

Dated: 25 February 2003

Mr. Stephen Sedgwick,
Chairperson of the Board Inspection Committee,
Asian Development Bank,
Manila.

Subject: The Chashma Inspection Request

Enclosed with this letter is the Second Supplement to the Chashma Inspection Request filed on November 25, 2002.

We consider that the GRSC and the compliance review are two separate and different issues. This is also clear from the emerging direction of the on-going inspection review process. Management promotion of the GRSC is simply an effort to distort the issues at hand, as the GRSC does not address the issues of accountability and policy compliance of the ADB Management. In the Requesters view, the GRSC is an effort to block their demand for policy compliance and accountability. If Management views on the GRSC prevail, it would definitely lead to weakening the policy compliance and accountability mechanisms in future.

We strongly believe that the ADB Management did not comply with the relevant Bank's policies and procedures. We have already provided the analysis of specific nature and points of policy breaches and subsequent material harm to local communities. Most vivid example of policy breaches is the non-compliance with the Bank's Policy on Supplementary Financing. An additional reason for emphasizing the violation of this particular policy is the already available judgement of the Board Inspection Committee (BIC) with regard to the Samut Prakarn Inspection Request. Nonetheless, only an inspection i.e. compliance review will reveal the full extent to which the Bank's policies and procedures were not complied in the case of CRBIP.

The Inspection Function is a forum for project affectees to appeal to an independent body regarding the ADB's compliance with its own policies and procedures so that the institution is made accountable to stakeholders. The rationale of the Inspection Function is to improve accountability, transparency and quality of ADB's operations. The CRBIP case is clearly an instance where this accountability is needed.

Despite the fact that the Requesters consider the GRSC and the compliance review and accountability two separate and different issues, they are filing their assessment of the GRSC and its potential effectiveness in future so that the BIC could be informed of our objections on this flawed mechanism and process.

With the best regards,

Mushtaq Gadi
(On the behalf on the Requesters).

Supplement to the Chashma Inspection Claim

I: INTRODUCTION

After receiving the response from the ADB Management to the request for inspection on the Chashma Right Bank Irrigation Project (CRBIP), the Bank Inspection Committee (BIC) asked the Requestor of the inspection if they would like to provide additional information pertaining to the request. We (the Requestor) feel that we already submitted the required and relevant information as part of the Request for Inspection that the BIC would require to authorise inspection of the project. However, in light of the Management's assertions about the GRSC and its views on how project inspection would affect the redressal of grievances among Project Affectees, we would like to submit the following information and attached materials in response to the BIC's request.

11. THE GRSC IS INADEQUATE AND UNREALISTIC

The ADB Management Response of February 7, 2003 says that the Requesters assessment that the GRSC is inadequate and unrealistic response to their demand (Requester demand as articulated in the Complaint) is erroneous and premature judgement. Management Response further says that this evaluation of GRSC and its potential effectiveness is based on the Requesters incomplete understanding of the negotiation process and its outcomes.

We wish to state that the Requester assessment of the GRSC is well informed, well reflected and based on our engagement experiences with Management and executing agencies (EAs) for the last two years. The Management's assertion that the Requesters assessment of GRSC is premature and uninformed about the negotiation process and its potential effectiveness is not correct. We would suggest that the ADB Management should rather inform the Board Inspection Committee (BIC) of the details of the Chashma Multi-stakeholders Dialogue process and the reasons of its dissolution. This process of Chashma Multi-stakeholders Dialogue continued rigorously for about five months and primarily failed because of the irresponsible and inflexible conduct of Management and EAs during the negotiation process. We will provide the details and evidence about this process later on.

The views of the Requesters and Project affectees are articulated in below.

A. **General Comments: The GRSC does not represent emerging multi-stakeholders' dialogue and decision-making approaches**

The GRSC is a conventional, power-ridden and bureaucratic approach to the resolution of conflicts in the current context of emerging democratic multi-stakeholders dialogue

approaches and negotiated decision-making models and processes. The GRSC approach does not recognize that stakeholders have unequal power and this can seriously hamper their ability to participate in and influence decision-making. The new approach and model of multi-stakeholder dialogue and negotiated decision-making as adopted and advocated by the World Commission on Dams (WCD) emphasizes that those groups whose livelihoods, human rights, and property and resource rights may be affected by an intervention are major rights holders and thus core stakeholders in a stakeholder forum within which negotiated outcomes should be achieved. The WCD Final Report further emphasizes the need for identifying those at risk through vulnerability or risk analysis and considers them as core stakeholders, including those who face risks to their livelihoods, human rights and property and resource rights. The WCD Final Report further recommends that special attentions should be given to indigenous peoples, women and other vulnerable groups as they may face greater risks from development interventions.

Major attributes of a fair negotiation process include a free process of stakeholders' selection and ensuring the effective and legitimate representation of all interests. Another cornerstone is a firm commitment and assurance that community representatives will not be divided or coerced in the negotiation process, adequate time will be allowed for consultation and, most importantly, the multi-stakeholder forum will assess and address built-in power imbalances in the negotiation processes.

Since the ADB has accepted the WCD's findings and report, it is to be expected that the ADB would demonstrate in practice its commitment to following the guidelines recommended by the WCD.

The GRSC is an inadequate and unrealistic model of multi-stakeholders dialogue and processes in emerging democratic perspectives. The GRSC does not recognize that the Project affectees facing the violations of their basic human and livelihoods rights, as well as increased risks to their security of life, livelihoods and local ecology are core stakeholders and should have fair and adequate representation through a free and direct process of selection. This is evident by the fact that only two representatives of the affected groups will be members of the GRSC. Furthermore, they will not be nominated through direct and free process conducted among the affectees; instead they will be picked by elected local representatives of the area. There is no assurance that the Project affectees would not be divided and coerced by the state apparatus and would be able to exercise their free will in the negotiation process. The decision-making in the GRSC will be done through majority principle based on one member having one vote. Instead of addressing power imbalances in decision-making, the GRSC will more likely be a tool to further entrench the exiting power imbalances.

B. Specific Comments on the GRSC

(i) The GRSC does not address our specific and concrete demands made in the Request: We have made seven specific and concrete demands in the Request,

which we consider pre-requisites for bringing the Project in compliance with the relevant Bank policies and procedures. The ADB Management Response does not address our demands and instead makes passing remarks that these demands would delay the process of grievance redress and settlement. We believe that meaningful grievance redress process is not possible unless full technical, social, environmental and cultural impact assessments of the Project are made through an independent participatory and consultative process. Without such a knowledge base and impact assessment, the process of grievance redress cannot be realistic and will be mere window-dressing. Any democratic and participatory negotiation process to resolve project related conflicts should follow only after an independent, participatory and full impact assessment is conducted of all quantitative and qualitative information of adverse impacts of the Project.

(ii) Policy and legal framework for the GRSC is arbitrary and inadequate with regard to the compliance conditions: The Terms of Reference (TOR) for the GRSC says that 'Pakistan's policies and legal framework including but not limited to the Land Acquisition Act, 1894, will provide the fundamental legal basis for the Committee's recommendations, which will be supplemented by ADB's relevant policies including ADB's Policy on Involuntary Resettlement (IR) (1995) and ADB's Policy on Indigenous Peoples (1998), together with relevant guidelines on the incorporation of Social Dimensions into Bank Operations, where legally possible'. (Emphasis added). The TOR of the GRSC further specifies that 'in regard to land acquisition, the Committee's role would be to see all matters relating to assessment and payment of land compensation are handled fairly, transparently, and in accordance with the Land Acquisition Act 1894'.

We consider the policy and legal framework of the GRSC inadequate and in fact a mockery of justice and fundamental rights. First, this policy and legal framework is totally arbitrary in its nature and design. It provides vast opportunities to the Committee to make a series of interpretations based on differing and fundamentally contradictory policies and laws with regard to resettlement, land compensation and rehabilitation. Pakistani national policy and legal policy framework is totally inconsistent with ADB's Policy on Involuntary Resettlement and Indigenous Peoples and is thus incapable of fulfilling the conditions of compliance with the Bank's policies including the Policy on Involuntary Resettlement and Indigenous Peoples.

Land Acquisition Act, 1894 is a colonial law enacted to achieve specific objectives of the then British Empire with regard to land and other natural resources. Objectives and procedures of the Land Acquisition Act 1894 are totally repressive and violate basic human rights. Worst is the exercise of this law under the Project. According to the official figures, about 19,503 acres of land affecting 185 villages have been acquired under the provision for emergency acquisition, namely Section 17 of the Land Acquisition Act, 1894. We believe the Project affectees would be deprived of using normal legal redress mechanisms even after the establishment of the GRSC. The inadequacy and contradictory nature of the Land Acquisition Act, 1894 is evident by the fact that many Bank funded projects have their own separate policy and legal framework and guidelines for resettlement and land acquisition under the project. One

example is the National Drainage Program (NDP), the project from where the funds were re-allocated to the CRBIP at the time of supplementary financing.

(iii) Institutional and decision-making framework for the Committee is inadequate and against the interests of the Project affectees: Institutional framework for the Committee is inadequate in a number of ways. First, its identification of the categories and classification of stakeholders is erroneous. Local communities and especially the Project affectees are primary stakeholders and thus must have a prominent role and direct voice in any negotiation and decision-making process with regard to the grievance redress. All other members of the GRSC are secondary stakeholders and in fact beneficiaries of the development process. Contrary to this, even though they are primary stakeholders, the project-affected persons will only have two representatives of project-affected persons in the Committee.

The Project created numerous categories and constituencies of the Project affected groups including

- the people facing the threat of involuntary displacement in the non-command western region,
- the vast majority of affected persons facing the threat of project induced flooding in the non-command eastern riverine belt,
- the groups who are severely affected by land acquisition,
- women,
- tenants and small farmers,
- rowed-kohi users in the western side,
- ethnic minorities and indigenous groups.

It is not possible for two representatives of the affected groups to legitimately represent the interests and rights of these vast categories and constituencies of the Project affectees.

Furthermore, it is state here that the district assemblies of the D.I.Khan and D.G.Khan districts will indirectly nominate these two representatives of the affected groups. This method of nomination for the representatives of affected groups deprives them from the right of direct nomination of their representatives for the GRSC. Furthermore, there is no criteria for the selection of the representatives of the affected persons and thus leaves a vast room for arbitrary choices and manipulation of the selection process.

If managing the size of the GRSC is a consideration, then we recommend that the various EAs be considered a single stakeholder representing the Project Organization. Their separate and multiple representations will only serve to provide them leverage to influence and dominate the decision-making process. If the differentiation of the executing agencies is functionally required, it could be done through a separate inter-governmental agencies coordination committee, which in turn could have a single representation in the GRSC.

Most importantly, the decision-making framework of the GRSC is very much against the interests and rights of the affected groups. The GRSC will have to observe a system of majority decision-making based on the principle of one member having one vote. The representatives of affected persons are in minority and will be unable to participate in and influence decisions. Given the vast power imbalances built in the composition of the GRSC, the EAs and consultants will in fact have *de facto* veto power and will dominate the decision-making process.

C. Effectiveness of the Inspection Function and the GRSC

Management Response under paragraph 154 asserts that 'any decision to proceed for inspection of the Project could completely erode the efforts of Management in bringing to a closure the establishment and functioning of the GRSC. In the event of an inspection, the consensus reached on the GRSC may be seriously weakened. This would be counterproductive to the very objectives of inspection, i.e., to address the grievances of the Requester in compliance with ADB's operational policies and procedures'. (Emphasis added). The Management's views represent extremely narrow and negative interpretation of the Bank's inspection functions and are a challenge to the effectiveness of the Bank's inspection function itself.

These Management views are narrow because they exclude from the inspection functions anything other than the grievance redress of affected parties. One of the important elements of the rationale for establishing an inspection function independent of Management is an independent investigation of the facts underlying the grievances caused by the Bank's failure to follow its operational policies and procedures and thereby permitting a fair hearing of the views of the affected group. Another important element of the rationale for establishment of an inspection functions and related inspection procedures is to encourage transparency and accountability in the Bank's operations. There are five separately written elements of the rationale for the establishment of an inspection function and related inspection procedures as given in the Bank Inspection Policy. Management Response implies that these separate elements are inconsistent and could be counter-productive to each other.

Management views on the impact of an inspection of the Project are also negative and contradictory in that they undermine the value and credibility of the Bank's inspection function. These views show that Management has little trust and confidence in the effectiveness of the Bank's inspection functions, which should in fact be an important element of institutional governance, accountability and transparency.

Without making any value judgment on the on-going inspection review process, we wish to state that the ADB Management's views about the relationship between the GRSC and inspection process are against the emerging direction of the inspection review process, which emphasizes the separation of two inspection functions, namely, consultation and problem solving and compliance review. If Management's views on the relationship between the grievance redress and an inspection function prevail, they would undermine the credibility of this emerging direction from the very outset.

Management will also use this as a precedent in the future to block compliance review and accountability processes under the new inspection functions. We believe that the questions of accountability and transparency and internal learning should remain central in the Bank's inspection functions.

III. WHY THE REQUESTER OPTED TO STAY AWAY FROM THE NEGOTIATION PROCESS?

The Requesters refused to become formal part of the negotiation process between the ADB and the Government of Pakistan. This decision was taken in part because of the concerns about the inadequacy and unrealistic nature of the GRSC as articulated in earlier. Another reason, which did not encourage Requesters participation, was the irresponsible and inflexible conduct of Management and EAs was another reason behind this decision of the Requester. This assessment of the Requesters is based on their past engagements and interactions with Management and EAs. Elaboration of this assessment is essential in the context of the Inspection Request as well as the on-going thrust of inspection review process on consultation and problem solving.

The Requesters and the Project affectees entered into dialogue and consultation with Management and EAs in good faith and a constructive spirit. We have undertaken considerable efforts to bring concerns and grievances of project affectees in the notice of Management and EAs. These efforts started in November 2000. We have made a number of requests for information sharing and establishment of grievance redress mechanisms. Rigorous dialogue efforts were undertaken for a period of five months, which yielded in the Chashma Multi-stakeholders' Workshop, held in March 2002, after a 15 month period of continuous requests for information sharing and grievance redressal.

Despite the concerns of the Requester and Project affectees about their lack of access to important project information and relevant documents as well as the design of the dialogue, they decided to attend the Chashma Multi-stakeholders Workshop with the hope that both Management and EAs would be interested in responsible problem solving approaches towards their concerns and grievances. The Chashma Stakeholders' Dialogue process was however dissolved during the workshop due to three reasons.

First, the Requesters and Project affectees came to know that they were neither informed nor consulted during the key decision-making on the issue of involuntary resettlement. The decision about the involuntary resettlement was made during February 2001 to May 2001. This was the period when the Requester and the Project affectees were not only engaged with Management and EAs but also asking for greater access to information and participation in decision-making process. They came to know during the Chashma Multi-stakeholders Dialogue that they were deliberately excluded in the 2001 process.

Secondly, the Requester and the Project Affectees made the request to Management and EAs before and during the Chashma Multi-stakeholders Dialogue Workshop that the provision for emergency land acquisition (Section 17 of LAA-1894) should not be applied in the Project. But this request was not entertained and emergency provision was retrospectively imposed before the Chashma Multi-stakeholders Dialogue Workshop.

Thirdly, the last blow to the confidence and trust of the Requesters and the Project affectees on the consultation and negotiation process was the refusal of the ADB's consultants with regard to their request that the report on the Chashma Multi-stakeholders Workshop covering the details of field visits and proceeding of the workshop should be provided to them. This event proved the breaking point of consultation and negotiation process.

The BIC should note that Management has made extensive references to the Chashma Multi-stakeholders Dialogue without referring to the controversy and conflict. Rather, Management continues to refer to the action plan as consensual and agreed between all stakeholders. This is not only inaccurate and untrue but also shows that the Management's conduct is imposing, dominating and irresponsible with respect to the spirit of multi-stakeholder negotiations.

Management tried to re-initiate and re-establish the dialogue and consultation process after receiving the indication from the Requesters that they would be moving towards the inspection function. These efforts were however very much directed and specific to thwart the move for invoking inspection function. Despite this fact, the Requesters have given sufficient time to Management to comply with the Bank's policies and procedures. However, Management delayed the process and just insisted on our participation in the GRSC without answering our specific demands made in the Complaint and further elaborated and specified in the Request. It should be noted that the GRSC was finalized in the end of January 2003, almost after 10 months of the multi-stakeholders dialogue of March 2002.

Last but not least, the Requester and the Project affectees feel that BIC should make critical and objective assessments as to whether Management has taken timely and sufficient measures to prevent such a situation to becoming a serious problem of organizational accountability. The Requester and the Project affectees have undertaken considerable efforts and spent significant amount of time and energy to make Management realized that timely, adequate and realistic actions are required to comply with the relevant policies and procedures.

IV. Conclusion

The Requesters would like to present the following demands in the context of any insistence for negotiation and dialogue in the future.

1. The BIC should authorize the inspection of the Project in order to make an independent assessment of policy compliance and extent of material harm caused by the violation of the Bank's policies and procedures.
2. The GRSC should be redesigned in the light of the principles and guidelines provided by the WCD Final Report. Most importantly, the project affectees should have fifty percent of the membership in the GRSC through direct nomination of their legitimate representative forums.
3. Management should make a firm commitment that independent, participatory and comprehensive social, environmental, economic and cultural impact assessments would be undertaken with a clear timetable agreeable to the Project Affectees and the Requestor.

The Requesters and the Project affectees also wish to state here that they are planning to establish the Chashma Peoples Tribunal. The Chashma Peoples Tribunal will be comprised of judges from the local affected communities and prominent voices of national and international civil society. Besides other responsibilities, judgement on the scope, mandate, effectiveness and legitimacy of the GRSC would be included in its responsibilities.

Attachments:

1. Video documentary on the Chashma Right Bank Irrigation Project
2. Photographs of the scenes of flooding of Sokkar village and breaching of the main canal which occurred in August 2001.
3. Comments of civil society organizations and the project affectees on the Social Impact Assessment and the proposed Chashma Multi-stakeholders Dialogue.
4. Statement of the representatives of NGOs and the Project affectees after the Chashma Multi-stakeholders Dialogue Workshop of March 2002.
5. Copies of the correspondence between the Requester and Management

Joint statement of the project affectees and civil society organizations on the conclusion of the Chashma Multi-stakeholders Workshop

The Donors (ADB &KFW) Special Review Mission on the Chashma Right Bank Irrigation Project (CRBIP) and the subsequent multi-stakeholders' workshop held in March 2002 failed to satisfy the concerns of the representatives of affected communities and civil society organizations. The representatives of affected communities and civil society organizations refused to enter into any agreement without addressing their core concerns. Some major highlights of the process and outcomes are as the following:

In the concluding session of the Donors Special Review Mission and CRBIP Multi-Stakeholders Dialogue, Mr. Khadim Hussain from Action Aid-Pakistan presented the following joint position of the affectees and civil society organizations on the process and outcome of the review mission and stakeholders' dialogue.

“We consider the local communities and particularly affectees of CRBIP as the real and genuine stakeholders. Other stakeholders including the Asian Development Bank, KFW and WAPDA are in fact the beneficiaries of this project like any other such development process. In our view, the participating civil society organizations are even secondary stakeholders in this process. The Donors Special Review Mission and Multi-stakeholder Dialogue have totally failed to address the core concerns of the affected communities and civil society organizations. Our major concerns include project induced flooding and displacement, fair and just compensation of multiple livelihood assets being damaged and destroyed by the project, adverse environmental impacts, independent review of the flawed project design, participation of the affected communities in the decisions concerning with their well established rights and livelihood entitlements and full compliance with the policies and guidelines of donor agencies. The Special Donors Review Mission and Multi-stakeholders Dialogue remained unsuccessful and, rather, ineffective to address these core concerns. The decisions made here are primarily concerned with the issues of inter-agency coordination and the mechanism of project implementation rather than the recognition of the basic rights of affected communities. Therefore, we don't consider ourselves the part of any process and agreement that does not recognize and address our fundamental rights with regard to resettlement, just and fair compensation of livelihood assets, access to information, environmental rights, etc. Representatives of the affected communities and civil society organizations decided to stay away from the rest of the process. However, some of us who are present here have been asked to attend the second day's workshop and conveyed this decision to the donors and representatives of implementing agencies”.

1. Highlights of the process

a) Play of information disclosure

The Donors (ADB&KFW) Special Review Mission CRBIP and Multi-stakeholders Dialogue were dramatic and surprising in many ways. On the third day of the Mission, the representatives of civil society and affected communities were handed over the report on social survey and action plan for the protection of affected communities from the flooding to the west of main canal. Representatives of affectees and civil society organizations received the report from the project management consultants. This is the same report which the representatives of affected communities and civil society have been demanding since the February 2001. Interestingly, the report was also prepared in February 2001. The report was prepared by the consultants in

accordance with the Asian Development Bank Guidelines for incorporation of social dimensions in the Bank operations. To our surprise, the consultation with the NGOs in the preparation of the action plan was part of the Terms of References. In reality, the access to the report on social survey and action plan was denied to the NGOs throughout this period. The information was shared with us at the point when the decision against the basic right of resettlement was already taken and implemented by the government. Interestingly, this decision was also against the recommendations of the said study. It was also revealed that some major settlements like Sokar that experienced flooding and damages during the last year were not part of the survey. These settlements were assumed secure from the project induced flooding. This shows the inability of project designers to correctly assess the extent and nature of the threat of flooding and project induced displacement.

Some of the major findings and recommendations of the report on social survey and action plan are as follows:

1. The threat of flooding has been increased because of the major changes in the project design. The alignment of the main canal was shifted to the higher ground levels on its right (west) side. Furthermore, the decision to convert the siphons into low sill levels super-passages multiplied the problem of flooding. (Underlined sentences are addition by the repotuer)
2. Under this survey, twelve villages in the Punjab province were considered threatened. However, the current figure for the affected villages is twenty-three. The figure is still unrealistic because a number of other villages consider themselves under the threat of severe flooding.
3. The surveyed villages under the threat of flooding are chronically poor. The average income is below the 1\$ per day. The average landholding per family is about 11 acres while landholding per capita is only 1.8 acres. They are now facing under the severe threat of flooding.
4. **All villages except one opted for relocation from the danger zone of flooding. The opinion in the village that opted for the protection bund was also divided. Moreover, the district administration fully supported the draft resettlement plan and assured the full cooperation.**
5. **A number of legal options under the national laws (Land Acquisition Act, 1894) were also identified and proposed in the report in order to smooth implementation of the draft resettlement plan.**
6. **The plan was rejected because of the concerns of implementing agencies with regard to the increase in project cost.**
7. **It was decided to provide either flood protection embankments or cash compensation. It is interesting that the package of cash compensation included only rooms. Even the compensation for land was not paid to them. The average rate of compensation for building was not more than twenty thousand per family.**

b) Story of the Mission's field visit

Breaking the promise again: It was decided between Mr. Matsunami from the ADB and representatives of NGOs that the field visit would be extended to two days in order to have broader consultation with the affected communities and increase the understanding about their concerns. With regard to this, a number of reminders to the relevant ADB staff were sent well before the arrival of the Special Donors Review Mission. However, we have been never responded by the ADB. Resultantly, a number of important areas such as riverine belt were not

included in the field visit. This attitude was in fact the repetition of previous behavior shown by the ADB staff on a number of occasions.

Harassing the affectees: the WAPDA and the ADB's consultants planned the first half of the one-day field visit. One of the meeting places was the Katehra village. This was the only village where some of the villagers opted for the flood protection embankment. However, later on, they demanded resettlement because the closed protection embankment proved virtual jail for them. During the field visit of, the officials of WAPDA tried to silence the affectees in response to their demand for resettlement. When some of the affectees tried to speak and conveyed that they were consulted, the officials of WAPDA started to intimidate them. At this point, the representatives of NGOs made it clear that they would not take part in any stakeholders' consultation in which affectees were harassed and threatened. However, the staff of donors' agencies refused to stay and listen the affectees. Rather, they left the place immediately.

Staging the assembly of beneficiaries: WAPDA and On Farm Water Management (OFWM) jointly organized the next meeting attended by local influential elite and large landowners. The meeting was not held in any village. It was rather held near to the field camp of project contractors. During the meeting, only the selected speakers were allowed to make speech. They thanked the ADB and WAPDA for bringing prosperity in the area. However, some of the affectees present at the occasion managed to speak and highlighted the concerns about the lack of land compensation for the eight years, livelihood disruption particularly the stoppage of hill-torrent water and loss of livelihood, problems of mobility, etc. Majority of the participants demanded to handover the canal to the provincial irrigation department.

Visit of the Sokkar village: the site of project failure: The next meeting with the affected village community was held at the Sokkar village. The NGOs and affectees jointly organized that meeting. The Sokkar village has the population more than ten thousand. The village was initially not identified and included in the list of potential affected settlements under the threat of flooding. However, the village was flooded thrice the last year. Sokkar village is the site which in fact represents the obvious case of the failure of project design. The villagers briefed the mission that the wrong estimates of floods for the local hill-torrents made by the project consultants. They told that the structure of flood super passage for the big hill torrent was under designed. It was vice versa in the case of relatively small hill-torrent. Last year, the whole village was flood thrice and thus remained cut off from the area for many days. These floods demolished more than ninety houses. They said that they were now under the similar condition, as the water from various hill-torrents would start to come down soon. Some of the participants told the mission that the suggested flood protection embankment would make the life more vulnerable and insecure. First, the protection embankment would itself be under the threat of flooding and could be breached at any time. As the southern side of the village is higher and the large amount of silt is deposited annually, the breach would be in fact imminent. If such situation happened, the village would prove watery grave. There would be the problem of drainage within the village. Humid weather coupled with the blockage of fresh air would make the life miserable. The construction of protection embankment would deprive the farmers from using the hill-torrent water for irrigation purposes. The people also expressed the concern about the large-scale acquisition of land for the protection embankment.

Meeting at Distributory 34: The project affectees of about twenty villages from the canal command area were present at the next meeting point. A number of the affectees termed the

project disastrous for their livelihood. They raised the concerns about the lack of land compensation for the last eight year, the impacts of the stoppage of hill-torrent water for the last four years, flooding in the riverine belt, under-valuation of the assets (land, crops, trees, building structures), corruption, and technical failure of distribution system because of the lack of understanding about local topographic characteristics.

2. Highlights of the Stakeholders Workshop

The following was the workshop agenda:

- ◆ Flooding and resettlement
- ◆ Land acquisition and compensation
- ◆ Livelihoods disruption
- ◆ Information sharing, participation and coordination

a) Flooding and Resettlement

“Flood protection bund is a sub-jail for us. Our women, children and elderly face problem for toilet. We are 170 persons at present; naturally we will grow and be in need of more houses soon; but the premises is too small to build a single room; imagine living within 18-20 feet high embankments at 50 degree temperature. The protection could be breached any time and we would be buried inside the bund. You people would be responsible for our death. ”

- The statement of Mr. Abdul Razaq, the representative of affected community participating in the workshop”

“ We can not do anything about you. We don’t have the funds for resettlement. Moreover, the law does not permit us to provide resettlement for affectees. It is up to you whether you want to live there or migrate to the other areas”

“ We admit that there is problem of flooding in the riverine belt caused by the project. We are also ready to extend the distributaries and flood carrier channels up to the Indus River. However, the local community will have to provide the land free of cost”.

- The statement of Project Director in response to the demand of affectees

The local affected community demanded for the preparation of comprehensive participatory resettlement plan. They asked that their right to resettlement should be fully recognized. They rejected the option of flood protection embankment as well as land compensation. However, the WAPDA refused to accept the demand. The representatives of ADB and KFW stated that the resettlement was the responsibility of country government. The representatives of NGOs said that flooding was due to the serious flaws in project design. When NGOs representatives mentioned about the resettlement policy of donors, they argued that this would require legal interpretation whether the policy at the time of project preparation was applicable or not.

b) Land Acquisition and compensation

“ I have recently taken the charge of land collector. I am hopeful that I would be able to complete the process of land compensation within the next nine months. We are going to impose the section 17 of Land Acquisition Act, which would give special powers to do it.

- The statement of land collector

“ The government failed to compensate for the last eight year. I am surprised how would you do? The section 17 is usually applicable in the state of emergencies and the provision deprive the affectees to challenge the decision in the court”. So far the land was acquired without the application of any specific provision of the law. The just and fair comensation under the current law is impossible.

- The statement of NGO representative

The representatives of affected communities and NGOs demanded that the land compensation should be done according to the market rate. There should be mechanisms for the participation of affectees in the valuation of assets. They opposed the implementation of the section 17. The irregularities, corruption and violation of law in the case of the compensation for trees and crops were also highlighted. However, the representatives of government said that law did not permit to compensate according to the current market rate. They agreed to enhance information sharing with the communities.

Joint Comments

On

Social Assessment of CRBIP Stage III

We, the coalition of civil society groups and Chashma affectees, appreciate the efforts of the ADB consultants with regard to the identification of social issues concerning the Chashma Right Bank Irrigation Project (CRBIP) and suggesting the stakeholders' negotiation framework. Before commenting on the report, we want to make it very clear that many of our concerns have not been dealt in this report. These concerns include the negative environmental impacts, overly projected economic returns, option assessment and project design, the decision-making processes with special emphasis on compliance with the ADB policies and national laws, and the role of foreign consultants.

As one of the consultants' responsibilities was to facilitate stakeholders' dialogue and build consensus on principal concerns and possible solutions, the report is thus divided into three clear areas that are the identification of stakeholders and the process of dialogue between them, their major concerns, and possible institutional solutions. Our specific comments on these issues are as follows :

1. Framework for stakeholders' dialogue:

Rights and negotiations: One important pre-requisite for multi-stakeholders dialogue is to develop consensus on the content, design and process of dialogue. The report itself says that its purpose *"is to assist the CRBIP stakeholders in conducting a joint assessment of CRBIP social issues, and in developing a mutually acceptable resolution of these issues, using a process that all stakeholders would consider fair and effective"* (p.3).

Recognition of fundamental rights is an important design element of any negotiation process. These fundamental rights include the right to life, right to just compensation in the case of involuntary land acquisition, right to resettlement in the case of involuntary displacement, right to information. Besides the universal nature of these rights, almost all of them have adequate protection in the constitution of Pakistan. These rights are also admitted and recognized by the ADB's policies and project guidelines. Also, we believe that a prior informed consent and participation of affected communities in decision-making process should be recognized as universal human right. Thus, we firmly believe and suggest that the negotiation framework should be explicitly based on the recognition of these fundamental human rights of the project-affected communities.

Design and process of stakeholders' negotiation: The proposed design and process of stakeholders' dialogue is deliberated in a manner that not only narrow the wide-range of concerns but also displace some of them that have been time and again raised by the civil society organizations, national and international policy advocacy networks and the most importantly the Chashma affectees themselves. Interestingly, these concerns are not minor but represent important sectors and processes such as environment, technical design and option assessment and financial and economic viability of the project and unlawful practices, irregularities and corruption. The report rightly admits

that its major focus is on social concerns. However, social impacts cannot be recognized and comprehended in isolation from other areas of concerns, which have otherwise profound implications for each other. Secondly, we suspect that without having the independent and comprehensive review and assessment of the environmental impacts, option assessment and technical design, assumptions about the project economic returns, the role of foreign consultants, and corruption and irregularities at the project management level, the scope of negotiation will be limited. How the concerns other than negative social impacts will be addressed during the review process?

Identification of stakeholders: So far as the identification of broader stakeholders' categories is concerned, we are in agreement with the ADB consultants. We are however not satisfied with the details and the proposed manner of stakeholders' selection.

There is a wide range of project-affected communities. They will not have the full representation unless the number is not increased. Secondly, the right of selection should be given to the coalition of civil society groups and Chashma affectees themselves. Civil society organizations and Chashma affectees have been raising the concerns together.

In the case of civil society representation, the consultants' proposal keeps a number of important and legitimate civil society groups out of this process. For example, Pakistan NGO Forum has been actively engaged in the advocacy campaign of Chashma affectees. The forum passed many resolutions on this issue. Similarly, Pakistan Network of Rivers, Dams and People is the most concerned policy advocacy network and have legitimate concerns in water projects and their impacts. They should be given representation in the negotiation process.

Time allocated for the Workshop is insufficient: One-day workshop is not sufficient. The range of issues and nature of conflicts involved in the project demands more time for developing understanding and reaching on certain agreement.

2. Findings of the report:

The findings of the report confirm and substantiate many of the community perceptions and concerns about the adverse impacts of CRBIP that were initially raised by the NGOs' survey report. However, the ADB took almost one year to initiate the process of assessment. However, during this period, Chashma affectees continued to suffer.

We have the following specific comments on the findings of the report.

Flooding and Project Design: Project induced flooding along with detrimental human, social, economic and environmental impacts cause serious threats to the life and livelihoods of large population living in the project area. This has already played havoc with many villages. In the report, local communities identified three major technical causes behind the project induced flooding which were high sill levels of the super-passages across the canal, unpredictable course of hill-torrents and wrong estimates made about the peak flood flows of different hill-torrents and the subsequent design problems in the cross-drainage structures.

Surprisingly, these serious technical objections raised by Chashma affectees remain by and large unanswered in the report. The project-engineering consultants¹ avoided providing the specific answers and technical elaborations against these concerns. Merely posing confidence on their recommended project design is not sufficient and seems ridiculous. However, some other technical studies share and support the analysis and concerns of local communities. Suffice is here only to mention the feasibility study conducted by the Japan International Cooperation Agency (JICA). This feasibility study was prepared in 1992, aiming at to look into different options for the development of irrigation system based upon the manipulations of flood flows of hill-torrents in the Dera Ghazi Khan district. Many findings and recommendations of the said study corroborate the concerns of local communities. This is particularly true about the estimates made about the peak flood discharges of different hill-torrents, the regular changes in the course of hill torrents and the proposed solutions for flood control.

Wrong estimates of Peak flood discharges: some specific examples: Maximum design flood recommended for *Kaura* hill torrent is 18,000 cusecs. However, the peak flood discharge of this hill-torrent estimated by JICA's study is about 42816 cusecs (P. 3.5). This is not an ignorable difference and has serious implications with regard to the flooding and design structure. Similarly, the maximum peak flood discharge of *Sanghar* hill-torrent is about 119744 cusecs. After emerging from the gorge, it splits into three branches of which the right side branch has the tendency to draw more or even entire flows and would result in depriving the area on left branch from irrigation (P. 3.24). However, the design floods recommended for different nullahs in the right side that receive the major share of flood flows of *sanghar* are far below the actual flows.

What was the basis of estimate about peak flood flows? Why is there so wide difference of estimates made by the project-engineering consultants and technical team of JICA? What is the secret in the reluctance to share the details of technical design and source data? These are very specific questions and need to be addressed in very focused manner.

Changes in the courses of hill torrents: In almost all field meetings, communities claimed that the current cross-drainage structures would be rendered useless because of frequent changes in flood paths, which is quite normal phenomenon in flood irrigation system in this area. The project engineers and consultants, however, refused to acknowledge this fact without giving sound reasons and necessary explanations. Rather, they preferred to put the blame on traditional irrigation practices. For example, in the case of *Sokar* flood, the project engineers blamed the villagers that the flood was caused because the farmers had continued using flood flows despite the canal and had

¹ Consultancy services were awarded to the joint venture of M/s HARZA ENGINEERING CO.USA, SOGREA INGENRIE, FRANCE, and NATIONAL DEVELOPMENT CONSULTANTS, PAKISTAN. The Terms of References (ToRs) include planning, design, preparation of drawings, preparation of Tender Documents, and supervision of construction activities of the civil works components of Stage III of CRBIP. Besides the grave problems in project design, the consultant consortium has also failed to ensure the timely finalization of the project contractors which, in turn, caused the substantial delay and project cost overrun. From the outset, the delay in the first award impeded the project implementation for one and half year. The second award was impacted badly by this and took 27 months. The almost same situation is with the other awards. However, the project-engineering consultants profited large sum in the form of extended consultancy period and speedy devaluation of local currency.

therefore diverted the floodwater towards their village. Villagers have been doing this for centuries. What is new in this process is the blockage of flood flow by the main canal. Are the engineers not aware that the whole area in the west side of CRBIP lies outside of canal command and would continue to be heavily dependent on using flood irrigation? Should people abandon their livelihood system centered on historically developed flood irrigation technologies? Have they any alternative? Was it not the main canal that blocked the flood flows and worsened the situation?

In fact, the project consultants failed to understand natural and ecological processes that cause frequent changes in the course of hill-torrents. Some pertinent factors with this regard are the role of high rate of sediment deposition, extreme variability in size of flood flows and its implications on design structures, and flood velocity. Change in the course of hill torrent floods is a regular occurrence. High-suspended silt and bed load of floodwater are deposited in its recession period as it flows into the unconfined course in the mild plain. These phenomena are more apparent in recession of large floods. The courses of streams in case of small to medium floods are affected by sediment deposition from previous large floods. The deposited sediments act as an impediment to them and the floodwaters cut across these deposits and form a new path for themselves and thus roam. The process of sediment deposition continues and so does the meandering of flood flows in the plains. However, the silt that accompanies the floodwaters and would have been spilling over a large area now gets restricted due to the main canal and between the embankments. It would be thus continuously raising the bed level of hill-torrents and creating possibilities for abrupt and frequent changes in flood courses. Farming communities in the project area has the understanding of this process and are aware about the danger of this fact in the presence of huge embankment structures and blockages. Moreover, diverting multiple nullahs and sheet flows to single drainage structure enhances the chances of large floods coupled with high regular changes in the course of flood flows, thereby making the people in the project area more vulnerable. Similarly, the ever-rising bed level of nullahs would continue to demand the raising of the level of embankments accordingly.

Flooding and the degradation of the riverain belt: The report is almost silent about the grave flooding problem of downstream riverain belt, the location wherein floodwater is disposed into the Indus River. Intensity of this problem is not less than the left side flooding. While falling into the Indus River, these nullahs were causing flooding and soil erosion in the riverain belt and at the riverbank. Now, the floodwater in the drains that is more in quantity and faster has become devastating force and largely destroyed crops, structures and settlements in this season. Moreover, the fear of return flows compelled the engineers to keep the disposal points of flood flows very far from the Indus River. This makes the large riverain tract vulnerable to the huge annual floods and their livelihood has been completely destroyed.

Flood control approach and technical measures: The control and regulation of flood flows with the help of embankments and allied engineering intervention is bound to fail. Watershed management and conservation is the only sustainable solution to this problem. This will help in the reduction of flood peak discharge and prolongation of runoff period. Secondly, the watershed management will be helpful in reducing the sediment yield from the watershed area.

The evidence suggests that the CRBIP was technically an impossible endeavor. It is, however, made possible with the help of numerous faulty assumptions and hyper scientific and engineering imagination. Dominant thrust of the CRBIP design is to harness and thus conquer the centuries' old torrent-spate-irrigation system in order to make its design assumingly successful. Both systems stands diametrically opposite to each other in terms of their hydrological principles, hydraulics and social organization and are bound to compete. Some of the major objectives of the project design include ensuring the safe passage of floodwater from the main canal, protection of command area and safe exit of floodwater to the Indus River. The project design has been so far miserably failed to fulfill most of these objectives even at the initial stage. Main canal was breached at many points during this monsoon season; command area was flooded due to the failure of flood carrier channels in guiding the flood flows to the determined direction and disposal points; and devastating floods have ravaged the most productive riverain belt.

Flooding and Resettlement: The report does not provide any specific information about the exact number of settlements and people who would be displaced due to the flooding problem. Interestingly, the sokar village, which has a population of more than 10,000 inhabitants and has been flooded many occasions during this season, was not included in the resettlement survey. It was assumed safe by the project consultants. This is exactly the case with many other villages. Therefore, we want to know the exact official estimates. On many occasions, we have asked the WAPDA and ADB to share the results of resettlement survey report with us. We have not yet received the survey report.

Mitigation Strategies: The report identifies two mitigation strategies that are protective bunds and resettlement. The construction of protective bunds around the threatened villages has already been proved ineffective and, in some cases, very dangerous. So far as the resettlement option is concerned, the cash compensation to the displaced communities is the most preferred strategy by the WAPDA. However, as the report identifies correctly, the communities who have been so far paid are not at all satisfied with the amount. The threat of force was also used in compelling them to accept very low cash compensation.

As we have stated before that the right of resettlement in the case of involuntary displacement should be considered and admitted as a fundamental human right and affected communities should be given wide range of options instead of imposing any mitigation measure on them. Local conditions and diversity of preferences demand the mitigation approach that should include varieties of options and flexibility. Cash compensation is only one option. The option of cash compensation has been proved ineffective in the context of livelihood restoration. The right to choose any of the options should be given to the displaced communities. Secondly, the resettlement framework should be based on the principle of livelihood restoration. In this case, the landless farmers, women, artisans and other disadvantaged groups should have differential treatment.

Unlawful land acquisition and compensation process: The report confirms and elaborates the concern we have been raising for the last one year. The land acquisition and compensation process remained unlawful throughout the project implementation. The concerned authorities even failed to implement the much-criticized colonial legal system for land acquisition. Affected communities and households were not informed. Unnecessary land acquisition is very common. There is a wide variation in awards and element of political influence is very prominent. Corrupt practices are wide spread. Many small farmers have now become landless and their livelihood is completely destroyed.

Compensation Framework: The report tends to recommend for efficient and transparent implementation of the existing legal framework for land acquisition and compensation. We think this is very simple thinking. All past experiences regarding project induced displacement and land acquisition confirm the limitation of the present legal system and its conspicuous failure in ensuring fair compensation, transparency at the level of implementation and accountability. First, the present legal system gives vast powers to the implementing agencies that become the basis of corruption. Secondly, it has clear limitation with regard to the valuation of assets on market rates. Third, it has no clear accountability measures against corruption and misuse of powers. Fourth, the participation of local communities in decision making is not possible under this colonial legal framework.

3. Project management, irregularities and corruption

The incidents of corruption and wrong-doings are not only limited to the field implementation level. This is also case with the overall management of the project. For example, in one of the CDWP meetings, it was recommended to initiate investigation with regard to the irregularities in undertaking three dove-tailing works. It was formally minuted that *“the committee was not convinced by the arguments given by the WAPDA and that proper tenders should have been called for and the award was of the contract on negotiation was highly irregular and not acceptable and therefore needed to be inquired in to with regard to the increase in cost of civil works”*. Similarly, communities in the project area raised the issue of low quality civil works. The engineering consultants are responsible for the final approval of civil works. Similarly, the substantial delay in awarding the civil works contracts and controversy between the ADB and WAPDA need to be investigated. The PC-1 states that the donors threatened to suspend the loan in case the GOP did not agree to award contract to M/S TEKSER. We want to know what was behind this controversy that took almost one and half year to get settled under the threat of funding withdrawal.

4. Institutional approaches and solutions:

We are planning to hold a workshop with local communities to deliberate on the best institutional mechanisms for the project implementation. However, there is an immediate need to take some practical steps to solve the most important problems concerning with project affectees. The project is nearing to completion. Most of the issues are however unresolved would continue to affect the local communities if some concrete steps are not taken immediately.