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The Asian Development Bank held its 36th Annual Governors Meeting two days ago in Manila on June 30, 2003, without any of the usual pomp and extravagance that characterized previous AGMs. If original plans had been followed, this year's AGM would have been held in Istanbul, Turkey in May but the United States' war on Iraq highlighted security and other concerns that led to the cancellation of the Istanbul event. The ADB then decided to move the meeting to Manila and drastically abbreviate it to a one-hour business-only meeting, where attendance of all Governors (finance ministers of member countries) was not even mandatory.

The scaled-down and seemingly low key nature of this year's AGM notwithstanding, the Asian Development Bank stands as one of the more powerful and influential financial institutions in the Asia and Pacific region. It has programs and projects that span sectors from agriculture to telecommunications, from health to energy, from education to roads and ports; and policies that traverse poverty reduction, private sector development, privatization, governance, and similarly context-changing framework.

In this issue of Focus on Trade we tackle important aspects of institutional and policy governance that the Bank takes pride in purportedly protecting. The complete print version of this collection of articles will be released at the end of July. After that, copies may be downloaded from the Focus website <http://www.focusweb.org>. Limited numbers of hard copies may also be sent to readers upon request. For information contact Joy Chavez <[j.chavez@focusweb.org](mailto:j.chavez@focusweb.org)>

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## SLAP IN THE ADB'S FACE: THE KHLONG DAN WASTEWATER TREATMENT PROJECT CORRUPTION SCANDAL

By Luntharimar Longcharoen\*

As the Special Investigation Department intensifies its corruption investigation of the Khlong Dan Wastewater Treatment Project in Samut Prakarn, south of Bangkok, Thailand, the names high-ranking government officials, politicians, property developers and contractors have been publicly revealed and alleged to be involved in corruption and abuse of power. Yet the Asian Development Bank (ADB), which claims to be a financial institution with operational policies based on "good governance" and which provided a US\$230-million loan to the project, remains silent. The Bank has sidestepped the lack of transparency even though the implementation of the project is a serious violation of its good governance policy.

At the 2000 annual ADB meeting in Chiang Mai, the Bank was heavily criticized by Thai civil society. Two thousand villagers gathered in protest against ADB loans to various projects that adversely affected the society and environment of their communities. Among these were people from Samut Prakarn's Khlong Dan and Chachoengsao's Song Khlong sub-districts. These villagers demanded that the ADB stop funding the Samut Prakarn Wastewater Treatment Project on the grounds that the project would destroy the local environment, the community economy and a national food source. They also pointed out many irregularities in the project. For instance, the project site was relocated from the original area approved and studied; the design of system was obsolete; project costs were unnecessarily high; many Thai environmental laws were violated; and corruption-related problems dogged almost every stage of the project's operation.

The protest was an unprecedented shock to the ADB. In its operations over the past 30 years, the Bank's public relations have always trumpeted transparency and accountability in its poverty reduction goals. But the Samut Prakarn Wastewater Treatment Project is a notorious example of an operation that is lacking transparency and public participation at every stage. The adversely affected villagers were never informed of what was to take place in their communities. Neither was an environmental impact assessment (EIA) carried out - a basic requirement of both Thai environmental law and Bank policy. Such a study was not necessary, the project operator argued. Ironically, destroying the environment on which the Khlong Dan community's livelihood depends is quite incompatible with the Bank's publicized poverty reduction objectives.

Throughout the project, Thai civil society monitored the ADB's performance and tried time and again to point out

the lack of transparency in the Bank's loan management. The ADB made two loans to the project: US\$150 million in 1995 and US\$80 million in 1998. The additional funding was needed because of changes in the project's technology and design, according to the Thai government through the Pollution Control Department (PCD), the project operator. These changes were significant, pushing project costs 124% higher than the original estimate. According to the Bank's policy on Supplementary Financing of Cost Overruns, the ADB should have conducted a reappraisal of the project because its site and design were completely changed. In 1995, the Bank and the Thai Government agreed in principle to build two wastewater treatment plants in Samut Prakarn's industrial areas of Bang Poo Mai and Bang Pla Kod. It was decided later to build only one plant in Khlong Dan sub-district, a fishing community over 20 kilometers from the original sites. The environmental, social and economic contexts were obviously entirely different from the original assessment. The ADB's failure to conduct a reappraisal of the entire project meant that the Bank violated the project's fundamental principles. This led to problems at every stage of operation. The big question was how efficient the Bank's evaluation and approval of a project had been. The assessment of project benefits - central to any project planning - was also questionable.

Throughout the project, affected villagers have urged both the government and the ADB to halt loan disbursements and construction in order to examine the project's deficiencies and lack of operational transparency. But the villagers' repeated complaints were met with insincerity on every point.

After the Wastewater Treatment Project was raised at the ADB annual meeting in 2000 and the village people had called for the ADB to visit their fishing community, a Special Review Mission was sent in June of that year. But the villagers later found an aide-mémoire of the Mission - produced after a visit to their community - to be distorted.

Since the Special Review Mission did not present their problems truthfully, the villagers wrote a letter to ADB President Tadao Chino on 27 November 2000. They complained about the Special Review Mission's misinterpretation of details and procedures that were in breach of many ADB operational policies and Thai laws. The letter also noted that the Special Review Mission's aide-mémoire failed to include the lack of transparency and irregularities of project activities conducted by the ADB, PCD, and contractors. More importantly, the ADB has relied on one source of information - the PCD - and had ignored the fertility of the area inspected by the Mission. The aide-mémoire failed to mention various problems raised by the villagers or to report the presence of a large number of protesting villagers on the day the Mission visited the Khlong Dan community.

GOING THE INSPECTION ROUTE, AND

## FAILING TO GET FAIR HEARING YET AGAIN

The villagers relentlessly urged the ADB to inspect the project. In 2000, they resorted to the Bank's Inspection Policy to further press for an examination of the project's transparency and compliance with ADB policies. A complaint letter written by the villagers to President Chino clearly indicated that the Bank had ignored and violated its own major policies and Thai laws.

Finally, the ADB's management agreed to establish an independent Inspection Panel to examine the Bank's operations. This was the first time in the Bank's 30-year history that its operations were inspected as a result of direct pressure from the people.

But the inspection process was inadequate. The most essential stage of the inspection - field trips to the site and discussions with affected villagers, academics, and those who had been closely monitoring the project in Thailand - did not take place. This was the result of a Thai government condition that the ADB would be responsible for "any damages" that might arise from the Inspection Panel's visit. The ADB was unwilling to accept the condition, but at the same time it did not push hard enough to safeguard an examination of its own funding. In fact the ADB created this loophole because according to its policies, an inspection in a loan-recipient country must have the permission of that country's government. A moment's consideration will show that this loophole creates an opportunity for ADB staff and the state officials to collude in exploiting existing mechanisms so as to dodge accountability.

Despite the various restrictions, the Inspection Panel still concluded that the ADB had violated many of its own policies. Most critical was the fact that ADB management had not conducted a reappraisal of the project when a supplemental loan was requested in 1998, a violation of the Bank's policy on Supplementary Financing of Cost Overruns. This, in turn, led to a breach of other Bank policies on the Involuntary Resettlement, Social Aspects Assessment, Benefit Monitoring and Evaluation, and Economic Analysis.

The Inspection Panel report also clearly stated that "(T)he rights and interests of the people whose livelihood depends upon the activities in the EEZ (Economic Exclusion Zone) have been adversely affected due to being excluded from engaging in their economic activities." It further noted that the people who lived off the sea would be negatively affected because of the reduced salinity of the seawater as a result of the huge discharge of treated wastewater. Still contaminated by toxins and heavy metals, the released freshwater could consequently cause odor and sediment. The ADB's operational failures were further explained in the Panel's report: "Thus the Panel is of the view that in not carrying out a reappraisal of the entire project for the supplementary loan proposal there was non-compliance by the Bank of OM 13/BP/OP, 12 December 1995. This omission became a crucial factor from which other consequences followed."

As a self-defensive ploy, the ADB proposed resettlement and compensation plans to the villagers.

## JUSTICE IN OWN BACKYARD

Throughout the project's operations, a great deal of information and factual evidence about the project's lack of transparency was disclosed through the media and a number of fact-finding committees. These committees, setup by the Prime Minister, the Ministry of Natural Resources and the Environment and the Senate, all concluded that there was corruption in the project's procedures.

The Senate's Special Committee to Study and Monitor the Samut Prakarn Wastewater Treatment Project, for instance, reported that corruption had been found at every stage of the project's operations, causing great damage to the state. Of particular note was corruption in the purchase of land. It was found that public land, such as roads, canals and mangrove forests - which cannot be issued with title deeds - had been issued with titles. The valuation of land purchased by the project was also unrealistically high, costing the government three times the fair market price.

In addition, the Senate committee found extensive engineering problems. The engineering design was incorrect and risky. Importantly, the wastewater treatment system is not designed to deal with heavy metals and other industrial toxins. The untreated toxic discharge would therefore negatively affect the quality of seawater in the Gulf of Thailand and threaten marine animals, coastal fisheries, and the community economy. The project also lacked plans to deal with odor, air pollution and the management of toxic waste and sediment.

## "CLASSIC CASE" AND EMPTY TALK

This clearly shows that the ADB's claim to be a lender with a policy to monitor its own operations in pursuit of good governance and poverty reduction is just empty talk. The Bank not only failed to evaluate and monitor the project, but also ignored the fact that the project would be drastically destructive to the recipient country and local people and damage country's social, economic and environmental well-being.

With the disclosure of the project's corruption, lack of transparency and huge damage, the Thai government finally ordered a halt to construction on 26 February 2003. A special investigation has now been commissioned by the Ministry of Natural Resources and the Environment to investigate the project in order to sue the joint venture group of contractors and property developers. At the same time, high-ranking PCD officials previously responsible for the project - the director-general, his deputy, and the former director of the water quality division - were removed from their posts for alleged involvement in corruption and wrongdoing.

What is surprising is that the bank, which proclaims itself to be committed to good governance, transparency and accountability, refuses to admit that this project has problems of transparency, despite ADB policies on project supervision and the necessity for ADB staff to follow these policies.

At the annual ADB meeting in Shanghai in 2002, the ADB president stated that Samut Prakarn project was a highly valuable learning experience for the Bank. Alas, its high-priced lesson has already jeopardized the Khlong Dan villagers' livelihoods and wasted an enormous chunk of Thailand's budget on a dubious and unsuitable project. Prime Minister Thaksin Shinawatra himself described this project as a "classic case" and one of Thailand's biggest corruption scandals.

The Samut Prakarn Wastewater Treatment Project has revealed to the public that the Asian Development Bank has no transparency and does not adhere to principles of good governance. More deplorable still is the fact that the Bank repeatedly makes mistakes but never admits it.

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## THE MESS THAT IS MAYNILAD: LEGAL WRANGLING AT THE EXPENSE OF CONSUMERS AND TAXPAYERS

Jollete Fajardo\*

Five years ago, proponents of privatization triumphantly declared that the salvation of millions of Metro Manila residents unconnected to piped water had come. The control over the operation and management of Metropolitan Waterworks and Sewerage Systems, one of the oldest water services in Asia, was transferred to private hands.

These proponents, led by no less than former Pres. Fidel V. Ramos, harped on the low bids of Maynilad Water Services Inc. and Manila Water Company Inc. as an indicator to the success of the privatization scheme. Maynilad's starting tariff was half of what MWSS used to charge its customers. Manila Water's bid is even lower. MWSS charged consumers 8.78 pesos (18 US cents) per cubic metre of water. Maynilad's bid price is 4.96 pesos (10 US cents) and Manila Water: 2.32 pesos (5 US cents).

Less than six years later, Metro Manila residents are now waking up to the harsh realities of privatization.

Water rates have gone up on both sides of the concession area. In the Maynilad concession area, water rates have shot up from the initial 4.96 pesos (10 US cents) to almost 20 (40 US cents) presently. At the Manila Water area, rates have increased from 2.32 pesos (5 US cents) to 14 pesos (28 US cents) per cubic meter.

As to the efficiency of the private sector, the Manila experience has been another blow to that particular myth.

Non Revenue Water (NRW), water treated but lost either through leaks or through theft, in the West Zone increased from 65% to 70%. In the East Zone, it also increased from 44% to 50%.

The argument that privatization will bring in private capital was also demolished. Less than five years after privatizing MWSS, Maynilad and the Philippine government have parted ways because the former has been unable to put in the money it promised to pour into the concession. Worse it has not been able to pay its concession fees for more than two years now.

Maynilad and government have terminated the concession agreement. An International Arbitration Panel was created to investigate the reasons for the failure and subsequently determine which side is at fault.

The proponents of privatization can only shake their heads and vainly try to find excuses for the failure of privatization in Manila.

## THE FALL OF MAYNILAD

Maynilad, despite costly bailouts extended to it by the Arroyo administration in order to keep the privatization myth alive, failed miserably in its duty to provide clean, accessible and affordable water for residents of Metro Manila's West Zone. (1)

Maynilad's woes can be traced primarily to its inability to tame its NRW levels to a manageable level. In its original bid, Maynilad promised to bring down NRW levels to 30% by 2002 from its pre-privatization level of 58%. It only made NRW worse. It now hovers at 70%.

Maynilad NRW Financial Model		Actual
1997	57.4%	63.3%
1998	47.9%	60.5%
1999	42%	67%
2000	30.8%	65.5%
2001	29.80%	65.99%

In a report submitted to the MWSS Board of Trustees, the MWSS Regulatory Office noted "operational inefficiencies in terms of salaries and wages" in how Maynilad is run. Maynilad officials are a pampered lot. They are paid handsomely for failing to deliver on their efficiency promises. They are even made to drive top-of-the-line luxury vehicles.

## COSTLY BAILOUTS AT THE CONSUMERS' EXPENSE

In the last few months of the Estrada administration, Maynilad applied for an automatic currency exchange rate adjustment (auto-CERA) in order to protect itself from foreign exchange fluctuations. It must be noted that the company inherited around \$800M debts from MWSS. Estrada was not able to immediately act on the demand because of the political pressures on him at that time. He was later booted out of office before he could take any action on Maynilad's demands.

Pres. Arroyo proved to be more sympathetic. Despite vigorous protests from civil society, she allowed the auto-CERA plus a new demand by Maynilad: the accelerated recovery of foreign exchange losses from 1997-2000. Since the concession agreement between MWSS and Maynilad mandates that foreign exchange losses should be recovered within the remaining life of the contract, GMA ordered the revision of the contract to accommodate Maynilad's demands.

Aside from the contract amendment, MWSS has tolerated Maynilad's non-payment of concession fees starting April 2001. A big chunk of concession fees go to servicing of MWSS's past debts. Estimates made by Regulatory Office (RO) officials put the aggregate unpaid concession fees at 5 billion pesos (approximately US\$100M). Since

Maynilad is not paying, government has been forced to borrow just to continue servicing these debt.

## TURNING THE TABLES ON MWSS

The rot inside Maynilad was not to be healed by generous bailouts made at the expense of consumers.

During the rate rebasing exercise conducted last year by the Regulatory Office, Maynilad still asked for a 34 pesos (68 US cents) per cubic metre rate. Despite Maynilad's failure to provide services to Metro Manila residents, government granted Maynilad a 26 pesos (52 US cents) per cubic metre rate. (2)

Probably realizing that they cannot decently run Maynilad and turn out some profit, Maynilad filed a notice of termination last Dec. 9, 2002 alleging that government has made it difficult for them to perform their service obligations. MWSS, according to Maynilad, violated provisions of the concession agreement.

The numbers behind Maynilad's decision to turn the table against government is simple. If the Appeals Panel decides that Maynilad should be booted out of the West Zone because of their failure in providing services to the consumers in the west zone, Maynilad will be able to recover only a small portion of the investments they have already put in the concession. But if they turn the table against the government, they stand to recover a termination fee of around 21 billion pesos (US\$420M), the estimated amount of investments the company actually made.

Instead of showing disgust at Maynilad's notice of termination, which blamed government, after the generous bailout the concessionaire got, government negotiated with Maynilad.

When Maynilad stuck to its untenable demands of moratorium on concession fees until 2008 and a scaling down of service obligations, government had no option but to challenge the termination by filing its own counter-notice of termination on January 9, 2003.

## THE INTERNATIONAL ARBITRATION PANEL AND THE CONCESSION FEE FIASCO

An International Arbitration Panel has been constituted to decide on the termination notice and counter-notice. The Panel is mandated by the concession agreement to act as arbiter in case of major disputes between MWSS and the private concessionaire. The panel has three members. Representing Maynilad is Atty. Antonio Picaso. MWSS will be represented by former Supreme Court Justice Bernardo Pardo. The International Court of Arbitration has appointed Allan Philip as Panel chairman.

On February 7 this year, Maynilad tried to return the concession but the Appeals Panel issued a stay order until it decides the termination fee issue. This means Maynilad will continue running the West Zone until the

Arbitration panel decides on the termination fee amount. As mentioned earlier, the amount of the termination fee would depend on who is at fault for the failure of Maynilad. If Maynilad is at fault, the termination fee amount will only be around 4 billion pesos (US\$80M). But since it owes MWSS around 5 billion pesos (US\$100M) in concession fees it unilaterally stopped paying in March 2001, Maynilad will actually have to pay MWSS the difference.

Since April 2001, Maynilad has unilaterally stopped paying concession fees to MWSS. The concession fees are supposed to service the debt of MWSS inherited by Maynilad.

Part of the bailout given by government to Maynilad is an extension of the payment of these fees to end-2002. In December 2002, MWSS sent demand letters to Maynilad asking the company to pay its concession fees. The demand letters were ignored.

MWSS asked the Appeal Panel authority to draw on the performance bond of Maynilad securing its payment of concession fees. Last April 29, the Appeals Panel denied the MWSS and gave Maynilad until June 15 to renew its Performance Bond. It warned that if Maynilad fails to renew the bond, it will be constrained to allow MWSS to draw on the existing bond.

The June 15 has passed but Maynilad has not yet renewed its bond. Government has announced it will draw on the bond but whether or not it will actually draw on the bond has been rendered moot because just four days after the deadline, the Appeals Panel issued a stay order ordering MWSS not to draw on the bond.

### QUO VADIS ADB?

The Asian Development Bank, together with International Monetary Fund and World Bank, has been very active in pushing government to pursue the privatization of water utilities.

In the ADB country operation strategy for the Philippines in 1993, it called for the greater involvement of the private sector especially in water sector. Maynilad also actively supported Maynilad and its partner Suez Lyonnaise des Eaux, in their successful bid to get into Manila's water sector back in 1997 when MWSS was privatized.

As one of the lenders of Maynilad, the Asian Development Bank helped push government to agree to giving in to Maynilad's demand for a rates increase to prop up the ailing company. The increases were given, people's already difficult lives became even harder, yet Maynilad continued to suffer financial hemorrhages anyway.

Now, ADB is eerily silent on the Maynilad problem. Despite the increases in rates, creditors, including the ADB, continue to stay away from Maynilad as it is very clear that the corporation is unbankable. When Maynilad declared that it is returning the concession, the ADB even

had the gall to make a statement saying government should not take over the concession despite the obvious failure of privatization.

ADB should share in taking responsibility for the impact of the failed water privatization in Manila. The privatization policy subjected Metro Manila residents to steep water rates increases with no accompanying service improvements. The policy also took away the provisioning of water from the realm of government services to a sphere which treats water as a source of profit. With water in private hands, the people lost their power to demand better services because of the private corporation's lack of accountability to the public. They cannot even participate in the ongoing legal dispute between MWSS and Maynilad because of lack of "legal personality" to intervene in a "private contract" between MWSS and Maynilad.

ADB is now busy pushing for "improvements" in the capacity of the Regulatory Office through a technical assistance grant in line with the neoliberal policy of taking government away from its active involvement in vital sectors of the economy.

### FAILURE OF PRIVATIZATION

The ADB has been steadfast in promoting privatization as a solution to the water problems of the world. It seems to have forgotten why majority of the world's nations (95%) run water utilities themselves.

The following are the advantages of having government run MWSS again:

1. Lower cost of capital - Loans obtained by government generally have longer terms and lower interest rates
2. Clear and direct accountability: Government is directly responsible for water services
3. National Security concern is addressed by government itself
4. Government has duty to serve ALL sectors of society. Providing services to depressed areas may not be enticing to private concessionaires.
5. The cost of delivery and access water can be socialized
6. Democratic ownership and management - consumers and the public, who are the ones who pay for the cost of delivery and access, would be able to participate in management.

Back in 1997, the Philippine government harped on the fact that running MWSS will cost government around \$7Billion in the next 25 years. It said it could not afford this huge amount so it had to tap the purse of the private sector. What government did not say was that the private sector will be shelling out only around US\$100M per zone and that the rest of the investments would be source from the cash flow to be generated from selling water to Metro Manila consumers. It also did not anticipate cases of concessionaires unilaterally stopping payments of concession fees.

If push comes to shove, government can also take out loans to run the concession previously held by Maynilad again, provided it is done judiciously.

But all the “development” experts seem to frown upon the idea. They raise the usual arguments of government inefficiency and corruption, and its lack of capital.

But are they really such strong arguments? Privatization will not solve government inefficiency and corruption. Even privatization proponents admit that strong and good governance is a requisite for privatization to work. The solution is to reform government, not to have it turn its back from its responsibility to its people.

The issue of capital also offers weak support as both government and private companies borrow, with Government loans being generally cheaper. Private concessionaires even ask for government guarantees to facilitate release of their loans. Further, bulk of the capital needed for the maintenance and operation of MWSS will come from the cash flow generated by income from water distribution and sanitation.

Pursuing the privatization policy espoused by multilateral financial institutions like the ADB will not bring “water for all.” By pushing government to adhere to a policy of treating water as an economic good that should be provided by the private sector, the ADB succeeded in taking an essential service away from effective government control, making water a source of profit available to only those who can afford it.

(1) Maynilad has been granted the right to accelerate recovery of around three billion pesos in foreign exchange losses. It was also granted an automatic currency exchange rate adjustment mechanism. Both are not provided for in the concession agreement so the contract was amended to accommodate Maynilad.

(2) Manila Water, on the other hand, asked for a P24/cu.m. rate. It was initially awarded a P17/cu.m. rate. Manila Water agreed on a staggered increase so it only charges 14.22. Manila Water will eventually get the P17/cu.m. rates within the next few years.

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## THE ADB IN EAST TIMOR: NEW COUNTRY, OLD TRICKS

Lao Hamutuk\*

On August 30th 1999, the people of East Timor voted for independence from Indonesia in a referendum organized by the United Nations Assistance Mission in East Timor (UNAMET). When the result was made public on September 4th the Indonesian military and its militia proxies culminated their 24-year campaign of crimes against humanity, and went on a rampage that destroyed more than 75 percent of East Timor’s infrastructure and displaced approximately 680 thousand people. With Indonesia’s violent and belated withdrawal, East Timor had no government until the United Nations Security Council approved the second mission, the United Nations Transitional Authority in East Timor (UNTAET) on October 25th.

The Asian Development Bank arrived in post-Indonesian East Timor as part of a World Bank-led Joint Assessment Mission which arrived in East Timor on October 26th 1999. The Joint Assessment Mission, which also comprised donors, the United Nations and East Timorese leaders, came to East Timor to identify immediate reconstruction objectives and assess financing needs.

The findings of the Joint Assessment Mission were presented in Tokyo on December 17th at the first International Donors conference for East Timor. Donors endorsed the concept of a Trust Fund for East Timor (TFET) with the World Bank as trustee and joint administrator with the Asian Development Bank. Therefore the World Bank and Asian Development Bank assumes control of [not large in comparison with other countries] donor funds and begin to shape and direct the reconstruction and development process in East Timor. Of the \$520 million pledged by donors in Tokyo, \$147 million was earmarked for TFET. Since then, TFET has received a total of \$166 million.

On January 10th 2000, the Asian Development Bank signed a memorandum of understanding with the World Bank to establish working arrangements and outline respective areas of responsibility in East Timor. As joint administrator of TFET, the Asian Development Bank is responsible for a much smaller part of the TFET “pie” than the World Bank and its projects focus on infrastructure rehabilitation and developing microfinance.

## CO-“ADMINISTERING” A NEW COUNTRY

The ADB manages five infrastructure rehabilitation projects in East Timor, most of which are nearing completion. The ADB-managed projects reflect the ADB’s usual pattern of relying on foreign consultants and private sector companies; the ADB seems unable to engage or develop East Timorese skills. The ADB awarded large amounts of donor funds to private sector building and engineering firms, mostly from Australia. The ADB is also

using its position as manager of TFET projects to increase the possibilities of foreign ownership of water and electricity supply for East Timor.

The ADB's Emergency Infrastructure Rehabilitation Project 1 (EIRP 1) dealt with emergency repairs on major roads throughout East Timor, the rehabilitation of Dili port, and the reinstallation of electric power. Given the urgent need to reestablish infrastructure after the 1999 destruction, projects were based on systems in use under the Indonesian occupation rather than on studies to find more sustainable systems. Reinstating the power supply focused on power stations in the districts but also included some assistance for the Dili-Comoro power station and developing a power utility and financial management. This part proceeded more slowly than the road and port rehabilitation, which were completed in mid-2002. Most people acknowledge that the ADB-established systems to provide and manage electricity have serious problems. Although other institutions involved in developing the electricity sector (UNDP, UNOPS, and the Portuguese and Japanese governments) share responsibility for these problems, the ADB has been responsible for overall coordination. According to the ADB, they have had "mixed results" in the electricity sector, and "consulting services have been evaluated by ADB staff as unsatisfactory." As of January 2003 more than 30% of the funds amounting to \$9 million went to foreign consultants under the EIRP 1.

The follow-up Emergency Infrastructure Rehabilitation Project 2 (EIRP 2) will establish routine maintenance systems to reduce annual emergency rehabilitation needs. The project includes detailed engineering services and project management services and training. EIRP 2 was planned to start in January 2003, but consultants have not yet been selected. The ADB is now advertising for five international consultants who will start work in September 2003.

The Water Supply and Sanitation Rehabilitation Project 1 (WSSRP 1) project included a Quick Response Facility to support urgent repairs and rehabilitation to water supply and sanitation systems for all of East Timor. The project also focused on establishing Water Supply and Sanitation sector management and planning under the East Timor Transition Authority (ETTA) before independence, including capacity building and institutional development to prepare frameworks, standards and guidelines for the department. The second Water Supply and Sanitation Rehabilitation Project (WSSRP 2) largely continues the activities of WSSRP 1, with added emphasis on upgrading technology and communications, urban sanitation and implementing a tariff system. The water supply system includes government-operated urban services and community-operated rural services, with international NGOs often contracted to establish the rural systems. Although the ADB states that over 90,000 working hours have been created and that local NGOs have been involved in water supply projects, over 40% WSSRP 2 funds have gone to foreign consultants. In fact, over 80%

of WSSRP 2 funds have been contracted out to foreign consultants, companies and international NGOs.

The ADB continues to be involved in the power and water sectors by funding technical assistance. In the power sector the ADB has funded a plan for the electrification of East Timor through 2025, developed by Electro-watt Ekono, an energy company from Finland. The plan examines different forms of electricity generation, including wind power, diesel generators and gas turbines. However, the plan's principal proposal is hydroelectric production with five new hydroelectric schemes costing between US\$160 and US\$206 million.

The ADB is also funding technical assistance for Integrated Water Resources Management (IWRM). The ADB believes that the current "absence of a national policy that specifies the key principles of IWRM across Timor Leste, coupled with a lack of water resource management skills and experience, poses a very high risk of future incompatible sub sector strategies and conflicts over water resource allocation as demand for water grows." Therefore, the ADB's technical assistance (TA) aims to develop a national water policy for East Timor in conjunction with a national water law. Water policies are currently being developed by East Timorese government departments, including the Water and Sanitation Service and the Ministry for Agriculture, Forestry and Fisheries, and the Ministry for Development and Environment. The TA will give the ADB the ability to influence ministerial water policies currently being developed and work to ensure that they do not conflict with plans for the provision of hydroelectric power.

The ADB has an enormous amount of influence over future electricity and water provision for the people of East Timor. The East Timorese government presently has a "no debt" policy, and is unwilling to borrow money for new power generators. Alternative funding can come through ADB-negotiated Build Own Operate (BOT) or Build Own Operate (BOO) schemes. If this happens the ADB can mobilize project financing which will likely come with a government provided "take or pay" guarantee for electricity based on the ADB's evaluation of what the market can afford to ensure the venture is profitable for the company or companies involved, rather than benefiting local people. If electricity users cannot pay what the ADB has determined, the government would have to effectively underwrite the agreed cost whether the electricity is used or not.

The ADB has already facilitated one BOT scheme in the telecommunications sector through two TAs which negotiated the BOT contract signed in July 2001 giving Portugal Telecom International a 15 year monopoly on fixed line, mobile, and internet service in East Timor. The TAs also drafted the regulatory framework for government involvement in the telecommunications sector.

## HERA PORT FISHERIES FACILITIES

## REHABILITATION PROJECT: BEYOND PORTS AND INTO FISHERIES

The ADB also manages the Hera Port Fisheries Facilities Rehabilitation Project. ADB involvement with Hera Port (just east of Dili) dates back to the Indonesian occupation, with a \$50 million loan to the Indonesian government in 1984 for the Indonesia-wide Fisheries Infrastructure Sector Project, completed in 1994. The ADB acknowledges that under this project Hera Port was poorly built, hence the current need to rebuild. A 1997 ADB report finds that the Fisheries Infrastructure Sector Project greatly overestimated the private sector growth that would result from improving such port facilities, which actually did little to generate employment or increase availability and quality of fish. The project significantly damaged coastal and marine environments.

The current Hera Port Fisheries Facilities Rehabilitation Project is similar, on a much smaller scale. The project is a sub-component of the World Bank-administered Agriculture Rehabilitation Project II, but since it deals with infrastructure, the ADB is implementing it. Aimed at developing Hera Port for use by relatively large offshore fishing vessels, the project focuses on repairing and reinforcing port infrastructure such as breakwater structures and wharves. The project began in October 2001 should have been completed by May 2002 but there were considerable delays in rectifying the assessment of construction quantities and awarding contracts, resulting in further erosion of existing harbour structures which necessitated additional civil works. The project was finally completed in June 2003.

The ADB's rationale behind the project is to facilitate offshore fishing of pelagic species like sardines and mackerel to increase the supply of cheaper fish protein to the population of East Timor. The ADB estimates that current fishing methods will increase fish protein consumption from 8 percent of the FAO recommended daily consumption to 28 percent whereas an increase in offshore fishing would raise that figure to 56 percent in five years. However, there are currently only 24 boats capable of fishing further off shore, although the ADB expects that more will be provided by the private sector when the improved Hera Port facilities are available.

Almost all fish landed in East Timor are caught by relatively poorer local fishermen, using small vessels operating close to shore. They will be unable to compete with larger vessels bringing in larger quantities, and the inshore fishing sector, which supported 9,000 East Timorese fishermen in 1997, will become unviable as a livelihood. Eventually the domestic fishing sector will be dominated by larger fishing vessels which will be owned by wealthier East Timorese or non East Timorese. Moreover, the assumption that this will increase the supply of cheaper fish is only true if the fish cannot be sold more profitably in foreign markets particularly in nearby Australia, but also Japan and Indonesia.

The ADB is currently funding a TA for Exclusive Economic Zone Demarcation which has been working on databases, maps and data sets for the United Nations Convention on the Law of the Sea. Although work is continuing, there is currently enough data available which can be used for agreements with neighbouring Australia and Indonesia on the East Timorese Exclusive Economic Zone which will confirm East Timorese fishing boundaries. Furthermore, the ADB is also currently pushing for the formulation of a Fisheries Act which will govern inter alia licenses for non-East Timorese vessels to fish in the East Timorese Exclusive Economic Zone. If the ADB does become involved in developing an East Timorese Fisheries Act, they will probably encourage the issuing of fishing licenses as a source of domestic revenue to larger, more competitive international vessels to fish in East Timorese fisheries.

## THE MICROFINANCE DEVELOPMENT PROJECT: MICRO-MANAGING FINANCE

The microfinance development project is the only ADB managed project not focused on the reconstruction of infrastructure. It was initially allocated \$7.72 million from TFET but this was later reduced to \$4 million. The brief for the microfinance development project was to address the lack of financial services available to the rural poor. The ADB aims to increase the availability of rural credit by rehabilitating credit unions and creating a sustainable microfinance bank.

The project formally began in December 2000 with the signing of the TFET grant agreement but there were massive delays in project implementation. The ADB states that this was due to the absence of a legal framework for the banking sector despite the fact that Indonesian laws continued during the United Nations Transitional Authority in East Timor and the Portuguese Banco Nacional Ultramarino began operations as early as 2000.

The ADB wanted to push a different legal framework in order for the project to run as they wanted rather than using the existing Indonesian laws. Together with the International Monetary Fund, the ADB would not allow the creation of a government-owned microfinance bank. Hence, the delay was compounded due to the need for the legislation that allowed the creation of a foundation to "own" the \$2 million capital which was set aside from the original TFET grant. Furthermore, the ADB wanted donor, rather than local, control of the foundation to ensure the Microfinance Institute of Timor Leste (IMTL) remains "faithful to its original objectives" and to "resist political pressures." This caused some friction with the East Timorese Council of Ministers who wanted more East Timorese representation on the foundation's board.

Once the laws existed the ADB created the Foundation for Poverty Reduction in East Timor in order to receive the grant and be the temporary owner of the IMTL. The Foundation for Poverty Reduction is currently governed

by a Board of Trustees which is comprised of the ADB Representative in East Timor, the Head of the ADB's Special Liaison Office (an ex-officio member) and representatives from AusAID and the Portuguese Development Support Agency. There are two East Timorese members.

The Board of Trustees appoints the Board of Directors, which officially governs the IMTL. At the moment the Board of Directors is the Board of Trustees, with the addition of the Head of the ADB's Project Management Unit and the Administrative and Finance Officer of the ADB's office in East Timor. The Board of Directors does not function independently, and all tasks designated for the Board of Directors are carried out by the Project Management Unit.

The US\$2 million starting capital was disbursed on 18 January 2002, although the IMTL head office and the Main Branch in Dili did not begin operations until 13 May 2002, a week before independence. The district branches in Gleno and Maliana did not open until September and November 2002 respectively.

### TARGETED LENDING?

Initially the ADB focused lending on market vendors in Dili. This was due to the desperate need to get the \$2 million starting capital working rather than being used up in operating costs. Focusing lending on market vendors in the two main Dili markets provided an opportunity to begin disbursing loans quickly and easily. In addition, IMTL agents could make daily visits to the markets in Dili in order to receive the repayments and ensure a high repayment rate.

By December 2002, \$236,800 of the \$2 million starting capital had been disbursed. The IMTL had 1,533 borrowers, 1,014 of whom were based in Dili, mostly market vendors. Four months later, the profile of the IMTL borrowers had changed dramatically. Outstanding loans amounted to \$284,857, accounting for the new borrowers in Gleno and Maliana. However, the number of active borrowers in the Dili main branch had fallen by more than 60 percent to 412 and average size of loan for market vendors remains at \$100 which is the size of the initial loan indicating that many market vendors are not taking out subsequent or larger loans. The Dili main branch was the only branch where borrowers, all market vendors, defaulted on their loan repayments. In addition, the overall number of borrowers had decreased to 1,502.

The number of Dili-based borrowers dropped because market vendors declined to take out second or third loans. Interviews conducted with market vendors in the main Dili markets Taibisse and Comorro showed the mixed results of the ADB's targeted lending. Some borrowers were relatively successful like Domingos, a former guerrilla fighter who was among the first people to borrow from IMTL and was already on his third loan from IMTL. Domingos said he would not recommend that other people

to take out loans from IMTL, since sometimes it was difficult to sell enough to repay the daily installments.

Domingos was by far the most successful of the IMTL clients interviewed. Most borrowers indicated that although the loan allowed them to invest in their stall, their ability to repay was based on the number of customers, which showed no sign of increasing. Maria, a 28-year-old married woman with three children, who sold mainly coffee and sugar, was using the loan to invest in her stall. She had already received a second loan of \$250. She was able to make the daily repayment of \$2.20 if she had enough customers, but business is very competitive with many stalls selling coffee and sugar. Taking out a larger loan would increase the daily repayments.

Bendita, a widow supporting seven children in school, had also taken out a market vendor loan. She had used the money to support the immediate needs of her seven children and was not able to invest the money in her small stall. According to her, IMTL sent people to look at her house, type of business and asked about her marital status. She was told that if she did not repay the loan she would be taken to court. According to an IMTL official this is in the agreement with the client.

Borrowers who form groups in order to take out ADB loans in the areas outside Dili are serviced from the Dili main branch. Group loan borrowers felt the loans given to them were not flexible enough to meet their needs, particularly as the initial loan was very small and split within the group limited the scope of investment. Group loan clients in Liquisa, a town, west of Dili, said that they were either not keen on borrowing money or they wanted to borrow more money than the ADB's inflexible loan packages would allow. For example, one wealthier client wanted to borrow enough for a motorbike in order to travel with her stall to villages further inland.

### INAPPROPRIATE SERVICES

The ADB had no intention of creating financial services which reflected people's needs. Instead they created a series of loan packages based on what they thought people could afford. All borrowers, but particularly those in Liquisa, wanted savings services, with a nearby bank branch where they could make regular deposits and earn interest. Services in savings were not advertised due to the inability of IMTL to deal with a large number of clients wanting to make deposits. The IMTL has since been overwhelmed by the number of clients wanting to make deposits. The number of depositors in Dili increased from 991 in January 2003 to 2,049 by May 2003 and deposits increased by 70 percent. In Gleno deposits increased by 66 percent but in Maliana deposits have increased by 265 percent.

The total figure is 264 percent over the amount of deposits predicted in the ADB's Business Development Plan and financial projections. The ADB's IMTL is now in the

awkward position of soon not being able to accept more depositors as the amount of deposits is very close to the \$1 million legal threshold which allows it to remain a microfinance institute rather than becoming a bank. Moreover, once deposits reach \$1 million the IMTL needs to recapitalize in order to maintain a 2:1 capital to deposit ratio as specified by international banking regulations. The proportion of the original TFET grant deposited as equity has been used up in operating costs. The ADB currently does not know where it will get the money from.

### SUSTAINABLE FUTURE?

From May to October 2002, 28 percent of all costs were met by interest from equity deposited in commercial banks, 11 percent from interest from loans and 20 percent from loan fees charged on new loans. The remaining 40 percent was charged against equity. By May 2003 the income earned from interest from equity deposited in commercial banks had fallen to 13 percent and income from loans had increased to 35 percent. A massive fifty percent of the income was due to the increase in loan fees on the microfinance group loans when the Maliano and Gleno branches opened.

At the moment the income makes up 80 percent of the operating costs, but this is likely to drop if present trends continue, as there is no more money to open up new branches to increase the number of borrowers, and existing borrowers are reluctant to take out subsequent loans.

Up until December 2002 the largest proportion of IMTL's income came from interest from equity deposited in commercial banks. This amount has decreased as loans have been disbursed, which has increased the IMTL's income from predominantly fees charged on new loans but also interest. The initial income boost from loan fees on market vendor loans has diminished as market vendors are not taking out more loans. This was significant as market vendor loans accounted for 49 percent of the value of all loans. Since December 2002 the IMTL has relied on loan fees on rapidly disbursed microfinance group loans out of the Maliana and Gleno offices to make most of its income. Equity has decreased with loan disbursements and continuing operational losses and because a quarter of the original TFET grant was spent on international consultants fees. The IMTL will have to rely on loan fees and interest from existing borrowers and this only makes up 35 percent of its operational costs.

The Microfinance Development project ends in December 2003. The Foundation for Poverty Reduction and IMTL will be transferred to East Timorese hands, a process the ADB refers to as 'divestment.' The present Boards of Trustees and Directors will be replaced and the Project Management Unit will be disbanded. The new Board of Trustees will appoint a new distinct Board of Directors, which will assume all the management tasks of IMTL. The ADB currently has no idea how this divestment process will take place.

### A FUTURE WITH ADB?

With US\$4 million dollars and a project running since December 2000, the ADB's microfinance project is a debacle with less than US\$300,000 currently disbursed as loans and declining numbers of borrowers. They will be looking to hand over to East Timorese ownership a loss making entity which is in urgent need of more funds in order to be legally and financially viable.

With the microfinance development project and with other projects, the ADB has been overly preoccupied with "being seen to get things done" rather than addressing real needs. Although the ADB manages funds donated by other countries for the benefit of East Timor, large amounts of TFET money has been spent on foreign consultants and companies at the expense of local labour, capacity and industry.

Most of the TFET projects are nearing completion and the ADB is currently looking to extend its influence in East Timor through technical assistance. Through its involvement in the power and water sectors it is advocating the construction of large hydroelectric schemes. No independent environmental and economic assessment has as yet been carried out. The ADB's rationale behind the scheme is not to meet the needs of people but what they can afford to pay for what is likely to be yet another utility operated at a profit by an international company.

\* More details may be obtained from Simon Foster of Lao Hamutuk, [laohamutuk@easttimor.minihub.org](mailto:laohamutuk@easttimor.minihub.org).

## ACCESS TO INFORMATION AT THE ADB: THE COST OF SECRECY

Bank Information Center\*

In June 2003, the Asian Development Bank (ADB) initiated a review of its information disclosure policy. (1) The review is an opportunity for the ADB to bring its policy framework more in-line with the Bank's stated commitment to citizen participation and transparent governance. To do so will require the ADB to move beyond the disappointing policies in place at the other multilateral development banks (MDBs).

The disclosure standards of the MDBs, such as the World Bank Group, the European Bank for Reconstruction and Development (EBRD) and the ADB, all share common failings. The MDBs do not release detailed project descriptions until after final decisions are made; in the case of loans to the private sector, detailed project descriptions are generally not disclosed. (2) Furthermore, none of the MDBs require the release of regular supervision reports during project implementation. When documents are released, they are usually not translated into local languages and are often hard to access for groups directly affected by MDB operations. None of the MDBs have clearly defined standards for consulting the public and releasing drafts of policies and strategies and, as a result, the strategy formulation process is inconsistent and often closed to the general public. MDB governance is also extremely secretive. Executive Directors on the boards of the MDBs, who are supposed to represent the member countries, operate behind closed doors. Transcripts and summaries of board meetings are not available, nor are the formal statements or votes of Executive Directors. (3)

The secrecy surrounding MDB operations undermines domestic democratic processes, reduces the development effectiveness of Bank operations, increases the likelihood that projects will cause social and environmental damage, and alienates interested parties. There is a clear contradiction between the MDBs' stated commitment to participatory development and the concrete policy provisions outlined in their disclosure policies. The ADB has stated that "evidence from several sources shows clearly that the benefits of participation outweigh the costs" and that "not adopting participatory approaches also has costs." (4) Despite this stated commitment to inclusive decision-making, the ADB's disclosure policy presents obvious obstacles to meaningful citizen participation. The upcoming disclosure review will be an opportunity for groups to demand that the ADB justify this clear disconnect between rhetoric and reality.

What follows outlines a few of the problems associated with access to information at the ADB. This is by no means an exhaustive list but it should help to illustrate the distance the ADB will have to travel if it expects to

emerge from the ongoing disclosure review with credible standards that protect the public's right to timely and detailed information.

The Bank Information Center would welcome feedback from groups in the region who have confronted problems related to ADB secrecy or who are interested in being involved in the ongoing review of the ADB's disclosure standards.

## ADB GOVERNANCE

The secrecy surrounding the ADB's Board of Directors is indicative of the profound "democratic deficit" that characterizes governance at the institution. Executive Directors on the ADB's Board are selected by and are supposed to represent the Bank's member countries and, by extension, the citizens of those countries. In practice, however, the public does not know how they are being represented. Whether you are a citizen of Japan, Cambodia, India, or the United States of America, you are not allowed to know what your Executive Director said in a meeting of the Board. In fact, you are probably not even provided information on how your representative voted!

Even relatively conservative observers, such as Joseph Nye, Dean of Harvard University's Kennedy School of Government, acknowledge that the MDBs "can look like closed and secretive clubs." Nye argues that those "concerned about democracy" should "think harder about the norms and procedures for governing globalization."<sup>(5)</sup> Unfortunately, recent experience at the World Bank suggests that governments are not thinking hard enough. The World Bank's disclosure policy review, which ended in late-2001, made only marginal improvements in the transparency of the Board of Directors. There was simply not enough political will to take a substantial step forward. If the ADB settles for World Bank standards at the end of its ongoing disclosure policy review, it will send yet another signal that Executive Directors and their governments are not prepared to be held responsible for the positions they take at the ADB's board.

## THE POLICY AND STRATEGY FORMULATION PROCESS

The process of formulating policies and strategies is another example of how citizens are routinely shut out of ADB decision-making. An organization as large and complex as the ADB should have a clearly articulated and systematic approach to conducting external consultations during the formulation or review of a policy or strategy, but this is not the case. Instead, every time the ADB reviews a policy or strategy, civil society organizations first need to struggle with the Bank over the nature and extent of the consultations. Even in those cases where civil society organizations are able to get the ADB to agree to conduct consultations, final drafts of policies and strategies are disclosed only after they have been formally approved by the Bank's Board of Directors.

The development of the ADB's over-arching strategy in a given country - the Country Strategy and Program - is even more problematic. The ADB claims that in addition to the government it seeks input from other stakeholders including civil society and NGOs when preparing a country strategy, but this assertion is hotly contested by those closely monitoring the ADB. The ADB does not have clearly articulated procedures that require the Bank to conduct consultations and draft country strategies are

not disclosed for comment prior to their final adoption. As a result, citizens do not have access to the ADB's strategy for their country until after it has been formally accepted by the ADB's Board of Directors. At best, this process is closed and unnecessarily secretive. At worst, it actively undermines an open and democratic debate on the relationship between the ADB and its member countries.

### BOX 1. MISINFORMATION AND FAILURE TO PROVIDE ACCURATE & TIMELY PROJECT INFORMATION: CHASHMA RIGHT BANK IRRIGATION PROJECT (STAGE III), PAKISTAN

The ADB's Policy on Confidentiality and Disclosure of Information (August 1994), states that the Bank should provide "the greatest possible degree of transparency and disclosure in all areas of the Bank's operations." However, when the Chashma-affected communities requested the project consultant's report on induced flooding and the resettlement plan, they were told that the report was not eligible for disclosure because it is considered the property of the Government of Pakistan (GoP). ADB staff did not commit to making a request to the GoP to make this document publicly available. Eventually the Chashma-affected communities received the report through an informal channel and discovered that consultations with NGOs and local affected communities were part of the Terms of References (TORs) for the development of the very report they had requested

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Prior to a Chashma Multi-stakeholders Dialogue Workshop held in March 2002 project-related information was not shared with affected communities. In fact, ADB staff misinformed Chashma affectees at this workshop claiming that additional funding for the project in 1999 was not made through a separate loan. NGOs supporting the efforts of the affected communities feel this was an attempt by the ADB to prevent having to do a full reappraisal of the Chashma project as is required in the bank's policy on supplementary financing. Despite the commitment given by ADB and its consultants, Water and Power Development Authority (WAPDA), during the workshop that its proceedings would be widely circulated and shared with local affected communities in the Project area, ADB consultants failed to uphold this commitment and thus deprived local communities from knowing about the outcome of the workshop.

The ADB claims to have provided opportunities for affected communities to give input about the project, but affected communities have not been able to participate in an informed manner because they have been repeatedly denied access to crucial project information or have been misinformed. Although in its rhetoric the ADB acknowledges that the involvement of project beneficiaries in developing and implementing projects has a major influence on project quality, impact and sustainability, its actions in the Chashma case contradict this claim. Instead, design flaws in the project have had a dreadful impact upon communities in and around the project area. The project has caused severe environmental damage and over 13,000 people will be displaced as a result of project induced flooding. Chashma project affected communities have been denied the right to informed participation in decision-making for a project that will change their environment and their daily lives. Forever.

## LENDING OPERATIONS

Communities need information early in the project cycle in order to protect themselves from the social and environmental damage that is all too often associated with the kind of large-scale operations in which the ADB routinely engages. A recent ADB project in Pakistan, the Chasma Right Bank Irrigation Project (described in Box 1 above) illustrates this failure to share information with project affectees and the subsequent impact of denying affectees the right to informed participation in project development. In absence of this information communities are often displaced with little or no warning, their rivers and fields are undermined or destroyed and the social or economic basis of their lives are torn apart.

Citizens are routinely denied access to information about ADB projects that directly affect their lives and much of the information that is made available is disclosed only after final decisions are made. As a result, communities are often unable to understand the full implications of a given project until the impacts pose an immediate threat to their way of life. The experience of local residents affected by the ADB's Tree Plantation Project in Laos (described in Box 2) and Samut Prakarn Wastewater Management Project (described in Box 3) demonstrate how a lack of timely access to information can undermine a community's ability to make informed decisions about the use of their land.

The ADB does require some information to be made available before a given loan is finalized and approved. For instance, the Bank is supposed to disclose summaries of public and private sector environmental assessments 120 days prior to board approval and make the full

assessment available upon request. The ADB is also supposed to disclose summaries of projects, called project profiles, during the preparation of a given loan.

Unfortunately, information is usually inadequate, late or not disclosed at all. For instance, project profiles are usually released late in the project preparation process and they do not provide very much detail, often consisting of no more than a couple of pages. The ADB is not required to release resettlement action plans or factual and technical documents, such as feasibility studies, and the Bank does not disclose detailed project descriptions until after a project is prepared and approved. Detailed project descriptions for private sector loans are usually not disclosed at all.

During the implementation of a project the information flow from the ADB stops completely. The Bank does not require the release of any documents while its operations are being implemented.

Perhaps most disturbingly, the ADB does not require its lending documents to be made available in the national language of the country in which it is operating. Even if people are able to access documents, they are only available in English. This affects private citizens and public officials alike and, as a result, meaningful access to ADB documents is often restricted to an elite group of individuals that are able to read the operating language of the ADB.

### BOX 2. WHOSE DISCLOSURE POLICY?: ADB TREE PLANTATION PROJECTS IN LAOS

In 1993, the ADB agreed to a US\$11.2 million loan to the Government of Laos for an Industrial Tree Plantations Project. The project began in July 1994 and the first phase will be completed in 2003. The project aimed to establish almost 10,000 hectares of commercial fast-growing tree plantations.

The ADB is currently planning phase II of its plantations project in Laos, entitled Tree Plantations for Livelihood Improvement. According to the Project Profile available on the ADB's website, the objective of project identification is to prepare an operation that will improve the livelihoods of the rural population through tree plantation. (6) In the profile, the ADB claims that phase II of the plantations project "will build on the successes and lessons learned from the ongoing ... Industrial Tree Plantation Project and identify opportunities and appropriate methodologies for extending tree plantation to poorer groups." (7)

Unfortunately, beyond the Project Profile, which consists of a two-page description of project data, there is little information available on the project. In March 2003, when the Oxfam Mekong Initiative (OMI) requested additional documents related to the project, a Senior Project Economist at the ADB stated that "The draft reports produced so far are not ready for public distribution and will only be available after Board approval." (8) Denial of information early in the project cycle negates external actors' ability to meaningfully participate in project development and therefore limits the potential poverty-reduction effectiveness of the project.

The ADB has also been reluctant to release some information even after Board approval. Under phase I of the project, ADB consultants produced a study entitled Current Constraints Affecting State and Private Investments in Industrial Tree Plantations in the Lao PDR. The consultant's recommendations, if carried out, would involve changes to the forestry law and changes to local environments. However, the report is not available to the public because, according to a project officer at the ADB, the report is an official document and the Bank requires the permission of the Lao government to release it. (9) Another phase I document produced by consultants, National Strategy for Sustainable Plantation Forestry, has been repeatedly requested from the ADB but the Bank has not yet responded to these requests.

In its publicity material, the ADB plays down its failure to provide information on its plantations project in Laos. In a 2002 article,

Bartlet W. Édes, the external relations officer at the ADB, wrote: “Tree-planting firms negotiate with villagers for the use of forest lands. Commons, swiddens, grazing land, and community forests are protected by the villagers themselves, who must give their written consent to any commercial use.” (10) Yet, phase II of the project is taking place without the input of local residents who run the risk of losing their land to eucalyptus plantations. At Ban Nao Naua, in Xaibouli district, 100 hectares of dry dipterocarp forest was destroyed to make way for ADB-funded eucalyptus plantations. Instead of addressing villagers’ concerns about the plantations, ADB’s consultants attempted to convince villagers that the plantations would not cause any problems and that a further 100 hectares should be planted. (11)

Without timely access to information, local residents are not prepared for negotiations with plantation companies. Villagers’ abilities to make informed decisions about the use of their land are limited because of the minimum information disclosure standards set by the ADB. The principle of timely disclosure is a basic minimum requirement of participatory development but one that the ADB seems to violate routinely.

## IN WHOSE INTEREST?

The public has an interest in accessing timely information about the projects and policies that affect their lives. It could be argued that this is a basic democratic right, or it could be argued that this is common sense from the perspective of minimizing the negative impacts of projects and maximizing positive outcomes. Conversely, there may be legitimate grounds to withhold certain information. But how does the ADB reconcile the public’s interest in accessing information with legitimate reasons not to disclose? Unfortunately, there is no clear answer to this question.

In relation to private sector operations, the Bank appears to place the interests of private corporations above those of the communities impacted by their projects. The ADB, like other MDBs, seems to have adopted the attitude that anything the private sector says is confidential is by definition confidential. As mentioned above, a very limited number of documents are usually disclosed for private sector operations, but on the whole information is kept secret. The Ombudsman of the World Bank Group’s

International Finance Corporation recently noted a widespread belief that “business confidentiality concerns had been inappropriately extended to the social and environmental dimensions of projects.” The Ombudsman argued that the IFC should reconsider “the extent to which business confidentiality poses a legitimate constraint on information disclosure.” (12) This is equally true for the ADB.

But neither the IFC nor the ADB have an impartial mechanism for determining what a “legitimate constraint on information disclosure” might consist of in practice or how to weigh these constraints against the public’s interest in being informed. The legal impunity of the ADB prevents citizens from taking the Bank to court in their countries and the inspection mechanism that the ADB has established is not mandated to perform this function. As a result, the ADB defers to the private sector or the borrowing government or it exercises its own considerable discretion. In either case, there is no evidence that the ADB is forced to seriously consider the public’s interest in disclosure or be held accountable for consistently applying the policy.

## BOX 3. FAILURE TO PROACTIVELY DISSEMINATE PROJECT INFORMATION: THE SAMUT PRAKARN WASTEWATER MANAGEMENT PROJECT, THAILAND

The ADB’s Policy on Confidentiality and Disclosure of Information (August 1994), states that the purpose of project profiles is “to provide as much information as possible to the public during the earliest stages of project preparation, to ensure adequate debate, dialogue, and participation by parties concerned including affected populations at the formative stages.” In the case of the Samut Prakarn Wastewater Management Project, the ADB and the Government of Thailand failed to proactively provide any information about the project to affected communities, who only became aware of the project after construction began. If this project becomes operational, it stands to have negative environmental effects on a coastal ecosystem on which a community of 60,000 people depend for their economic livelihood. The lack of transparency in the project design and implementation understandably created serious apprehension among the affected communities. It also denied them the right to be involved in the project’s decision-making process and consequently ensure the Project causes them the least harm.

**The existing disclosure policy does not require ADB staff to proactively disseminate information.**

It only guarantees that Bank information which has been cleared be made available upon request and thus lacks an incentive for staff to distribute information about a project to communities who in most instances are completely unaware of potential upcoming projects or the kind of information that is available to them.

Considering that most project beneficiaries lack access to the internet, coupled with ADB staff’s tendency towards secrecy, this gap in the policy contradicts other policies of the bank that require project-affected peoples’ input and participation. Consequently, the bank’s failure to inform affected communities about the project indicates their failure to comply with its policies on Incorporation of Social Dimensions, Benefit Monitoring and Evaluation, Environmental Assessment, and Involuntary Resettlement, all of which require input from project affected communities. This indicates a general inability or unwillingness on the part of the ADB to inform project-affected communities about projects being planned in their country that will impact their daily lives.

## CONCLUSION

The next six to twelve months will be a litmus test for ADB's commitment to transparency and accountability. During this time, the ADB will be considering the foregoing and other issues as the Bank's disclosure policy review evolves. Citizens and organizations that are concerned about the obvious gap between ADB's stated commitment to citizen participation and the reality of the Bank's disclosure standards can also use this review as an opportunity to engage the ADB directly. They can test the limits of the Bank's commitment to transparency, or draw attention to these problems by other means.

\* For information on access to information at the ADB and other MDBs, contact Graham Saul, Transparency Program Manager ([gsaul@bicusa.org](mailto:gsaul@bicusa.org)) or Mishka Zaman, Asia Program Manager ([mzaman@bicusa.org](mailto:mzaman@bicusa.org)), at the Bank Information Center.

## Notes:

- (1) The ADB's main webpage on Information Disclosure (<http://www.adb.org/Disclosure/default.asp>; June 19, 2003) stated, "On 29 May 2003, a Steering Committee of senior-level officials was formed to oversee a review of the Disclosure Policy." However, it is BIC's hope that the review will have a broad scope encompassing issues outside the current Confidentiality and Disclosure of Information (August 1994, 2000). The ADB should also take into consideration other policies and strategies integral to the disclosure and accessibility of information. These include the ADB's Information Policy and Strategy (1994, 1999), Confidentiality and Disclosure of Information Operations Manual Section: 52 (March 2003), Policy on Confidentiality and Disclosure of Information, A Guidebook (April 1996), and Resident Mission Policy (February 2000).
- (2) This passage refers to the central document used by the Board of Directors when considering a given loan, the Report and Recommendation of the President.
- (3) Summaries are a general account of a meeting of the Board of Governors or Board of Directors, including an overview of key issues raised, opinions expressed and decisions made. The release of Chairman's Summaries or Chairman's Concluding Remarks for a Board meeting does not constitute summaries as defined here.
- (4) Asian Development Bank, Mainstreaming Participatory Development Processes, Section II.C.12.
- (5) Joseph S. Nye Jr. "Globalization's democratic deficit: How to make international institutions more accountable," *Foreign Affairs* July/August 3.
- (6) Tree Plantation for Livelihood Improvement Project, Project Profile. Asian Development Bank PPTA: LAO31344-01.
- (7) Tree Plantation for Livelihood Improvement Project, Project Profile. Asian Development Bank PPTA: LAO31344-01.
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