



July 21, 2004

Mr. Nalin P. Samarasingha
Special Project Facilitator
Office of the Special Project Facilitator
Asian Development Bank
6 ADB Avenue, Mandaluyong City
Manila, Philippines

Dear Mr. Samarasingha:

We are happy note that the Office of the Special Project Facilitator accepted our claim on the Melamchi Water Supply Project (MWSP) in Nepal, filed on May 1, 2004 and the visit that it conducted in Kathmandu and Melamchi Valleys on June 7-15, 2004 for the review and assessment of our claims, concerns and demands.

The following are some brief comments on the report made to us by the SPF on 25 June 2004. We were given two weeks of time to decide whether we wanted to carry on the consultation process or file a request with the Office of the Compliance Review Panel by 7 July of this month.

Although, we absolute disappointment and serious reservations about this institutionally biased report with flaws in factual analysis, ridiculous conclusions and faulty recommendations, we informed the SPF of our willingness to engage in consultation process. However, the continuity of this process now depends on how the Bank reacts to the report as well as our comments and whether the SPF will rework on its analysis and recommendations. We find that the biggest mistake that the SPF has done is the analysis of policy compliance issues with no clue about what these policies mean to our claims, how they are violated and how they could be remedied. We are also ridiculed by the conclusion of the SPF that "the individual claims will be found to be examples of policy non-compliance". If this is how the SPF functions then it would just be an illusion that it has a role to play to investigate claims from victims of ADB-funded projects and that it provides any meaningful mediation.

General observations

The SPF was appointed to reach out to local stakeholders in ADB supported projects, to seriously investigate, understand and help address their concerns in the light of the local

reality and significance of project impacts. From the report in the Melamchi case, it appears that the SPF has not worked in accordance with this mandate. Instead, the SPF's reasoning and argument demonstrate that it kept a significant distance from the complainants, the actual project impacts, in particular at a local level, and the related issues of concerns.

In our observations, it seems clear that it is not sufficient just to make a request to the SPF with the summary of claims and providing documents. The SPF has failed to go into the depth of the issues, claims and policy violations. It has not done any analysis of Bank's policies and operational procedures in relation to the claims and the conclusions and recommendations.

The SPF seems to be acting with a pre-determined attitude about what to say regarding the project. The SPF has seemed more interested in not finding violations than in conducting proper research and investigation into on the ground problems. According to the SPF report, one may conclude that the claimants are completely ignorant people about what is going in Melamchi and Kathmandu Valley and about ADB policies and procedures. Frankly, we would have done a much more detailed analysis had we known that the SPF would not do its own detailed investigation and analysis.

Furthermore, the SPF has reviewed and assessed many issues that are beyond its mandate or that are not directly relevant to our claims and suggested remedies. This has been counterproductive. We have received information that the Bank's Nepal Resident Office (NRM) is already using the SPF report as a justification of its compliance in the local process. We think that it is premature for the Bank or for the MWSDB to do so. According to our understanding of the Accountability Mechanism, it is the Compliance Review Panel that is qualified and mandated to judge a project vis-à-vis policy compliance.

The SPF also fails to make a distinction between the individual claims and group/collective/community claims. Our claims which were made on behalf of communities, were treated as individual claims. To clarify this point, let us here make it clear that we have attempted to seek standard and collective solutions. The individual cases have been presented only as a matter of examples. We have been trying to encourage the MWSDB and the Bank to address these issues and problems in line with the ADB's policies and operational procedures. We have made this point very clear in our claim which still remains as a collective one. We have all the needed authorities and rights to represent these affected people and the communities. The SPF has recognised this fact when accepting our claim and deciding on our eligibility for such a representation. This distinction is significant to us also in order to avoid hundreds of costly and lengthy individual claims and the field visits and investigations by the Bank's accountability mechanisms.

In many respects, the SPF looks like an ADB project performance report rather than an independent review and assessment report.

Rather than assessing the complaint in the light of local interests and reality and considering the actual project impacts, the SPF's reasoning and assessment appear to be entirely colored by the ADB's institutional and the governmental framework, policies and rhetorical commitments.

The SPF also has failed to investigate all the alleged and potential policy and procedural violations on all the issues raised by the claimants, including from details provided when filing the claims. It also fails to explain why it did not do so and it only focused on some selective “comfortable” issues in favour of the MWSP and in the specific interests of the Bank and the MWSDB. For example, the report contains a repeated defense and justification of the project, a denial of alternatives and praises the performance of the Bank and MWSDB staff.

The SPF has made contradictory statements and conclusions in various places. For example, in paragraph 25, it says that there is no concrete evidence of ‘systematic and serious’ non-compliance with ADB policies, but immediately thereafter, in paragraph 30, it states an investigation by the compliance review panel is not precipitated in the absence of such evidence. The qualification as ‘systematic and serious’ in paragraph 25 are both redundant and wrongly evocative, particularly if this paragraph is read in conjunction with the statement made in paragraph 30. There is a task for the Compliance Review Panel if a policy violation causes direct and material harm to the local people, thus, there is no requirement that the policy violations are also ‘systematic’ or ‘serious’ in the view of the SPF.

However at the same time, the SPF describes a number of most disturbing failures in the design and implementation of the project, as well as the SUP. In fact, these are the failures that evidently cause direct and material harm, most visibly where these relate to inadequate compensation and mitigation measures.

Furthermore, contrary to the aforementioned conclusion in paragraph 25, and in view of both the SPF’s observations under section I (on the Implementation Environment) followed by the long list of recommendations under section J (to improve project implementation and the performance of the MWSDB), it appears that the non-compliance found is indeed both serious and systematic.

Regarding ADB's Responsibility and Accountability

The ADB is responsible for the protection of social and environmental interests in the projects that it supports. This responsibility follows from its mandate and character as a public international institution which cannot be delegated. The ADB may, of course, substantiate the obligations related to its responsibility by instructing another body, in this case the MWSDB, to take adequate measures to help protect the social and environmental interests. However, such instructions cannot relieve the ADB of its accountability.

However, the SPF’s report does not recognize this principle. It proposes measures for improvement of MWSDB’s performance, but it fails to stress that these are a matter of ADB’s accountability, and that the Bank’s integrity is at stake if these are not immediately and effectively implemented.

Regarding Environmental and Social Concerns

The paragraph 12 of the report refers to an *aide memoir* of a Joint Review Mission (JRM) of the Government of Nepal and donors, apparently conducted in 2003. But it is not clear

whether this JRM was also initiated by the ADB, or what other role the ADB may have had in this and other JRMs.

According to the report, the JRM found the construction contracts did not adequately address but further ignored environmental, social and occupational issues. It also refers that a subsequent MWSP review found that land compensation process and the SUP had been “controversial,” including the delays and a lack of communication between the MWSDB and the affected people. Similar concerns were found by an ADB Project Performance Report of February 2004. In this, even the ADB staff and consultants expressed their concern about social and environmental components of the project.

The above official findings are most problematic. In order to ensure that the ADB’s policies are upheld, particularly those related to the protection of environmental and social interests – the ADB must insist not only on the present or future ‘design’ of remedial measures, but on the evidence of immediate relief and implementation measures thereof.

Furthermore, the ADB should not be satisfied with the rhetorical “genuine willingness” on the part of the government and the Bank management for the implementation of the resettlement plan, the EIA and the SUP, as long as this dedication is not substantiated with actions. The question whether policies have been upheld or violated can only be found with reference to the actual outcomes, e.g. whether the policies have been properly and satisfactorily implemented in the whole project cycle or not. Words without action do not constitute compliance!

Regarding Project Design and Justification

One claimant, Mr. Siwakoti, has expressed his serious concern regarding the project design and its necessity for water supply in Kathmandu Valley. In response to these concerns, the SPF noted that it is not its function to ‘second guess’ the ADB’s project planning or design. Moreover, ADB staff has assured the SPF that Mr. Siwakoti’s concerns are unfounded.

However, as mentioned, it is the SPF’s function to focus on and seriously investigate the concerns of the local stakeholders. Rather than to be satisfied with the ADB’s rhetoric, and regardless of the scientific validity of those concerns, the SPF should aim to determine the origin of those concerns and conflicts, in order to find out why these claims arose and how these can best be addressed. However, the SPF did not pose such questions. It did not inquire, for instance, whether or not the alternative options were actually assessed. Even though the concerns expressed in this respect are yet another indication that the ADB policies may not have been complied with.

Instead, the SPF simply suggests that there are no serious issues to consider. However, paragraph 22 implies the contrary, describing a range of alarming problems and concerns that cannot be overlooked. The SPF relates that the compensation scheme has not been adequate or adequately implemented; the impact of the access road on forest, farming and irrigation has not been adequately mitigated; and the SUP only exists on paper, is not adequate or adequately implemented. It means that there are reasons to question the validity of the project as a whole.

The SPF notes that this question is posed only by a “vocal minority of stakeholders” – perhaps by way of reassurance? However, the ADB should be most disconcerted by this observation, which states that the group that questions the project not ‘only’ consists of local farmers and others who experienced direct harm, but of highly educated and experienced academics, ex-government officials and lawyers. We would point out that only such few people and groups have the resources and professional knowledge and skills to oversee this kind of complaint. If farmers could file directly for inspection cases, you can be assured that the ADB would be receiving many more complaints than it does today.

Regarding SPF Recommendations

The SPF’s recommendations demonstrate a misapprehension of the complaints. For example:

Mr. Siwakoti apparently asked for an open discussion about the project, engaging all stakeholders. However, the SPF’s recommendation relates to the provision of information: a measure of one-way communication, which is totally insufficient to enable a public debate or to ensure participatory decision making.

Participatory decision making requires the fair and properly informed engagement of all stakeholders in order to ensure that all the relevant concerns and interests are properly taken into account and as such addressed. Such processes are a matter of institutional accountability.

The same is true for the SPF’s recommendation regarding Mr. Pandit’s concern. Mr. Pandit apparently expressed concerns about the water needed for irrigation use and wishes to better understand the projections for the needed water flow and usage. These concerns are symptomatic for what appears to be a fundamental problem related to the project: participatory and consultation processes have apparently failed. However, rather than suggesting a measure to address that problem, the SPF recommends still more one-way communication for information communication and access to available documents.

Conclusions

In summary, the SPF report has the following flaws, which, if not remedied will render futile any further attempts at arbitration:

- 1) The report does not include categorical and serious investigation of grievances made by the complainants.
- 2) The report fully accepts the positions and the wordings of project implementers regarding problem solving and disclosure of information without any evidence to back up their claims.
- 3) The report is fully biased and full of flaws in terms of the analysis of policy violations as regards to the individual and groups claims.
- 4) There will be nothing much to expect from the SPF if this is how it defines its mandate and the role as a negotiator/facilitator.

In the light of these comments and suggestions, we do hope that you will clearly define your mandate and the role as a Special Project Facilitator and show your strength and willingness in addressing the problems of victims, and not of the Bank and/or the borrowers, and set an example by resolving the MWSP-related controversies, claims and policy violations.

We hope to hear from you soon, including the comments of the Bank management on your report as well as our comments sent to you today.

The claimants,

Gopal Siwakoti 'Chintan
Co-ordinator, WAFED
and affected person in Kathmandu Valley

Hasta Pandit
Representative, Melamchi Local Concern Group
and affected person/family
Ichowk VDC 6, Melamchi Valley

Ram Bahadur Khadka
Representative, WAFED, Melamchi Branch
and affected person/family
Palchowk VDC-4, Melamchi Valley

Pitambar Bhandari
Chairperson, Federation of Community Forest
Users Nepal (FECOFUN), Sindhupalchowk District Branch
Kiul VDC 3, Melamchi Valley

Comments on the Report of the Special Project Facilitator

Melamchi Water Supply Project

ADB Loan 1820-NEP(SF) (21 December 2000)

A. Project Overview

1. The Melamchi Water Supply Project (MWSP) [Loan 1820-NEP(SF)] was approved by the Asian Development Bank (ADB) on 21 December 2000. It is a large and complex project that aims to provide a sustainable supply of potable water to the Kathmandu Valley region. The project design provides for the diversion of water from the Melamchi River in Sindhupalchowk District through a 26-kilometer tunnel. The main infrastructure components consist of the Melamchi diversion scheme, a water treatment plant, the bulk distribution system, distribution networks, a groundwater well-field, and access roads related to the diversion scheme (see Location Map in Appendix 1). The executing agency for the Project is the Melamchi Water Supply Development Board (MWSDB) of the Government of Nepal.
2. The Project includes a Social Uplift Program (SUP), designed to promote the socioeconomic wellbeing of people living in areas covered by 14 Village Development Committees (VDCs) in the Melamchi Valley.
3. There is a wide array of consultant services for project implementation in the areas of project management, physical infrastructure, social and environmental concerns, public relations and institutional reform.
4. The estimated total project cost of \$464 million is financed by the Government of Nepal and seven co-financiers.¹ ADB's loan amounts to \$120 million.
5. A key conditionality attached to the external funding for the Project stipulates that the Government agree to charge an appropriate levy on water from the Project from Kathmandu residents for the benefit of the residents of Melamchi Valley.
6. Construction activity is currently confined to the main access road (MAR) and other branch roads from the MAR to the location of the proposed pipeline. The MAR construction, which is financed by the Government, started several years before the donor-financed project. Project implementation is still at a very early stage.

¹ ADB, Japan Bank for International Cooperation, Norwegian Agency for International Cooperation, Swedish International Development Cooperation Agency, OPEC Fund for International Development, Nordic Development Fund, and the Government of Japan.

B. Nature of the Complaint

7. On 3 May 2004, the Special Project Facilitator (SPF) received, through e-mail, a complaint regarding MWSP. The letter and the attachments to the complaint are included in Appendix 2. The complaint requests the investigation of policy non-compliance on seven issues of concern:

Issue 1: Access to Information

That the information flow has been restricted, not enough information has been available in Nepali, and that there has been little public participation in the decision making and project design process.

Issue 2: Environmental Impact Assessment (EIA)

That the EIA has methodological flaws, ignores some of the environmental impacts of the project, and has inadequate mitigation plans.

Issue 3: Land Acquisition, Compensation and Resettlement

That the land acquisition, compensation and resettlement processes have been arbitrary and that people have not been given enough time to move. In addition the complainants state that the project ‘intentionally’ failed to assess all the direct and indirect impacts upon the residents.

Issue 4: Indigenous Peoples

That the rights of the indigenous people have been denied.

Issue 5: Social Uplift Program

That the SUP has been designed with the inadequate involvement of local people and therefore fails to address local needs.

Issue 6: Agriculture

That the project seriously affects agriculture in the Melamchi Valley. The complaint also claims that there was inadequate investigation of the downstream impacts upon agriculture of the river diversion.

Issue 7: Forestry

That the project has had a serious impact on community forests by paying too little attention to the need for access and management of the forests.

8. The complaint also indicates the remedies expected by the complainants.

9. The four complainants, Mr. Gopal Siwakoti 'Chintan', Mr. Hasta Pandit, Mr. Ram Bahadur Khadka and Mr. Pitambar Bhandari have claimed to be 'directly affected individuals and groups' in the Melamchi and Kathmandu valleys, representing the 'wide interests of the people and communities adversely affected by the project'. The complainants have made representations to the Government of Nepal, the Asian Development Bank (ADB) and other financiers in the past regarding the design of the MWSP and its impact upon the people and the environment. In the opinion of the complainants, they have not received satisfactory responses to the points they raised.

10. The complaints made are general in nature and required further investigation in the field.

C. Initial Determination of Eligibility

11. An initial assessment of the eligibility of the complaint and the complainants as 'materially and adversely affected' people, or their representatives, was made prior to the visit to Nepal of SPF through extensive document research and interviews with a range of concerned parties. On the basis of this research there appeared to be, at least for some of the issues of complaint, prima face evidence that there may be cause for concern and the further involvement of SPF:

12. The aide memoir of the Joint Review Mission (JRM) of the Government of Nepal and the donors states:

JRM noted that there were serious environmental problems associated with the construction contracts. This is partly due to the fact that environmental, social and occupational safety issues have not been adequately addressed in the earlier contracts, while in later contracts these issues are largely ignored by the contractors.'

(Paragraph 27. Aide memoir, JRM. 29th September 2003)

13. A special review² of the project undertaken as a result of the report of the JRM noted the following with regard to social issues:

'the land compensation process has been very controversial and has thus contributed to the delays in several project components'

'a comprehensive Social Uplift Program has been made. The program has been seriously delayed and the lack of communication between the Melamchi Water Supply Development Board and the affected people has been heavily criticized'

14. The ADB Project Performance Report noted similar concerns (12 February 2004). All three documents above note that actions are being taken, or are proposed, to improve the situation.

² Review of the MWSP. Sweco Groner, and the Centre for Economic Development and Administration, Tribhuvan University. March 2004.

15. Interviews with ADB staff and consultants directly involved in MWSP confirmed that there are issues of concern in the social and environmental components of the project.

16. Ideally, a field visit would have been desirable to determine the eligibility of the complaint, particularly given the general nature of the issues raised and the lack of clarity surrounding the nature of the affect of the project upon the complainants and their right to represent adversely affected people. However, since ADB had previously recognized that these complainants could speak on behalf of project affected people and in view of the persistent nature of the social and environmental difficulties, it was decided that the complaint was eligible for consideration under Step 4 of the Accountability Mechanism.

Comments

1. *The SPF has clearly acknowledged that the claimants represent the 'wide interests of the people and communities adversely affected by the project' and that it notes the unsatisfactory responses to the points raised in the past.*
2. *The SPF finds that the complaints are general in nature and required further investigation in the field and finds, at least, for some of the issues as per the prima face evidence that may be cause for concern and the further involvement of SPF.*
3. *The SPF mentions that the aide memoir of the Joint Review Mission (JRM) of the Government of Nepal and the donors as below:*

JRM noted that there were serious environmental problems associated with the construction contracts. This is partly due to the fact that environmental, social and occupational safety issues have not been adequately addressed in the earlier contracts, while in later contracts these issues are largely ignored by the contractors.' (Paragraph 27. Aide memoir, JRM. 29th September 2003)

4. *The SPF further notes that the Special Review made by the MWSP and the Centre for Economic Development and Administration, Tribhuvan University. (March 2004) found 'the land compensation process has been very controversial and has thus contributed to the delays in several project components' and that 'a comprehensive Social Uplift Program has been made. The program has been seriously delayed and the lack of communication between the Melamchi Water Supply Development Board and the affected people has been heavily criticized'.*
5. *It further notes that the ADB Project Performance Report has noted similar concerns (12 February 2004) and that actions are being taken, or are proposed, to improve the situation.*
6. *The SPF also refers to the interviews with ADB staff and consultants directly involved in the MWSP that has confirmed the issues of concerns in the social and environmental components of the project.*
7. *The SPF clearly agrees with the view of the ADB that "the complainants could speak on behalf of project affected people" (No. 16).*
8. *The SPF has acknowledged the position of the complainants as below:*

'it is also our full understanding that the issues and problems related to the Bank's policy violations and any satisfactory remedies through meetings, correspondence and any facilitation by your office will not result to our satisfaction and policy compliance as it appears now.'

'We therefore, would like to request you to thoroughly investigate the above claims and provide us with satisfactory solutions. But at the same time, we firmly believe that some of the issues and problems of the Bank's policy violations in the MWSP are beyond the capacity of the SPF.'

D. Position of the Complainants

17. Notwithstanding the eligibility of the complaint, the following statements, made in the letter of complaint to SPF, make the starting position of the complainants very clear:

'it is also our full understanding that the issues and problems related to the Bank's policy violations and any satisfactory remedies through meetings, correspondence and any facilitation by your office will not result to our satisfaction and policy compliance as it appears now.'

'We therefore, would like to request you to thoroughly investigate the above claims and provide us with satisfactory solutions. But at the same time, we firmly believe that some of the issues and problems of the Bank's policy violations in the MWSP are beyond the capacity of the SPF'

18. The lead complainant, Mr. Gopal Siwakoti 'Chintan', representing the Water and Energy Users' Federation-Nepal (WAFED), has issued a note clarifying the position of the complainants (Appendix 3). *It is against this background that SPF's assessment of the complaint was undertaken.*

E. SPF's Assessment

19. Extensive discussions during the assessment process focused upon two critical areas:³

- (i) The extent to which the claims made by the complainants have any substance; and
- (ii) Independent of the complaint, the efficiency and effectiveness of project implementation.

20. In general, SPF's discussions indicate a genuine willingness on the part of the Government to implement the project in line with ADB policies and a dedication to the implementation of the resettlement plans, the EIA, the SUP and the various forms of planned mitigation measures. There is commitment to project success. However, in the current environment, not only must those responsible for the Project work to deliver the intended impacts, they must also be *seen* to be working towards that end. Improvements in communications and participation are required (see Section J below).

Comments

We are simply puzzled with this statement by the SPF. It is simply not true. What is the evidence for this claim? While we are sure that the government claims to be willing to comply with the ADB policies but what have they done to prove it in the past decade or years? In our view, there is no genuine willingness. This has been the crux of the problem. The SPF should avoid making such pre-determined, biased and politically

³ Assessment in the field was carried out by N.P. Samarasingha, Special Project Facilitator and L. McMillan, Consultant from 7-16 June 2004. K. Oswald, Senior Project Facilitation Specialist; R. Robidillo-Ortega, Consultation Coordination Officer; and G. San Agustin, Executive Assistant provided support at ADB headquarters.

motivated statements whereas the claimants are questioning and challenging very much the same issues and problems with compliance. It undermines the whole process. There would have been no reason to approach the ADB's accountability mechanisms if this were the case.

21. Discussions at Nepal also focused upon the scientific and social reports which form the basis of the complaints made by Mr. Siwakoti on behalf of WAFED. It is not the function of the Office of the Special Project Facilitator (OSPF) to comment upon the rigor of the science involved in the project design, to attempt to 'second guess' the experts involved in the various investigations and planning processes, nor to reopen the debate on the original project design. However, it is clear, to the objective outsider, that the professional staff, in both Manila and Nepal, are committed to the science and design of the Project, believing that the necessary processes and the appropriate checks and balances are present in all aspects of the investigation and planning. They see no serious flaws in the protocols or the scientific method used to make the assessments and to develop the Project in accordance with the policies and procedures of the Government and the donors.

Comments

While we understand that it is not its function of the SPF that it is not its function to comment on the scientific and social reports and re-open the original project design and decision. But given the nature of the debate and the issues under scrutiny by Nepali and global civil society, it also is not its function to unquestioningly believe in what "the professional staff, in both Manila and Nepal" about their having followed correct science. The point is that there is no reason for the Bank to believe that the studies and decisions about Melamchi done in the late 80s and early 90s (before the Bank's involvement), are based on good science. If this was the case then these scientific studies would have been made publicly available at the same time, and at least after ADB's involvement, but it was never the case. There was never any peer-review of these studies. There was never any public debate. So the SPF cannot declare that the debate has already been closed when the project was decided. This is one of the purposes of our fight for accessing all project documents and information to establish whether there were serious flaws and how the protocols of scientific methods were maintained. We believe that there were serious scientific flaws and the fundamental protocols were violated. It is for this reason that we are demanding a scientific conference in Kathmandu of official and independent scientists and experts as part of the engagement with the SPF process towards reaching solutions. We made this demand very clearly to Edward M. Haugh, Jr., Director of Social Sectors Division, South Asia Department, Keiichi Tamaki, Melamchi Team Leader of the Bank, Peter Logan of NRM, Kathmandu on 27 April 2004 during a meeting at WAFED office, including previous correspondence and requests – both written and oral. But they flatly rejected this proposal. In this case, as we told them, we now proceed to the SPF, the dialogue broke-down and they left.

22. In addition, detailed discussions on compliance issues and on the implementation of the project were held with all claimants, nongovernment organizations and civil society from both Kathmandu and the Melamchi Valley, local people in the Melamchi Valley (affected and unaffected, compensated and not), representatives of ethnic groupings, experts in water management in Kathmandu (both for and against the project), government officials (both past and present), the Embassy of Norway, the managing consultants for the project, academics and local consulting staff. Apart from isolated personal grievances, generally revolving around compensation, the vast majority of affected people are supportive of the Project and are satisfied with the compensation received, albeit through a slow process. A few groups, however, expressed concerns regarding the impact of the access roads upon

community forests and farming, and the possible impact upon irrigation in the Melamchi Valley below the intake point of the tunnel. In addition, there is concern at the slow speed of planning and the delivery and content of the SUP, particularly with respect to ethnic minority groups and women. In the interests of fairness, it should be noted that there is also a vocal minority of stakeholders (lawyers, ex-government officials, journalists, engineers and academics) who question the validity of the whole project design and intent. These people form the constituency of the complaint filed by Mr. Siwakoti.

Comments

The SPF quotes this whole paragraph but does not disclose the source. We disagree in both the content and the intent of this statement. The SPF has tried to limit our grievances only as "isolated" and "personal" which is not true. There are collective and community grievances which are summarised in the claims and described in the attached documents which the SPF apparently did not study or use in its report. This is not only unfair but also makes the report incomplete. The SPF seems very happy to say that "the vast majority of affected people are supportive of the Project and are satisfied with the compensation received". But is it the claim that we have made to the SPF to investigate whether the people are supportive of the project? Is it really the mandate and issue here? It is clearly a Bank-management and MWSDB supplied statement that the SPF decided to insert. It is also not true that the people are happy about the fairness and the process of compensation irrespective of the delays. The question we are raising is the lack of standard criteria and process in deciding the rate of compensation, the random process of which piece of land to acquire and which not. As a result, there are people whose houses are connected to with the main access road but they are not compensated. The people have never been offered of choices, e.g. land to land compensation. The resettlement policy and plan has merely been a formality. The issues of compensation to community forests, agriculture and irrigation have not been properly addressed and there are dozens of cases or claims ready to be filed any time if necessary. The SUP is not only about planning and content but about the whole process and transparency in decision-making. Similarly, the constituency that I represent not only questions the validity of the project, which is certainly one issue, but it is and will be equally concerned and involved in monitoring the Bank's policy compliance. We are also directly project people here in Kathmandu Valley where the issues and violations are gradually coming up, and where the whole project has been justified in our name!

However, it is interesting to note that the Bank and the MWSDB have sped up the process of compensation after we filed these claims. We take it as the positive impacts of our campaigns and claims. But it is important that the payment of compensation alone does not ensure compliance. It requires a fair and just compensatory process to all the affected people without discrimination in terms of the rate of compensation and other remedial measures. We are observing all the activities very closely on a regular basis.

Regarding the rights and interests of various affected indigenous and ethnic groups and persons, the MWSDB and the Bank simply have not taken into consideration of complying with ADB's policy and operational procedures on indigenous peoples. Some superficial concerns might have been expressed accidentally but not as a policy compliance. The displaced Majhi, Danuwar, Tamang and Magar persons and communities have been left out with no compensation for the loss of their traditional income or the displacement from employment in local water-mills. The MWSP has completely disregarded their interests as the directly or indirectly affected communities and groups who live in and around the project areas, and whose traditional lands and water right are affected. These indigenous communities have made their concerns public, regarding effective consultation and participation in decision making, through meetings and the media also as the upper riparian populations but there have no any attention paid so far.

23. An essential aspect of the situation surrounding the complaint centers on perceptions of what constitutes appropriate, high quality research, feasibility study, design work and participation. The position of the complainants is not necessarily that there are serious scientific flaws in the process. Their position, rightly or wrongly, is that there was insufficient public discussion and consultation during project design, particularly regarding other possible options for providing water to the Kathmandu Valley. They are more concerned with the *processes of decision making and consultation* adopted by ADB and the other institutions involved than they are with the specifics of the complaints. Resolving the current complaint therefore, from the point of view of the complainants, requires revisiting of the original planning and decision making. While the individual complaints and complainants require proper attention, it is clear that the documentation has been filed to attempt to open a *process debate* with ADB regarding all projects of this size in Nepal in general and MWSP in particular.

Comments

On the contrary to the SPF statement in this paragraph, we are also looking at the high possibility of serious scientific flaws in the process. We are also equally concerned about the lack of transparency and consultation regarding this issue even after the ADB's took over of the project. We are demanding for a total compliance review with regards to the negative impacts that this hidden process has on the claimants in particular, and the people of Melamchi, Kathmandu and Nepal in general. If the SPF cannot rework its recommendations to meet these demands for a complete and comprehensive review of policy compliance in the whole period and the process then we will put an end to the SPF consultation process and appeal the case at the CRP.

F. Detailed Position of Complainants and SPF's Recommendations

24. Each complainant was interviewed regarding their situation as potentially adversely and materially affected people. The following paragraphs summarize the conclusions and recommendations of SPF as a result of the discussions. Where recommendations and actions are offered, these have been discussed with the complainants and a solution reached, subject to review where shown.

1. Complainant: Mr. Gopal Siwakoti 'Chintan'

Complainant's position: "Co-ordinator, WAFED and affected person in the Kathmandu Valley"

Nature of the Complaint

Mr. Siwakoti accepts that he is not personally and materially affected by the project. He has submitted no claims. His issues are general in nature and revolve around the availability of information and the participative process. His detailed position is shown at Appendix 3. His concerns are on the broad issues discussed at G. below. As noted above, and stated in detail in Appendix 3, Mr. Siwakoti's intention is to use the compliance review process to attempt to open a public debate on the merits of MWSP. He wishes to discuss, in open forum, with all parties concerned, the relative merits of MWSP and other potential options in solving the water problems of Kathmandu. His requests for information are in

furtherance of this aim. Through SPF, and, if necessary, through ADB's compliance review process, he intends to attempt to force a public debate with the senior management of ADB and other donors/funding sources. As such, the specifics of his complaint are a means to an end.

I find the description of nature of my complaint by the SPF very problematic and grossly misinterpreted. My claim has been that I am personally and materially affected by the MWSP in Kathmandu Valley, but not in Melamchi Valley since I am not a Melamchi resident. My claims are no broad but specific regarding access to information and public consultation in Kathmandu Valley. The SPF has ill-intentionally tried to undermine and misinterpret the merits of complaint stating that the main aim of my claim is to re-open a debate which is not accurate. There is no question of "re-opening" a debate when a) there never was a meaningful debate due to the non-transparent and autocratic process, and b) not all decisions about the project and its implications have been addressed. So it is a question of continuing process and debate. Furthermore, my aim of asking the senior management of the ADB and other donors/funding sources is a proposal in good faith towards correcting the policy violations and reaching into agreeable solutions through most authentic and scientific public debate – a genuine public consultation in Kathmandu Valley. Whether the specifics of my complaint are "a means to an end" or "an end" depends on the willingness of the Bank and MWSP in resolving the issues and problems relating to policy non-compliance and other associated matters.

As regards the role of Mr. Siwakoti in the complaints made by the other three complainants, he initially agreed to visit the Melamchi Valley to discuss the complaint in the presence of Melamchi residents, but during the visit of SPF changed his decision and did not accompany SPF to the field. No reason was given for the change. WAFED was represented in the Melamchi Valley only by Mr. Ram Bahadur Khadka, a complainant. Regarding the eligibility of Mr. Siwakoti to represent the interests of the people of the Melamchi Valley, SPF was presented with no further evidence, other than a claim by Mr. Siwakoti to have a further 180 cases which he could bring to the attention of ADB.

Comments

I also find the SPF making some technical and logistical matters as part of the review and assessment process and implying that I have not taken this process seriously. In the first place, there was a serious gap of communications during May 24 - June 10 between the SPF and myself as the co-ordinating person of all the claims. No details of the programmes were sent to me in advance as agreed over the phone. The SPF also had not informed us of its plans and programmes in Kathmandu and Melamchi Valley. We have not found the Nepal Resident Mission Office in Kathmandu positive and co-operative but just the opposite, particularly after the filing of these claims. We, instead, heard the NRM officials and staff making negative comments about us, our concerns and the SPF process.

Therefore, the SPF has no any right or reason to put blame on me saying that I declined to go to Melamchi for no reason given to them on my side. It is totally a false statement. As I said above, there were no any officially and collectively agreed plans and programmes as I had originally expected. What I also found as soon I returned to Kathmandu from Manila on June 10 is that the SPF was already meeting with groups of people and individuals through the NRM, and those

who came to these meetings were not given any proper invitation, agenda or purpose of the SPF visit. I heard some comments from some of the most concerned persons/experts in Kathmandu Valley who had simply decided to ignore these apparently lower-level unclear invitations made through telephone calls. The SPF was already in the public relations business and was also being brain-washed by the proponents of the MWSP and those who have been involved in undermining our campaign and monitoring activities. It is noteworthy to mention that the local claimants and the affected people gathered to see the SPF team during their visit found their behaviours more offensive, negligent and negative compared to the meetings and interviews in Kathmandu.

Going back to the issue of my absence in the Melamchi visit with SPF, I asked the SPF whether there is really any need of my presence there and if so then what would be the programmes. I was told that there is really no such need since we have already met and discussed and that we will be meeting again before their departure. Earlier, I had offered my availability and willingness to accompany them in Melamchi Valley provided that there were proper meetings with the local claimants, the affected peoples and the communities. But the SPF told me that that is really not the purpose but they want to at least see the place physically and talk to some local peoples. As contrary to my previous request for organising some meetings with genuinely affected people, the SPF told me that the meetings are being organised by the MWSDB. As a matter of fact, the other three claimants had just informed me that the Mast's public relations officials are inviting people in Melamchi to visit with SPF but the claimants are not even informed about it. We knew what kind of crowd that they were putting in place to impress the SPF that they are so happy with the MWSP or what they are getting. We hope that the SPF would have the maturity not to take these public relations exercises as reflective of the concerns of the average citizen from Melamchi.

In addition, the SPF said that they would leave in the morning to arrive in Melamchi around 11:00 am and leave for Kathmandu in the afternoon – not much time planned to visit the affected people and see the impacts caused by the Bank's policy violations. When I asked about whether the three local claimants could also accompany him as planned, he said that that is not possible due to the vehicle problem and other reasons. We were asked to go on our own but it is simply not possible for us to arrange a transport and be there with them on time. We found it rather unhelpful but we did not comment. We actually thought that we were not needed by the SPF in Melamchi and that we were unwanted by the MWSDB since it has its own show-off of the "happy people" as if there were no serious concerns and policy violations. It is just ridiculous!

Recommendation

The recommendation of SPF is that Mr. Siwakoti be provided with access to ADB-owned documents and the reports on the provision of water to the Kathmandu Valley by Binnie and Partners UK 1988, Stanley and Associates 1990, Snowy Mountains Engineering Corporation, Australia 1992 and Acres International, Canada.⁴ Both the Nepal Resident Mission (NRM) of ADB and MWSDB insist that these documents have been available publicly for some time and that WAFED and its associated organizations have received copies. Whether this is true or not, it is the recommendation of SPF that MWSDB, supported by NRM, proactively provide Mr. Siwakoti with all relevant project documentation. Where the

⁴ See Appendix 4 for e-mail letter from Mr. Siwakoti received on 22 June 2004 for the list of documents.

documents do not belong to ADB, SPF recommends that both NRM and MWSDB provide Mr. Siwakoti with all possible assistance in obtaining copies of the documentation.

SPF and the relevant operational departments of ADB, together with NRM and MWSDB, have a responsibility to monitor the flow of documentation to Mr. Siwakoti to ensure he receives access to all information in accordance with ADB policies. All parties have agreed to this role. Mr. Siwakoti should maintain communication with SPF, monitoring the information situation and informing SPF of any violations. Mr. Siwakoti has agreed to allow a period of three months to pass to allow for improvements in document flow before taking any further action. After three months, a review of the flow of information should be held by all parties involved.

Comments

I would have been satisfied if the SPF has acknowledged that there have been violations of the information disclosure policy. To me, the SPF has fully recognised this fact but have tried to save "face" of the Bank and the MWSDB by trying to make a false declaration that there have been no violations and any violations will be corrected by releasing the documents and reports as recommended, and if released. The question is: How could the SPF conclude that the compliance will be ensured through future measures before declaring that there have been violations in the past and as to date. The SPF never asked or verified with me the insistence made by the NRM and the MWSDB "that these documents [the reports on the provision of water to the Kathmandu Valley by Binnie and Partners UK 1988, Stanley and Associates 1990, Snowy Mountains Engineering Corporation, Australia 1992 and Acres International, Canada] have been available publicly for some time and that WAFED and its associated organizations have received copies." This is completely a false claim and false statement.

2. Complainant: Mr. Hasta Pandit

Complainant's Position: "Representative, Melamchi Local Concern Group and affected person/family. Ichowk VDC 6, Melamchi Valley."

Complaint

Mr. Pandit's complaint is general in nature. His claim is that he has not received the report on irrigation and water flow below the tunnel intake on the Melamchi River. In particular, he wants to understand the projections for water flow and usage in the rice fields below the point where water is drawn off.

In addition, Mr. Pandit would like to receive, in writing, a *guarantee* that there will be sufficient water for irrigation below the pipeline. Provision of such a guarantee is beyond the terms of reference of SPF. However, it was pointed out to Mr. Pandit that the Project provides for such guarantees. MWSP should make sure, through its communications and community liaison activities that people in the Melamchi Valley are aware of the guarantees provided.

Recommendation

The recommendation of SPF, discussed and agreed with Mr. Pandit, is that Mr. Pandit will be given full access to the reports regarding irrigation. This recommendation is made despite the insistence of both NRM and MWSDB that the reports have been made available to him and to related organizations several times.

MWSDB has agreed to copy the relevant reports and to inform Mr. Pandit of their availability. Mr. Pandit will collect the documents by arrangement from MWSDB or NRM. NRM would oversee and verify the transfer of documents, which should take place within one month, depending upon Mr. Pandit's availability. As was the case with Mr. Siwakoti, general progress towards information sharing should be assessed at the end of three months.

Comments

Although, I am satisfied with this specific recommendation regarding access to all information and reports on the flow of water down the intake and the necessary legal guarantees of the adequate flow of water for irrigation, I still have some questions unanswered. My demand as well as of the affected communities is:

- *Whether existing provisions relating to release of 400 litre/second flow of water downstream is the actually needed minimum flow for irrigation and other basic purposes.*
- *If this flow is not sufficient or satisfactory to the needs then whether there will be a complementary ELA on this.*
- *The release of minimum flow of water at all times from the ground-level of the intake, and not from the overflow.*

The report is also silent about my concern related to the re-routing of the access road through Chanaute Bazaar near the Chanaute Bridge.

In addition, I am disappointed that all the issues related to the local/affected communities, as I also represent their rights and interests through Melamchi Local Concern Group, have not been addressed in the report.

3. Complainant: Mr. Pitambar Bhandari

Complainant's Position: "Chairperson, Federation of Community Forest Users Nepal, Sindhupalchowk District Branch. Kiul VDC 3, Melamchi Valley".

Complaint

Mr. Bhandari is claiming for damages to a canal and loss of earnings for his water-mill for a period commencing 1997 when road construction was the responsibility of the Melamchi Water Company (a company of the Government of Nepal which predates ADB involvement in the project). His land lies two kilometres upstream from Chanute Bazaar. He is further claiming that a landslide caused by road

construction damaged forestry on his property and has filed an additional claim for compensation (May 2004). Mr. Bhandari's claim is complex as it involves estimates of lost income over several years which predates the involvement of ADB. The issue is further compounded by the agreement of the Melamchi Water Company to contract him to repair the damage to his canal and to provide him with the equipment to make the repairs. If carried out properly, these measures should have minimized the loss of earnings caused by the damage to the canal, thereby affecting the level of the claim. In addition, there is some evidence that the opening of another water-mill close to that of Mr. Bhandari may have contributed to his reduced earnings through increased commercial competition. If this is found to be true, it may not be the responsibility of the project to provide compensation.

Recommendation

Mr. Bhandari has received partial compensation amounting to NRs 592,832 (approximately \$8,300) for land from the project, although he is unhappy that the value allocated to his land was lower than in other areas. (The process of valuation was undertaken by a committee comprising both experts and local representatives). The claims for the canal, for lost income from the water-mill and for the landslide are under investigation by MWSDB.

As part of the normal processes, this complex claim would, in time, have been investigated and eventually settled. However, as a gesture of good faith, SPF has asked MWSDB to give priority to the claim and to expedite its processing. SPF will remain in close communication with both MWSDB and Mr. Bhandari to review progress.

Comments

My claim has been and disappointment about discrimination in fixing the price of compensation of the same area and land of same or even better quality, e.g. the rice field. I want re-evaluation of my land and pay me the remaining outstanding compensation.

The main reason of the closure of my water-mill is due to the landslide caused by the road construction. I have been assured of the repair and maintenance but it has not been to date. So I am asking for the compensation of my daily income from the mills Rs. 750/- Rs. 250/- was my cost so asking for 500 as date 2057 BS, as to date. The permanent solution is the repair and maintenance of the canal and the regular flow of 157 litres second needed for the operation of the water-mill. There are no other economic or financial reasons for the loss of my income. I was also generating electricity for 49 households and used to make income. There are also other economic losses which I have not claimed in good-faith, e.g. the damage caused in my machine and turbine and other equipments. (Please see the attachment, a letter dated 2061.2.1 BS

Regarding my claim made on behalf of the Sindbupalchowk District Branch of the Federation of Community Forest Users Nepal (FECOFUN) for the compensation of the seven project-affected community forests, the SPF is silent about its findings. I am not provided with any concrete criteria and process for the compensation. We are still ignorant about what is happening in this regard. In fact, there are about 82 community forests in 14 Villages but there is are not clear

plans about the management and conservation of these forests as they and would be affected by the MWSP, according to the Bank's policy on forestry. One main problem with the MWSP is that it still has not clearly defined and categorised the affected persons, groups and communities on the basis of what constitutes direct and indirect effects. As a solution to this problem, my request has been to make the protection and conservation of community forests at least as part of the SUP.

4. Complainant: Mr. Ram Bahadur Khadka

Complainant's Position: "Representative, WAFED, Melamchi Branch and affected person/family. Palchowk VDC 4, Melamchi Valley."

Complaint

Mr. Khadka is claiming for *actual damages* to an irrigation canal which feeds his rice fields. Further, he is claiming for *anticipated damages* to his agricultural land which may be incurred as a result of falling rock caused by the eventual blasting of a large rock downstream from Chanute Bazaar on the opposite bank of Melamchi River.

Recommendation

Mr. Khadka's claim for damages caused to his canal was discussed with MWSDB and the project management consultant. The conclusion is that the canal is subject to a build up of silt and other matter which would occur during the normal course of events and is unaffected by the project.

Comments

This is wrong. The fact is that the river course was diverted while constructing the Chanute Bridge. The rocks and other materials fell down to the river. As a result, the 600 jalis were washed away. About 150 meters may be washed away during the monsoon.

Demand, we want regular canal flow for this huge land in which 900 families are dependent in Dubachaur and Palchowk VDCs, 6.5 kilometres, only source of irrigation is this one, 2 times rice and nagade bali (winter crops) one time.

The claim for compensation for land that may be flooded due to falling rock changing the direction of the river anticipates future adverse material affects. Mr. Khadka was assured that systems exist to investigate his complaints if future damage is incurred. Further, the blasting of the rock has been delayed for two years due to the activities of insurgents. There is no immediate prospect of blasting in the area downstream of Chanute Bazaar.

Comments

This is not true. There is an imminent danger. The project had repaired once recently but it is very temporary. The rocks are falling down even now on the river and the pond. We want permanent solution and clear provisions for what compensatory measures will be in place.

SPF has agreed with the project-managing consultant that, as a gesture of goodwill, Mr. Khadka's irrigation canal should be cleared. However, it is the opinion of the project management consultant that the canal, because of its position, will continue to silt up naturally every year. It is recommended that Mr. Khadka consider relocating the canal. NRM and MWSDB should continue to monitor the situation regarding the potential flooding of Mr. Khadka's land due to future blasting of the rock. If flooding occurs, there is an effective system for considering claims at that time.

Comments

There is no possibility of relocation. We are demanding for natural flow. There were no problems in the past. There are still rocks uncleared. The big natural pond/reservoir is filled. This is all caused by the project.

This is probably the only honest finding that the SPF has made after the assessment and review of our claims. We are happy with its recommendations that all the ADB-owned documents to be released. But our claim is not only for the released ADB-owned documents but all documents that are have been used by the Bank. The ADB and the SPF have tried to justify the non-compliance on information disclosure by saying that they are responsible only for the documents and information produced after the Bank's late involvement in the project. We appreciate that the SPF has recommended the NRM and MWSDB to release also the other documents related to the project.

What is very typical and strange of the SPF on this issue is that it still did not find policy non-compliance by fabricating arguments that the NRM and MWSDB have claimed the release of all documents and we have them already. Again we would ask the SPF to demand evidence when faced with such claims, which we know to be false. While allowing others to get away with this kind of disingenuousness, the SPF sought proof and evidence from our side and did everything possible to question our locus standi and genuineness. Furthermore, the SPF has made a false statement saying that I have agreed for a three-month moratorium "to pass to allow for improvements in document flow before taking any further action". I never said that we will not take further action for another three months. What I said was that we can wait if there is a guarantee that we have access to all project-related documents and information by the Bank and the MWSDB.

Another problem of the SPF is its selectivity in recommending the Bank, the NRM and the MWSDB about what documents to release. The SPF has grossly misinterpreted our claims for access to information and have tired to limit to some of the past studies that we have been seeking for, but it has failed to specifically ask the Bank also to release all documents relating to loan agreements and associated conditions. We hope that the SPF's recommendation "access to ADB-owned documents and the reports" cover these demands. But the main problem here is that the SPF asks the Bank and the MWSDB to provide access to documents and reports only "on the provision of water to the Kathmandu Valley" when our demands are for access to all documents, reports and information relating to the MWSP, and not only about the provision of water to the Kathmandu Valley.

G. Discussion of the Seven Issues

25. The allegations made on each of the seven issues are very general and are related more to the wider aims of the complainants than to a specific violation of ADB policy. *Other than the specifics of each individual complaint discussed above, the complainants provided no concrete evidence of systematic and serious non-compliance with ADB policy.* It is clear from SPF's discussions and from examination of documentation that there is ongoing and considerable commitment to planning and mitigation work in each of the seven specified areas of complaint:

- (i) Improvements in information flow have been implemented, which will be further assisted by recommendations made in this report;
- (ii) There has been a wide ranging process of participation undertaken by MWSP including workshops and consultation meetings. This process will improve with further capacity building and any improvement in the security situation;
- (iii) Information is readily available in libraries in Kathmandu and Melamchi. The website contains relevant documents. Many documents are published in Nepali;
- (iv) Mitigation of environmental and agricultural damage caused by access road construction is ongoing;
- (v) The majority of the current land acquisition, compensation and resettlement cases have been settled. Three hundred of the 328 cases which have been carried over from the original government work on the MAR have been settled. The remainder, which are more complex, are receiving attention;
- (vi) The SUP is intended to provide for the general social uplift of the people in the Melamchi Valley. A significant part of the budget is exclusively for the uplift of socially disadvantaged sections of the population, including women and ethnic groups, with preference for education, training and scholarships being given to those groups. The SUP, as planned, provides significant benefits for both project affected and unaffected groups in the Melamchi Valley;
- (vii) Rigorous monitoring of water flow in the Melamchi river is ongoing with a view to ensuring adequate water for agriculture and irrigation;
- (viii) Forests and residents in four of the seven community forests affected by the project have already been taken care of. The remaining three are in progress; and
- (ix) Newly created conflict response teams, namely the Environment Issues Resolution Team (EIRT) and the Community Issues Resolution Team (CIRT) operate regularly in the Melamchi Valley and have handled grievances. These teams represent a significant innovation for MWSDB.

H. Conclusions

26. This complaint has to be looked at from two perspectives. At a superficial level, there are four complainants who assert that they have been affected by the implementation

of the project. The overt claims by each of the four individuals are discussed in F. above. Each specific claim can be accommodated through the effective delivery of documentation or by expedited processing as recommended.

Comments

This conclusion is not satisfactory to us. This does not offer anything other than access to information. We have provided the details above under each of the recommendations made by the SPF regarding individual claims.

27. At a more general level, as discussed above, the claims can be seen as merely the means to access the process of compliance review, not with any great hope or expectation that the individual claims will be found to be examples of policy non-compliance but as tools in opening a much wider debate on the legitimacy of MWSP as a key solution to the water problems of Kathmandu. As noted in paragraph 21, SPF adopted the position that reopening the original debate went beyond the terms of reference for OSPF and that the focus of investigation should be upon the specifics of the complaints. As such, while there are opportunities for improvement, there would appear to be no grounds for accepting claims of non-compliance in the implementation of the Project. However, in identifying the potential need for performance improvement and by ensuring that all parties involved in implementing MWSP do so in the interests of the Nepali people, the four complainants have played a valuable role.

Comments

We also disagree on this finding. If the SPF was fully convinced that "the claims can be seen as merely the means to access the process of compliance review, not with any great hope or expectation that the individual claims will be found to be examples of policy non-compliance but as tools in opening a much wider debate on the legitimacy of MWSP as a key solution to the water problems of Kathmandu" then it simply would have recommended the claims to the Compliance Review Panel (CRP) but it did not do so. The SPF went beyond its mandate by misinterpreting the objectives of the claimants about how they would use the information and documents if and once they are released. The SPF also failed to understand the value and meaning of the timely disclosure of information to the affected persons, families and communities. In addition, the SPF in its whole report has completely ignored the fundamental aspects of releasing these information and documents in local languages that the affected and concerned people understand. The SPF is silent on this.

We had briefly mentioned about the loss of opportunity to participate in the MWSP-related decision-making process in a timely and meaningful manner in the absence of release of basic projects and information both in the past as well as the present. The demand for information and documents always has a purpose, and our claims are not for the release of information and documents for the sake of keeping in the shelves! They are meant for timely use to influence the decision-making process and the outcomes constructively. It is up to the claimants to decide about how they would use the information. There is no doubt that the debate about on what basis the MWSP was decided, may have to be re-opened if the decisions have been made in violations of the Bank's policies. The Bank simply cannot take over a wrongly decided project and say that it cannot take responsibility for the past mistakes. The Bank has to take responsibility, or refuse to support a project that is in violation of its policies. So there is nothing wrong even if the claimants are using the SPF process as a tool to re-open the debate on the project – a process of Bank's policy compliance in a fully manner and with a sense of moral accountability in some situations as an inter-governmental institution of high responsibility.

We also have serious problems with the SPF findings that that "there are opportunities for improvement" but "no grounds for accepting claims of non-compliance in the implementation of the Project". It further says that "the potential need for performance improvement and by ensuring that all parties involved in implementing MWSP [is] in the interests of the Nepali people". To us this is totally a non-mandated political statement. To us, the need of performance improvement is one of the areas where many of the violations are systematically hidden. The SPF also has gone beyond its mandate and beyond the claims by declaring that the people of Nepal need this project. In the first place, the people of Nepal may not need this project and it depends on what the project is all about and what benefit they will get. This is what we, the claimants, are struggling very hard to find out. The SPF at least should know that this is not the project for the Nepali people and of the Nepali people. It is a project for the Kathmandu people and it is mainly project of the donors and the lenders like the ADB and the Japan Bank for International Co-operation (JBIC). Is the SPF interested to get into these issues and debate as part of the review and assessments? It was our understanding that the SPF would seek to avoid these kinds of political statements, and we are disappointed to find them in this report.

28. The provision of documentation is an important step in ensuring that civil society play its rightful role in project monitoring. If, after receipt and review of the documentation requested, the complainants, in particular Mr. Siwakoti of WAFED, still have cause for concern regarding project design and implementation, they should be free to bring their complaints to the attention the reports on the provision of water to the Kathmandu Valley by Binnie and Partners UK 1988, Stanley and Associates 1990, Snowy Mountains Engineering Corporation, Australia 1992 and Acres International, Canada of the Government of Nepal and the co financiers.

29. SPF's role with regard to the complaint could end after the recommended action is satisfactorily implemented.

I. The Implementation Environment

30. While there is no concrete evidence of serious non-compliance with policy which would precipitate investigation by the compliance review panel, there is scope for improvement in project implementation.

Comments

This is even more serious and problematic. It shows how ignorant the SPF is about the Bank's own environmental policy and operational procedures. It simply has not clue about what the claimants were taking about the environmental issues and problems from process to outcomes of EIA and from the denial of timely and meaningful access to project information and documents to the effective participation of the project-affected people and the other stakeholders. Why the SPF makes statement like this almost by declaring that even the CRP will not find any non-compliance. The SPF speaks here as the spokesperson of the Bank management and the MWSDB. But at the same time, it also recognises that "there is a scope for improvement in project implementation." This is a clear double standard on the part of the SPF not to find or recognise the policy violations within "scope of improvement".

31. SPF's assessment of the complaints, therefore, also focused upon the progress and effectiveness of the implementation of the project. The operating environment within which

implementation is taking place is difficult. This has, in the opinion of all parties concerned, produced major delays. These delays have given rise to a level of dissatisfaction with the project among certain groups which is reflected in the types of complaints being received.

32. In facilitating a solution to the current complaint, it was clear to SPF that addressing issues of capacity building in MWSDB is critical to project success. The project is at an early stage of implementation. Capacity and organizational shortcomings must be dealt with now if they are not to inhibit performance in the future as the project moves into more complex stages of implementation including major engineering works, further land acquisition and resettlement, the complex participative discussions regarding the water distribution system in Kathmandu and the further involvement of key stakeholders, including civil society. In particular, management systems, communication, participation, the delegation of authority and staff responsibility require improvement. The position adopted by SPF regarding management capacity is consistent with the final report of *Sweco Grøner AS and the Centre for Economic Development and Administration at Tribhuvan University, March 2004: "Review of the Melamchi Water Supply Project"*, which identified management capacity, structure, decision making processes, the membership and organization of the Board of Directors, and the lack of clarity in staff roles and responsibilities as clear barriers to performance improvement.

Comments

Our claims are that all these institutional problems that the Sweco Grøner AS and the Centre for Economic Development and Administration at Tribhuvan University, March 2004: "Review of the Melamchi Water Supply Project", and the SPF identified are what they have led to all the mismanagement, non-compliance and violations, particularly at local levels in Melamchi, including the "little experience of running projects of this nature and complexity" of the MWSDB (para. 17). The SPF has tried to find as many justifications and excuses as possible to defend the Bank and the MWSDB, including the reasons for the delays. But our claims and concerns are not about these delays but the systematic failure from the beginning of complying with Nepal's legal and ADB's policy and procedural compliance. It is the negligence, arbitrariness, manipulation and the lack of institutional intent and set up that we have been questioning. Most of the changes that have been taking place in the past one year are not due to the intent of the Bank and the MWSDB but the result of massive campaign from local to national as well as international levels by the claimants and their organisations. But the SPF did not understand this.

Also our claims and concerns are not about the slow progress in project implementation. They are about the lack of compliance with our legal and policy-based rights and interests on whatever damages that have been made and will further be made during the process of project implementation. Regarding the SUP, it is not for any other reasons as described in the report, but simply for the reason that, in one hand, it has been presented as the most positive component of the MWSP for local development, on the other, it has been a corruptly managed top-down isolated programme – benefiting mostly the highly paid outside consultants and sometime used to manipulate or suppress the local voice and concerns by distributing little money and projects in a sporadic manner.

33. It is not the intention of OSPF to suggest wholesale solutions to the problems discussed above. However, in the interests of contributing to an immediate improvement in project implementation, a range of measures are discussed at J below. These measures are compatible with those of the report referred to above.

34. The critical operating environment factors from the point of view of implementation are:

35. *The continuing problem of security in the Melamchi Valley.* The takeover by insurgents of areas of Nepal, through which the access roads and the tunnel will run, severely hampers progress. It is difficult to maintain good participative and implementation practices in an environment of personal risk. As a result of the security situation, the ability of MWSDB to make physical progress in the Melamchi Valley and to manage the perceptions of local people is very constrained. The lack of visible presence of senior officials of MWSDB results in a *perception of a lack of on-the-ground progress* on the part of some residents in the valley. However, in fairness to the position of MWSDB, it may be pointed out that the day before the visit of SPF to the Melamchi Valley a policeman was killed in an ambush attack on the MAR and in the past there have been attacks upon the contractor's camp using explosives. These incidents put the problems faced by MWSDB into context.

36. *The relative 'newness' of the requirements of managing a large, complex project to the officials of MWSDB.* MWSDB management freely admit that they had little experience of running projects of this nature and complexity and that there was a very sharp learning curve in terms of both personal development and organizational systems. This learning curve is continuing.

37. *The commitment of the project to honour claims for compensation which extend back in time to the original construction of the MAR which was under the control of the Government of Nepal and therefore not subject to ADB policies.* The decision to accept claims for compensation/resettlement for actions carried out several years before ADB involvement illustrates the willingness of the project to be fair and equitable and to comply with the policies of ADB, but it increases the administrative task enormously, resulting in processing delays.

38. *In many cases, the lack of legal paperwork by the claimants has delayed the processing of claims.* While the intent is to maintain goodwill and community involvement in the project, the reality of maintaining the fairness and legality of the system has inevitably created delays.

39. *These factors combine to create the perception that little is happening in terms of project implementation.* The affected people and the general population that would benefit under the SUP and from additional employment, for some time, have been living with the *promises* of benefits to come with little evidence that they can expect action in the near future. From their perspective, the *reality was that nothing tangible was happening*—that the benefits would accrue in the future was still *only a promise*. Past experience on the part of some of the marginalized groups in the Melamchi Valley make them suspicious of, as yet, undelivered promises. The early shortcomings of MWSDB in terms of organizational capability and the operating environment in the Melamchi Valley created the conditions for others to interpret the perceived lack of activity as policy non-compliance.

Comments

These physically difficult working environment and the delays, including security concerns caused by the Maoist insurgents, have less to do with the bad project design and implementation performance. The SPF is

just providing more excuses here for the continuing violations of the Bank's policies and procedures. This is not even anything about which we had complained.

J. Improving Implementation

40. There is no doubt that if the security situation were to ease, reform of the operations of MWSDB would produce significant performance improvements in the delivery mechanisms of the project. Indeed, in spite of the organizational and operating environment difficulties, significant improvements in delivery are in progress or about to be launched: the vast majority of compensation claims have been processed and concluded; the SUP is launching initiatives in local services and infrastructure including ambulance services, nurseries and school sanitation. In environmental management, significant steps have been taken to mitigate or to repair environmental damage around the quarry and the MAR.

41. However, operating on the assumption that the security situation will not improve markedly in the short term, any further improvement in implementation must be generated by improvements in the capacity of MWSDB. Critically, these improvements must be implemented with well-defined results targets which are in the public domain, together with the changes in management decision making and behaviours which necessarily underpin this type of results focus. Giving MWSDB a results-based focus, open to public discussion, would go a long way to altering the perceptions held of MWSDB by sections of the population.

42. The critical issues for improvement and the development of a results focus, identified through discussions with MWSDB staff, consultants, NRM, civil society and the residents of the Melamchi Valley and Kathmandu are:

43. *Communication and Participation.* A critical role of communications in the management of a complex undertaking such as MWSP is the creation of 'meaning' for all stakeholder groups. Stakeholders must be given the information they require in a form that allows them to understand what the project 'means' to them. If project managers do not create 'meaning' for affected people, the affected people (and others) will create their own, often opposing, 'meaning' from the same published facts. Delays and a lack of presence in the Melamchi Valley have enabled this to happen with some groups. The only way to solve this problem is increased visibility, improved dialogue with all stakeholders, and a dedication to creating and managing real 'meaning'.

Recommendations

- (i) Review of the public relations policy and terms of reference to widen the scope. Incorporation of a measurable results focus;
- (ii) Training for MWSDB management in communication skills, focusing particularly on two-way communication with all stakeholders (both supportive and critical);
- (iii) Training of MWSDB staff in the operation of participatory mechanisms of project planning and implementation, following ADB models of participation

developed by the Regional and Sustainable Development Department of ADB. These models have been given to staff of NRM for discussion with MWSDB;

- (iv) Review of the operation of steering groups, ensuring that they incorporate all stakeholders (for example women, local people etc); and
- (v) In the interests of transparency, scientific measurements, (for example, of river volume), should be taken with the participation of representatives of the community.

44. *Visibility.* It is essential that means are found to further enhance visibility in the Melamchi Valley. There is a history of short-term involvement by officials in the valley which ends with changes in the security situation. In addition, allowances and living conditions provided for MWSDB officials in the Melamchi Valley are inadequate.

Recommendations

- (i) Senior management must show a presence in the Melamchi Valley at regular intervals. It is only by maintaining presence that people will learn to trust the actions and promises of the project and MWSDB. However, it is accepted that this recommendation may be difficult to implement in the current security situation;
- (ii) Regular visits to the Melamchi Valley must be undertaken by technical officials of MWSDB. It is not sufficient to leave the work of liaison to consultants or to lower ranking officials. People expect to be able to talk to officials who can make decisions and explain practices. The creation of the innovative EIRT and CIRT have made a significant recent contribution to the aim of raising visibility. Their work may be further enhanced by the delegation of more decision making authority;
- (iii) Development of a results focus in the management of participation and visibility; and
- (iv) Immediate improvement, in advance of the establishment of the contractor's camp, in the expenses, security and living conditions for middle ranking MWSDB officials for visits to the Melamchi Valley.

45. *Decision Making, Responsibility and Authority.* The culture of Nepal, with respect to decision making, responsibility and authority, is hierarchical, where decisions are traditionally taken by the most senior officials. A culture such as this can make the management of complex projects difficult. The hierarchical culture is particularly strong in government, from where the staff of MWSDB are drawn. More junior officials wait for direction from above; even when the most senior management have attempted to make it clear that they want to delegate responsibility for decision making. To date, from the perspective of project consultants working with MWSDB and the staff of NRM, there is evidence that despite the commitment of MWSDB senior management to devolved decision making, there remains a

reluctance to assume responsibility at the lower levels. Project implementation would be accelerated if real decision making were to be devolved.

Recommendations

- (i) For individuals to feel comfortable in accepting decision making responsibility there must be clarity regarding the extent of their decision making authority. Internal discussions are required to bring clarity to issues of decision making authority and responsibility and to enable officials to begin to exercise judgement and initiative. This process may benefit from external facilitation;
- (ii) In line with the above discussions, MWSDB needs the immediate creation of clear job descriptions and results based target setting for all staff. If medium and long term improvements in the management of the project are to be achieved, an appropriate and transparent results focus should be developed in the operations of MWSDB. The results focus should provide indicators of performance for activities and for staff;
- (iii) The need to clearly delegate authority is also present at the highest level of MWSDB. For the Executive Director to be able to take timely decisions there has to be a clear separation of the roles of the Executive Director and the Board of Directors, delegating to the Executive Director the ability to make high-level decisions that fall within policies set by the Board. This separation would result in faster decision making; and
- (iv) An enhanced role for the managing consultants in the project, extending their brief to cover 'management issues' in the operation of MWSDB.

46. *Building Management Capacity.* The management of MWSDB have experience of managing technical projects in Nepal. However, by their own analysis, they are inexperienced in managing a project which has a complex interaction of technical, social and environmental issues and which operates under a policy regime as rigorous as that of ADB. In a short time, MWSDB have learned quickly and have adjusted to the new realities, performing well enough to ensure compliance. They now need to consolidate their learning through facilitated planning, not of the *issues and technicalities of the project*, but of the *management processes* required to efficiently and effectively run all aspects of the work of MWSDB.

Recommendations

- (i) An effective way of raising competence levels in senior management is to study a model of good management operating in circumstances similar to those of MWSDB. Visiting and analysing the management of an ADB project similar in objectives and complexity to those of MWSP would produce a jump along the learning curve. ADB may wish to consider offering support for such a development initiative; and
- (ii) Extending the role of the project management consultants to include mentoring and coaching.

47. As discussed above, in the following weeks and months there is potential for significant and tangible improvement in on-the-ground delivery of project benefits. This alone should make a significant contribution to improvement in community relations and perception of project effectiveness. The recommendations made above are intended, over a reasonable period, to build upon the implementation processes already developed by MWSDB.

48. Even at the risk of exceeding SPF's mandate, the above improvements, which are achievable, are recommended for consideration by MWSDB, the Government of Nepal, ADB, and the other co-financiers of the Project.

Comments

All these measures discussed under this are the factual bases that led to the bad performance and violations. We support the recommendations made to the MWSDB for better institutional and personnel level performance but we are also of the view that the Bank also needs to reform and change more than the MWSDB in the case of MWSP in particular, and in all its activities in Nepal and in the region in general.

July 21, 2004, Kathmandu