Mishka Zaman, Asia Program Manager, Bank Information Center ([mzaman@bicusa.org](mailto:mzaman@bicusa.org)).

Thank you,

Toby Mendel, ARTICLE 19, United Kingdom  
Jennifer Kalafut and Mishka Zaman, Bank Information Center, USA  
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The views expressed in this paper are the views of the authors and do not necessarily reflect the views or policies of the Asian Development Bank (ADB), or its Board of Directors or the governments they represent. ADB makes no representation concerning and does not guarantee the source, originality, accuracy, completeness or reliability of any statement, information, data, finding, interpretation, advice, opinion, or view presented.

**Executive Summary**  
**Civil Society Comments on second draft Public Communications Policy**  
**Of the Asian Development Bank**  
**November 24, 2004**

This paper provides comments on the ADB's second draft Public Communications Policy (draft PCP). This paper was jointly prepared by the non-governmental organizations listed below and is endorsed by the undersigned members of civil society. We look forward to seeing our input reflected in the forthcoming PCP Working Paper. Any questions or responses to these comments should be directed to Mishka Zaman at the Bank Information Center, [mzaman@bicusa.org](mailto:mzaman@bicusa.org).

In the first part of this paper, we outline some of the more progressive elements of the second draft PCP, including a number of recommendations that were proposed by civil society groups. **We consider these elements to be minimum standards which should be retained in the final policy.** In the second part of the paper, **we outline several remaining concerns with the second draft PCP, pointing to areas where we would like to see further reform.** The third part of the paper contains a recommendation on the **PCP drafting process.**

**Part I: Progress in the ADB's second draft PCP**

**1. The disclosure of a tentative Board schedule and Board minutes.**

Transparency of the Board of Directors is essential to improving the democratic governance of the Asian Development Bank. The second draft PCP recommends that a "*tentative schedule and topics of Board discussions*" be made available "*for the forthcoming 3 weeks.*" (paragraph 140) Furthermore, it recommends that "*minutes of each regular Board meeting are made publicly available upon approval of those minutes by the Board.*" (paragraph 141) The disclosure of a Board schedule and Board minutes would be an important step towards increasing public understanding of the Board's operations and would help bring the ADB into line with best practice at other institutions.

**2. Commitments to translation and dissemination.**

Disclosure of information is meaningless unless people are able to (i) easily access that information and (ii) access that information in a language they understand. We are encouraged that the draft PCP provides for the development of a detailed Translation Strategy. (paragraph 184) The Strategy should make a clear commitment to the translation of specific documents into national and local languages. Consideration should also be given to developing a more comprehensive strategy aimed at enhancing local *dissemination* of information. It is appropriate that the draft PCP recognizes that translation costs should be assumed in project budgets – communicating with affected populations is a fundamental requirement for all projects. Although the current proposal covers some costs related to translation and to better dissemination, the ADB should make a clear commitment to allocating adequate resources for the full implementation of such a strategy.

**3. Disclosure of information during project implementation.**

The public should have access to information about the degree to which a given project is proceeding according to expectations as well as any unexpected social and environmental impacts

associated with the project. The draft PCP begins to fulfill this need by proposing to disclose detailed information during project implementation.

#### **4. Regime of exceptions or constraints**

The draft PCP establishes a general presumption in favor of disclosure (paragraph 71), with the result that all information held by the ADB should be disclosed unless it falls within the scope of the regime of exceptions (sometimes referred to as constraints) set out in the Policy. We welcome these commitments, which represent an important shift from document-based disclosure to a recognition of a general obligation to disclose all information held, subject only to exceptions to protect legitimate interests. At the same time, we note some shortcomings with the regime of exceptions (see below).

### **Part II: Recommendations for Increased Disclosure and Access to Information**

Although the draft PCP includes some positive features, a number of important recommendations proposed during the policy review process have not been incorporated. These proposals would, if reflected in the policy, make an important contribution to openness at the ADB. Furthermore, these recommendations would support the ADB's ability to implement the policy effectively by providing ADB staff with clear guidance on what can and cannot be disclosed. Outlined below are some of the key proposals we would like to see incorporated into the final PCP:

#### **1. Compliance Review**

The “**appendix**” mentioned in Section X of the draft PCP is intended to contain a list of those parts of the Policy that may be subject to review by the Compliance Review Panel (CRP). It is quite clear that the CRP should be the competent body to determine for itself which sections/clauses of the draft PCP will be subject to compliance review. We therefore suggest that the proposed “appendix” be removed from the draft PCP as it appears to over-ride the role and mandate given to the CRP under the existing Accountability Mechanism Policy. Indeed, by selecting only certain sections of the PCP as being “inspectable”, the appendix appears to violate the existing Accountability Mechanism Policy.

#### **2. Independent appeals mechanism.**

In keeping with national and international best practice, an independent appeals body is a necessary component of any information regime. Such a body will interpret ADB's stated presumption in favor of disclosure and provide an independent review of the regime of exceptions. The draft PCP should, therefore, provide for an independent level of appeal from any refusal to disclose information. We also propose that the CRP, in addition to its existing compliance role under the Accountability Mechanism, should operate as an independent appeals body for information requests. Furthermore, the role of the PDAC in reviewing decisions not to disclose should be clarified.

*Mandate:* The CRP already has a mandate to conduct compliance review of all ADB Operational Policies and Strategies. We recommend that it also function as an independent appeals mechanism for information disclosure appeals emanating from decisions of the PDAC.

*The Process:* We recommend an “accelerated process” for CRP’s review of disclosure appeals. This “fast track” process would not require requesters to approach the Office of Special Projects Facilitator (OSPF) before the complaint is forwarded to the OCRP as we believe the “problem solving” and mediation function of the OSPF will already have been performed by the PDAC.

*Access:* We recommend that any individual or interested party, regardless of whether or not they are harmed by ADB’s non-disclosure, should be eligible to lodge a disclosure related appeal with the OCRP.

### **3. Uniformity in the disclosure of public and private sector information.**

In the second draft PCP, the ADB proposes very different transparency standards for its public- and private-sector sponsors. We recognize that there may be good reasons for non-disclosure of private-sector information, especially regarding commercially sensitive information. However, blanket statements that the ADB will not disclose specific documents work against the ADB’s ability to adapt to future disclosure trends and are unnecessary since the policy has clearly defined exceptions which protect commercial sensitive information. We recommend that the ADB remove all blanket statements of non-disclosure from Sections H and I of the PCP.

### **4. Regular and timely reports on project development.**

While the ADB proposes to disclose an updated Project Information Document (PID) through-out the project cycle, Bank staff are already required to regularly report on project development in *Aide Memoires* and Project/Program Progress Reports (PPRs). In addition to the PID, we recommend that *Aide Memoires* and PPRs are routinely disclosed, redacted if necessary According to the disclosure exemptions outlined in Section J of the draft PCP.

### **5. Release of draft documents**

We recommend that all full/complete draft policy and strategy documents and assessments (for example, draft EIAs, draft resettlement plans and draft feasibility studies) be released regardless of whether the ADB anticipates holding public consultations around them.

### **6. Board documents**

We strongly recommend that public and private sector draft RRP’s and R-Papers pertaining to safeguard policies, other operational policies, and sector and thematic strategies be released and that summaries of Board discussions on the above also be disclosed.

### **7. Exceptions**

As noted above, the regime of exceptions is generally progressive and in line with a commitment to openness. There are, however, two exceptions which are blanket in nature and not premised on harm to any legitimate interest. The exception relating to internal documents should focus on information the disclosure of which would undermine either the deliberative process within the ADB by inhibiting the free and frank provision of advice or exchange of views, or the effectiveness of a testing or auditing procedure. As regards decision-making and policy development, the exception should be limited to information that, if disclosed, would prejudice the effective

formulation or development of policy, or would seriously frustrate the success of a policy, by premature disclosure of that policy.

## **8. General Institutional Information**

The draft PCP does not include a provision for the disclosure of a directory of ADB staff. While we recognize that the Bank may not want to disclose room numbers due to security concerns, we recommend the disclosure of a complete staff listing, including position and e-mail. The ADB should disclose detailed information on its operational budget, including a clear indication of departmental budgets and other aspects of resource allocation. The ADB should also release detailed information on actual expenditures.

### **Part III: Recommendation on PCP drafting process**

In keeping with the recommendation to release all draft papers for policies (see number 6, part II), we recommend that the R-paper<sup>1</sup> for the PCP be disclosed to the public at the same time as it goes to the Board. To withhold the paper during a consultative process undermines the transparency of the drafting process.

### **Conclusion**

The ADB's second draft disclosure policy is in some ways progressive and provides for greater disclosure of information but it does not meet many standards which are commonplace in national access to information laws. We strongly recommend that in the next draft PCP (Working Paper), the ADB should (i) incorporate the comments made by civil society through this paper, (ii) focus on the policy's ability to meet development effectiveness goals, and (iii) make the policy as clear as possible for ADB staff in order to facilitate implementation.

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<sup>1</sup> The R-paper of the Environment Policy was released in 2002.

**Expanded Comments**  
**Civil Society Comments on second draft Public Communications Policy**  
**Of the Asian Development Bank**  
**November 24, 2004**

On October 26, 2004, the Asian Development Bank (ADB) released the second draft of its *Public Communications Policy (PCP): Disclosure and Exchange of Information*, and it is seeking comments on this draft until November 24, 2004. In January 2005, the ADB is scheduled to send a PCP Working Paper to the Bank's Board of Directors, which we understand will be made available for another 30-day commenting period. Following this, the ADB will prepare and send to the Board an R-paper (restricted), which we understand is not intended to be released to the public. The ADB plans to approve a final PCP in the first half of 2005.

This paper provides comments on the ADB's second draft Public Communications Policy. It was prepared jointly by the non-governmental organizations listed below and is endorsed by the undersigned members of civil society. We look forward to seeing our input reflected in the PCP Working Paper. Any questions or responses to these comments should be directed to Mishka Zaman at the Bank Information Center, [mzaman@bicusa.org](mailto:mzaman@bicusa.org).

In the first part of this paper, we outline some of the more progressive elements of the second draft PCP, including a number of recommendations that were proposed by civil society groups. **We consider these elements to be minimum standards which should be retained in the final policy.** In the second part of the paper, **we outline several remaining concerns with the second draft PCP, pointing to areas where we would like to see further reform.** In the third part of this paper, we make a **recommendation on the drafting process.**

## **Part I: Progress in the ADB's second draft PCP**

The second draft PCP is the result of a consultation process during which the ADB received input and statements from a range of civil society organizations. Civil society expressed concerns around the review process, including the exclusion of affected community representatives in the face-to-face meetings. At the same time, a number of the comments provided by civil society were incorporated into the second draft PCP, which makes progress over the first draft in terms of promoting transparency and of ensuring effective access to information at the ADB. The proposed policy, if approved by the Board of Directors, would set several of new disclosure standards for the multilateral development banks (MDBs).

**We outline below a number of important rules in the second draft PCP which we would like to highlight in order to emphasize their importance and to endorse their adoption at the ADB. We view these as minimum standards which should not be diluted as the ADB moves forward with policy approval.**

In particular, we recognize the following developments in the second draft PCP and recommend that the ADB seeks to improve upon these proposals in the PCP Working Paper:

## **1. The disclosure of a tentative Board schedule and Board minutes.**

Transparency of the Board of Directors is essential to improving the democratic governance of the Asian Development Bank. Currently, the Board of the ADB operates in almost complete secrecy. Citizens in the countries represented by Executive Directors (EDs) have little way of knowing how their concerns are being reflected in Board discussions and Board decisions.

The second draft PCP recommends that a “*tentative schedule and topics of Board discussions*” be made available “*for the forthcoming 3 weeks.*” (paragraph 140) In 2002, with the approval of its new disclosure policy, the World Bank began to release a monthly Board calendar. This calendar has proved extremely useful not only for civil society, but also for journalists and researchers interested in projects supported by the World Bank Group. External stakeholders acknowledge the tentative and changing nature of the Board’s calendar, but are also appreciative for advance notice of possible Board discussions.

The second draft PCP also recommends that “*minutes of each regular Board meeting are made publicly available upon approval of those minutes by the Board.*” (paragraph 141) While the tentative Board schedule allows interested external parties the opportunity to anticipate possible Board discussions, Board minutes will report on actual discussions and contribute to Executive Director accountability. Board minutes would only be disclosed after approval by ADB EDs and will not reflect the full breadth of the dialogue at Board meetings.

**The disclosure of a Board schedule and Board minutes would be an important step towards increasing public understanding of the Board’s operations and would help bring the ADB into line with best practice at other institutions.**

## **2. Commitments to translation and dissemination.**

Disclosure of information is meaningless unless people are able to (1) easily access that information and (2) access that information in a language they understand. These are two of the most critical features of the new PCP. Among other things, the second draft PCP states that the ADB will increase the number of national officer positions (paragraph 178) and upgrade Public Information Centers at Resident Missions (paragraph 187). Furthermore, it commits the ADB to developing a translation framework (paragraph 89) and states that a variety of documents may be eligible for translation, including project-specific information (paragraph 90).

**The ADB should develop in greater detail a strategy to enhance local dissemination of information and should make a clear commitment to the translation of specific documents into national and local languages.** As proposed by the ADB, translation costs should be assumed in project budgets. Although the current proposal covers some costs related to translation and to better dissemination, **the ADB should make a clear commitment to allocating adequate resources for the full implementation of such a strategy.**

### 3. Disclosure of information during project implementation.

The second draft PCP makes a commitment to disclose detailed public-sector project information during implementation and, if retained in the final approved policy, the ADB would become the first MDB to disclose information during the project implementation stage. As MDB's increasingly focus on development results,<sup>2</sup> there is an enhanced emphasis on the need to articulate development intent and report on development impacts. **The public should have access to information about the degree to which a given project is proceeding according to expectations as well as any unexpected social and environmental impacts associated with the project.** By committing to the disclosure of project monitoring reports during project implementation, the ADB would become a leader among the MDBs regarding the public provision of regular reports on development results.

### 4. Regime of exceptions or constraints

The second draft PCP establishes a general presumption in favor of disclosure (paragraph 71), with the result that all information held by the ADB should be disclosed unless it falls within the scope of the regime of exceptions (sometimes referred to as constraints). Part J of the Policy (paragraphs 153-156) sets out 16 exceptions, most of which include a harm test; it also includes a public interest override which allows generally for disclosure in the public interest. Part K of the Policy (paragraphs 157-158) provides for the disclosure of Historical Information, defined as information which is more than 20 years old and which is no longer 'active'.

**We welcome these commitments, which represent an important shift towards recognition of a general obligation to disclose all information held, subject only to exceptions to protect legitimate interests.** At the same time, we note some shortcomings with the regime of exceptions (see below).

## Part II: Recommendations for Increased Disclosure and Access to Information

Although the second draft PCP includes some positive features, a number of significant recommendations proposed during the policy review process have not been incorporated. These recommendations would support the ADB's ability to effectively implement the policy by providing ADB staff with clear guidance on what can and cannot be disclosed and, if reflected in the policy, would make an important contribution to openness at the ADB. Outlined below are some of the key proposals we would like to see incorporated into the PCP Working Paper:

### 1. Compliance Review

The second draft PCP states in Section X that *"the disclosure requirements of the Policy will be subject to compliance review pursuant to ADB's Accountability Mechanism Policy. ADB is in the process of developing a new appendix to this Policy that lists each such requirement...."*

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<sup>2</sup> In February 2004, at the Second International Roundtable on Managing for Development Results held in Marrakech, Morocco, ADB committed to a global action plan on managing for development results. (see Annual Report on Loan and Technical Assistance Portfolio Performance for the Period Ending 31 December 2003. Asian Development Bank, Operations Evaluations Department: June 2004, paragraph 2.)

(emphasis added). Meanwhile, the OM Section L1/BP of the ADB Accountability Mechanism Policy states in Section F (Scope) “*The Board decides whether a particular policy is an operational policy subject to compliance review, and it is for CRP to determine which part of the operational policies and procedures was or is not complied with after carrying out a compliance review of the request concerned.....*”

**We therefore propose that the CRP be the competent body to determine the sections/clauses of the draft PCP which will be subject to compliance review. We also believe there is no need to develop the proposed “appendix” as such a document would over-ride the role and mandate of the existing Accountability Mechanism Policy.**

## **2. Independent appeals mechanism.**

The second draft PCP provides for an appeal arising from an Operational Department’s (OD) refusal to disclose information to be considered by the Public Disclosure Advisory Committee (PDAC), comprised of the Managing Director General (serving as chair), the Principal Director of the Office of External Relations (OER), the Secretary and the General Counsel, and reporting directly to the President. The draft PCP does not, however, provide stakeholders with the option of approaching an independent body when they are not satisfied with the response of the PDAC. International best practice is quite clear on this matter and practically all national access to information laws provide for independent review of any refusals to disclose information.

**In keeping with international best practice, we recommend that the PCP must explicitly include recourse to an independent appeals body operating under appropriate procedures.** The ADB’s Office of Compliance Review Panel (OCRP) is an existing independent compliance review body which could interpret ADB’s stated presumption in favor of disclosure and provide independent review of the regime of exceptions. Its operating procedures could be adapted to hear appeals related wholly and specifically to information disclosure. Created under the auspices of the ADB Accountability Mechanism Policy which states (paragraph 57) that the “*establishment of the mechanism complements ADB’s policy of allowing greater public access to ADB documents and publications,*” the OCRP has a mandate to review complaints of harm relating to compliance with ADB operational policies and to issue recommendations. It could thus serve as an independent and impartial body of final recourse when requesters are not satisfied with responses received from ODs and PDAC.

There are, however, two shortcomings in the current Accountability Mechanism procedures as applied to information appeals. First, the procedure is very lengthy, requiring complaints to go through a number of detailed steps. While this may ordinarily be necessary for an appropriate assessment of whether or not individuals or communities have been harmed by the ADB’s failure to comply with its policies, it is unnecessary in the context of an information request, particularly given the role of the PDAC. Second, under the Accountability Mechanism approach, the OCRP can only entertain complaints from those who have specifically been harmed by a failure to comply with a policy; again, this is an inappropriate and unnecessary limitation in the context of information requests. We note, in relation to both, that an information requester will simply want to gain access to the relevant information, a straightforward and limited remedy.

### The Compliance Review Panel

*Mandate:* Since the CRP already has the mandate to conduct compliance review of all ADB Operational Policies and Strategies, we recommend that it also function as an independent appeals mechanism for appeals related to information disclosure.

*The Process:* **We recommend an “accelerated process” for OCRP’s review of appeals related only to disclosure request/s.** This “fast track” process would remove the requirement for requesters to approach the Office of Special Projects Facilitator (OSPF) before the complaint is forwarded to the OCRP since the “problem solving” and mediation function of the OSPF will already have been performed by the PDAC. Under this proposal, requesters would first request information from an OD as provided for under the draft PCP. If they are not satisfied with the response received, they would then approach the PDAC. If they remain unsatisfied, they would then have the option to file an appeal with the OCRP. OCRP would review requests and provide its recommendation/s to the ADB Board of Directors as well as to the complainant/requester. After receiving OCRP recommendation/s, the Board would issue a final judgment in the matter.

*Who can file an information appeal to OCRP:* **We recommend that any individual or interested party, regardless of whether they are harmed by ADB’s non-disclosure, should be eligible to lodge an appeal with the OCRP.**

### **3. Uniformity in the disclosure of public and private sector information.**

In the second draft PCP, the ADB proposes very different transparency standards for its public- and private-sector sponsors. For example, project *feasibility studies*, *loan agreements*, *Project Completion Reports* (PCRs) and *Social and Environmental Monitoring Reports* (SEMRs) are disclosed (in full) for public-sector projects. In stark contrast, the second draft PCP specifically states that these documents will *not* be disclosed for private-sector projects. It states that:

- “*Private sector monitoring reports are not publicly available.*” (paragraph 120)
- “*Project Completion Reports prepared for selected private sector projects are not publicly available.*” (paragraph 123)
- “*Commercial cofinancing agreements are not made publicly available.*” (paragraph 129)
- “*Feasibility Studies for Private Sector Projects: In light of the financial and other information contained in feasibility studies ... they are not disclosed.*” (Appendix 4, page 83)

Furthermore, the *Project Concept Clearance Paper* (PCC) for private-sector projects, developed in the earliest stage of project preparation, is not disclosed under the proposed PCP, even though its public-sector equivalent, the *Project Preparatory Note* or *Technical Assistance Paper* is disclosed. And lastly, the *Report and Recommendation of the President* (RRP), which provides the most detailed information about a project, will only be disclosed in summary form for private-sector projects.

The ADB’s proposals to subject private-sector clients to far fewer disclosure obligations than developing member governments are problematic for several reasons:

- a. The development mandate of the ADB applies equally to public- and private-sector projects. Development impacts are no less significant for private-sector projects than for public sector projects. The rationale for information disclosure, including that disclosure increases development effectiveness, is the same for private- and public-sector projects.
- b. Business attitudes towards transparency are changing. As the ADB's private-sector clients begin to adopt more socially responsible practices, including increased disclosure of information, the ADB, by articulating rigid statements of non-disclosure of specific documents in its PCP, does not allow for the adaptation and incorporation of best practice in the future. The ADB's PCP should be flexible enough to allow for greater disclosure of information over time.
- c. It is hard to imagine what type of information would be included in at least some of these documents, for example an Environmental and Social Monitoring Report, that would be business sensitive. The ADB clearly states in the beginning of the second draft PCP that "ADB does not withhold information just because it is negative." (paragraph 73) Furthermore, if some sensitive information is contained within a report, that information can be redacted and the remainder of the report disclosed.
- d. We recognize that there may be good reasons for non-disclosure of private-sector information, especially regarding commercial sensitivities. However, these are fully acknowledged by the regime of exceptions detailed in Section J of the policy, which includes confidential business information and trade secrets, as well as information relating to procurement processes. There is no need to attempt to exclude specific documents, when the current exemptions regime has been designed so that ADB officers can utilize their discretion to ensure that sensitive information is protected on a case-by-case basis.

**We recommend that the ADB remove all blanket statements of non-disclosure (i.e. statements that specific documents under no circumstances will be disclosed) from Sections H and I of the disclosure policy.**

#### **4. Board documents**

As mentioned in Part I of this paper, the draft PCP provides for disclosure of Board minutes and a Board calendar for the upcoming 3 weeks, both welcome developments. The PCP, however, does not provide for the disclosure of other Board documents, such as draft Report and Recommendation of the President (RRP) and Restricted Papers (R-Papers) pertaining to safeguard policies, other operational policies, and sector and thematic strategies. Summaries of Board discussions (apart from those relating to CSPs) are also not publicly released.

The Board of Directors could benefit by receiving comments from project beneficiaries/affected persons and civil society on these final draft documents. In many instances, external stakeholders will have commented on earlier drafts of these documents and will thus be well acquainted with the intricacies of the issues at hand. The Board stands to gain from the timely and targeted insights which these external stakeholders could bring to the debate. Indeed, at times the Board could receive information that might not have been considered before.

**We strongly recommend that public and private sector draft RRP's and R-Papers pertaining to safeguard policies, other operational policies, and sector and thematic strategies be released and that summaries of Board discussions on the above also be disclosed.**

## **5. Regular and timely reports on project development.**

The ADB's second draft PCP proposes to develop a Project Information Document (PID) which will be the primary mechanism to communicate information about project development to affected communities and the broader public. While this is a welcome development, we are concerned that given the wide range of responsibilities and the number of reports that ADB staff are already required to produce, it is inefficient for staff to produce another document that is strictly for public consumption, much less to keep this document regularly updated throughout the project cycle.

The ADB already produces a report that provides regular updates on the development of a project. *Aide Memoires* are developed jointly by the ADB and project sponsors and outline agreed actions for project preparation and implementation. *Aide Memoires* are usually distributed to key stakeholders outside the ADB, including Government representatives and other donors. Accordingly, unlike Back-to-Office Reports, *Aide Memoires* are already drafted to some extent with a view to their external consumption and are therefore, less sensitive than some other monitoring documents prepared by ADB staff. **We recommend that *Aide Memoires* be routinely disclosed.**

Similarly, the ADB uses data provided by the Bank's borrowers to produce *Project/Program Progress Reports* (PPRs). These reports are natural updates on a project during implementation and contain information that the ADB proposes to capture in the PID. In addition to the PID, **the ADB should disclose the PPRs (redacted if necessary) during project implementation.**

## **6. Release of draft documents**

The PCP states that draft documents will only be released "*if they are developed through consultation*". This is mentioned specifically, for example, in the case of Strategy and Program Assessments (paragraph 96).

We propose that **all full/complete draft policy and strategy documents and assessments (for example, draft EIAs, feasibility studies, draft Resettlement Plans) be released regardless of whether the ADB anticipates holding public consultations around them.**

## **7. Exceptions**

As noted above, the regime of exceptions is generally progressive and in line with a commitment to openness. There are, however, two blanket exceptions which have been very broadly drafted, and not premised on harm to any legitimate interest. The first is an exception in favor of '*[i]nternal documents, memoranda, and other communications*' from ADB staff, directors and so on. The second covers '*[i]nformation exchanged, prepared for, or derived from the deliberative and decision-making process between ADB and its members and other entities with whom the ADB cooperates*'.

We recognize that exceptions may be required to protect internal deliberations, and decision-making and policy processes. However, comprehensive and blanket exceptions of this sort go far beyond

what is necessary to protect legitimate interests in this area. We note that many national access to information laws, where analogous interests are also in play, provide for far more limited exceptions in this area. In terms of internal documents, the exception should focus on information the disclosure of which would *undermine* either the deliberative process within the ADB by inhibiting the free and frank provision of advice or exchange of views, or the effectiveness of a testing or auditing procedure. As regards decision-making and policy development, the exception should be limited to information that, if disclosed, would prejudice the effective formulation or development of policy, or would seriously frustrate the success of a policy, by premature disclosure of that policy. Further, we believe that project affected people have the right to be involved, or at the very least be informed, about ADB's deliberations on projects, programs and policies that will affect their lives and natural environments. These minor amendments would ensure that the exceptions can be used only to protect legitimately sensitive information and are not so broad that they can be misapplied to prevent important information from reaching the public domain

## **8. General Institutional Information**

The draft PCP does not include a provision for the disclosure of a directory of ADB staff. While we recognize that the Bank may not want to disclose room numbers due to security concerns, we recommend the disclosure of a complete staff listing, including position and e-mail. The public must be able to access ADB staff members and know which staff members are in charge of which areas. The World Bank publishes a complete staff directory, including room numbers, telephone numbers and position. **If a complete directory cannot be disclosed, we recommend a disclosure of a staff directory including at least positions and e-mails of all ADB staff.**

Currently, the ADB discloses general budget information in its Annual Report. This includes such things as a balance sheet of capital resources, statement of income and expenses, and a summary of loans disaggregated by country and sector. The ADB also discloses information on country subscriptions and borrowings. However, a detailed breakdown of the ADB's operational budget is not currently available to the public. **The ADB should disclose detailed information on its operational budget, including a clear indication of departmental budgets and other aspects of resource allocation. The ADB should also release detailed information on actual expenditures.**

## **Part III: Recommendation on PCP drafting process**

In keeping with our recommendation to release all draft papers for policies (see number 6, part II), we recommend that the R-paper for the PCP be disclosed to the public at the same time as it goes to the Board. To withhold the paper after a consultative process undermines the transparency of the drafting process. The ADB has made welcome progress in opening up its policy reviews to the public. In the drafting process of the Environment Policy, the R-paper was released. **We encourage this precedent and recommend that the R-paper for the PCP also be released.**

## **Conclusion**

The ADB's second draft disclosure policy is in some ways progressive and provides for greater disclosure of information but it does not meet many standards which are commonplace in national access to information laws. We strongly recommend that in the next draft PCP (Working Paper), the ADB should (i) incorporate the comments made by civil society through this paper, (ii) focus on the

policy's ability to meet development effectiveness goals, and (iii) make the policy as clear as possible for ADB staff in order to facilitate implementation.

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18. Melamchi Local Concerns Group, Nepal
19. Yuki Tanabe, JACSES, Japan
20. FUKUDA Kenji, Mekong Watch, Japan
21. KUSUHARA Keiko, Fukuoka NGO forum on ADB, Japan
22. Natalia Ablova, Bureau on Human Rights and Rule of Law, Kyrgyzstan
23. Fernando Melo, Trasporencia S.C., Mexico
24. Naeem Iqbal, SUNGI Development Foundation, Pakistan
25. Shaukat Omari, Transparency International, Pakistan
26. Damien Ase, Center for Environmental Law and Community Rights Inc. (CELCOR)/Friends of the Earth, Papua New Guinea
27. Hazel Jean Malapit, Action for Economic Reforms, Philippines
28. Hemantha Withanage, Centre for Environmental Justice/Sri Lankan Working Group on Trade and IFIs, Sri Lanka
29. Tom Griffiths, Forest Peoples Programme, United Kingdom
30. Paul Orum ,Working Group on Community Right-to-Know, USA
31. Melanie Beth Oliviero, Government Accountability Project, USA
32. Tom Blanton, Freedominfo.org, USA

33. David Waskow, Friends of the Earth, USA
34. Phan Van Ngoc, ActionAid Vietnam, Vietnam
35. Dang Ngoc Quang, Rural Development Services Center, Vietnam.
36. Magda Stoczkiewicz, Central and Eastern European Bankwatch Network
37. Carol Ransley, EarthRights International, Southeast Asia
38. NGO Forum on the ADB, Asia
39. Longgena Ginting, Friends of the Earth International