

AN ANALYSIS OF ADB TRANSPARENCY: Comments for the Ongoing Disclosure Policy Review

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1. Introduction

Please accept this paper as the Bank Information Center's (BIC's) initial input into the Asian Development Bank's (ADB's) Review of Disclosure and Information Policies (the Review). What follows is BIC's response to the ADB's request for comments on its current transparency standards as well as recommendations on how to improve the provision of information about ADB operations.¹ We appreciate this opportunity to provide comments and look forward to discussing these matters in more detail over the course of the ADB's Review.

The ADB has specifically requested comments on its *Policy on Confidentiality and Disclosure of Information* (Disclosure Policy) and the *Information Policy and Strategy* (Information Policy). BIC's comments will focus on these two documents but may at times relate to matters discussed in other documents such as the:

Resident Mission Policy; Operations Manual Section 52 on Public Disclosure, Confidentiality and Disclosure of Information - Examples of Unclassified and Declassified Documents paper; and Environmental Assessment guidelines. All of these documents, among others, contain transparency-related

provisions that may be affected by the ongoing Review.

This paper begins by discussing the importance of transparency and the ADB's "presumption in favor of disclosure of information." It then reviews several issues related to the ability of citizens to easily access ADB information. This is followed by a series of recommendations related to information that the ADB should proactively disclose. Finally, constraints to disclosure and the importance of developing independent oversight of the ADB's transparency standards are addressed.

2. The Importance of Transparency and the Presumption of Disclosure

The ADB's *Policy on Confidentiality and Disclosure of Information* (Disclosure Policy) and *Information Policy and Strategy* (Information Policy) list a number of reasons why transparency is a valuable asset to the institution, as well as a necessary responsibility that the Bank cannot avoid. The ADB states that:

- (i) "The Bank will promote better awareness and understanding of its activities, strategies and objectives among the public and policymakers in all its member countries; marshal support for its activities; and fulfill its *legal and moral obligations for public accountability*."²
- (ii) "Increased disclosure of information encourages debate and dialogue on policies and operations, which, in turn, results in *an increase in flow of information back to the Bank, providing new and varied perspectives.*"
- (iii) "As a public institution, *the Bank is accountable to its shareholders and others providing sup-*

port to the institution, and *has a responsibility to provide the fullest possible information to its supporters.*³

These laudable statements point to at least three overarching reasons why the ADB should use the existing transparency review as an opportunity to greatly increase citizen access to information. First, as a public institution, the ADB has a legal and moral responsibility to be accountable to the public. This responsibility relates not only to the governments of ADB member countries, but also to the citizens on whose behalf those governments operate. In order for citizens to hold the ADB accountable for its actions, they require access to comprehensive information.

Second, transparency improves the development effectiveness of ADB operations. Projects and policies that benefit from public input are better able to minimize negative impacts and maximize positive outcomes. Disclosure can help to reduce corruption, increase local “ownership”, identify potential social, environmental and economic benefits, and avoid damaging communities and ecosystems in affected areas. In order for the ADB to truly benefit from new and varied perspectives, citizens require timely access to information.

Third, people have a basic right to information about projects and policies that affect their lives. Timely access to information is not only an underlying principle of democratic decision-making, it is also a prerequisite for the effective defense and promotion of social, cultural, economic and human rights. The ADB has a legal and moral obligation to ensure that citizens have the information that they need to meaningfully participate in the design and implementation of ADB operations.

For these and other reasons, the ADB’s transparency standards are said to be based on a “presumption in favor of disclosure of information” in absence of certain constraints.⁴ This is a valuable guiding principle. By vigorously implementing this “presumption in favor of disclosure,” the ADB could help to ensure that its transparency policies and practices reflect the importance of transparency and serve the public interest. Unfortunately, the ADB has thus far failed to meaningfully operationalize this important principle.

The recommendations outlined in this paper are intended to help the ADB operationalize the “presumption in favor of disclosure.” If adopted, they would represent a fundamental step towards greater transparency at the ADB and would send a strong signal to the public and other donor institutions that the Bank is committed to public accountability, development effectiveness and

meaningful citizen participation. Unfortunately, it is not clear whether or not the political will exists within the institution to move forward in a significant way. Resistance of various kinds will need to be addressed - and the necessary resources will need to be made available - if the ADB hopes to make meaningful progress in the coming years. While implementing some of the recommendations outlined below may require time, and while certain limits to disclosure will inevitably persist (see Constraints to Disclosure below), the Bank will ultimately pay a higher price if it fails to use the ongoing review as an opportunity to significantly improve its transparency standards. The benefits of greater transparency clearly outweigh the costs.

Recommendations regarding the importance of transparency and the presumption of disclosure:

- The ADB’s new Disclosure Policy should begin by clearly articulating the many reasons why transparency is important to the ADB, including those mentioned above.
- The ADB’s new Disclosure Policy should reemphasize the Bank’s commitment to the “presumption in favor of disclosure.”

3. Accessibility of Information

The ADB Review should focus not only on *whether* certain information is disclosed, but also *how* that information is made available to the public. Information disclosure is meaningless unless affected communities are able to easily access that information in a format that is most useful to them and in a language that they understand.

This section raises several issues related to the ability of citizens to easily access ADB information and makes recommendations for how the ADB can ensure proactive information dissemination to a wide range of stakeholders in targeted languages.

3.1 In-Country Access to Information:

Affected communities, journalists, civil society organizations (CSOs) and other stakeholders should be able to access information about the ADB and its operations from in-country offices staffed by ADB personnel with an expert knowledge of the Disclosure Policy and Bank activities.

According to the *Information Policy and Strategy*, the ADB “will be more proactive in disseminating information, and will utilize all forms and channels of communications

available and deemed relevant”.⁵ This would presumably include the ADB’s Resident Missions in 16 Asian countries; the regional mission for the Pacific in Vanuatu; the country office in the Philippines; the representative offices in Frankfurt, Tokyo, and Washington, DC; the special office in East Timor, and; the extended missions in Gujarat, India and Papua New Guinea.

Unfortunately, the ADB does not seem to have a comprehensive strategy for disseminating documentation through its offices in borrowing countries. In contrast, the World Bank recently conducted a thorough review of its dissemination practices and developed a strategy to *Strengthen Public Information Centers*.⁶ The strategy will create a cadre of public information officers – largely based in borrowing countries – who 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; 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 also expressed an interest in exploring opportunities to share its Public Information Centers with other bilateral and multilateral donors.

Recommendations regarding in-country access to information:

- The ADB should draft a strategy to create and/or strengthen public information centers.
- The ADB should work with the World Bank and other development agencies to establish information centers in all ADB borrowing member countries.
- All public documents related to ADB operations in a given country should be readily available through these information centers and citizens should be able to access hard copies free of charge. Centers should be staffed by knowledgeable individuals who are able to answer questions about disclosure of ADB information.
- Centers should also provide public access to the ADB’s external website, where individuals should be able to find electronic copies of ADB documents and other information on ADB operations in a country.
- The ADB should make use of existing in-country information dissemination mechanisms, like radio, newspapers, and other public fora (markets, mosques & suitable places of worship, community centers, local

government offices, etc.) to proactively announce new projects or policies at the initial stages of development or review and to ensure that affected communities and journalists are aware that documentation on a given operation or policy has been released.

3.2 Web Access to Information

Internet users should be able to easily navigate the ADB’s website and document database in order to find specific information on the Bank’s policies and operations.

Effectively organizing the Bank’s website in order to facilitate comprehensive and easy access to information is an essential component of disclosure and transparency. 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.

Recommendations regarding electronic access to information:

- The ADB should develop a comprehensive, web-based document database that includes all ADB operations and references all documents relevant to each operation.
- Documents used during the preparation, implementation and review of a given project should be referenced on the Bank’s website irrespective of whether or not the ADB intends to make the documents available to the public.
- The database should allow users to search by a variety of criteria.
- The database should include a searchable glossary, providing users with definitions of terms and document types.

3.3 Translation

Citizens should be able to access information in a language that they understand, especially information related to ADB operations in their country.

The ADB has no binding translation policy or strategy despite the fact that translation is arguably the most important issue regarding transparency at the multilateral development banks (MDBs). Translation affects private citizens and public officials alike, yet meaningful access to ADB documents is often restricted to an elite group of individuals that are able to read English, the operating language of the ADB.

It is clear that information needs to be available in a language that people understand, but this is admittedly a complex proposition in a region as diverse as Asia. The World Bank has developed a *Translation Framework*⁷ that will begin to address this issue. Key features of the World Bank's *Translation Framework* include the proposal that country strategies and project documents should be available in national and local languages.

Recommendations regarding translation:

- The ADB should develop a translation strategy to be implemented in conjunction with a new Disclosure Policy. The following measures should be included in the translation strategy.
- Basic information related to the institution as a whole, such as policies and sector strategies, should be translated into a range of international languages.
- Basic country specific documents, such as country strategies, should be translated into national languages.
- Project information should be available in national languages and, where necessary, should be translated into the local languages of affected communities.
- The ADB should adopt a list of documents that will be translated without exception and make resources available to translate additional information upon request.

3.4 Process Guarantees

Citizens should receive responses to requests for information within a reasonable period of time and, where applicable, they should be fully informed as to why their requests are being denied. People should be informed on how to proceed in cases where they feel that they are wrongly denied information.

The ADB's current Disclosure Policy articulates some guarantees that requests for information will be processed in a timely manner. The current Policy states that any information requests will be relayed "within three days to the Information Officer." Furthermore, these requests will be responded to "within 22 working days of the re-

ceipt of the request by the Bank." These are positive provisions that should be included and strengthened in a new Disclosure Policy. It is not clear, however, how the ADB monitors whether or not these commitments are being met in practice. It is also unclear whether or not the ADB has specific guidelines on how to proceed in cases where citizens are refused information.

Recommendations regarding Process Guarantees:

- The ADB should adopt clearer process guarantees, especially regarding the rights of citizens to receive responses to requests for information from the Bank in a language they understand; to receive acknowledgement of receipt of letters and requests within a specified amount of time; to receive the information they have requested in any form in which it is maintained at the institution, be it print or electronic; and to receive instructions on how to proceed if people feel that they are being wrongly denied information (this last point is elaborated on in Section 7: Disclosure Policy Compliance and Monitoring in this report).
- The ADB should disclose a complete directory of staff contact information, including office mailing addresses, phone and fax numbers and email addresses. This information should also be available on the Bank's website.

4. Proactive Disclosure: The Positive List

While the overarching principle behind the ADB's Disclosure Policy is a presumption in favor of disclosure, the Policy itself mainly consists of a list of specific documents that either must be disclosed or are only disclosed under certain circumstances. This list of documents, sometimes referred to as the "Positive List", is based on the idea that the Bank has a duty to proactively inform the public about its activities instead of simply responding to information requests as they arise.

This approach is important for a number of reasons. When the Disclosure Policy commits the Bank to proactively disclose certain documents or information, citizens do not have to wait while the Bank processes requests for documents. Instead, certain information is immediately available since the Bank has already placed the document in the public domain. The "Positive List" allows the Bank to apply the presumption of disclosure in advance to certain kinds of information, rather than having to decide on a case by case basis whether or not documents will be disclosed. The "Positive List" also provides predictability in citizen access to information, since people are able to use the Disclosure Policy to easily iden-

tify what information should be available and when it should be disclosed.

Unfortunately, there are a number of areas where the ADB has not yet accepted its duty to proactively inform the public. While the ADB claims that the Policy is guided by a presumption of disclosure, its unwillingness to release certain information suggests that the presumption is not being meaningfully applied. Furthermore, many of the documents that the ADB does disclose, such as the Report and Recommendation of the President, are only disclosed after the project has been approved. This undermines ADB efforts to solicit important feedback from the general public and denies the public access to detailed information while decisions are still being made.

This section provides recommendations on areas where the ADB's new Disclosure Policy should commit the Bank to proactively disclose information.

4.1 Budget and Financial Information

The operational budgets of public institutions should be a matter of public record. Journalists, academics, legislators and interested CSOs should be able to conduct detailed analyses of the ADB's operational budget and expenditures in order to hold the Bank accountable for how it is spending public funds.

Currently, the ADB discloses general budget information in its Annual Report. This includes such things as a balance sheet of capital resources, statement of income and expenses, and a summary of loans disaggregated by country and sector. The ADB also discloses information on country subscriptions and borrowings. However, a detailed breakdown of the ADB's operational budget is not currently available to the public.

Recommendations regarding Budget and Financial Information:

- The ADB should disclose detailed information on its operational budget, including a clear indication of departmental budgets and other aspects of resource allocation. The ADB should also release detailed information on actual expenditures.

4.2 Governing Bodies

Citizens should have access to information about how they are being represented in the governing bodies of the ADB. Governors and Executive Directors are selected by member governments and are supposed to reflect the will of the governments that they represent. By extension, they are acting on behalf of the citizens of those countries.

Unlike similar intergovernmental bodies, for example the United Nations Security Council which discloses meeting records and provides a live web cast of many of its meetings,⁸ the ADB's Board of Directors operates in almost total secrecy. In fact, the ADB's Board is more secretive than the Board of Governors of the United States Federal Reserve, which discloses minutes of meetings, releases full transcripts after a given amount of time, and allows the public to view certain discussions.⁹

The ADB does not disclose any substantive information on the meetings of its Board of Directors. Transcripts, summaries/minutes, votes and formal statements are kept confidential. The Board does not release a workplan outlining its agenda in the coming months, nor does it disclose a monthly calendar to allow citizens and journalists to monitor what issues will be coming before the Board. The ADB does not release contact information for its Board members, leaving most citizens with little indication as to how to communicate with their representatives on the Board.

Recommendations regarding Governing Bodies:

- The proceedings of the ADB's Board of Directors should be a matter of public record, with certain exceptions made for executive sessions. Board discussions should be open to the public or available by closed circuit television or webcast. Transcripts, minutes and summaries of Board discussions should be publicly available on the Bank's website and in hard copy by request.
- If the Board votes on a given issue, a record of voting should be kept and disclosed.
- Written statements of Executive Directors should be disclosed and available in national languages for the Directors' in-country constituents.
- The ADB should develop and disclose a 6-month work plan for the Board and a monthly calendar that lists the Board's agenda. Both the work plan and calendar should be disclosed in a timely manner and updated on a regular basis.
- Board committees should meet the same transparency standards that govern the entire Board.
- The ADB should disclose contact information, including phone numbers and email addresses, of its Executive Directors.

The above provisions should also apply to the Board of Governors.

4.3 Bank-wide Policies and Strategies

The policies and strategies of public institutions should be the product of an open and public dialogue. They should be subject to public scrutiny during their conception, drafting, implementation, and review.

The Board of Directors at the ADB approves a wide range of policies, guidelines and strategies. These policies and strategies dictate how the ADB functions and describes the institution's overarching objectives, priorities and goals. Policies can cover specific topics such as Information Disclosure or Resettlement, or can be sector specific such as the Forestry or Education Policy. The ADB also has a range of strategies, such as the Private Sector Development Strategy and the Strategy on Microfinance Development.¹⁰

The ADB's current Disclosure Policy allows for the disclosure of all "public sector policy papers, once approved by the Board of Directors."¹¹ However, there is no requirement for Bank staff to release these policies or strategies in draft form for comment, although in certain cases this has been done. When the ADB fails to disclose drafts in a timely way, the Bank effectively eliminates any opportunity for interested citizens to input into policy formulation.

Recommendations regarding the Policy and Strategy Formulation Process:

- The ADB should maintain a running list of policies and strategies it expects to review in the coming 12 – 24 months.
- As the review approaches, the ADB should release information on the review process, including information on whether or not the review will be web-based, involve face-to-face consultations, and how citizens can expect to participate.
- The ADB should also release any relevant background materials, including management evaluations of existing policies.
- Drafts of proposed policies and strategies should be released for public comment and at least 90 days should be provided for comment.
- External comments on a given policy or strategy should be publicly available on the web.
- Lastly, all drafts sent to the Board, including the final draft (the 'Restricted Paper') should be disclosed at the same time it is circulated to the Board and no less than 30 days prior to approval.

4.4 Country Specific Documents

Citizens in borrowing countries should not be passive recipients of the ADB's strategic plan for their country. Instead, journalists, academics, CSOs, legislators and other interested parties should have the information that they need to engage in a vibrant debate about the proposed and actual strategies of the intergovernmental organizations operating in their country. ADB country analyses and strategies are no exception.

For every country that borrows from the ADB, the Bank prepares a "master plan" called the Country Strategy and Program (CSP).¹² These CSPs establish the ADB's goals and priorities in a given country. They are based on a series of country-specific economic and social analyses as well as dialogue with the borrowing government. CSPs also provide a framework for judging the performance of a given country and evaluating the effectiveness of Bank operations. In theory, every project and program financed by the ADB in a given country applies directly to one of the goals or priorities outlined in the country strategy. CSPs also feed into regional strategies, which outline the Bank's priorities in a particular region.

CSPs are usually prepared once every five years. They are supposed to be prepared with the "active participation through consultation with the government and other stakeholders – civil society, NGOs, the private sector, and other aid agencies."¹³ However, the ADB does not require the disclosure of draft or final draft CSPs. Therefore, civil society organizations may not have access to the proposed strategy until after it is finalized and approved. A CSP Update is prepared every year to assess the continued relevance of the CSP, its implementation, and the operational program. In addition, Country Economic Reviews (CER), which contain relevant country economic information and analyses, are prepared every year and used by Bank Management and the Board when discussing strategies or projects for a given country.¹⁴ Although both the CSP Update and CER are disclosed as final documents, neither is disclosed in draft form for comment. There is also mention in the ADB's Disclosure Policy of unspecified "other country papers" that may or may not be disclosed at the discretion of staff.

Recommendations regarding Country Specific Documents:

- The ADB should post on its website and in relevant country offices, a schedule of when Country Strategies and Programs will be reviewed.
- As the review approaches, the ADB should disclose

relevant background materials such as CSP evaluations and country economic and social analyses, and make use of in-country information dissemination methods to ensure broad awareness of the approaching review.

- Draft CSPs should be disclosed and translated into the national language of the country concerned.
- The ADB should disclose the final draft of the CSP when it is circulated to the Board and no less than 60 days prior to approval.

4.5 Loan Documents in the Lending Cycle

Citizens have a right to understand and shape projects that affect their lives. They should have access to the information that they need at every stage in a project's development so that they can defend their interests, improve project benefits and avoid potential damage. Disclosure recommendations for each phase of the project cycle are outlined below.

It is important to stress that all of the recommendations outlined below are intended to apply to public and private sector operations equally. The ADB's responsibilities as a public institution do not vary depending on whether or not they are lending money to governments or corporations. Private companies should accept the disclosure requirements associated with receiving support from a public institution or they should seek that support elsewhere. Private sector projects developed without the informed participation of potentially affected communities should not receive financing from public institutions. The ADB's new Disclosure Policy should avoid compromising the public's interest in order to cater to the desires of private corporations.

4.5.1 Project Identification

Potentially affected communities should be aware that a project is under consideration from the outset. They should be able to consider the implications of a given project from its earliest conception and begin to engage relevant officials.

The ADB does not require the disclosure of any information at the project identification stage. Very limited information is available through the Bank's Business Opportunities listing and few details are released about Project Preparation Technical Assistance (PPTA) grants. If the ADB is serious about "ensuring effective local participation in decision-making, leading to 'ownership' of decisions by involved participants, and improving

project implementation and sustainability,"¹⁵ it must commit to timely and proactive disclosure of basic information at the outset of project identification. This is a precondition to effective community participation and can help to avoid potential problems before they arise.

Recommendations for disclosure during project identification:

- At project identification, the ADB should use, among other things, local communication networks to announce a project concept. The ADB should post basic project information on its website, in local newspapers, and on radio networks in the project area (See recommendations under Section 3. Accessibility of Information). Since the project will be at its earliest stage of development, project information might be limited to a brief outline of the idea behind the project and information on how to contact relevant officials. This information should be updated on a consistent basis and should include a list of all feasibility and technical studies already conducted.
- Any initial project documents that identify areas where social and environmental analysis will be necessary should be immediately disclosed.

4.5.2 Project Preparation

Affected populations, CSOs and other interested parties should have the information that they need to meaningfully participate in the design of a project. Citizens should receive timely information in order to allow them to input into decisions before they are made.

During project preparation, the ADB releases a Project Profile which provides a general overview of the proposed project. The ADB's Disclosure Policy also requires the proactive disclosure of a summary of environmental impacts at least 120 days prior to Board consideration for both high- and medium-impact loans. However, the ADB is not required to release indigenous peoples plans, background documents (such as feasibility studies) or detailed project descriptions prior to Board approval of a given project. Resettlement plans are not disclosed until they are circulated to the Board, which is usually shortly before Board approval.

Recommendations for disclosure during project preparation:

- As project preparation evolves, the ADB should disclose back-to-office reports or memos (Aide Memoires) that track the development of the project and provide information on emerging agreements between the Bank

and the borrower. These may need to be slightly redacted prior to disclosure but they should accurately reflect the contours of the project as it develops.

- The ADB should not rely on Project Profiles to update citizens on project developments. Evidence suggests that documents such as Project Profiles, which are specifically designed for public consumption, are often released well into project preparation, do not contain sufficient detail, and are not routinely updated by project staff. The ADB should avoid relying on documents, such as the Project Profiles, that exist solely for the purpose of disclosure. Instead, the ADB should disclose updates that are already routinely prepared by staff (such as back-to-office reports and Aide Memoires).
- Project updates should include a list of all feasibility and technical studies used in project preparation.
- Upon Management's review of the project, the draft Board report (the Report and Recommendation of the President) should be disclosed. This should occur before project appraisal and no less than 60 days before Board approval.
- The ADB should announce when the Board is planning to discuss the Report and Recommendation of the President (RRP) for particular projects.
- The final draft RRP should be disclosed when it is circulated to the Board and no less than 30 days prior to approval.
- The ADB should continue its practice of disclosing environmental information for Category A and B projects 120 days prior to project approval. These documents should be proactively disclosed in full and in summary.
- In addition to this, the ADB should release draft Indigenous Peoples Development Plans, including the Initial Social Assessment, and draft Resettlement Plans before appraisal and at least 120 days prior to project approval.

4.5.3 Project Approval and Implementation

Citizens should have the information that they need to develop a comprehensive understanding of the intended impacts of a given project and how the project will affect their lives. They should also be able to access information about the degree to which the project is proceeding according to expectations and whether or not the potential risks of a project are being effectively mitigated during project implementation. This information will help

ensure that citizens are able to hold both the Bank and borrower accountable for meeting the standards and fulfilling the commitments identified during project preparation and approval.

Upon approval of a given project, the ADB generally releases the final Report and Recommendation of the President or Technical Assistance (TA) Report (for TAs greater than \$1 million). Loan agreements between the borrower and Bank are sometimes disclosed upon request. However, during project implementation, no information is made available to stakeholders interested in monitoring the effectiveness of Bank loans and the mitigation of environmental and social impacts.

Recommendations for disclosure during project approval and implementation:

- The ADB should require the disclosure of all Loan Agreements, without exception, after loan approval.
- During implementation, the ADB should (develop and) disclose staff project reviews and supervision reports (such as aide-memoires and back-to-office reports), including environmental and social monitoring reports.

4.5.4 Project Completion and Evaluation

Affected communities should have a voice in, and access to, assessments of individual loans. This will help them to identify issues of ongoing concern and secure access to ongoing benefits.

Upon completion of a public sector project, the ADB releases a Project Completion Report or a Technical Assistance (TA) Completion Report after it is circulated to the Board. Furthermore, both Project and TA Performance Audit Reports are disclosed following project completion. However, none of the above mentioned documents are available for private sector operations. The Operations Evaluations Department (OED) of the ADB discloses a list of evaluations planned for the current or coming year. This list includes projects, programs and technical assistance grants to be evaluated under annual performance audit reports (PPARs and TAPARs). Furthermore, the OED develops and discloses a series of other evaluation documents including Country Assistance Program Evaluations, sector specific evaluations, and Annual Reviews of Evaluation Activities.

Recommendations for disclosure during project completion and evaluation:

- The ADB should continue its practice of developing and disclosing project completion documents for pub-

lic sector operations. This practice should be extended to include private sector operations.

- The criteria for the selection of projects, programs and technical assistance grants to be evaluated under annual performance audit reports should be disclosed.
- The ADB should disclose draft OED reports for comment when they are circulated to Management and borrowing member countries.
- All final and, where applicable, final draft OED reports, including such major reports as the Country Assistance Program Evaluations, should be publicly available soon after they are circulated to the Development Effectiveness Committee (DEC) and should include any response from management on the report and a Chairman's summary of the DEC discussion if applicable.

4.6 Financial Intermediary Lending

The use of public funds should be a matter of public record, even if those funds are channeled through a private bank. Citizens should be able to reasonably assure themselves that private banks that have received public monies have put in place robust systems to manage the social and environmental impacts of projects and are adequately implementing those systems.

When the ADB makes a loan to a Financial Intermediary (FI), the money passes through two lending cycles. First, the ADB lends the money to the FI. Second, the FI will use ADB financing to make a series of loans to third parties, such as companies that borrow directly from the FI. Therefore, the second lending cycle is from the FI to the third party. There is currently little information disclosed about both the loans to the FI, and the loans that the FI makes to third parties.

Recommendations regarding FI lending:

- The disclosure of the Report and Recommendation of the President for an FI loan should meet the same standards as those described above (see Section 4.5.2).
- The ADB should require the FI to disclose a list of the projects that the FI is financing as well as a list of all public documents related to those projects.
- The ADB should require the disclosure of the social and environmental management plan and the annual report on operations, both developed by the FI.
- Although the ADB will not be able to evaluate all FI operations, it should conduct an annual audit, perhaps

through its evaluation unit, of selected projects funded by FIs.

5. Constraints to Disclosure

If the recommendations made in the previous section are taken into consideration, the ADB would have a fairly extensive "Positive List" that would help to ensure the timely disclosure of most key documents. As discussed above, this list is based on the idea that the Bank has a duty to proactively inform the public about its activities, and provide predictability in citizen access to information. However, even with such an extensive list it is impossible for the Disclosure Policy to anticipate and cite every type of information produced by the Bank.

In order to protect information that falls outside of the "Positive List", the ADB's current Disclosure Policy defines a number of "constraints" to disclosure. The Policy states, "There are, however, legal and practical constraints regarding disclosure of information which must also be taken into account, to protect the Bank's interests and the legitimate interests of those who deal with the Bank, and to sustain cooperative relations with its various members."¹⁶

The constraints to disclosure currently in the ADB's Disclosure Policy include:

- Documents provided to the Bank on a confidential basis;
- Proprietary information;
- Internal documents and memoranda prepared by staff for deliberative processes;
- The proceedings of the Board;
- Discussions between the borrowing member government and the Bank;
- Private sector information, and;
- Personal information of staff.¹⁷

While there are clearly legitimate reasons for the Bank to keep certain information confidential, the constraints currently listed in the Bank's policies are written in a manner that could be interpreted to include almost all types of information produced by the Bank. They are not narrowly defined and, as a result, they are subject to arbitrary interpretation and abuse.

Recommendations regarding constraints to disclosure:

- The ADB should develop a more narrowly defined

list of constraints as well as a means to consistently interpret those constraints when deliberating on whether or not to disclose certain information (see below for more on reconciling the policy's constraints with the presumption of disclosure).

6. Disclosure Policy Compliance and Monitoring

The ADB's current Disclosure Policy states that "it is important for the Bank to be conscious of both the many positive contributions that an open and transparent policy can make to assist the Bank in its activities, and the legal and practical constraints that must limit disclosure in some cases. The policy to be adopted by the Bank must balance these various factors." We agree that the Bank needs a way to consistently weigh the public's interest in disclosure against the sometimes legitimate reasons not to disclose. As the ADB states, "These are competing needs which must be reconciled under a readily understandable and consistent policy."¹⁸ Unfortunately, the Bank has not developed a mechanism to fairly and consistently reconcile these competing needs.

In some cases, the Disclosure Policy provides the Bank with discretion as to whether or not a given document should be disclosed. For instance, Project Profiles for private sector operations are to be released prior to Board consideration of a project unless there are "circumstances where Bank Management determines that such disclosure would be harmful to the project company."¹⁹ In other cases, there are documents that are simply not mentioned in the Disclosure Policy, since it would be unfeasible for the Policy to cover every document that the Bank produces. However, in cases where discretion exists, or where a document is not mentioned in the disclosure policy, how does the Bank appropriately and consistently reconcile the presumption in favor of disclosure with the constraints articulated in the policies? How does it assure itself that staff are not abusing their discretion to the detriment of the Bank's stated goal of greater transparency?

In a domestic context, these competing interests are reconciled by the judicial system. Since the Bank enjoys a remarkable degree of legal impunity, and since it does not have an independent body tasked with reconciling the presumption in favor of disclosure with legitimate

constraints, the decision to release a given ADB document is often a simple judgment call made by one or more Bank officials. Those who might question the degree to which this judgment is being exercised in a reasonable manner have no clear recourse. Citizens who feel that they have been wrongly denied information have no clear and impartial avenue to appeal the decision. ADB Management and the Board of Directors, who must ultimately make a decision on whether or not to disclose a given document, are unable to seek impartial advice on how discretion is being exercised in practice, and there are no impartial bodies charged with monitoring whether the presumption of disclosure is being consistently interpreted across the institution. Under these circumstances, the "presumption in favor of disclosure" becomes a well intentioned but somewhat meaningless principle.

Recommendations regarding Disclosure Policy compliance and monitoring:

- The ADB should appoint an Information Ombudsman or a similar semi-independent body that would be able to provide Bank Management and Executive Directors with impartial opinions on how the presumption of disclosure is being reconciled with the constraints articulated in the Disclosure Policy. In absence of some kind of impartial mechanism to provide opinions to Management and the Board, and to monitor the disclosure policies' implementation as a whole, the ADB's assertion that the disclosure policies are based on a presumption in favor of disclosure are simply not credible.

7. Conclusion

Transparency is a multi-faceted issue and we are aware that this paper does not provide an exhaustive treatment of the subject. However, we hope that the above recommendations will provide a better understanding of the many steps available to the ADB to improve access to information.

Once again, we appreciate this opportunity to comment on the ADB's transparency standards and look forward to the Bank's response on how our recommendations are incorporated into the draft Disclosure Policy or the rationale for their non-inclusion. Please contact the Bank Information Center with any questions regarding our comments.

(Endnotes)

- 1) As listed on the ADB's website (www.adb.org/disclosure).
- 2) *Information Policy and Strategy*. Asian Development Bank, 1994: p. 7. Emphasis added.
- 3) *Policy on Confidentiality and Disclosure of Information*. Asian Development Bank, 1994: p. 13. http://www.adb.org/Documents/Policies/Confidentiality_Disclosure/default.asp. Emphasis added.
- 4) *Policy on Confidentiality and Disclosure of Information*. Asian Development Bank, 1994: p. 17. Emphasis added.
- 5) *Information Policy and Strategy*. Asian Development Bank, 1994: p. 8.
- 6) *Strengthening the World Bank's Public Information Centers*. World Bank Group, August 6, 2003.
- 7) *A Document Translation Framework for the World Bank*. The World Bank Group, August 6, 2003.
- 8) Website of the United Nations. <http://www.un.org/webcast/>
- 9) For a full explanation of disclosure requirements, including exceptions to disclosure, governing the Board of Governors of the United States Reserve, please see the website of the United States Federal Reserve Board at: <http://www.federalreserve.gov/boarddocs/meetings/sunshine.htm>
- 10) For a list of some of the policies and strategies at the ADB, see <http://www.adb.org/Development/policies.asp>.
- 11) Asian Development Bank. *Policy on Confidentiality and Disclosure of Information*, August 1994: p.25.
- 12) In August 2001, the Bank's Country Operational Strategy Study (COSS) and Country Assistance Plans (CAPs) were replaced by a singled document called the Country Strategy and Program (CSP).
- 13) From the website of the Asian Development Bank, <http://www.adb.org/Documents/CSPs/default.asp>.
- 14) Asian Development Bank. *Operations Manual Section 45 – Country Planning and Programming*, 19 November, 1996: paragraph 9.
- 15) Asian Development Bank. *Policy on Confidentiality and Disclosure of Information*, August 1994: p.13.
- 16) Asian Development Bank. *Policy on Confidentiality and Disclosure of Information*, August 1994: p.14.
- 17) For the full text of constraints listed in the ADB's Policy, please see the Policy on Confidentiality and Disclosure of Information, August 1994: pp.14-15.
- 18) Asian Development Bank. *Policy on Confidentiality and Disclosure of Information*, August 1994: p.13.
- 19) *Policy on Confidentiality and Disclosure of Information*. Asian Development Bank, 1994: p. 27.

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