

ISSUES FOR CONSIDERATION DURING THE ADB DISCLOSURE REVIEW

This overview identifies some of the issues and questions that civil society organizations (CSOs) can be expected to raise during the upcoming review of the Asian Development Bank's (ADB) disclosure policy. These questions illustrate that the task before the ADB is not simply a matter of deciding whether or not a given document will be disclosed. Access to information should be interpreted more broadly to include issues such as: how the ADB discloses information, including public information centers

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and the website; the languages in which information needs to be provided in order to be accessible to the general public; the options that citizens have in cases where they are denied information that should be disclosed; and the means by which the ADB can experiment with additional disclosure at the country level on a pilot basis.

The World Bank's Disclosure Policy Review concluded that these issues were central to any discussion of "disclosure." As a result, the World Bank is now in the final stages of developing a *Strategy for Strengthening Public Information Centers*¹ and a *Translation Framework*,² as well as an overhaul of its website document database. Any attempt to review the ADB's disclosure standards without grappling with the above-mentioned issues, among others, will be fundamentally incomplete.

It is also important to note that there are critical disclosure issues that the World Bank Group has not yet resolved, but that the ADB must confront during the upcoming review. The secrecy surrounding the activities of financial intermediaries is an obvious example.

The absence of substantial information during project implementation is another issue that none of the Multilateral Development Banks (MDBs) have adequately addressed.

Furthermore, the World Bank's Disclosure Policy review did not deal with the many problems related to the transparency of the World Bank Group's private sector arm, the International Finance Corporation (IFC). The IFC's Compliance Advisor/Ombudsman (CAO) recently noted a widespread belief that "business confidentiality concerns had been inappropriately extended to the social and environmental dimensions of projects." The CAO argued that the IFC should reconsider "the extent to which business confidentiality poses a legitimate constraint on information disclosure," as well as the extent to which "the IFC's disclosure policy conforms to international norms."³ These issues are equally relevant for the ADB.

Civil society organizations will inevitably want to discuss a range of issues that are directly relevant to the transparency of the ADB. As the World Bank discovered in the course of its review, these issues will go beyond the *ADB Policy on Confidentiality and Disclosure of Information* and are likely to include matters that might otherwise fall within the *Information Policy and Strategy*. The ADB should embrace this as an opportunity to simultaneously address a range of interconnected issues. This will ensure that the upcoming consultations are coherent, cost effective and comprehensive. The ADB's consultations will help the Bank to better understand the needs of external stakeholders and to become a leader in transparency among the MDBs.

What follows presents an overview of some of the issues that civil society can be expected to raise during the upcoming review of the ADB's disclosure standards.

General Institutional Information

There is a variety of basic information that, as a public institution, the ADB has a responsibility to disclose. This includes such things as comprehensive contact information for individual departments and staff, as well as full budget and financial statements.

Governing Bodies

The secrecy surrounding the activities of the governing bodies of the Multilateral Development Banks (MDBs), such as the Board of Governors, Board of Directors and subcommittees, is a matter of growing concern. Joseph Nye, Dean of Harvard University's Kennedy School of Government notes that "long lines of delegation from multiple governments, combined with a lack of transparency, often weaken accountability." Indeed, many civil society organizations would agree with Nye's conclusion that "these institutions 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."⁴ Civil society organizations will expect the ADB to "think harder" about why citizens are systematically denied information regarding how they are represented by government-appointed officials on the Board of Directors. None of the MDBs have seriously responded to this concern.

The Policy and Strategy Formulation Process

It is ironic that organizations as large and complex as the MDBs do not have clearly articulated and systematic procedures for consulting external stakeholders during the formulation of policies and strategies. The ADB should use the consultations as an opportunity to improve the transparency of the policy and strategy formulation process. How can the ADB ensure that external actors are aware of the Bank's intention to review a given policy? What steps can the ADB take to solicit comments on a given policy prior to initiating a review? How can the ADB effectively distribute draft policies and strategies to stakeholders in order to solicit input? What is a reasonable length of time for a comment period? How should the ADB report back to those that do provide input?

It is not unreasonable for citizens to expect a public institution to have clearly defined procedures for the disclosure of information during the review or formulation of a policy or strategy. The World Bank and the European Bank for Reconstruction and Development (EBRD) have taken initial but unsatisfactory steps in this direction. The ADB should take the time to better understand the expectations of interested organizations in this area.

Project Preparation

In order to effectively and constructively engage the ADB and project sponsors, affected communities and other stakeholders need information at the earliest stages of project preparation. They also require detailed project descriptions before final decisions are made. Therefore, civil society organizations will want to discuss the means by which the ADB notifies external parties that a given project is under consideration, the timing of that notification, and the nature of the information that is made available as project preparation evolves. These issues have not been adequately addressed at the other MDBs, especially for private sector operations. The ADB should use its consultations as an opportunity to better understand this issue and to develop processes that will improve on the practices in place at other MDBs.

Project Implementation

None of the MDBs have managed to construct a disclosure system that provides regular and detailed updates during project implementation. While MDBs require some kind of reporting for internal purposes, this is not a courtesy that has been extended to affected communities or other interested parties. This issue was highlighted by the Compliance Advisor/Ombudsman of the IFC in her recent review of the IFC's "Safeguard Policies." The CAO argued that the "IFC should be clearer at the outset of a project about what specific sustainable development impacts it expects to achieve and then measure itself against those goals *and report on it* (emphasis added)."⁵

The World Bank failed to adequately address this issue during its recent Disclosure Policy review, but it did initiate a series of "pilot activities" where "participating governments [in cooperation with World Bank country offices] could choose to release information on projects under implementation."⁶ As of April 2003, the EBRD Environment Policy states that "the Bank may require the results of ongoing environmental monitoring to be made available to the public."⁷

The importance of disclosure of information during project implementation is self-evident, but it has not been adequately resolved by any of the MDBs to date, either for public or private sector operations.

Financial Intermediaries

The transparency of Financial Intermediaries (FIs) has not received very much attention but, as FI portfolios grow, it is becoming increasingly clear that this dimension of MDB activity is dangerously untransparent. There is almost no information in the public domain about the subprojects of MDB-financed FIs. A recent *Annual Review of IFC's Evaluation Findings* argues that “the IFC should develop reporting templates – and include them in investment agreements – which allow the monitoring of development outcomes. . . .”²⁸ This issue will be considered during the IFC’s next disclosure policy review, but it has not been adequately addressed to date. The ADB’s consultations will be an opportunity to discuss this matter in more depth and develop appropriate strategies.

Independent Review Mechanisms and Process Guarantees

ARTICLE 19, a London-based non-governmental organization, has developed a standard setting work entitled, *The Public's Right to Know: Principles of Freedom of Information Legislation*,⁹ which has been endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression. ARTICLE 19 reviewed the World Bank’s Disclosure Policy against the principles outlined in the above mentioned work and concluded that, among other things, “the Policy fails to meet international standards in several key areas.” The World Bank’s Policy “does not provide for any independent review of refusals to disclose information” and there is an absence of adequate process guarantees, “including requirements of timely decision-making and that refusals be accompanied by substantive written reasons.”¹⁰

The World Bank is in the process of developing a complaint mechanism to respond to cases of non-compliance with its Disclosure Policy. The European Investment Bank (EIB) has subjected its Disclosure Policy to oversight by the European Union Ombudsman.¹¹ Similarly, the Public Information Disclosure Policy of the United Nations Development Program (UNDP) established an appeals process in the form of an Oversight Panel consisting of three UNDP professional staff members and two members from the non-profit sector.¹² The upcoming consultations will be an opportunity to discuss

the most appropriate mechanism for the ADB to address these important procedural questions.

Translation Policy

It is clear that information needs to be available in a language that people understand, but this is a complex proposition in a region as diverse as Asia. The World Bank has developed a Translation Framework¹³ that will begin to address this issue, but the Framework was developed in secrecy and it is unclear how it will be received by external stakeholders. The upcoming consultations will be an opportunity for the ADB to better understand this complicated issue and seek civil society input to develop an appropriate strategy of its own.

Electronic Access to Information

Effectively organizing the ADB website in order to facilitate comprehensive and easy access to information is an essential component of disclosure. The World Bank is in the process of restructuring its document database in order to allow stakeholders to search the web by geographic area, topic, chronology, or lending instrument. Among other things, the web will list *all* documents related to a search, including those that the World Bank intends to keep confidential. Under each document there will be a description and, if applicable, there will be an explanation as to why the document is not disclosed. The website will also provide a searchable glossary - accompanied by descriptions - of all types of documents that are produced by the World Bank.

The ADB should use the consultations as an opportunity to better understand who makes use of its website, what problems they have encountered and how website disclosure can better meet the needs of external actors.

In-Country Access to Information

It is essential that the ADB make an effort to understand the problems people face in accessing information about ADB operations in borrowing countries. Difficulties in accessing information through in-country offices was a recurring theme during the World Bank’s Disclosure Policy review. In response, the World Bank has developed a *Strategy to Strengthen Public Information Centers*. The Strategy will create a cadre of public information officers – largely based in borrowing countries – that will be responsible for: guiding Bank staff on the implementation of the Disclosure Policy; helping to monitor compliance; providing library and information services to staff

and the general public, and; advising on document translation. The public information officers will also be expected to develop outreach efforts to improve document dissemination and ensure that adequate and responsive facilities are available in-country to meet the needs of interested citizens.

The World Bank has expressed an interest in exploring opportunities to share its Public Information Centers with other bilateral and multilateral donors, and consultations could be used to develop a strategy to take advantage of possible collaboration with the World Bank. However, civil society organizations will expect the ADB to make a sincere effort to understand the problems they have confronted in accessing information from the ADB.

Conclusion

There are a range of other issues directly related to the transparency of the ADB that are likely to surface during the consultations. These include, for instance: the disclosure of Power Purchase Agreements and Production Sharing Agreements, as well as other factual and technical documents; the elaboration of “pilot” disclosure programs to experiment with enhanced disclosure at the country level; access to the archives, and; “whistleblower” protection. Given the broad range of issues outlined in this briefing, it is essential that the ADB carry out thorough consultations and take the time to better understand the experiences and opinions of external stakeholders. Restricting the consultations to a discussion about whether or not certain documents will be disclosed is neither viable nor desirable. The World Bank’s work over the past four years, while incomplete in many respects, clearly demonstrates that there are a range of disclosure-related issues that the ADB needs to address. It is hoped that the proposed review will provide an opportunity to discuss these issues in a comprehensive and coherent way.

Footnotes

¹ The World Bank, *Strengthening Public Information Centers*, January 3, 2003.

² The World Bank, *A Document Translation Framework for the World Bank*, January 3, 2003.

³ Compliance Advisor/Ombudsman, *A Review of IFC’s Safeguard Policies: Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes*, January 2003, p. 53.

⁴ Joseph S. Nye, Jr. “Globalization’s democratic deficit: How to make international institutions more accountable,” *Foreign Affairs* July/August 3.

⁵ Compliance Advisor/Ombudsman, *A Review of IFC’s Safeguard Policies: Core Business: Achieving Consistent and Excellent Environmental and Social Outcomes*, January 2003, p. 2 of the Preface.

⁶ World Bank webpage on Pilot Projects, May 20, 2003, www.worldbank.org/operations/disclosure/disclo-pilots.html

⁷ European Bank for Reconstruction and Development, *Environment Policy*, 2003. p.22.

⁸ International Finance Corporation, *Annual Review of IFC’s Evaluation Findings: FY2000*, February 20 2001. p. 37, section 4.23.

⁹ ARTICLE 19, *The Public’s Right to Know: Principles of Freedom of Information Legislation*, June 1999. London, United Kingdom. www.bicusa.org/policy/InfoDisclosure/Article19-GeneralFOIDocument.pdf

¹⁰ ARTICLE 19, Letter to World Bank President Wolfensohn regarding Review of the World Bank’s Policy on Information Disclosure, February 16, 2001. www.bicusa.org/policy/InfoDisclosure/Article19-LettertoWolfensohnonDisclosurePolicy-Feb01.pdf

¹¹ European Investment Bank, *Public Access to Information – Rules on Public Access to Documents*, October 2002. Article 8.

¹² United Nations Development Program, *Public Information Disclosure Policy*, 1997, paragraphs 20-23.

¹³ The World Bank, *A Document Translation Framework for the World Bank*, January 3, 2003.

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