

EXECUTIVE SUMMARY OF PANEL'S REPORT

The Inspection Panel and its Methodology

A Request for an Inspection of the Chashma Right Bank Irrigation Project Stage III (the Project), in accordance with the Inspection Procedures of the ADB, was acceded to by the Board of the ADB and a Panel of four persons from the ADB Roster of Experts was appointed in December 2003. The Inspection Panel (IP) examined the Request, Management's Response, and numerous other Project-related documents. It conducted personal interviews in Manila and Pakistan, and persons elsewhere by teleconference, with a large number of persons who were concerned with the Project, as present or former members of the Staff of ADB, Consultants, Government Officials, the Chairman of the GRSC, Requesters and affected villagers. Progress reports of the IP were filed on the website. The IP filed its Draft Report on 23 April 2004. The Requesters and Management submitted their observations on or about 26 May. After considering the comments of the Requesters and Management, the IP filed its Report on 10 June 2004.

Supplementary Financing of Cost Overruns

The loan for the Project was approved by ADB in 1991, but cost overruns were incurred in the implementation of the Project and supplementary financing was made available through a separate decision in 1999. Loans, including those by way of supplementary financing, require that there must be a full appraisal of the project. ADB in violation of its Policy in OM 13 failed to make a full appraisal of the Project. Consequently, ADB missed an opportunity to

- identify harm that was significant and causally connected with the project,
- take appropriate action to ensure timely, transparent and equitable remedial action with regard to negative impacts of the project, and
- apply the new policies (1991-1999) to the project

Management's position is that the provisions of the "internal laws" of the Bank are not mandatory, and that as a matter of "professional judgment" it decided that, because strict compliance with OM 13 would cause delays in supplementary financing, such compliance was unnecessary. An internal law of the Bank may be amended or repealed by the Board. But, in the Panel's view, as long as it remains, there must be strict compliance and not be breached because Management is of the opinion that it ought not to be complied with. To hold otherwise would result in uncertainty and undermine the authority of the Board.

Project Benefit Monitoring and Evaluation

At no time has the ADB had sufficiently comprehensive socio-economic data based on detailed technical, social, institutional, financial and economic analyses relating to Stage III of the Project. The information relied upon by the Bank in design, implementation, and project benefit monitoring and evaluation, as far as Stage III was concerned, was based on studies which used the same methodology and subject coverage as the PIME studies in Stages I and II. This was in

spite of the fact that Stage III possessed development characteristics, physical as well as economic and social, that were different in nature and scale to the earlier stages. ADB was obliged by its Policy (OM 23) to have relevant actionable data to assist it in project formulation and appraisal. But in failing to comply with the directions of its Policy ADB disabled itself from:

- ensuring that the Project was responsive to the needs and interests of project beneficiaries; and
- giving due consideration to the needs of communities affected by the project.

In the absence of pertinent information, ADB was unable to:

- effectively and thoroughly formulate arrangements which would avoid the occurrence of economically or socially adverse impacts;
- assess the feasibility of alternatives;
- mitigate adverse impacts; and
- ensure the timely payment of compensation in appropriate circumstances.

The Inspection Panel was directed by its Terms of Reference to find whether there was non-compliance with certain specified provisions, and in the event of a finding of non-compliance, it was directed to make findings as to whether non-compliance has resulted in “direct and material harm to the rights and interests of the Requesters.” The Panel did find that there was non-compliance with certain provisions, and, in part with the assistance of the findings of the GRSC, identified some of the harms caused. In the view of the Panel, benchmark surveys, as required by OM 23, would have helped to identify many of the negative impacts, and assisted in the timely formulation and implementation of remedial measures. There were certain Surveys and Studies, but they were limited in scope, for they followed the same methodology and coverage as the Study in Stages I and II, despite the fact that *Stage III* of the project – which is what this inspection is concerned with – as pointed out in 1989, possessed development characteristics that were different in nature and scale to the earlier Stages requiring detailed technical, social, institutional, financial and economic analyses of recent developments. The Panel was not required by its Terms of Reference to consider the benefits of the project. No doubt there were positive impacts, including the provision of a reliable perennial supply of water to vast areas of land that had earlier been cultivated with undependable, sparse rainfall, or by the use of sporadic- and sometimes violent – flows of water from hill torrents, or shallow tubewells. As a consequence, a substantial increase in production is expected. However, at the present time, pre-project and post-project comparisons are not possible for lack of information. This is to be expected, for as Management said, the benefits of *Stage III* of the project will take time – Management in May 2004 suggested five years - to come through. What we now have are only *estimates*.

Environmental Impacts

During the Preliminary Environmental Screening, the Project was erroneously classified as Category B despite the fact that as a “large-scale irrigation and water management” project it should, in compliance with OM 21, have been placed in Category C. In the Secondary Environmental Screening, six major environmental concerns were identified and it was recommended that an IEE be prepared. However, in contravention of OM 21, no IEE was produced prior to the Feasibility Study, and no EIA was completed before the approval of the loan.

OM 21 was further breached by ADB's failure to

- enforce the covenant in the Stage III Loan Agreement that required an EIA to be made;
- incorporate covenants in the Loan Agreement to ensure that identified mitigating measures would be implemented;
- identify how the implementation of mitigating measures would be financed.

At the time of Supplementary Financing in 1999, ADB,

- in contravention of OM 20 of 1997, failed to determine whether or not significant environmental impacts warranting an EIA were likely; and
- in contravention of OM 13, by not making a full appraisal, it

(a) failed to identify the project's environmental impacts;

(b) missed an opportunity to incorporate provisions in the loan agreement to formalize an obligation to implement measures in mitigation of adverse environmental impacts and thereby ensure the implementation of mitigating environmental measures (including the return of the EMP from NDSP back to the CRIBP, so as to secure its implementation); and

(c) missed an opportunity to secure the required funding for identified mitigable measures.

Some nine years after the EMP there are still no satisfactory plans or financial arrangements in place for securing the implementation of the plan. Moreover, there has been no adequate process that has enabled the informed and meaningful participation of affected communities of the project area in the implementation of the EMP.

Harm that is material, in the sense that it is causally connected with the project and is not of a trivial nature, can broadly be identified from the complaints made available to the Inspection Panel in writing and orally, both on and off the field and through the Report of the GRSC. However, precise - or indeed even approximate - quantification is inadvisable in the absence of relevant reliable qualitative and quantitative baseline data, which, as we have seen, ADB in contravention of OM 23, failed to garner. The identifiable harms with regard to the subject of environmental impacts as a result of the non-compliance of ADB with its Policies in OM 21 and 20 read with OM 13 and 23, include the failure on the part of ADB to sufficiently understand and address problems relating to

1. flooding;
2. the use of agricultural chemicals;
3. forests and grazing lands;
4. water-logging and salinity; and
5. possible pollution and waste management issues.

Socio-economic and Cultural Impacts

Social Cultural Assessment

The Inspection Panel finds as follows:

- The Feasibility Study for CRBIP Stage III does not adequately analyze and identify the possible social and economic impacts of the project, or propose effective mitigating measures. While the applicable Staff Instructions were lacking in specificity regarding

the requirements for social analysis and remedial action, the Panel is of the opinion that the project at the approval stage did not meet the objectives that are formulated in the 1986 Staff Instruction on Socio-cultural Impacts of Bank Projects.

- After the adoption of OM 47 the Bank has had an obligation to implement the relevant provisions of the OM. This would have included the requirement to identify various categories of people who may be adversely affected by the Project, to develop safeguard and compensation mechanisms for their losses, to develop monitorable indicators and provisions for monitoring, and to review the mitigation of adverse effects on vulnerable groups. Before the Request for Inspection was filed, no such action had been taken, which constitutes a violation of OM 47.
- In preparing for the supplementary loan, OM 47 required the undertaking of an Initial Social Assessment, which is mandatory for all new projects, and – considering the severe social disruptions due to the project that were known at the time – a full Social Analysis. This was not done, and it constitutes a violation of OM 47.

Participation

- The Panel concludes that the Bank has failed on several counts to comply with the requirements in OM 47 for consultation and participation of project affected people.

The material harm resulting from the contravention cannot be quantified for lack of data. However, the evidence placed before the Inspection Panel, for the most part corroborated by the findings of the GRSC, leads the Inspection Panel to conclude that consultation might have helped to identify, eliminate and mitigate some of the more serious harmful impacts of the Project, including those resulting from

1. poor water management and distribution system;
2. interference with the Rod kahi system;
3. deprivation or reduction of access to grazing land and fuel wood;
4. unsafe settlements due to the construction of flood protection embankments;
5. poorly located flood protection embankments;
6. restrictions on mobility due to insufficient or poorly located bridges;
7. incomplete FCCs and water accumulation on distributary tails;
8. loss of land without compensation or with inadequate or inequitably assessed awards, or dilatory payments;
9. damage to land;
10. severance of land holdings;
11. loss of standing crops, orchards and trees;
12. loss of dwellings;
13. damage to kilns and machinery;
14. restriction or denial of access to burial grounds;
15. destruction of potable water supply lines.

Involuntary Resettlement

Resettlement of villages affected by flooding was not anticipated when the project was approved in 1991. The need for resettlement was only identified in 1994, and physical resettlement did not start until 2001.

The Inspection Panel concludes that:

- No resettlement plan was ever prepared. This constitutes a clear violation of OM 50.
- ADB failed to include the necessary provisions for a resettlement program in the scope and budget of the 1999 Loan Agreement for supplementary financing of CRBIP. This constitutes a clear violation of OM 50.
- After a promising start, the consultation process was essentially abandoned in March 2001. The affected people were never informed of the contents of the first SSAP report, and the feedback from the second report was clearly intended to influence their choices in terms of selecting protection over resettlement. This also constitutes a violation of OM 50.
- Realistic proposals that would have satisfied the ADB policy requirement to “as far as possible” execute involuntary resettlement as part of the CRBIP development program were rejected.
- The panel has not been able to find any reference to participation of affected groups in the valuation of their assets, or that any particular attention has been paid to protecting the interests of the poorest affected persons. If this is the case, these omissions also constitute violations of OM 50.

The Inspection Panel finds that the ADB has failed to comply with its policy requirements in the identification, planning and implementation stages of resettlement:

- By not taking action to quickly and accurately assess the need and initiating planning for resettlement once the flood risk had been identified in 1994.
- By not ensuring that a proper resettlement plan was prepared at any time.
- By not appraising the known need for resettlement and ensuring that the necessary provisions, including budgets and binding covenants, for a resettlement program became part of the 1999 Loan Agreement on supplementary financing for CRBIP.
- By failing to ensure that the affected people were given a meaningful influence in decision-making through a proper consultation process on resettlement options.
- By not advocating that the involuntary resettlement be executed as part of the CRBIP development program.
- By failing to secure the participation of affected groups in the valuation of their assets, and that particular attention be paid to protecting the interests of the poorest affected persons.
- By failing to provide monitoring in order to ensure that the policy objective of restored livelihoods has been achieved.

The Panel finds that the following harms have been caused:

- The rights of the affected people to be informed and to participate in making decisions about their resettlement has been violated.
- Many villagers still face the threat of flooding. The ADB mission in March 2002 reported that of all the families that had agreed to self-resettlement and received compensation, only five families had actually vacated their houses. This should not have come as a surprise, since this is exactly what ADB and its experts had warned may happen if new houses were not built for the displaced families. The survey that was done by the Participatory Assessment Specialist in December 2003 to April 2004 showed that 139 out of the compensated 462 households were still residing in the flood impact zone.
- Valuation of assets and adequacy of compensation and rehabilitation may not have been sufficient to ensure that the living conditions of resettled persons have been restored.

There is still no system in place that would make it possible to assess the present social and economic status of the people that have been resettled. The almost complete lack of baseline data also makes it next to impossible to monitor and evaluate whether the economic and social situation of these people are, in the terms of ADBs policy, “as least as favorable” as it would have been without the project. While it is likely that many of the negatively affected families have also been in a position to benefit from the positive developments that the project has brought with it, there does not seem to be any provisions in place for those that have not.

In this context, the Panel finds the way that the 400 page Project Impact Monitoring and Evaluation Study in December 2002 treats the resettlement issue to be most remarkable. Although the study lists - in an Annex - flooding as a major negative impact and resettlement as a protection measure, it does not in any way try to quantify the magnitude of the problem, establish baselines, or identify indicators for monitoring and evaluation.

Indigenous Peoples

The ADB did not have any specific policy documents on indigenous peoples at the time of the appraisal of the CRBIP Stage III in 1991. However, the 1986 Staff Instructions on Socio-cultural Impacts of Bank Projects made explicit reference to “rights of tribal/ethnic minorities, cultural integrity and traditional land use control”, while OM 23 on Project Benefit Monitoring and Evaluation required benchmark information to be obtained and analyzed about “tribal minority groups.”

On the basis of its findings the Panel concludes that:

- The Feasibility study and Appraisal document that was the basis for approving the loan do not address the issues of “rights of tribal/ethnic minorities, cultural integrity and traditional land use control”, as specified in the 1986 Staff Instructions on Socio-cultural Impacts of Bank Projects.
- The approval in 1999 of supplementary financing for the project should have been preceded by a review of issues related to the rights and interests of indigenous peoples.

Any effort to implement the Bank Policy, Procedures and Staff Instructions on Indigenous Peoples would have to start by determining which groups of people in the project area the policy applies to (and consequently whose interests are to be protected by their application). Under the current OM this would involve an analysis of the affected communities, both on the basis of ADB's definitions of 'indigenous peoples' and on the provisions under Pakistani law. The present policy requires that this be done in a consultative process. As no such analysis has ever been undertaken, the Panel concludes that the Bank has never made any attempt to apply its Indigenous Peoples Policy and Instructions in the project. This is confirmed by the fact that we have not found any reference to any specific measure that addresses problems or issues in terms of ethnic or cultural identity.