

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

TO: disclosure@adb.org

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To whom it may concern

Attached is our comments on the 2nd consultation draft of ADB's Public Communications Policy.

Any subsequent PCP draft(s), such as the forthcoming W Paper (para.53), as well as Board paper (R Paper), must be disclosed upon circulation to the Board, along with a matrix to explain how ADB has/has not incorporated external comments.

Thank you for your consideration.

Best regards,

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Comments on the 2nd Consultation Draft on Public Communications Policy of the Asian Development Bank

November 24, 2004

Submitted by
Friends of the Earth Japan
Japan Center for a Sustainable Environment and Society
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1 Translation

We welcome ADB's commitment to provide more information to project-affected people, and its recognition of the importance of translating key documents in order to facilitate communication with them (paras.89, 110). At the same time, the 2nd draft fails to require translation of several important documents. The 2nd draft proposes that a translation framework for documents related to ADB operations will be developed (paras.89). **The Public Communications Policy, however, should clearly state that the translation of the following documents are mandatory and should not leave it up to the translation framework to address.**

- **Project Information Documents (PID).** The 2nd draft states that ADB will ensure that a mechanism will be in place to provide affected people the same updated information as contained in the PID (para.110). However, some information contained in the PID (ex. estimated dates for appraisal authorization and Board consideration, and the responsible ADB officers) are ADB-specific, and borrowers or project sponsors have nothing to do with them. In addition to working with borrowers, ADB itself should prepare and update translated versions of the PID for general disclosure (this incurs no additional costs because the same information will be prepared anyway).
- **Key policy documents including safeguard policies, anticorruption mechanism and the PCP along with the associated sections of the Operations Manual.** Because these policies are prepared to protect the interests of affected people, they need to be translated and disseminated to the affected people. Currently the Office of the Compliance Review Panel is working to translate the brochure of the Accountability Mechanism into local languages, but if the above policies and procedures are not translated and affected people thus remain uninformed of their rights under these policies, the aim of the Accountability Mechanism will not be achieved.
- **Social and Environmental Monitoring Reports.** ADB should require executing agencies or project sponsors to prepare monitoring reports in local languages.

2 Information on Implementation

The 2nd draft made substantial progress towards greater transparency in project implementation, including mandatory disclosure of the Project Administration Memorandum, Social and Environmental Monitoring Reports and documents related to major changes in scope of projects and programs. However, it is still difficult for external stakeholders to know what kinds of unexpected social and environmental impacts have occurred and how ADB responded to them. In order to make the process of project

implementation more open and public, **information regarding social and environmental issues contained in aide memoirs and Back-to-Office Reports (BTOR) should be made publicly available** after removing information borrowers do not agree to disclose.

ADB also proposes that data from Project/Program Progress Reports and aide memoirs/BTOR will be reflected in the PID (appendix 4, pp. 73, 75-76). **It should be made clear that the PID will also include information on unexpected environmental and social issues and the responses of executing agencies/project sponsors and ADB** (para.105).

3 Transparency of the Board meetings

In the process of consultations on the PCP, civil society organizations have demanded greater transparency in meetings of the Board, ADB's main decision-making body. Disclosure of the minutes and schedule/topics of Board meetings are welcomed (paras.140-141). However, since ADB, as a public institution, should be accountable to the public regarding their decision-making, **transcripts of Board meetings should also be made publicly available**. ADB argues that Board members need freedom to discuss issues openly (p.18, Major Recommendations from External Stakeholders on ADB's 1st Draft Public Communications Policy), and we agree to that, but we also believe that disclosure of transcripts will not affect Board members' freedom to speech. Contrary to this assumption, public scrutiny will ensure that ADB will make better decisions for the people it serves by bringing in more information and opinions to ADB's decision-makers.

In addition to that, the 2nd draft does not reflect many NGOs recommendations to make RRP's and R-papers available to public (paras.101, 102, 118). The Board members could make better decisions by receiving comments on particular projects/programs or policy proposals by affected people and civil society organizations, and thus enhance ADB's accountability as a democratic organization. **All proposals for Board consideration, including those circulated to the Board on a non-objection basis, should be disclosed at the same time they are circulated to the Board.**

4 Documents on Private Sector Operations

The 2nd draft adopts different disclosure levels for public sector operations and private sector operations. We cannot accept this approach, because local people may be adversely affected by ADB-funded projects regardless of whether they are public or private. It is particularly important that the same disclosure standards are applied to documents related to social and environmental impacts. The following documents on private sector operations should be disclosed after eliminating any information that falls under exceptions described in no.8 of para.155 (information that ADB removes in this process should be subject to exception-based requests for information (para.165)).

- **Report and Recommendations of the President** (para.118)
- **Social and Environmental Monitoring Reports** (para.120)
- **Project Completion Report** (para.123)
- **Feasibility Studies** (p.83, Appendix 4)
- **Legal Agreements** (p.87, Appendix 4)

5 Incorporating recommendations of the Extractive Industries Review

As suggested by the Final Report of the Extractive Industries Review, disclosure of key documents related to the economic performance of projects in oil, coal and mining sectors

are essential to achieve sustainable development. **ADB should give serious consideration to the final report of the EIR and incorporate its recommendations in the PCP.** In all private sector operations funded by ADB, the following documents should be made public: production-sharing agreements, host-country agreements, power purchase agreements, economic and financial assessments, information on accident prevention and emergency response, and company annual monitoring reports to government agencies.

6 Application of Exception-Based Request for Information

Several paragraphs in the 2nd draft state certain documents are not publicly available (para.118, 120, 123, 129, 130, 131 and many parts of Appendix 4). However, this new policy has clear criteria for information that will not be disclosed (para.155). With this clear definition of confidential information, all documents should be subject to exception-based requests for information (para.165) if documents are not subject to proactive disclosure (para.164).

It should be clearly stated in paragraph 165 that all documents not subject to proactive disclosure are subject to exception-based requests for information. All sentences that state certain documents are not made public should be deleted.

7 Documents on Accountability Mechanism

Disclosure requirements for the consultation phase of the Accountability Mechanism (para.147) contradict the Accountability Mechanism's Policy and its Operations Manual.

ADB proposes that Final Review and Assessment Reports be made publicly available following stage 6 of the consultation phase. The process of the consultation phase should be as transparent as possible, according to the para.29 of OM Section L1/OP. In accordance with the policy of Accountability Mechanism, both draft RARs and final RARs should be disclosed to the public in step 4 and at the end of step 6, respectively, unless the complainants voluntarily agree not to disclose them.

Also, the final agreement and solutions will be kept confidential only when the parties so agree (para.29), and the final report of the consultation phase should be disclosed to the public (para.27), as required in the OM Section L1/OP.

8 Independent Recourse Mechanism

ADB should allow people to file complaints to the Compliance Review Panel when they are denied access to documents they request, regardless of whether they are affected by ADB-funded projects or not. ADB should establish streamlined procedures for the compliance review on the PCP.

The 2nd draft proposes that the PDAC will review claims regarding unreasonable non-disclosure. We do not agree that PDAC is independent enough to make a fair assessment of claims brought to them, because it consists of senior ADB staff and has the same set of interests and incentives as the staff of Operational Departments who make the initial decisions.

It is sometimes difficult for public officials to disclose information they have, because they might face public debate and criticism as a result of such disclosure. Most of the information disclosure legislations at national levels have independent review mechanisms to address this problem. ADB cannot be an exception to this global trend. We strongly urge

ADB to establish independent review procedures for cases in which access to information is denied, and the Compliance Review Panel is a suitable body to review decisions for non-disclosure, as it already has the mandate to review ADB's compliance to its own policies and procedures.

9 Compliance Review

Chapter X of the 2nd draft states that ADB is developing an appendix that lists each requirement subject to compliance review pursuant to the Accountability Mechanism. When ADB proposed a list of ADB operational policies and procedures subject to inspection in November 2002, civil society organizations uniformly demanded that ADB Management must not have discretion over whether particular provisions in the policies are subject to inspection or not. Such discretion falls into the mandate of the Compliance Review Panel. The approach ADB is trying to adopt clearly violates the policy paper on the Accountability Mechanism, which says:

The Board will decide 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. Management will not carve out which operational policies or procedures should be excluded from compliance review. ...For the present and for purposes of the policy on the new ADB accountability mechanism, the scope of compliance review is "ADB's operational policies and procedures" as they relate to the formulation, processing, or implementation of an ADB-assisted project, and excludes matters relating to the procurement of goods and services, including consulting services, and non-operational housekeeping matters, such as finance and administration. (para.143, Review of the Inspection Function: Establishment of a new ADB Accountability Mechanism)

Therefore, **ADB should immediately stop developing such an appendix that lists provisions subject to compliance review**, and follow the clear guidance of the Accountability Mechanism policy.

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