V. Critical Analysis of the New Accountability Mechanism of the Asian Development Bank

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Introduction

The Board of Directors of the Asian Development Bank (ADB) approved its New Accountability Mechanism on May 29, 2003. This was the result of a long process to review the ADB's Inspection Function, which aimed to enhance the ADB's accountability by addressing the concerns of the people negatively affected by ADB-funded projects. The new mechanism was also established to address demands for accountability and transparency in ADB funded projects from civil society organisations.

This paper examines the background and the process of the review of the Inspection Function, and analyses the new mechanism in the context of the struggles of affected people and efforts of civil society who are fighting against the ADB's problematic projects.

Origin of Inspection Mechanism

The Inspection mechanism was started by the controversial Narmada Dam project in India. As a response to the global campaign against the Narmada project around the beginning of 1990, the World Bank, which was the main financier of this destructive project, decided to conduct an independent investigation of the project. An independent investigation team was tasked by the World Bank to check the Bank's compliance with its own policies on environmental assessment and involuntary resettlement. The result showed that the dam would adversely impact the lives of the local communities and that the World Bank shared responsibility for such harm. This report led to the Board of Directors of the World Bank to pressure the Indian government, and as a result, India finally declared in 1993 that it would not ask for the outstanding disbursement of the loan for the Narmada project from the World Bank.

The Narmada case made clear that the Bank Management tended to avoid responsibility in ensuring that the Bank funded-projects met the international standards set forth in the Bank's safeguard policies. Because of NGO lobbies the World Bank proposed the establishment of a permanent independent body to receive complaints from affected people. The U.S. Congress was also a strong proponent of this independent mechanism. In September 1993, the World Bank's Board approved the establishment of the Inspection Panel, which is an independent body to investigate the compliance of the World Bank to its policies based on requests from affected people.

The ADB became the third organization to establish an inspection mechanism called the 'Inspection Function' in 1995, after the Inter-American Development Bank (IDB) in 1994. However, both the ADB and the IDB adopted less independent systems compared to the World Bank. The stated objective of the current Inspection Function of the ADB is to enhance the transparency and accountability of the ADB by conducting investigations by independent experts on whether or not the ADB has complied with its operational policies and procedures.

Why Are Inspection Mechanisms Important?

The importance of inspection mechanisms can be summarized as follows. First, inspection provides one of the few quasi-judicial mechanisms by which independent experts can check management staff of Multilateral Development Banks (MDBs). MDBs enjoy immunity from any legal jurisdiction under international law, which means that they are free from any legal action against them. However, most of the inspection bodies of MDBs report to the respective Boards of Directors and are thus
not totally independent from the decision-making bodies of the institutions.

Secondly, inspection mechanisms are the only institutional ways for affected people to raise their concerns to MDBs. Before this mechanism, affected people had to rely on informal ways to influence decision-making in MDBs, including public campaigns and lobbying to MDBs, donor governments and the media. It provides avenues for affected people to access independent investigation bodies that are expected to give impartial assessments on MDB's performances on policy compliance. They also provide ways for affected people to attract attention from decision-makers within MDBs.

Whether or not the inspection mechanisms provide solutions to the grievances of affected people is a difficult question. The experiences of the World Bank’s Inspection Panel shows that only two out of 27 inspected projects were cancelled as a result of investigations by the Panel. Only several cases produced partial solutions or compensation to the people affected by the problematic projects. The Management of the World Bank has continuously tried to avoid such investigation and built coalitions with board members from developing countries. This tactic has been a big obstacle for the operation of the mechanism. In the case of the ADB, while 8 claims were filed, only 2 have been approved for inspection. Of these 2 cases, requesters’ grievances have yet to be adequately addressed.

**How Does the ADB’s Inspection Function Work?**

The primary actors in the inspection process include the Requesters of the Inspection (affected people), Panel of Experts, the Board Inspection Committee and the ADB Board of Directors.

**Requesters** initiate the inspection process by filing a claim. They are required to satisfy the eligibility criteria set by the ADB. Requesters have to be 2 or more persons affected by an ADB-funded project, or their representatives. The Inspection Policy requires requesters to show that (1) the ADB has failed to comply with its own operational policies and procedures, (2) this failure led to material harm upon the requesters, and (3) requesters have already contacted ADB Management to ask for remedies to the problems. These legalistic requirements make the mechanism difficult for affected people to access.

The **Board Inspection Committee (BIC)** is a sub-committee of the ADB Board of Directors, and oversees the whole inspection process and makes recommendations to the Board. The BIC has a critical role in the inspection process, including (1) making recommendations to the Board on whether or not an inspection should be conducted, (2) selecting Panel members from the Roster of Experts after the Board authorizes an inspection, (3) preparing the Terms of Reference and timeframe for the inspection, and (4) making recommendations to the Board on any remedial measures based on the Panel's report and the Management response to the report. The Board of Directors approves the recommendations thus making it the final decision-making body to decide what actions should be taken on the project concerned.

The **Panel of Experts** is a team of 3 persons that conducts the actual investigation of the project concerned and reviews Bank Management’s compliance to its own policies and procedures. The members of the Panel are selected by the BIC from the Roster of Experts, and the Panel’s activities are determined according to the Terms of Reference (TOR) also prepared by the BIC. The Panel prepares a report of their findings and recommendations regarding remedial measures, and submits it to the Board.

The existence and importance of the BIC is one of the major differences between the ADB’s Inspection Function and the World Bank’s Inspection Panel. The BIC undermines the independence of the Panel by recommending another set of remedial measures after the Panel’s report. Furthermore, members of the BIC may have conflicts of interest when the BIC receives claims regarding countries they represent as Board members.
The inspection process is lengthy. After requesters filed a request to inspect a project, 110 days are consumed just to decide whether or not the ADB will conduct the inspection. The length of the actual inspection depends on the panel members’ designated timeframe. Upon completion of the investigation on policy compliance and submission of the findings, the ADB Board and Management will again use up around 65 days to decide what to do with the results of the inspection the recommendations.

**Accountability Down the Drain: the First Inspection Case of Samut Prakarn Wastewater Management Project**

Because of the complex process and uncertain consequences, relatively few requests have been filed to the ADB Inspection Function. So far, the Samut Prakarn Wastewater Management Project in Thailand is the only case that has gone through the entire Inspection Function process. All other requests for inspection have been dismissed as ‘ineligible’ except for the request on Chashma Right Bank Irrigation Project-Stage III, for which the Board of Directors decided to conduct inspection in April 2003.

The ADB Board authorized the inspection of the Samut Prakarn project on July 20, 2001. It has been the most controversial ADB-funded project for the past 3 years, and the target of local villagers’ protests and international campaigns calling for the ADB’s accountability. The project was criticised for environmental and social impacts, corruption, lack of public participation and lack of environmental impact assessment. Local people especially fear that the wastewater from the treatment facility will damage the fisheries, especially the mussel farming, upon which the livelihoods of most people living in adjacent areas depend.

Local people have protested against it late 1998, half a year since the beginning of the construction of the project. In 2000 civil society organizations in Thailand jointly organized a large protest at the ADB annual meeting held in Chiang Mai. The protest mobilised 3,000 people, including two hundred from Klong Dan, where the Samut Prakarn project is located. International NGOs joined the campaign and addressed both the ADB and the Japan Bank for International Cooperation.

Despite earlier scepticism about the effectiveness of the Inspection Function mechanism, the local people decided to use it as a way to press for ADB’s accountability, and to demand suspension of the loan for the project. The inspection process of the Samut Prakarn project was filled with disappointments. First of all, the Panel was not able to enter Thailand to visit the project site because of the conditions imposed by the Thai government for such visit. It is a prerequisite of the policy that the host government must allow site visit. As a result, the requesters lost the opportunity to present their views to the Panel. The Panel also complained that they had no way to communicate with outside stakeholders, and they had difficulties in accessing relevant documents and to interview ADB staff.

Despite these obstacles, the Panel report revealed that the ADB had violated seven policies in the course of approving the Samut Prakarn Project. The violated policies included policies on supplemental financing for cost overrun, operational missions, environmental considerations, involuntary resettlement, social dimensions, governance, and benefit monitoring and evaluation. The Panel recommended that the ADB should admit these violations and that the ADB should negotiate with the Klong Dan community regarding the damages, remedies and the local community’s participation in the management and operation of the plant. The Panel denied, however, the requesters’ demand to suspend disbursement for the project.

The Board approved the BIC’s recommendations on March 25, 2002, without admitting to policy violations, and instructed Management to make semi-annual reports regarding the implementation of the BIC’s recommendations. The ADB, however, has not taken any proactive action to build trust with the Klong Dan community to
this day. The ADB continued to disburse the loan for the project while substantially ignoring the major issues the local people raised.

The fact that ADB had violated its own policies on environmental and social impacts may have somehow affected the Thai government’s decision-making. One month after the final decision of the Board, Prime Minister Thaksin Shinawatra visited Klong Dan and met with the community, which led to a series of the studies by the Thai Environment Ministry. As a result of strong the Thai Government announced the suspension of the project’s construction in February 2003. This was a remarkable event in the histories of both civil society’s struggle in Thailand and of international campaigns against the ADB.

Review Process of the Inspection Function

During the inspection of the Samut Prakan project, many stakeholders recognized the serious need for revising the inspection policy. The review of the policy began in December 2001, and took almost one and a half years to complete. It is worth noting that the review of the Inspection Function was the most transparent and participatory policy-making process in the ADB’s history. At the same time, it involved political conflicts among the stakeholders, none of whom were satisfied with the results of the review.

In the beginning of the review, international NGOs played a leading role. The ADB employed two environmental lawyers from NGOs who had extensive experience working on the World Bank Inspection Panel. The ADB disclosed a total of 3 drafts of the new policy, and organized 10 public consultations in both developing countries and donor countries. The first and second drafts were extensively discussed in this consultations. The NGO’s proposals for the need for a permanent and independent panel and accessible procedures gained broad support at these consultations.

After initial success of the NGO campaign calling for an independent and strong accountability mechanism, ADB staff and governments of developing countries started to resist such a mechanism. At the Phnom Penh consultation in August, the Management attempted to influence the views of developing countries by passing a memo written by an ADB senior staff. This incident became a scandal and infuriated the donor government and NGOs.

After a round of external consultations, the debate internalised within the ADB, and civil society had to wait for the result of these secret negotiations until February 2003, half a year after the second draft was disclosed. The subsequent ‘working paper’ (the third draft) proposed to establish both a problem-solving body and an independent panel to review policy compliance. NGOs again submitted comments on the working paper claiming that the sequential model proposed in the working paper, which requires a case to first go through part of the problem-solving phase before reaching the compliance review process, would undermine the effectiveness of the mechanism and the requesters’ right to demand the ADB’s accountability.

Finally, the Board of Directors approved the new policy called the ‘ADB Accountability Mechanism’ at the end of May 2003. The new policy is a compromise between NGOs and donor governments on the one hand, and ADB senior staff and governments of developing countries on the other. Although there are a number of improvements in the new policy, several severe shortcomings also exist. Both positive and negative aspects of the policy are described below.

Stakeholders of the Accountability Mechanism

Various stakeholders’ have different perspectives on the new Accountability Mechanism:

The ADB Management and Staff: are the major obstacles in the inspection process. ADB staffs have a strong incentive to lend more money to their clients, the developing member countries, and do not want to admit the problems caused by their funding. ADB staffs consistently derail the inspection process. In the Samut Prakarn
case, the Management Response to the inspection request denied every policy violation allegation, and claimed that there was no need for the inspection. The Thai government’s ‘objection’ to the site visit was allegedly suggested by ADB staff. After the Panel’s report came out, the Management continued with their denial about policy violations despite the concurrence between the BIC’s report to the Board and the Panel’s conclusion.

In the case of the Chashma Right Bank Irrigation Project, Management claimed that an Inspection should not be conducted because it would undermine the on-going efforts to solve the problems through the ‘Grievance Redress and Settlement Committee.’ The ADB staffs have tried to avoid inspection by pressuring the Pakistani government to establish this committee, though the process of its establishment, including the TOR and selection of members, was far from satisfactory for the requesters. These are some of the examples of how ADB Management has tried to avoid taking responsibility for the harm caused by its projects.

**Developing Member Countries’ Governments and their EDs:** In many cases, Developing Member Countries’ (DMCs) governments are the owners of the projects and naturally they do not want protesters to be heard by the ADB. They also think that inspections are meant to investigate their faults. It is said that the Thai government opposed the site visit by the Panel in the Samut Prakarn inspection because it feared that the Panel would investigate the Thai government instead of the ADB’s conduct. The DMCs also strongly opposed the introduction of a problem-solving mechanism, claiming that it undermines their sovereignty. They also maintain that site visits should be conducted only with their consent.

**Donor Governments and their EDs:** Donor governments were the major proponents of the independent inspection panel. They are concerned that their contributions to the ADB should be used in effective ways, without causing local and international protest.

**NGOs and People’s Organizations:** There are different perspectives on the ADB’s inspection mechanism among civil society organizations. International NGOs working on the ADB’s accountability believe that it is the only institutional mechanism within the ADB where affected people can have their grievances addressed. NGOs in developing countries are more sceptical of the effectiveness of the mechanism because there is no assurance of actual solutions. Other local NGOs and people’s organizations see it as one strategy to gain the attention of decision-makers in the ADB and donor governments. Although the degree of expectation varies, there is a consensus among NGOs that an effective and accessible inspection mechanism will be a useful tool to demand the ADB’s accountability.

**Whose Problems to be Solved? – the Function of the ‘Consultation Phase’**

The ADB introduced a ‘problem-solving’ function in the new Accountability Mechanism, which will be performed by the ‘Special Project Facilitator (SPF)’ during the ‘consultation phase.’ The SPF is separated from the Panel, and the position is for one person with a small secretariat. The role of the SPF is to conduct the consultation phase of the Accountability Mechanism “to respond to specific problems of locally affected people in ADB-assisted projects through a range of informal and flexible methods.” The SPF is appointed by and reports to the President of the ADB. Thus, the SPF is fundamentally the tool of Management, and the Board does not have significant influence on the process during the consultation phase.

It is welcomed that the ADB recognizes its own role in problem solving for ADB-funded projects. Although it may be useful for affected people to a certain extent, there are many concerns regarding the consultation phase:

**Independence of the SPF:** NGOs have demanded that the SPF should be independent from the Management and should report to the Board instead of the ADB President. Such independence is essential
so as to build trust between the borrower and affected people. The SPF should not have been appointed by the Bank's President and that current ADB staff should not be eligible to be the SPF. Someone from within could not be seen as independent and trustworthy by project-affected people.

Relationship between the SPF and the Panel: It is regrettable that the new Accountability Mechanism requires the requesters to file their complaints first to the SPF and not directly to the Panel. They also have to wait for at least 84 days before filing a request for compliance review. This step is redundant and a waste of time and energy for both the requesters and the SPF. Most importantly, the sequential model overlooks the affected people's rights to demand the accountability of the ADB.

ADB's ability to solve problems: The fundamental question of the new consultation phase is the ADB's ability to solve the problems of affected people in a fair and impartial manner. Experiences of engagement with ADB Management showed, however, that the ADB always took the side of the governments of borrowing countries, and is reluctant to take responsibility for problems produced by the projects.

Major Improvements
Although some issues remain to be addressed, there are a number of improvements in the policy that made it far more accessible to affected people. Compared to the World Bank Inspection Panel, the advantage of the mechanisms are:

a). Independent and Permanent Panel: A permanent Panel called the Compliance Review Panel will be established. This allows the requesters to consult with the Panel and to be given necessary assistance for filing claims. This is also to build institutional learning regarding policies and institutional problems of the ADB.

b). Citation of Policy Violations: The new policy does not require requesters for the compliance review to cite the policy violations that led to material harm. Citing ADB policies was a major burden and obstacle to the affected people before due to the language used in the policies. Under the new policy, requesters will be asked to explain (1) how they are, or are likely to be, affected materially and adversely, and (2) that this material harm is, or will be, caused by the ADB-assisted project.

c). Reduced Management Response: Under the new policy, Management will be allowed to submit their response only once when the Panel delivers a draft report, and it will save the time and energy of the Panel and Management.

d). Language: The new policy will allow both the claim to the SPF and the request for compliance review to be submitted in any official or national language of the ADB's developing member countries.

e). Anonymity: Requesters can ask to keep their identity confidential.

f). Requesters' will be given the opportunity to comment on the draft report of the Panel.

g). Monitoring of the Remedies: The Panel will monitor the implementation of any remedial actions approved by the Board as a result of compliance review. In many inspection cases of the World Bank, implementation of the Board decisions have been left to the Management, and the effectiveness of these decisions were severely undermined by the reluctance of Management and borrowing governments to follow the decisions.

h). Private Sector Operations: The private sector operations of the ADB are covered by the new mechanism, which were not included in the Inspection Function.

Toothless New Policy
Compared to what NGOs were advocating, the new policy lacks measures to ensure the impartial investigation and adequate solutions to problems.

Site Visit: Despite the Samut Prakarn experience, the new policy maintained the requirement that borrowing government must not object to a site visit. NGOs proposed that this condition be eliminated, and that there should be a clause in every loan agreement between the ADB and borrowing governments to allow the Panel to
conduct site visits. The new policy did not change this condition for the site visit since “the policy should assume the good faith cooperation of all parties in the compliance review,” which leaves room for governments to resist site visits.

**Suspension of Loan Disbursement:** The requesters of the Samut Prakarn case seriously questioned why the ADB did not suspend the loan disbursement when it became obvious that the ADB violated its own policies during the project. NGOs demanded that the Panel should be empowered to recommend the suspension of loans even when the inspection is in progress. In the Samut Prakarn case, more than 90% of the project construction was completed when the inspection was over; it became too late to change the project design thus undermining the effectiveness of the Panel’s recommendations.

**Further Steps to Prevent the Negative Impacts of ADB Projects**

Though there are a number of improvements in the new Accountability Mechanism, the mechanism itself will not be enough to prevent negative impacts caused by the ADB-funded projects. Further steps must be taken to enhance the social and environmental performance of the ADB, including the transparent implementation of the mechanism, addressing the shortcomings of the mechanism, institutional reforms of the ADB, and strong and effective monitoring from civil society.

**Transparent Implementation of the new mechanism:** While the review of the Inspection Policy was conducted in a transparent manner, the effectiveness and reliability of the mechanism rest on how the Accountability Mechanism will be implemented. NGOs have suggested for a committee or a forum consisting of representatives of each sector to enhance communication with external stakeholders, but this proposal was not incorporated into the new policy. There is still room, however, for NGOs and peoples organizations to influence the implementation of the policy, including the selection of the Panel/SPF and establishment of the operating procedures for both phases. In particular, the SPF should be selected by and work in consultation with civil society organizations, the current arrangement of the SPF will not ensure the independence and credibility of the SPF.

**Leadership of the President:** the leadership of the President is one of the keys for the successful implementation of the mechanism. Traditionally ADB Presidents have been reluctant to strongly lead the institution, and have seen their role as a mediator in the culture of consensus-based decision-making in this ‘Asian’ organization. In the Samut Prakarn inspection case, the president failed to exercise his leadership when the Thai government objected to the Panel’s site visit and Board opinion split between the South and the North.

The ADB president is playing a key role as the chief executive of ADB Management and the chair of the Board of Directors. The newly introduced consultation phase requires a more active role of the president, as it is the president who makes decisions on the remedial measures recommended by the SPF. Lack of means of enforcement in the new mechanism, i.e., suspension of loan disbursement, can also be addressed if the President exercises his leadership in making decisions to suspend loans in cases which require urgent actions to be taken.

**Educating ADB Staff:** It is the ADB staff that actually designs, appraise and implement the ADB loan projects. Educating and training ADB staff regarding the negative impacts caused by ADB loans and the importance of accountability will help make operations of the Accountability Mechanism more effective. The staff should also be given incentives to avoid negative impacts from the projects they fund.

**Strengthening Civil Society:** the inspection mechanism was established as a result of civil society’s struggles against destructive projects funded by international financial institutions. NGOs and people’s organizations have made tremendous efforts in both inspection cases and in the review of the inspection policy. The new mechanism is the result of this strong effort
to establish the accountability of the ADB and bring justice to affected communities. The case of Samut Prakarn showed that local people, local NGOs and international NGOs can work together against giant organizations like the ADB.

Critical flaws remain in the Accountability Mechanism that carry the potential to undermine the entire process, i.e. the right of governments to reject site visits and the lack of measures to stop loan disbursements. Without persistent and active monitoring, both of projects in the pipeline and those already under way, we will continue to see disasters caused by the ADB. While civil society has had some success in bringing about this new Accountability Mechanism, it may also be up to civil society to make sure that it works.