

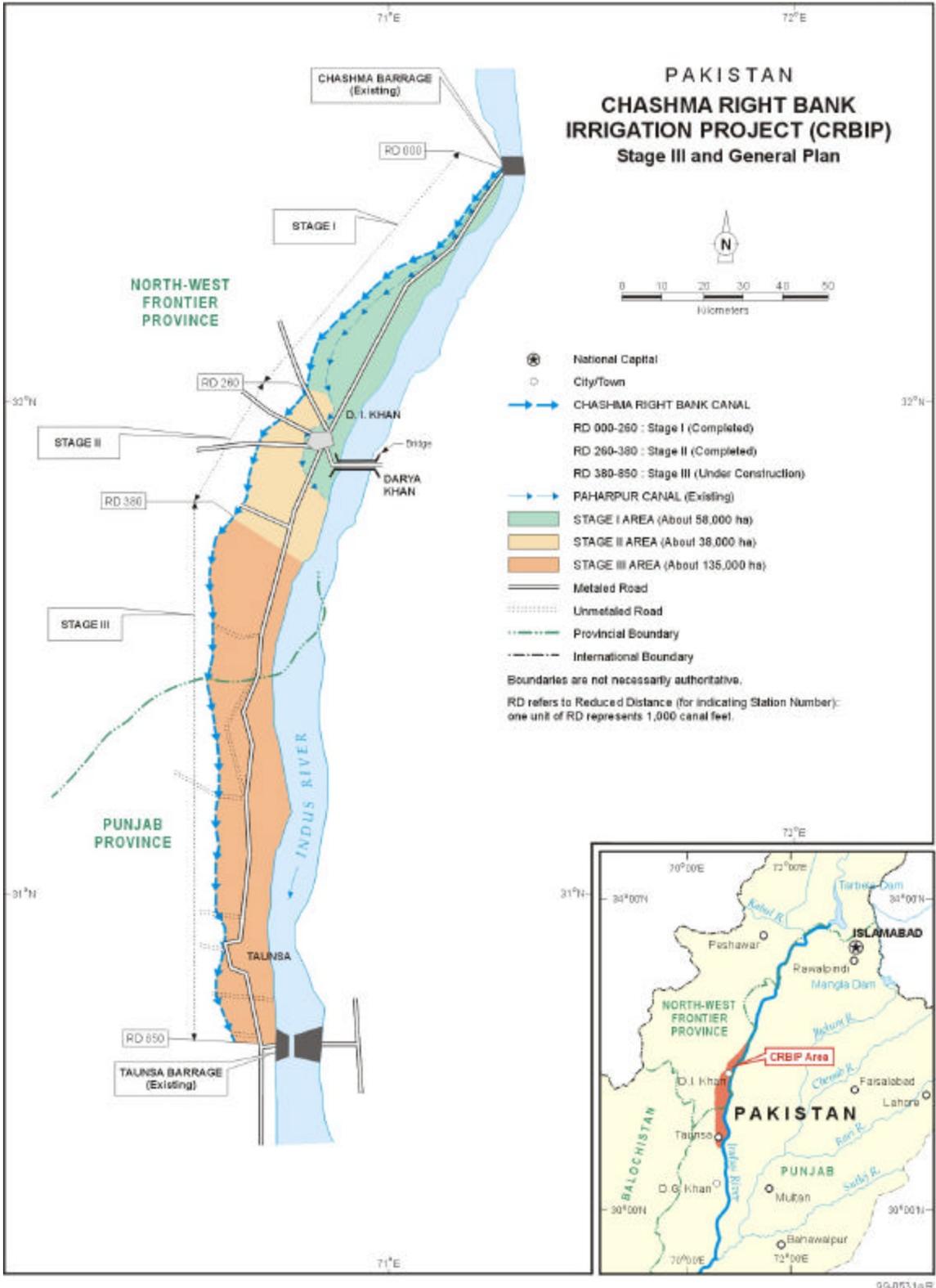
Final Report of Inspection Panel

on

Chashma Right Bank Irrigation Project Stage III

10 June 2004





Abbreviations

ADB	-	Asian Development Bank
BIC	-	Board Inspection Committee
BTOR	-	back to office report
CBI	-	Consensus Building Institute
CCA	-	cultivable command area
CRBIP	-	Chashma Right Bank Irrigation Project
EA	-	executing agency
EMES	-	Environmental Monitoring and Evaluation System
EMP	-	Environment Management Plan
FCC	-	Flood Carrier Channel
GRSC	-	Grievance Redress and Settlement Committee
IEE	-	initial environmental examination
IIMI	-	International Irrigation Management Institute
ILO	-	International Labor Organization
IWMI	-	International Water Management Institute
KfW	-	Kreditanstalt für Wiederaufbau
MOU	-	Memorandum of Understanding
MOW & P	-	Ministry of Water and Power
NDC	-	National Development Consultants
NDSP	-	National Drainage Sector Programme
NFC	-	National Fertilizer Corporation
NGO	-	non-government organization
NWFP	-	North-West Frontier Province
O & M	-	operation and maintenance
OFWMP	-	On-Farm Water Management Project
OM	-	Operations Manual
OP	-	Operational Procedures
PBME	-	project benefit and monitoring evaluation
PCMU	-	provincial coordination and monitoring unit
PCR	-	Project Completion Report
PEM	-	Project-evaluation Mission
PIME	-	project impact monitoring and evaluation
PMC	-	Project Management Consultancy
PPAR	-	Project Performance Audit Report
PPTA	-	Project Preparatory Technical Assistance
PRA	-	Participatory Rural Appraisal
Rs.	-	Pakistan Rupees
SDR	-	Special Drawing Rights
SIEE	-	Summary Initial Environmental Examination
SMP	-	Salinity Management Plan
SSAP	-	Social Survey and Action Plan
TA	-	Technical Assistance
TAM	-	Technical Assistance Mission

- TOR - terms of reference
- WAPDA - Water and Power Development Authority
- WEC - WAPDA Environmental Cell

Glossary and Definitions

<i>barani</i>	rainfed
cross drainage	structures that allow hill torrents to pass across (either over or under) the canal
cusec	unit of flow – cubic feet per second
cut section	section of a channel requiring earth excavation during construction
fill section	section of a channel requiring earth filling (mostly for embankment) during construction
flood carrier channel	channel with embankment, mostly using <i>nullahs</i> , for draining hill torrents floods within the irrigation command area
ha	hectare
km	kilometer
Management	The President and Vice Presidents of ADB
mt	metric ton
<i>mogha</i>	outlet from minor or distributary into a watercourse
<i>nazim</i>	locally-elected District or sub-district (<i>tehsil</i> or union) head of local government
<i>nullah</i>	natural channel or gully formed by hill torrents that flow only when precipitation falls in its catchment area, from which water is diverted for <i>rod kohi</i> agriculture
<i>nullah</i> siphon	culvert under the canal with headworks to guide the floodwater
PC-1	Planning Commission Proforma I; document for budget allocation from state funds
Request	written request for inspection of the CRBIP, submitted in November 2002
Requesters	Group of six individuals who submitted the Request on behalf of people affected by the project, and individuals they represent
Response	ADB Management's response to the Request
<i>rod kohi</i>	irrigation system from hill torrent flood waters
superpassage	a flume that carries the <i>nullah</i> flow over the canal clear of the canal water surface
<i>tehsil</i>	a sub-district unit of local government
union	a sub-tehsil unit of local government

1. Introduction

1. The Chashma Right Bank Irrigation Project (Stage III) (the Project)¹ was approved by the Board of Directors of the Asian Development Bank (ADB) in December 1991. It is the third phase of a project that was intended to irrigate 230,000 hectares of semiarid land in the North-West Frontier and Punjab provinces of Pakistan by diverting water from the Indus River at the Chashma Barrage. Phases I and II were completed and work on Phase III commenced in September 1993. Although the Project was due to be completed in December 2002, as of 30 January 2004, it was reported that 99% of project construction was complete.² The date of completion was extended to 31 December 2004.

2. At appraisal, the estimated Project cost was \$287.5 million, to be financed in part by an ADB loan of \$185 million and Kreditanstalt für Wiederaufbau (KfW) cofinancing in the amount of \$40 million. The Government provided the remaining \$62.5 million of the Project cost. In June 1999 the ADB Board approved the provision of additional financing in the amount of \$33.5 million to meet a part of a \$50.5 million financing gap caused by cost overruns. As of December 2002, the revised Project cost estimate was \$296.52 million; the ADB loan was \$172.60 million; the KfW loan was \$41.64 million; and the Government's share was \$82.28 million.³ As of 30 January 2004, it was stated that 80.34% of the total amount of the ADB loan had been disbursed.⁴

3. On 4 June 2002, the President of the ADB received a complaint dated 28 May 2002 from Mr. Ahsan Wagha, Damaan Development Organization, Taunsa Sharif, Mr. Zafar Iqbal Lund, HIRAK Development Centre, D.G. Khan, Mr. Mushtaq Gadi, SUNGI Development Foundation, Islamabad, and Mr. Mohammad Nauman, CREED Alliance, Karachi, with an authorization to represent persons affected by the Project. The complaint alleged that ADB had breached its operational policies and procedures in formulating and processing the Project, which had an adverse effect on the affected persons.

4. ADB's Management (Management) responded on 16 July 2002, within the stipulated 45 day period. It described the steps taken and measures being pursued with respect to (a) Flood Protection; (b) Resettlement, Compensation and Rehabilitation; (c) Environmental Management Plan; (d) Additional Physical Works to Improve Livelihood in the Command Area; and (e) the establishment of a Grievance Redress and Settlement Committee (GRSC). Management indicated the need for a complaint to conform to certain requirements under the Inspection Policy and Procedures and stated that there was a failure to comply with some of those requirements in the complaint submitted to the President. Management then proceeded to deal with specific issues raised in the complaint concerning (a) Substantial Material Harm; (b) Reappraisal of the Project During Supplementary Financing in 1999; (c) Project Design and Related Social and Environmental Issues; (d) Flooding and Involuntary Resettlement; (e) Land Acquisition and Related Compensation; (f) Lifestyle Disruptions, Livelihood Losses and Threats of In-migration; and (g) Information Sharing, Consultation and Participation of the Affected Communities –

¹ Loan 1146-PAK (SF): *Chashma Right Bank Irrigation Project* (Stage III).

² Terms of Reference for the Inspection Panel, January 2004, (TOR), "Project Status".

³ Report of the Board Inspection Committee to the Board of Directors on the Request for Inspection on Chashma Right Bank Irrigation Project (Stage III), 12 March 2003, (BIC Report) ¶ 3.

⁴ Inspection Panel TOR, "Project Status".

Compliance with ADB's Guidelines for Incorporation of Social Dimensions in Bank Operations, and OM 47.

5. On 25 November 2002 the Chairman of the Board Inspection Committee (the BIC) received a written request for Inspection, dated 19 November 2002 (*Request*). It was submitted by the applicants who had submitted the earlier complaint and two other persons – Mr. Khadim Hussain of Action Aid-Pakistan, and Mr. Shafi Qiasrani of CRBIP Affectees Committee (*Requesters*). The Request was submitted with an authorization for the Requesters to represent the persons affected by the Project. The Requesters stated that they were not satisfied with the response to the complaint, including the proposed GRSC, and sought an Inspection of the Project.

6. The BIC considered the Request on 18 December 2002. It was decided that, *prima facie*, the Request was neither clearly frivolous nor clearly ineligible and the BIC sent a copy to the President requesting that Management provide a response within 30 days of receipt. On 19 December Management requested an extension of the 30-day deadline, which was extended to 7 February 2003 by the BIC Chairman on 20 December.

7. Management's Response (*the Response*) was received by the BIC on 7 February. On 11 February, the BIC received supplementary information (*the First Supplement*) from Mr. Mushtaq Gadi, one of the Requesters.

8. On 12 February, the BIC considered the Request, the Response and the First Supplement and decided to call for additional information from the Requesters and from Management.

9. The additional information from Management was received by the BIC on 25 February. In its view Management had addressed all of the issues on which the BIC had sought information and, accordingly, the BIC decided that it did not require further information from Management at that stage.

10. The additional information from the Requesters was received by the BIC on 26 February, by email (*the Second Supplement*). A hard copy was received subsequently. In its view the Requesters had addressed all of the issues on which the BIC had sought information and, accordingly, the BIC decided that it did not require further information from the Requesters at that stage.

11. In July 2002, in its Response to the Initial Complaint of the Requesters Management stated that a Grievance Redress and Settlement Committee (GRSC) was to be appointed and that it was hopeful that the pending issues would be quickly resolved. In February 2003 Management in its Response to the request for Inspection reiterated the position that "major pending issues under the project can be satisfactorily addressed through timely and effective functioning of the GRSC" and expressed the opinion that an inspection would be "counterproductive to remedial measures proposed."

12. The GRSC functioned from 20 May to 29 December 2003. Its Final Report was submitted to the Chairman of the BIC on 16 February 2004.

13. In accordance with ¶ 39 of ADB's *Inspection Procedures*, whereby the Board Inspection Committee (BIC) may consult with a member of the Roster in its deliberations regarding a request for inspection, Dr. Judy Henderson was asked to provide an opinion on whether

(a) the Request satisfied the requirements of the Policy and Procedures; and, if so,

(b) whether an inspection should be recommended to the Board.

14. On 5 March 2003 Dr. Henderson expressed the opinion that

- (a) the requester is an eligible party;
- (b) the request did relate to a matter within the scope of the inspection policy;
- (c) the subject matter of the request did appear to involve a violation of the Bank's operational policies and procedures;
- (d) the matter had been raised appropriately with Management;
- (e) Management had not adequately responded to the claims made in the Request, either by demonstrating that it had followed its operational policies and procedures, or by outlining specific steps that Management was taking, or intended to take, to correct any failure to follow the policies and procedures and to address any harm caused by such failure.

15. Members of the BIC met informally five times in Executive Session to consider the Request, the Response, the two Supplements, Management's and Requesters' additional information, the Roster Member's report, and project-related documents. The BIC met formally on 12 March to determine in accordance with ¶ 39 of ADB's *Inspection Procedures*, "based on the information present in the Request and Management's response, whether

- (a) the Request satisfies the requirements of the Policy and these Procedures; and, if so,
- (b) an inspection should be recommended to the Board."

16. The BIC recommended that "the Board authorize an inspection of the Chashma Right Bank Irrigation Project (Stage III) ...", and that the inspection process should commence in December 2003. The deferral of the implementation would allow a Grievance Redress and Settlement Committee that was to be appointed to complete its activities before the inspection.

17. On 2 April 2003 the Board of Directors approved the recommendations with regard to the Inspection Request and on 28 November 2003 the Chairman of the Inspection Committee of the Board reported that four members of the ADB Roster of Experts, namely, Mr. A.R.B. Amerasinghe of Sri Lanka, Mr. Goran Eklof of Sweden, Mr. Neeraj Joshi of Nepal and Mr. Lawrence Williams of the USA, had been selected to serve as members of the Inspection Panel (IP).

18. The agreed Terms of Reference gave the Inspection Panel a mandate to investigate ADB's action with respect to the following OMs and staff instructions:

- OM 21, Environmental Considerations;
- OM 23, Benefit Monitoring and Evaluation;
- OM 13, Supplementary Financing;
- OM 32, Bank's Operational Missions;
- OM 50, Involuntary Resettlement; OM 47, Social Dimensions;
- Staff Instruction on Socio-cultural Impacts of Bank Projects; and
- Staff Instruction on Indigenous Peoples

19. In December 2003 the members of the IP received background documents for consideration and a consultation draft terms of reference with a request for comments by 15 January 2004. The members of the IP met in Manila at the ADB Headquarters in between 26-28

January to set up office and organize logistics and administrative matters, determine procedures and to draw up its work plan and tentative timetable. On 29 January the IP met with the BIC to discuss the proposed Terms of Reference (TOR), work plan and timetable. On 30 January the BIC adopted the TOR. On 2 February the members of the IP signed the TOR. The TOR, work plan and tentative timetable were posted on the website.

20. Although the Terms of Reference were posted on the ADB website, it was evident to the members of the Panel during their discussions with some persons, both in Manila and during the Panel's visit to Pakistan, that some clarification may not be out of place to allay fears, dispel doubts, clarify misconceptions and qualify expectations. The Inspection Panel is neither a judicial authority nor even a grievance redress mechanism. The Panel's mandate is not to evaluate the Project. The focus of the inspection is on ADB's conduct and not the conduct of the Government or Executing Agencies. The purpose of the Inspection was to determine whether ADB has complied with its operational policies and procedures in processing or implementing the Chashma Right Bank Irrigation Project Stage III in Pakistan. In the event of a finding of noncompliance, the Panel is required to make a further finding as to whether the noncompliance resulted or may result in direct and material harm to the rights and interests of the Requesters and make any further recommendations, if appropriate, for any remedial changes in the scope and implementation of the project.

21. The IP made a careful study of the Request, Management's Response, the additional information furnished by the Requesters and Management to the BIC, the Report of the Roster Member, and the report of the BIC to the Board on the subject of the Inspection Request. The IP further considered the translated, representative complaints made to the Grievance Redress and Settlement Committee by affected persons furnished to the IP by Mr. Mushtaq Gadi, one of the Requesters.

22. There are a large number of documents relating to the Chashma Right Bank Irrigation Project Stage III that were examined by the IP in order to fully understand the Bank's operational directives, procedures and guidelines in the context of the Project and associated technical assistance. Some of these are confidential documents. In compliance with ¶ 19 of its Terms of Reference, the IP has refrained from making public matters that are of a confidential nature.

23. The IP interviewed personally or through tele-conferencing a number of persons who are or who had from time to time been involved in the Project as members of ADB staff or as consultants. The IP is much obliged to them for their unstinted cooperation and support both at interviews and in furnishing documents.

24. The IP sought the opinion of ADB's General Counsel on certain matters concerning the scope of the IP's functions and questions of confidentiality. The IP is obliged for the guidance it received.

25. The IP had the benefit of the advice of a consultant hydrologist, Mr. Abdul Wahid. The IP wishes to place on record its gratitude to him for the clarification of certain technical matters.

26. By the letter dated 12 March 2004, each of the Requesters was informed of the proposed visit of the IP to Pakistan and their support was solicited. The proposed visit to Pakistan was also discussed by the IP with Mr Gadi by tele-conference.

27. The IP visited Pakistan between 27 March and 6 April 2004 and had discussions at Islamabad, Lahore and in the Project area with many officials. Mr. Riaz Ahmad Khan, Additional

Secretary, Ministry of Water and Power, Chairman KESC, Vice-Chairman PEC, functioned as the Government Coordinator. The officials the IP met included representatives of the Government's Ministry of Water and Power, Ministry of Economic Affairs and Statistics, the North West Frontier Provinces, officials of the Water and Power Development Authority (WAPDA), including the Member Water and the Chief Engineer and PD of the Chashma Power Complex who accompanied the IP during the Project visits conducted under the auspices of WAPDA, the Punjab Irrigation and Power Department, including its Chief Engineer, and Board of Revenue, and the Land Acquisition Collector at the WAPDA Colony in Taunsa Sherif.

28. On 27 March the Panel met with Mr. Khadim Hussain, one of the Requesters. He informed the Panel that it had been decided at the Lok Sath that the Requesters would "disengage" themselves from their role as Requesters of the Inspection, but that they would nevertheless facilitate the work of the Panel. This position was later confirmed by two other Requesters – Mr. Mushtaq Gadi and Mr. Ahsan Wagha – when the Panel met with them to finalize plans for the field visit. It was agreed that four days would be spent with the Requesters and one day with WAPDA. Later, Mr. Gadi, who was coordinating the visits to the villages and sites and meetings with affected persons, stated that he would not be available beyond the third day. The Panel met with villagers at Muchaniwali, Jadywali, Ketherewali, Gat, Chanr, Tubb and Sokkar. The Panel also met with landowners in Taunsa Sherif. Various sites were visited to gain a better understanding of the matters referred to in the documents, and at interviews with Bank Staff and Consultants, Government officials, Requesters and villagers.

29. The Chairman of the now defunct Grievance Redress and Settlement Committee, Mr. Justice (R) Muhammad Azil Mirza, was interviewed at Lahore. The Panel was greatly impressed by his deep knowledge and strong sense of justice.

30. Many debts of gratitude have been incurred. The IP wishes to unreservedly thank all those who assisted it during its visit to Pakistan including the Government and officials of Pakistan, the Requesters and in a special way the people of Project area, who despite their preoccupation with harvesting and other activities gave generously of their time.

31. The Panel is indebted to the Requesters and Management for their perceptive and helpful comments.

32. The Panel wishes to thank the Board Inspection Committee for enabling the Panel to discharge its duties in an atmosphere that was free of any interference. The Panel is grateful to Ms. Jill Drilon who functioned as the Secretary of the Panel and her supporting staff members – Ms. Kathy Ella and Ms. Arlene C. Dogelio.

2. Project History

33. The following is a *selective* summary of the history of Chashma Right Bank Irrigation Project (CRBIP). It focuses on those aspects of the project that are most immediately relevant in the context of the present inspection.

34. The CRBIP was formulated in the early 1970's in the framework of the Indus River Basin Project. The project envisaged the construction of a 273 km long main canal originating from the existing Chashma Barrage, and related infrastructure for the development of a total cultivable command area of about 230,000 ha.

35. In 1982 it was decided to undertake the project in three stages, based on the original development concept. The ADB has provided loans for all three stages, as well as for some related projects. Stage I of the project was completed in 1988, and Stage II in 1994.

36. In February 1988, the Government of Pakistan requested technical assistance from the Bank for detailed preparation of CRBIP Stage III. ADB approved the TA grant in July 1989. By then, the ADB had undertaken an environmental screening of the project, and categorized it as a "B" project according to the classification set out in the Bank's OM 21 (1988) regarding Environmental Considerations in Bank Operations.

37. Consultants Brown, Copeland & Co., who had already been involved in the previous stages, were contracted to do the Feasibility Study for Stage III. A Technical and Economic Feasibility Report was submitted in March 1990. As part of the process, they had subcontracted the task of producing the Benchmark Socio-Economic Survey to the National Fertilizer Corporation of Pakistan Ltd. The report on the survey was submitted in October 1990.

38. The Feasibility Report outlined a project with four main components:

- The Main Canal and Related Facilities
- Distributary Canal and Drainage Facilities
- On-farm Water Management, and
- Agricultural and Livestock Extension

39. The project planned for and promoted an increase in the use of fertilizers, pesticides, new seeds and agricultural mechanization in order to maximize the productivity increase that was made possible by canal irrigation. The population in the project area was predicted to almost double by year 2000, largely due to an estimated in-migration of some 8 000 families (55,000 persons) that would be attracted by new income opportunities. The plan did not foresee any need for resettlement of households, or any significant environmental impacts.

40. In April-May 1991, the ADB fielded a Loan Appraisal Mission to review the proposed project. The Appraisal Report, along with a proposal for the CRBIP loan was submitted to the ADB Board of Directors in November 1991. It describes the main quantifiable benefits as follows:

- 41. Perennial irrigation and drainage for 135,000 ha with an annual cropping intensity of 150 percent, enabling an increase of more than 300,000 mt in the annual

- production of wheat, rice, maize and sugar, complemented by increases in oilseed, milk, meat and wool.
- 42. Total increase in farm-gate output was estimated to be \$ 137 million from the crop and livestock sectors alone
 - 43. An average four-fold increase of household incomes in the currently rainfed areas from \$550 to over \$1,900
 - 44. An additional farm labor demand of 23,000 man-years, and 20,000 man-years of employment for project related construction activities
45. Predicted non-quantifiable impacts included reduced income discrepancies between the project area and other parts of the country, rapid expansion of the service sectors in the major towns, improved quality of water available for domestic use, improved communications in the project area, creation of a more predictable economic environment for investments, and improved environmental conditions (including improved soil conditions for sustained agricultural production).
46. The Appraisal included a Summary Initial Environmental Examination (SIEE) of the project, wherein the environmental category “B” was confirmed, and concluded that no further environmental impact assessment was required. However, besides the loan for Stage III, the proposal for the CRBIP III loan also contained a proposed Environmental Impact Assessment TA that would be ‘piggy-backed’ to the project. The purposes of the TA included building WAPDA’s capacity for environmental assessment and planning, doing environmental impact assessments of the CRBIP, and developing a comprehensive environmental monitoring program. On 17 December 1991 the Board approved the loan and the TA.
47. The Appraisal was based on the premise that “the final alignment/location and detailed design” of the main canal and distributaries would be subject to review after detailed site surveys and investigations, “but only minor deviations from those proposed in the Stage III feasibility study are anticipated”. A revised design proposal was presented by National Development Consultants (NDC) on 12 December 1991, only five days before the Board’s approval of the loan. The proposed changes implied shifts in the alignment of the main canal of up to 2 km, and new designs for a number of cross drainage structures.
48. ADB’s first visit to the project area after the Board’s approval of the loan was an Inception Mission in November 1993. Further work on the detailed design was undertaken throughout 1994. In March 1994 WAPDA published an Initial Environmental Examination (IEE) of CRBIP Stage III, which had been produced under the TA project. This was followed in March 1995 by an Environmental Management Plan (EMP). Both documents based their analysis of the impacts on the original project design as proposed in the 1990 Feasibility Study. Since neither the TA nor the Stage III loan included any money for financing of the identified mitigation measures, it was agreed to transfer responsibility for implementation of the plan to the National Drainage Sector Program (NDSP), for which ADB provided a loan in 1996. As implementation of NDSP became stalled for several years, nothing was done to implement the Chashma EMP.
49. Floods in 1994 caused damage to infrastructure and a village at the tail end of Stage II, which alerted ADB to the dangers of flooding in areas uphill from the canal. WAPDA commissioned a study to assess the flood risks and propose measures to mitigate the effects. A draft report in August 1995 attributed the flooding to the construction of superpassages over the canal, and recommended that people in 12 villages should be resettled. A second report in December 1996 estimated that 25,000 acres of land in 10 villages were at risk of being flooded.

50. In April 1997 ADB fielded a mission, which included a Social Development Specialist, with the purpose of defining the scope on a “Social study and action plan” - in practice a flood protection/resettlement plan - for the flood affected villages. The contract for developing the plans was, however, not signed until year 2000.

51. By the time a Mid-Term Review Mission was conducted in December 1997, substantial cost overruns had been predicted. Preparations were initiated for the provision of supplementary financing for the project. In July 1999 the ADB Board of Directors approved that a surplus of up to SDR 24 million from the NDSP could be used for financing the deficit in CRBIP Stage III. The new loan was approved without a full reappraisal of the project. New covenants on counterpart funding and maintenance of the main canal were added to the loan agreement, but problems with the implementation of the EMP and the Flood Protection/Resettlement Plans were not addressed.

52. When the proposed Flood Protection and Resettlement Plans were presented in February 2001, WAPDA objected strongly to the preferred resettlement options that had been selected by 11 out of 12 villages. ADB also requested that Flood Protection options should be developed for all villages. The consultants were instructed to develop such plans, along with cheaper resettlement options. At about the same time, an additional 10 villages were identified as being at risk. The final outcome of the process was that 14 villages were given cash compensation for self-resettlement, while flood protection structures were constructed for eight villages.

53. Widespread dissatisfaction with delayed and inadequate payment of compensation, inappropriate flood protection arrangements (and flooding of several villages during the 2001 monsoon), restrictions to mobility and a series of other problems led the ADB to initiate a multi-stakeholder dialogue process in July 2001. External facilitators interviewed government agencies, project staff and NGOs, and conducted PRA studies in villages, while preparing a background report for a workshop that was held in March 2002. The workshop resulted in a matrix of ‘agreed measures’. However, by the last day the NGOs that had participated declared that they could not endorse the plan.

54. An ADB Loan Review Mission visited the project in May 2001, mainly in order to follow up on the Multi-Stakeholder Workshop. At a high level meeting in Islamabad, agreement could not be reached on the Mission’s proposal to involve NGOs in preparing and implementing a final action plan. The mission also prepared the draft Terms of Reference for the preparation of a new Resettlement Plan. However, after the mission returned to Manila the priorities were changed. In July 2002 ADB proposed the creation of what became the Grievance Redress and Settlement Committee (GRSC). The appointment of the GRSC was agreed to in January 2003, and the Committee worked between May and December 2003.

55. In January 2004, a new draft proposal for implementation of measures from the Environmental Management Plan was presented, and it was discussed in consultation meetings in February. The revised proposal is to be implemented between from April 2004 to May 2005. The Government of Punjab has commissioned a feasibility study for a Hill Torrents Management Plan. The report is due towards the end of 2004.

3. Supplementary Financing of Cost Overruns

56. The main points of the various ADB policies and provisions that relate to the issue of supplementary financing are presented in Box 1.

Box 1 Supplementary Financing – Policies and Procedures

OM 13/BP 12 December 1995, Introduction.

“Financing of cost overruns will require reappraisal of the project concerned.”

R 115-83 29 November 1983, ¶ 22

“The procedural arrangements for processing supplementary loans would be similar to those applicable to new loans, including the reappraisal of the whole project.”

OM 13/OP 12 December 1995, ¶ 1

“The procedure for processing a supplementary loan ... is similar to that for a new loan, and includes reappraisal of the entire project ...”

OM 32/ OP 13 January 1997, ¶ 29

“A reappraisal mission is sent ... when cost overruns are incurred in its implementation. As in the case of an appraisal mission, the reappraisal mission is required to obtain all the necessary information to analyze the technical, economic, financial, legal, institutional, social, environmental and other aspects of the project.”

3.1 Request

57. The Requesters assert⁵ that at the time of the supplementary financing to cover cost overruns (1999), there was a duty on the part of Management to conduct a “full” appraisal⁶ of the project. In support of that view, they quote from OM 32 BP/OP:⁷ “A reappraisal mission is sent ... when cost overruns are incurred in its implementation. As in the case of an appraisal mission, the re-appraisal mission is required to obtain all the necessary information to analyse the technical, economic, financial, legal, institutional, social, environmental and other aspects of the ... project ... The mission is expected to determine whether supplementary financing of cost overruns could be considered based on the policy and operational guidelines for such purpose.” (Emphasis added).

⁵ *Chashma Inspection Request Filed with the Board Inspection Committee Under the Inspection Procedures of Asian Development Bank*, November 19 2002, (Request) pp. 19-20 ¶ 47. Cf. *Complaint filed with the President ADB, 28 May 2002 under the Inspection Procedure of the ADB* p.4 ¶ 14-15.

⁶ The General Counsel quotes the words emphasized in this paragraph and states: “A ‘reappraisal’ which broadly considers the foregoing factors is known as a ‘full appraisal’.” The General Counsel to the Chairman Board Inspection Committee on Chasma Right Bank Irrigation Project: Stage III, Letter GC 2003 AMM 19 dated 12 February 2003, p. 5 ¶ 16, reproduced as an Annex to this Report.

⁷ OM 32 J ¶ 29 s.v. “Reappraisal Mission.”

58. The Requesters further assert that the “relevant policies on supplementary financing make it compulsory to consider the additional funding as similar to that for new loans, and include reappraisal of the entire project.” They proceed to quote the following words from OM 13/OP ¶ 1: “The procedure[s] for processing a supplementary loan ... is similar to that for new loans, and includes reappraisal of the entire project.” The Requesters add that “The policy also states that financing of cost overruns will require reappraisal of the project concerned. ([OM 13] BP ¶ 1).”⁸

59. The Requesters claimed that, since Management “has admitted that the only thing that the ADB team did during reappraisal was to establish the reasons for the cost overrun (see Management response para 38) ... Management has therefore admitted that the reappraisal mission failed to comply with ADB’s policies on Supplemental Financing of Cost Overruns and the policy on the Bank’s Operational Missions.”⁹

3.2 Response

60. Management stated that reliance by the Requesters on OM 32 was mistaken and that, as a consequence, the erroneous conclusion was reached that “all” Bank policies in force at the time of supplemental financing must be followed. According to Management, the relevant OM applicable to supplementary financing is OM 13.¹⁰

61. Management admitted the fact that the reappraisal it made was limited to ascertaining the reasons for the cost overrun.¹¹ It explains that this was because, in its opinion, “the scope of the Re-appraisal in accordance with OM 13 has been limited to the objective of establishing the reasons for cost overrun. ADB staff in reappraising the project in 1999 followed this interpretation” (emphasis added) “in following the related policy on supplementary financing. Based on this interpretation ADB staff complied with OM 13 in carrying out a Re-appraisal limited to establishing the reasons for cost overrun.” (Management’s emphasis).

62. Although it was aware (i) of the views of the Panel of Experts and the BIC in the Samut Prakarn case, namely, that reappraisal meant full appraisal;¹² (ii) and, with the benefit of hindsight, that in 1999, supplementary financing did present an opportunity for a full appraisal which could have more thoroughly and systematically dealt with the issues raised in the request, yet Management did not accept the allegation of the Requesters that it transgressed the Bank’s Policy on Supplementary Financing of Cost Overruns. Management persisted in its stated position with regard to the scope and extent of re-appraisal in the context of Supplementary Financing.¹³

3.3 The Need for Inspection

⁸ Request, November 19, 2002, p. 20 ¶ 48.

⁹ Request, November 19, 2002, p. 20 ¶ 49.

¹⁰ *Response of Management to the Initial Complaint*, July 2002, p.8 ¶ 36.

¹¹ *Response of ADB Management to the Initial Complaint*, July 2002, p. 8 ¶ 38.

¹² *Response of Management to the Initial Complaint*, July 2002, p. 8 ¶ 39.

¹³ *Ibid.*

63. In the circumstances, the matter of the alleged transgression of the Bank's policies relating to supplementary financing on cost overruns was referred to the Inspection Panel, despite the fact that the BIC was of the view that a full appraisal was required at supplementary financing.¹⁴

3.4 Findings

64. OM 13 BP p.1 states: "The procedure for processing a supplementary loan ... is similar to that for new loans, and includes reappraisal of the entire project." The need for a full appraisal¹⁵ is specially justified in the peculiar circumstances of CRBIP Stage III. The project was somewhat unusual in that the Board approved two loans (in 1991 and 1999), and could therefore be said to have approved the project twice.¹⁶

65. In its response to the Draft Report of the Inspection Panel, Management refers to the need for interpretation. A prescribed norm is communicated through language. Language must be interpreted before it can be applied. However, interpretation is not an arbitrary exercise; it must take place within a framework of rules. The rules may be simple or complex, depending on a variety of matters including the character of the statement whose meaning is sought – e.g., is it a formally, carefully crafted statement or a casual statement- and whether the grammatical meaning is clear or whether there is ambiguity. Management states¹⁷ that it made "A literal reading of the applicable OM 13/BP, para . 1." Rather, what Management did in fact was not to make a "literal reading" but to extract the OM phrase "reappraisal of the entire project" from its context and construe that phrase in the light of documents "underlying" OM 13,¹⁸ thereby giving OM 13 a strained meaning. OM 13 acknowledges that it is based on a number of documents submitted to the Board of Directors, including R 115-83 of November 1983 and SEC M 48-89. As The General Counsel observed: "These documents include language that confirm that for the preparation of a Supplementary loan, the procedural arrangements for processing such a loan must be 'similar to those applicable to new loans including reappraisal of the whole project' (e.g., para. 22 of R 115-83)."¹⁹ These documents use language that confirm that for the preparation of a Supplementary loan, the procedural arrangements for processing such a loan must be similar to those applicable to new loans including reappraisal of the whole project (e.g., para. 22 of R 115-83). When processing a supplementary loan, there is no doubt an obligation to establish the principal reason for the cost overrun, but that does not, as Management suggests,²⁰ carry with it the corollary that there need not be a full appraisal of the project. Management misconstrued OM 13 and misdirected itself and reached the erroneous conclusion that its obligations were confined to identifying the reason or reasons for the cost overrun.

66. The Samut Prakarn inspection case, as the General Counsel said,²¹ is a useful precedent for the Chashma matter. In that case, Management argued that Board policies that had been adopted after the original approval of that project were not relevant because the reappraisal

¹⁴ Report of the BIC to the Board of Directors, 12 March 2003, pp. 10-12 ¶¶ 48-52.

¹⁵ As to the meaning of "full appraisal", see note 6 above.

¹⁶ Letter from The General Counsel to the Chairman of the BIC, GC 2003/AMM 19 dated 12 February 2003 on Chasma Right Bank Irrigation Project 2003, p. 4 ¶ 13 reproduced as an Annexure to this Report.

¹⁷ *Response of ADB Management*, February 2003, p. 15 ¶ 52.

¹⁸ *Ibid.*

¹⁹ Letter from The General Counsel to the Chairman of the BIC, p.5 ¶ 15 reproduced as an Annexure to this Report.

²⁰ *Management Response to the Initial Complaint*, July 2002, p8 ¶ 40; *Management Response to the BIC*, February 2003, p. 15 ¶ 52.

²¹ The General Counsel to the Chairman of the BIC, *op. cit.* pp. 4-5 ¶ 14 reproduced as an Annexure to this Report.

required in connection with supplemental financing was limited to the reasons for the cost overruns incurred.²² The Inspection Panel determined, and the Board Inspection Committee agreed, that such an interpretation of Management's obligations at the time of considering supplementary financing of cost overruns was unduly narrow.²³

67. In making a full appraisal, Management was obliged to obtain all the necessary information to analytically examine the technical, economic, financial, legal, institutional, social and other relevant aspects of the Project in accordance with each and every one of the OMs, Guidelines and Instructions applicable at the time. The Inspection Panel finds itself in agreement with Management that its failure to conduct a full appraisal at the time of Supplementary Financing was indeed a lost opportunity. The failure to seize that opportunity, as we shall see in greater detail in the chapters that follow, resulted in undesirable consequences. However, there was more to it than that. For the reasons stated above, the Inspection Panel holds that the failure of Management to conduct a full appraisal was also a breach of OM 13 which was a "mandatory"²⁴ provision constituting what has been described as an "internal law" of the Bank.²⁵

68. In its response to the Draft Report, Management said that ADB's "internal laws" were "not written as rule-based statutes but as operational principles that Staff should apply" and that Management is called upon to make "evaluations and decisions about what is possible and 'doable' while adhering to the integrity and spirit of ADB's internal laws." Management refers to its qualifications and capacity to make professional judgments. The essence of its submissions is that, particularly in relation to its failure to comply with the requirements of OM 13, it deliberately, as a matter of judgment chose not to comply.

69. Since the issue of professional judgment is referred to at great length and not inconsiderable reliance is placed on professional judgment as a reason for non-compliance with the Bank's operational policies and procedures, the Panel feels obliged to explain at some length why it shares The General Counsel's view that the "internal laws" of the Bank are mandatory.

70. Good governance requires that the affairs of any organization should be conducted in an orderly and reasonably predictable way. This is usually ensured by a hierarchy of norms, including good practices, guidelines, instructions and policy-based operational procedures. Clues to identifying the importance of a norm and the expected level of compliance are ordinarily found in the manner of its formulation and expression and its source.

71. As far as ADB is concerned, it seems to the Panel that the greatest importance is attached to compliance with its procedures anchored in Bank policy and formally declared and prescribed by the Bank's apex governing body – the Board. Their paramount importance and the nature of the compliance expected is reflected in their description as internal "laws" of the Bank. Merely adhering to their "integrity and spirit" is less than what is expected of those from whom obedience is expected. Hence, when the Bank decides that its conduct merits examination, a distinction is drawn between the operational procedures it has itself, as a matter of policy, formally prescribed and others (e.g., instructions or directions issued by a Head of Department). Understandably, therefore, what is liable to inspection are those matters the Board has prescribed as requiring compliance. As far as the present Inspection Panel is concerned, the 'inspectable'

²² *Management's Response* dated 24 May 2001 to the *Request for Inspection for the Samut Prakarn Wastewater Management Project* ¶ 25.

²³ The BIC's Report to the Board of 20 June 2001 on the Samut Prakarn Wastewater Management Project, ¶ 25. See also The General Counsel to the Chairman of the BIC, op. cit. p. 4 ¶ 14.

²⁴ The General Counsel to the Chairman of the BIC, op. cit. p. 3 ¶ 9.

²⁵ The General Counsel to the Chairman of the BIC, op. cit. p. 3 ¶ 9.

matters are set out in the Panel's Terms of Reference. By reference to the standards set out, the Bank has been weighed and measured, fairly and impartially by the Panel and found wanting.

72. Unless in the circumstances and to the extent prescribed by the Board expressly permitting departures and deviations, compliance is mandatory. There is no choice. It is not a matter for professional judgment as to whether there may or may not be compliance. The need for compliance is not based on any assumption of the qualifications or qualities of any person. It is based on a perceived need of the Board with regard to the conduct it has prescribed.

73. Admittedly, an "internal law" may in its present form be obsolete. It may even be harmful in its application. For example, Management in its response to the Inspection Panel's Draft Report explained that it did not comply with OM 13 because to have done so would have resulted in delay in providing supplementary financing. But OM 13 gave Management no choice. Nor did the Board waive the requirement of compliance in the circumstances. An "internal law" may be amended or even repealed by the Board. But until that happens compliance is mandatory. To hold otherwise would be tantamount to permitting a member of Management to take the law into his or her hands. This would result in uncertainty and undermine the authority of the Board.

3.5 Harm Caused

74. By the time of Supplementary Financing, most of the causes for the matters complained of by the Requesters had manifested themselves, and action could have been taken, after investigation using an appropriate methodology, including consultation with stakeholders and their representatives to ensure inclusiveness, to identify them and appropriate action taken to ensure timely, transparent and equitable remedial action. Indeed, although Management persisted in refusing to accept as obligatory the making of a full appraisal, yet it was constrained by the turn of events, evidenced by public complaints encapsulated by certain Non-Governmental Organizations in their representations, to acknowledge the fact that the occasion of refinancing did afford it an opportunity to make a full appraisal and "more thoroughly and systematically" deal with the complaints raised in the Request.²⁶

75. As it were by way of mitigation, Management pleads that the "considerable efforts" made by staff "to solve all the problems in accordance with applicable policies" which, it is claimed, "have gone a long way to redress any resulting prejudice" from the failure to make a full appraisal.²⁷

76. As we shall see Management failed to act in accordance with some of the "applicable policies" at the time of Supplementary Financing and at other relevant times.

77. As for going "a long way to redress any resulting prejudice", while the Inspection Panel recognizes that Management has endeavoured to deal with the problems caused by the implementation of the Project, yet, it is the view of the Inspection Panel that Management's efforts have not taken it as far as it had confidently expected and asserted. In July 2002, acknowledging the fact that "some of the pending issues concerning land acquisition, resettlement, compensation and rehabilitation still need to be resolved,"²⁸ Management drew attention to the establishment of the Grievance Redress and Settlement Committee (GRSC) and

²⁶ See ¶ 6 above.

²⁷ *Response of Management to the BIC*, February 2003 p. 15 ¶ 53.

²⁸ *Response of Management to the Initial Complaint*, p.4 ¶ 14.

said it was “hopeful that the above pending issues would find quick and time-bound resolutions ...”²⁹ In February 2003, Management reiterated its position that “major pending issues under the project can be satisfactorily resolved through the timely and effective functioning of the GRSC”, and expressed the opinion that an Inspection would be “counterproductive to remedial measures proposed.”³⁰ In accordance with the directions of BIC, *The Final Report on the Grievance Redress Process* was submitted by Management to the BIC on 16 February 2004. That report shows that many matters of crucial importance remained unresolved and were held in abeyance at the end of the tenure of the GRSC: – for instance, on the matter of Land Acquisition and Compensation,³¹ the Hill Torrent Management Plan,³² the Environment Management Plan,³³ the Improvement of the Irrigation System and Management,³⁴ Cross Drainage Structures on the Indus Highway,³⁵ Incomplete Flood Carrier Channels,³⁶ Other Preventive Measures for Future Floods.³⁷ With regard to many of these matters, it is stated in Management’s *Final Report* that ADB will “monitor” progress.³⁸ The modalities for the ADB doing so are unclear.

78. The Grievance Redress and Settlement Committee received complaints from 8914 persons through 5212 applications. However, GRSC noted that “the number of the affected persons will certainly be more as many of them may not have filed their applications/complaints for one reason or the other.”³⁹ Moreover, the complaints were processed on the basis of responses to a prescribed matrix and classified accordingly.⁴⁰ The complaints in the Request, however, covered a wider range. They included various aspects of matters relating to land acquisition, resettlement, compensation, rehabilitation, loss of livelihood, loss of mobility, loss of or diminished access to cultural properties, exposure to floods, loss of access to or loss of sources of potable water, deprivation of water for the practice of the traditional *Rod-kohi* cultivation system, in-migration and the use of fertilizers and pesticides.

79. There were some recommendations of the GRSC that were not accepted by the Government. The Report states:⁴¹ “If the recommendations accepted by the Government are fully and promptly implemented, the Project-affected persons will be measurably better off than would have been the case without GRSC. Although the Government has not accepted all of GRSC’s recommendations, ADB will continue its dialogue with the Government on the implementation of all GRSC recommendations and all other remedial measures for redress of any outstanding entitlements of the Project-affected persons.” If at the time of supplementary financing, a full appraisal was undertaken, the causes of complaint would have been more comprehensively identified and appropriate remedial measures, including covenants, might have been put on a firmer footing. In the words of Management, the complaints would have been dealt with “more thoroughly and systematically.”⁴²

²⁹ Ibid. ¶ 19.

³⁰ *Response of ADB Management to the BIC on the Request for Inspection*, p. 45 ¶ 154.

³¹ *Final Report on the Grievance Redress Process*, February 2003, p.8 ¶ 22.

³² Ibid. p. 9 ¶ 23.

³³ Ibid. p. 9 ¶¶ 24 and 25.

³⁴ Ibid. p. 10 ¶¶ 26 and 27.

³⁵ Ibid. p. 10 ¶ 28.

³⁶ Ibid. p. 10 ¶ 29.

³⁷ Ibid. pp. 10-11 ¶ 30. See also ¶ 15.

³⁸ Ibid. ¶¶ 22, 25, 29, 30.

³⁹ GRSC “*Recommendations for Adverse Impact Mitigation and Grievance Redress and Settlement*”, October 15 2003, p.1.

⁴⁰ For a tabulated list of grievances by category, see *Final Report on The Grievance Redress Process*, February 2003, p.5 ¶ 9; cf. p.2 *Receipt-of Grievance Status Report*, September 22, 2003.

⁴¹ *Final Report on the Grievance Redress Process*, February 2003, ¶ 35.

⁴² See ¶ 11 above.

4. Project Benefit Monitoring and Evaluation

80. The main points of ADB policies that relate to Project Benefit Monitoring and Evaluation are presented in Box 2.

Box 2 **Benefit Monitoring and Evaluation**

OM 23 Project Benefit Monitoring and Evaluation, 30th March 1987

Benchmark information should be prepared during the feasibility study phase to in order to serve as a basis for monitoring and evaluation, but also to “ensure that the project is responsive to the needs and interests of project beneficiaries”, to “give consideration to the needs of communities which may be adversely affected by the project”.⁴³

Information needs to “be obtained and analyzed about tribal minority groups and communities which may be displaced during the implementation of a project to assist in assessing the impact and cost of resettlement if it is obvious at this stage of the project preparation that resettlement measures are unavoidable.”⁴⁴ The TOR for the feasibility study “should specify that information be obtained about families which would be economically or physically displaced.”⁴⁵

“Information to be prepared about persons to be otherwise affected by the project will include data on their demographic, sociological and economic conditions.”⁴⁶

OM 22 Benefit Monitoring and Evaluation, 7 January 1997

Benefit monitoring “will help assessing ... whether adverse effects of the Bank intervention has been adequately mitigated”.⁴⁷

“A limited number of simple, easily understandable, and monitorable quantitative and qualitative indicators will be developed during project processing and used in BME.”⁴⁸

4.1 Request

81. The *Request*⁴⁹ asserts: “The Bank has ... violated the policy on Benefit Monitoring and Evaluation which requires gathering of qualitative and quantitative information about important

⁴³ OM 23 Project Benefit Monitoring and Evaluation, 30th March 1987, ¶ 3.

⁴⁴ Ibid, ¶ 8.

⁴⁵ Ibid, ¶ 13.

⁴⁶ Ibid, ¶ 9.

⁴⁷ OM 22/BP, Benefit Monitoring and Evaluation, 7 January 1997, ¶ 3.

⁴⁸ Ibid, ¶ 5.

⁴⁹ The *Inspection Request for Chashma Right Bank Irrigation Project Stage III* dated November 19, 2002 (*Request*).

social and economic characteristics of individuals and groups affected by the proposed project.”⁵⁰ “Neither at the time of the 1970 feasibility study nor in the subsequent 28 years” was “any comprehensive and appropriate study of socioeconomic and sociocultural conditions” undertaken.⁵¹

4.2 Response

82. Although Management stated that the *Request* was “without specification” and that “it is not clear what Policy is being referred to by the Requesters”;⁵² Management did identify the Policy set out in OM 23 and proceeded to deal with the allegations contained in the *Request*.

83. Management said that in carrying out the Feasibility Study for the Project, the socio-cultural impacts of the project were taken into account in assessing the social and economic characteristics of individuals. Management explained that a benchmark socio-economic survey was carried out by ADB (sic.) in 1989 as a part of the feasibility study, and the final report was prepared in October 1990 by the National Fertilizer Corporation of Pakistan Ltd. More comprehensive studies (PIME Studies) in “2000 and 2002” covering the entire Chashma Right Bank Irrigation Project including Stages I and II were undertaken. Under the PIME Studies, a benchmark survey in Stage III (the Project) was undertaken again.

4.3 Findings

84. The Report prepared by the National Fertilizer Corporation Ltd. (NFC) 1990 says that it followed closely some studies made in 1980. Between the construction of Stage I (1977-1987) and the partial completion of Stage II, and the times when baseline data were prepared, physical, social and economic changes had taken place on account of the implementation of the project. The PIME Studies Phase I began in June 2000 and focused on Stages I and II.

85. The draft report for Phase I was submitted in May 2001. It was then realized that several key aspects needed to study the impact of the canal were explicitly excluded from the original terms of reference for the PIME Studies but those gaps were it seems identified in the draft final report and additional data collection efforts and analysis were undertaken to fill the gaps during the preparation of the final report.

86. Phase II of the PIME studies started in November 2001 and the Final Report was published in December 2002. Management maintained that the PIME “studies in 2000 and 2002 were more comprehensive”. The Study of Stages I and II was more comprehensive than the 1980 Study. However, the Study in relation to the part of Stage III it covered, had the limitations of the Study relating to Stages I and II. This was to be expected; for, as Management observed, the “*same methodology and subject coverage as the study in Stages I and II*” were used, (emphasis added) despite the fact that it had been noted in 1989 that Stage III of the Project possessed development characteristics that were different in nature and scale to the earlier stages, and that

⁵⁰ Ibid.p 30 ¶ 73. With regard to persons alleged to be “affected” see *Request* pp. 2 and 3, ¶¶ 7, 8, and 10.

⁵¹ Ibid p. 15 ¶ 39 quoting without citation from *Project Performance Audit Report: Chashma Command Area Development Project (PAK)* 8 January 1999, p.3 ¶ 10. See also *Request*, p.15 ¶ 40.

⁵² *Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III)*, February 2003, (*Response*) p. 41, ¶ 144 and note 111.

the required detailed technical, social, institutional, financial and economic analyses of the Stage III development had not been adequately addressed in earlier studies. The second PIME Study noted that the conditions inside and outside of the Project's Stage III were fundamentally changed once construction of the Main Canal commenced. In fact, it appears from the 2001 PIME Study referred to by Management, that by reference to eight criteria, indicators for the PIME program had been identified, which would have yielded quantitative and qualitative information about important social and economic characteristics of individuals and groups affected by the project, and helped in assessing whether adverse effects of the Bank intervention had been adequately mitigated. But these were not used to obtain the necessary information with regard to Stage III except in limited areas and in limited ways, depending on the state of development at the time of the PIME Studies.

87. The loan agreement, as Management tells us, entrusted the responsibility for the Project Benefit Monitoring and Evaluation (PBME) to be carried out by the Borrower; and the PCMUs were responsible for arranging for the PBME. This is in accordance with OM 23 ¶ 5. To that limited extent, Management complied with OM 23.

88. However, the agreement referred to by Management said that the Borrower shall cause PBME to be carried out in accordance with the Bank's Guidelines for Project Benefit Monitoring and Evaluation. And so ADB had a duty, at least as a matter of best practice, to follow up and monitor the obligation of a borrower to observe undertakings given in loan covenants.⁵³ Accordingly, ADB ought to have ensured that benchmark information was required to be prepared in accordance with the Guidelines⁵⁴ and, *a fortiori*, the directions prescribed in OM 23 – an internal law of the Bank, and therefore standing at the apex in the hierarchy of compliance requirements.

89. No doubt the Borrower was responsible for selecting, engaging and supervising the consultants entrusted with the preparation of the Bench Mark Survey and PIME Studies. However ADB had to be satisfied that the functions and responsibilities assigned to the consultants were adequately defined in the Terms of Reference. ADB should have ensured that the Terms of Reference called for the inclusion of Benchmark Information required by OM 23 in the preparation of the Consultant's work. ADB should have taken steps to see that a contract containing such Terms of Reference was duly performed.⁵⁵ In the view of the Inspection Panel, it was then that ADB could have justifiably "cleared" the Consultant's work.

90. Although there was satisfaction with the Survey and Studies in certain quarters, there were deficiencies resulting from the failure to comply with OM 23. A member of the staff

⁵³ Compare OM Section J4/BP Issued on 29 October 2003 C ¶ 6.

⁵⁴ OM 23 of 1987 is based on *Guidelines on Project Benefit Monitoring and Evaluation for Agriculture, Irrigation and Rural Development Projects* issued on 10 April 1984, which, in turn, was based on *Project Benefit Monitoring and Evaluation (PBME)* issued in August 1980.

⁵⁵ Compare OM Bank Policies J2/BP, Consultants, Issued on 29 October 2003 ¶ 4. The PPAR observed that the required BME surveys to support project management were never carried out in spite of Bank follow up. This shortcoming, it is stated resulted in several harmful consequences because they were not recognized early enough to take corrective action. It is said: "More decisive action by the Bank concerning these issues might have helped." PPAR January 1999 p. 5 ¶ 15. Admittedly, as Management stated in its response to the Inspection Panel's Draft Report, the PPAR was primarily concerned about earlier stages of the project. However, Benchmark information cannot always be disaggregated without loss of useful information. E.g. referring to "useful information" contained in the 1990 Survey, the PIME Study 2002 at p. 7 note 1 observed: "Even in 1990, it can be argued that Stage III area was already influenced by the project since the original project appraisal in 1977 covered all three stages. At that time, construction was estimated at five years for all stages, so long speculation and changes in land use almost certainly were triggered as long ago as 1977."

interviewed by the Inspection Panel, who had been on a mission to the site, described them as “big gaps in our knowledge.”⁵⁶ That view was confirmed by another member of the staff who was interviewed.

91. OM 23 ¶ 9 states that “Information to be prepared about persons to be otherwise affected by the project will include data on their demographic, sociological and economic conditions.” Guideline 3.07 (ii) requires that there should be information on “the effect of the project on [the] economic and social well being” of the project beneficiaries.⁵⁷

92. Demographic information in the NFC survey refers only to out-migration, and although the PIME studies note the massive increase in population attributable to in-migration induced by the project, no assessment of in-migration impacts (as in the case of actions affecting environmental resources and values) was made and therefore could not have served the objectives of the preparation of benchmark information stated in OM 23 ¶ 3.

93. In the NFC report, the only information on tribes consists of the number of bradaris/tribes in each typical village with a caveat that the number and strength of the badaris/tribes was not evenly distributed in the project area and with the comment that inter-bradari relations were primarily cooperative rather than conflictive in nature. The report says that the Baloch is the most dominant bradari in the project area and as such they do not face any political, economic or social challenge from any other bradari.

94. Those were not the matters to which attention was directed by OM 23 ¶ 8: The required information and analysis was with regard to tribal minority groups. Consequently, the required analysis was not carried out and there were significant gaps in necessary information. Management was not unaware of this: When the Requesters asserted that in-migration of tribal Pushtuns induced by the Project was likely to cause ethnic conflict and cited certain observations of the PPAR in support, Management’s response⁵⁸ was as follows:

“What the initial complaint does not quote is the following relevant parts from the same para. of the PPAR. ‘In the absence of baseline and subsequent benefit monitoring and evaluation data, it is not possible to objectively assess the socio-economic and socio-cultural conditions in the future with-project and future without-project situations, in any objective or comprehensive manner ... any meaningful assessment of the situation was impossible without the required benefit monitoring and evaluation surveys.’ ”

95. It had been noted that the migration of various tribes into the area of historic proportions due to the provision of irrigation facilities, the consequent, albeit, marginal increase in ethno-linguistic tensions, and the possibility of a political response that would slow down the development of the CCA. It was suggested that political manipulation, particularly one that combined anti-Pakhtun sentiments with the frustrations of poor *seraikhi*-speaking peasants who, having sold their land, might feel increasingly bypassed by the benefits of canal irrigation, might, become problematical. Notwithstanding these observations made in 1990, the PIME studies, made in 2000 – 2002, make no mention of tribal minority groups which may be displaced, e.g. by

⁵⁶ The interview was recorded and a summary sent to the person interviewed for confirmation. The quoted words were not amended. A copy of the transcript as amended by the person interviewed will be submitted to the Chairman of the BIC.

⁵⁷ *Guidelines on Project Benefit Monitoring and Evaluation for Agriculture, Irrigation and Rural Development Projects*, 10 April, 1984.

⁵⁸ Response of ADB Management 2003, ¶ 133 at p. 38.

selling their lands to immigrants. As in the case of the Fertilizer Corporation Survey, the PIME Studies also do not conform with the requirements of OM 23 ¶ 8.

96. Neither the NFC report nor the PIME studies referred to by Management provide information and analyses about communities – whether minority tribal groups or others – which may be displaced during the implementation of the project to assist in assessing the impact and cost of resettlement. The defective preparation of the Benchmark information was, therefore, in violation of OM 23 ¶ 8. The Operations Manual directs that “Information to be prepared about groups of persons who may be dislocated by the project should quantitatively describe the economic and sociological consequences of the dislocation and cost of resettlement.”⁵⁹ This was not complied with in the preparation of the NFC and the PIME studies. There was therefore a breach of OM 23 ¶ 9. Being a project whose implementation would require involuntary settlement, the Terms of Reference for the preparation of Benchmark Information should have specified that information be obtained “about families which would be economically or physically displaced.”⁶⁰ This was not done and therefore OM 23 ¶ 13 was breached.

97. Admittedly, there is a qualification contained in OM 23 ¶ 8 in the phrase “if it is obvious at this stage of the project preparation that resettlement measures are unavoidable.” *The Summary Initial Environmental Examination* (SIEE) in 1991 said that The Stage III Project does not involve any dislocation of families for irrigation canals and facilities. It was said to have been first identified by Management in 1995, and it can hardly be denied that it was ‘obvious’ when the terms of reference were formulated for, and during the preparation of and reporting upon, the PIME Studies in 2000-2002.

98. OM 23 ¶ 9 also required the preparation of data on sociological and economic conditions. As far as sociological conditions are concerned, none of the surveys and studies address the characteristics, need, and demands of the population and subgroups within the population to the level of detail necessary to serve the objectives of OM 23 ¶ 3. Nor is there an identification and analysis of potential adverse impacts. There is no information with regard to groups which may be disadvantaged by the project, for example, through loss of dwellings, involuntary relocation, loss of land, damage to land or severance of lands, (e.g. by canal and infrastructure constructions such as distributaries, and excavation), damage to crops and trees, damage to structures such as kilns, damage to machinery, loss of rights to the use of land (e.g. by deprivation of hill torrent water for traditional Rod-kohi irrigation, loss of grazing land, loss of fuel wood), loss of mobility due to the construction of canals and watercourses and the lack of sufficient and appropriately located bridges, loss of income, and loss of access to or limitations with regard to the use of cultural properties such as burial grounds. Nor is there information enabling (a) an identification of options for avoiding or mitigating adverse consequences, or (b) the consideration of the need to compensate groups which may be adversely affected. There is a complete absence of information quantitatively describing and quantifying the impact of the project on each vulnerable group.

99. It has been said that “Benchmark information always refers to conditions prior to an intervention, and is collected prior to loan approval and/or during the early phases of project implementation.”⁶¹ As we have seen,⁶² at the time of activities connected with the preparation of the survey of 1990, which preceded loan approval in 1991, the need to redefine and enlarge the

⁵⁹ OM 23 ¶ 9.

⁶⁰ OM 23 ¶ 13.

⁶¹ *Benefit Monitoring and Evaluation, A Handbook for Bank Staff, Staff Executing Agencies and Consultants*, ADB March 1992, p. 4 ¶ 2.01.

⁶² ¶ 86 above.

scope of the investigation was obvious to Management. We have also seen,⁶³ that at the time of supplementary financing in 1999 Management was placed in the position of approving a new loan. That being the case, in the mandatory process of making a full appraisal there was an obligation on Management to ensure that there was benchmark information prepared in accordance with OM 23.

100. Having regard to the reasons stated above, on a balance of appreciation, the Inspection Panel finds that Management failed to comply with its obligations under OM 23 ¶¶ 3, 7, 8, 9 and 13.

4.4 Harm Caused

- 101. The PPAR observed that the required Benefit Monitoring and Evaluation surveys to support Project management were never carried out resulted in a succession of flawed designs as well as inadequate operation and maintenance (O & M) and management of the completed facilities.⁶⁴
- 102. The PPAR observed that throughout the CRBIP and Project process, and in the absence of useful BME data, the assumed cropping pattern and intensity were based solely on soil suitability and crop water requirements. There was no explicit consideration of the resources, needs and objectives of farmers, whose financial status and objectives decide which crops they will plant and which cultural practices they will apply.⁶⁵
- 103. The cumulative impact of the failure of Management to comply with its obligations prescribed by the provisions of OM 23 ¶¶ 7, 8, 9 and 13 was that the Bank was deprived of certain vital Benchmark Information that was integral to the success of its operations. In the absence of such information, it was not possible, in terms of OM 23 ¶ 3, in project formulation by Management and appraisal by missions, to:
 - (i) ensure that the project was responsive to the needs and interests of project beneficiaries; and
 - (ii) give consideration to the needs of communities which may be adversely affected by the project.
- 104. In the absence of information about communities, groups and families which may be dislocated or economically or physically displaced; and in the absence of a quantitative description of the economic and sociological consequences of dislocation or displacement, Management was unable to effectively and thoroughly:
 - (i) formulate arrangements which would avoid the occurrence of economically or socially adverse impacts;
 - (ii) assess the feasibility of alternatives;
 - (iii) mitigate adverse impacts; and
 - (iv) ensure the timely payment of compensation in appropriate circumstances.

⁶³ See the Inspection Panel's observations in Ch. 3 ¶ 77 on the subject of OM 13.

⁶⁴ Project Performance Audit Report, 8 January 1999, p.5 ¶ 15

⁶⁵ Ibid, p.12 ¶ 46

105. Many adverse impacts have been complained of and, even after the work of the Grievance Redress and Settlement Committee was completed, some issues remained unsettled and important tasks were left unfinished.⁶⁶

106. Management in its response to the Draft Report of the Panel states that no credit is given to the project and that the Report is “skewed”. The Panel did not squint at or make sideways hits. Its problem was the lack of information about Stage III of the project, and Management agrees that definite information was lacking. In its Response,⁶⁷ Management said: “Stage III of the irrigation system was completed in late 2002. The shift from traditional to irrigated farming, and the corresponding build-up benefits, will still take some time to come through. But these will come and will be widespread.” The project no doubt yielded a rich harvest of benefits including 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 tube wells, and consequently a substantial increase in crop production is expected.

107. However, on account of the absence of credible data, pre-project and post-project comparison might well nigh be difficult. Indeed, since as Management says, the benefits of the project will take time to come through – perhaps, it says, five years – it is premature to make comparisons except on the basis of *estimates*. As might be expected of a project of such magnitude, it brought with it a crop of problems, including involuntary settlement, severance of land, loss of or damage to land, dwellings, structures (such as kilns), machinery, crops, trees, flood risks, water logging, salinity, loss of mobility, loss of access to fuel wood and grazing land and cultural property (such as burial grounds), loss of traditional cultivation opportunities (rod-kohi), loss of livelihood, deprivation of sources of potable water.

108. Thanks in part to the work of the GRSC, we have been able to identify some of the grievances. But in the absence of settled criteria for evaluation, quantifying the damage caused is difficult. For example, what monetary value may one place on the restraint of mobility, lack of access to burial grounds, or deprivation of potable water, in the absence of settled criteria for evaluation of such negative impacts? “ADB is committed to ensuring that people affected by the project should not be made worse off as a result.”⁶⁸ Yet there were people, as the GRSC found, who did suffer from the negative impacts of the project and such adversely affected persons might well harbour misgivings about the Bank’s commitment. As pointed out above, compliance with OM 23 might have prevented or mitigated the harms caused.

⁶⁶ See Ch. 3 above.

⁶⁷ Page 2 ¶ 11 General Comments. According to that paragraph, full development is only expected in about five years. All we have now are estimates.

⁶⁸ Letter dated 16 July 2002 to Messers Wagha, Lund, Gadi, and Nauman from Mr Myoung-Ho Shin, Vice-President (Operations I), in response to the Initial Complaint on Chashma Right Bank Irrigation Project Stage III, Management’s Response.

5. Environmental Impacts

109. The Panel has considered the following issues with regard to compliance with ADB's environmental policies, procedures and, when applicable, guidelines:

- 1) Whether the project was properly classified and the environmental procedures properly followed; and
- 2) If not, what difference it has made to the final outcome of the Project.

110. The following bank documents are considered in this context:

At the time of loan approval in December 1991:

- OM 21 - *Environmental Considerations in Bank Operations*, 1988
- *Environmental Guidelines for Selected Agricultural and Natural Resources Development Projects* - 1987

At the time of Supplementary Financing in July 1999 all applicable OM's, including:

- OM 20 – *Environmental Considerations in Bank Operations*, 1997

111. Compliance with Bank Guidelines is generally not eligible to be inspected under ADB's Inspection Policy. However, as OM 21 clearly states that the Environmental Guidelines "must" be used by Projects staff in preparing an Initial Environmental Examination,⁶⁹ the Panel considers the relevant sections of these guidelines to have been incorporated in the OM. This interpretation is endorsed by ADB's General Counsel.

5.1 Request

112. The Requesters claim⁷⁰ that "in the project planning process, and preparation of an Initial Environmental Examination (IEE), the CRBIP has failed to fully comply with numerous guidelines given in the ADB *Environmental Considerations in Bank Operations*...which were in effect at the time of the initial financing of Stage III and at the time of refinancing."⁷¹

113. They claim that the project should have been classified as environmental Category C. "Had the Bank properly recognized the complexity of the environmental and social impacts of this project, and commissioned the appropriate studies and analysis, many of the problems might have been better addressed."⁷²

5.2 Response

114. Management cites the OM 21 provision describing Category B as projects "with significant adverse environmental impacts but for which mitigative/remedial measures may be

⁶⁹ OM 21, ¶ 15.

⁷⁰ Inspection Request for Chashma Right Bank Irrigation Project Stage III, 19 November 19, 2002.

⁷¹ Request ¶ 70.

⁷² Request ¶ 43, Box.

expected to cause significant impacts, to indicate that an Environmental Impact Assessment (EIA) needs to be done.⁷⁶

The Environmental Guidelines require Bank staff to follow three steps in preparing the IEE:

1. Prepare a checklist of potential environmental effects that may be associated with the project.
2. Consider each of the items on the checklist and; (a) make a preliminary assessment of the significance of the particular impacts; (b) identify potential mitigating measures, and; (c) formulate a decision of whether a more detailed evaluation is needed
3. Using the above information, prepare an IEE report. If the conclusion is that additional studies are needed, the report should contain the ToR for an EIA.⁷⁷

3. Environmental Assessment

For projects with a significant environmental impact, an environmental assessment must be made, stating the significant impacts of the project and outlining measures to be adopted to reduce adverse impacts. The EIA should be drafted as part of the Feasibility Study process so that the project design team can effectively use the findings of the EIA while preparing the Feasibility Study.⁷⁸ The results of the EIA must also be included in the Appraisal Report.⁷⁹

4. Contractual arrangements

Agreements reached on appropriate environmental measures should be incorporated as covenants in the Loan Agreement, and the additional costs for implementation and monitoring should be included in the project costs.⁸⁰

117. In the *Preliminary Environmental Screening*, which was done in 1989, CRBIP Stage III was assigned to environmental Category B.⁸¹ At the time little was suspected of the magnitude of the Project's environmental impacts, and, not surprisingly, no mitigative measures had yet been considered.⁸² Management's explanation regarding the identification of mitigative measures at a later date as a basis for putting the project into Category B is thus clearly not relevant to the decision taken in 1989.

118. The *Preliminary Environmental Screening* should have relied on the description of the four categories that is provided in OM 21.⁸³ This makes clear that Category B projects "generally include" a list of project types. The list includes "small irrigation schemes", but CRBIP Stage III, one of the largest irrigation projects in Asia, certainly does not qualify either as a small scheme,

⁷⁶ Environmental Guidelines for Selected Agricultural and Natural Resources Development Projects, 1987, ¶ 1.2.3.

⁷⁷ Environmental Guidelines for Selected Agricultural and Natural Resources Development Projects, 1987, ¶ 3.1, ¶ 4 and Figure 3. Forms and Checklists for various types of projects, including irrigation projects, are provided in the Guidelines.

⁷⁸ Ibid, ¶ 3.2.

⁷⁹ OM 21, ¶ 16.

⁸⁰ Ibid, ¶ 17.

⁸¹ Preliminary Environmental Screening of 1990/1991 Loan and Technical Assistance Projects (by Country), May, 1989, p. 12.

⁸² Management takes exception to the Panel's conclusion that the magnitude of the project's environmental impacts was not understood at this time. In fact, an MoU signed between ADB and the Government of Pakistan, WAPDA, on 27 February 1989 noted that Stage III of the project possessed "development characteristics that are different in nature and scale to earlier stages," and that the "the required detailed, technical, social, institutional, financial and economic analyses of the Stage III development have not been adequately addressed in earlier studies."

⁸³ OM 21, Appendix 1.

or under any of the other listed category B project types. Category C projects “include” large-scale irrigation and water management projects.

119. CRBIP, without doubt, qualified to be classified as a Category C project. The Inspection Panel is of the opinion that the difference between ‘generally include’ and ‘include’ is significant and makes it mandatory for projects of the types listed under Category C to be classified accordingly.

- 101. Based on this evidence the Inspection Panel concludes that CRBIP Stage III should have been classified in Category C. The decision by Management to classify the project in Category B was not in compliance with OM 21.

120. In the *Secondary Environmental Screening of CRBIP Stage III*, six major environmental concerns were identified: watershed erosion problems; downstream water quality problems; use of agricultural chemicals and impact to downstream water quality; conflicts in water use; changes in groundwater hydrology; and water-borne diseases.⁸⁴ The Secondary Screening report recommends that an IEE be prepared using the *Environmental Guidelines for Selected Agricultural and Natural Resource Projects, 1987* and the *ADB Handbook on the Use of Pesticides in the Asia-Pacific Region*.⁸⁵

121. Management has not been able to furnish the Inspection Panel with an IEE for the Project. Instead, as noted above, Management alleges that the IEE was included in the Feasibility Report. However, the OM and the Guidelines clearly required that an IEE is to be undertaken at the “Fact-Finding” stage in the project cycle “as a means to confirm the nature and extent of the impacts and, where such impacts are considered adverse, to specify the need for more detailed preparatory study.” The Environmental Guidelines further clarifies the timing question in a graph entitled “Role of EIA in Project Planning and Implementation” and in the following text: “It is important that the EIA and FS be done at the same time, preferably together as a single study with the EIA presented in its own chapter.” For the EIA to be “presented” in the FS the IEE would have to be done prior to the preparation of this document.

122. The only environmental study that was done prior to the approval of the Project is the five-page Appendix 18, *Environment and Energy Impacts*, attached to the *Technical and Economic Feasibility Report*, which briefly addresses a number of environmental issues. Appendix 6 on *Settlement and Sociological Issues* also discusses some of the issues that would have been covered by an IEE. Appendix 18, besides being written too late in the project cycle, also does not systematically categorize the severity of each identified impact as is required by the *Environmental Guidelines*.⁸⁶

- 123. The Inspection Panel concludes that the text on environmental issues in the Feasibility Report does not fulfill the requirements for an IEE in accordance with OM 21 and the Environmental Guidelines. Thus no IEE was produced prior to appraisal and approval of the project loan. This is a contravention of OM 21

⁸⁴ Secondary Environmental Review of 1990/1991 Loan and Technical Assistance Projects, September 1989, Appendix 1, p. 23.

⁸⁵ The Guidelines for Irrigation Projects refers to Annex I-A, Attachment 1 of the 1987 Environmental Guidelines for Selected Agricultural and Natural Resources Development Projects. The Handbook on the Use of Pesticides in the Asia-Pacific Region is dated November 1987.

⁸⁶ Ibid, Annex I-A: Irrigation (The IEE), pp. 1 & 2.

124. On the basis of the Feasibility Report and the findings of an Appraisal Mission in May 1991, Bank staff wrote a *Summary Initial Environmental Examination (SIEE)*, which was attached to the Appraisal document that was submitted to the ADB Board of Directors. The SIEE concluded that “The Mission confirmed that (i) the Project should be Environment Category ‘B’, which means that no significant adverse environmental impacts are likely to occur (ii) the environmental benefits far outweigh any adverse impacts that will occur, and (iii) no further detailed environmental impact assessment is required.”⁸⁷

125. It should be noted that the Technical Assistance document refers to “an environmental impact assessment (EIA) TA proposed for Bank financing.” When the Board approved the Stage III loan on 12 December 1991, this TA grant was ‘piggy-backed’ to the loan agreement. According to the Terms of Reference for the TA WAPDA staff would prepare post-evaluation EIA’s for Stages I and II, and a baseline environmental survey for Stage III as a training exercise.

126. The Stage III Loan Agreement, however, requires WAPDA to undertake an environmental impact assessment of the CRBI Project. Seen in its context as a covenant in the loan agreement for Stage III, it is impossible to interpret this to mean that assessments only have to be done for *the other* two stages of the project. This covenant thus clearly specifies an obligation to undertake an environmental impact assessment for Stage III. As will be discussed in the following section, no such EIA was ever undertaken.⁸⁸

127. Secondly, the limited assessments that were part of the Feasibility Report and the SIEE were based on the project design as proposed in the Feasibility Report. It was presumed at the time that, after detailed site surveys and investigations, there would be some minor deviations in design from those proposed in the Stage III Feasibility Report.⁸⁹ Five days before the ADB Board approved the loan, a realignment of the main canal and other changes were proposed. Additional changes were made up until at least in 1995. The potential environmental and social effects of these changes were never addressed in the environmental review process.

- 128. The Panel concludes that:
 - by not requiring the EIA to be completed before the loan was approved, the Bank has failed to comply with OM 21;
 - the Bank has failed to enforce the covenant in the Stage III Loan Agreement that requires an environmental impact assessment to be made for CRBIP Stage III.

129. OM 21 furthermore requires that appropriate environmental protection measures should be incorporated in the Loan Agreement, and that “the additional costs of implementing and monitoring significant environmental protection measures should be included in the project costs.” The EMP noted in 1995 that project planning for CRBIP (notably the Stage III Feasibility Report) includes a number of sound suggestions for ameliorative measures that have not been funded.

- 130. The Panel concludes that the Bank has failed to comply with the specific requirements in OM 21:

⁸⁷ Appraisal of the Chashma Right Bank Irrigation Project (Stage III) in Pakistan, November 1991, Appendix 10, ¶ 1.

⁸⁸ Management claims that the Panel uses “its own definition of the term ‘EIA’...in order to find non-compliance with OM 21.” The term Environmental Impact Assessment (EIA) refers to a very specific document that is clearly described in OM 21 of 1988 and in the Environmental Guidelines of the time. Management’s response to the IP draft report, ¶ 84.

⁸⁹ Report and Recommendation of the President to the Board of Directors on a Proposed Loan and Technical Assistance for Chashma Right Bank Irrigation Project (Stage III), 18 November 1991, ¶ 37.

- by failing to incorporate covenants to ensure that the identified mitigating measures would be implemented; and
- by not identifying how the implementation of these measures would be financed.

The 1999 Supplementary Loan

131. In July 1999 the Board approved a supplementary loan for Stage III. As has been shown in Chapter 3 of this report, the approval of this loan should have been preceded by a full appraisal of the project. A full appraisal would have required the project's environmental impacts to be assessed under the new OM 20,⁹⁰ which had replaced OM 21 from 7 January 1997.

132. OM 20 requires an Initial Environmental Examination (IEE) for projects that fall under Category A (significant adverse environmental impacts) and Category B (some adverse environmental impacts) "to determine whether or not significant environmental impacts warranting an EIA are likely."⁹¹

133. An *Initial Environmental Examination for Stage III* that was produced under the TA grant was published in March 1994. While that document contains much more extensive data, analysis and recommendations relating to the environmental impacts than the 1990 Feasibility Study for Stage III, its assessment and recommendations were still based on the 1990 Feasibility Study from which only preliminary conclusions could be drawn because the final design of CRBIP Stage III was only just beginning.

134. Correspondence from Staff has suggested that the IEE, together with the Environmental Management Plan that was produced in 1995 (see ¶ 122 ff), were sufficient to meet the intent of the Project loan covenant requiring an environmental impact assessment. Indeed, the Environmental Guidelines that were in effect at the time did provide that if there is "no need for further study, the IEE itself becomes the completed EIA for the project."⁹² However, the IEE itself does not claim to qualify as an EIA; on the contrary, it calls for an EIA to be completed as part of the Stage III final design. On this basis alone, the IEE obviously does not meet this requirement.

135. The Inspection Panel finds that:

- in failing to undertake an EIA at the time of the supplementary loan, the Bank violated the procedures of OM 20.
- the Bank thereby missed an opportunity to incorporate provisions in the loan agreement that secured the funding for and implementation of mitigatory environmental measures.

5.3.2. Implementation and supervision

136. Once the loan was approved, the Bank has certain obligations to ensure that Bank policies continue to be followed and loan covenants are honored. Box 4 summarizes the most significant obligations.

⁹⁰ OM Section 20, Environmental Considerations in Bank Operations, 7 January 1997

⁹¹ OM Section 20/OP, ¶ 2.

⁹² Environmental Guidelines for Selected Agricultural and Natural Resource Projects, 1991, Introduction, ¶ 16.

Box 4**Bank Policies related to implementation****OM 21 - Environmental Considerations in Bank Operations, 8 February 1988**

OM 21 states that “it is important that Review Missions ensure that environmental safeguards are implemented efficiently and satisfactorily by the Borrower/Executing Agency during the construction and operation of the project” and, more specifically, examine and evaluate “loan covenants covering environmental planning and management requirements.” Review missions should also “provide explicit details on any major environmental problems or issues revealed during field visits and on proposed remedial measures with an indication of the need for follow-up.”⁹³

OM F1 – Environmental Considerations in Bank Operations, 29 October 2003

The current OM on environmental considerations contains new requirements regarding the implementation of mitigation measures, as well as for monitoring and evaluation of environmental aspects. For environmentally sensitive projects ADB requires that “borrowers or executing agencies submit semiannual reports on implementation of EMPs” and that “review missions from ADB regional departments conduct an annual review of environmental aspects of the project”.⁹⁴

The Request

137. The Requesters claim that the “...Bank has failed to ensure the implementation of the environmental management plan that was prepared without consultation and inputs of local communities and supportive civil society organizations. While the project is very close to completion, almost all outstanding social and environmental problems are not resolved and Management has not provided a time-bound action plan for dealing with these problems.”⁹⁵

Response

138. Management responds that allegations regarding the lack of consultations and inputs of local communities, and of a time-bound action plan are wrong. “In preparing the EMP social survey interviews were carried out in 29 villages and focus group discussions were held in 11 villages” and work on the EMP “is to commence in April 2003”. Management admits that delays in implementation of the EMP are “unfortunate but mainly due to delayed implementation of NDSP”.⁹⁶ However, “ADB staff, during their many missions including the Mission in May 2002, November 2002 and [in] January 2003, have raised concerns about delays in implementation of the EMP by EAs”.⁹⁷

⁹³ OM 21, ¶ 20-21.

⁹⁴ OM Section F1 - Environmental Considerations in Bank Operations, 29 October 2003, OP ¶ 25.

⁹⁵ Request, ¶ 6.

⁹⁶ Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation Project Stage III, ¶ 80.

⁹⁷ Ibid, ¶ 21.

Findings

139. Under the separate TA grant of 1992, an Environmental Management Plan (EMP) was prepared for the whole CRBI Project. A “working draft” to the Government in March 1994, and the final proposal was submitted in March 1995.

140. The EMP identified ten primary and three secondary mitigatory measures, along with 13 enhancement measures and five compensation measures to ensure the sustainability of the project.⁹⁸ The EMP also stated that the WEC plans to undertake an EIA of Stage III, and provided a detailed work plan and budget for the exercise. The EIA report was expected to be prepared during April 1995. It should be noted that the EIA was proposed in the final report in spite of the fact that a December 1994 meeting between an ADB Technical Review Mission and Project Management had already agreed to replacing the EIA with the development of an “environmental action plan”.

141. At the same meeting it had been agreed, on the basis of an EMP draft, to select five priority issues from the EMP for implementation. This was done due to budget constraints, but ADB’s Environment Specialist noted that there were a large number of other potential problems that would need to be addressed later.⁹⁹

142. A proposed implementation program was presented by WAPDA in July 1995, with an estimated cost of a little over one million dollars, and covered the following mitigatory measures to be implemented over a five-year period:

- An Irrigation Management Program
- A Sandy Soils Investigation Program
- A Barrier Soils Investigation Program
- An Agrochemical Agriculture Extension Program
- An Environmental Awareness Program.

143. The next ADB mission in August 1995 suggested, in view of the financing constraints in CRBIP Stage III, that it might be possible to finance implementation of the proposed measures under the National Drainage Sector Programme (NSDP) that was being considered by the Bank.¹⁰⁰ By May 1996 the source of financing for the environmental measures had still not been determined.¹⁰¹ The Loan Agreement for the NDSP was finally signed in December 1996, but did not become effective until one year later.¹⁰² The Loan Agreement says that in addition to preparing an EMP for the NDSP “the Borrower shall support through the (NDSP) the implementation of EMP for the CRB”¹⁰³ (Chashma Right Bank; emphasis added). There is,

⁹⁸ As had been the case with the 1994 IEE, the EMP was based on the expected environmental impacts of of the original 1990 design of Stage III.. An indication of the significance of this fact is that even after the 1994 floods, which had triggered a review of the unexpected flood risks in the Stage III area, the EMP still lists the effects of flooding as a minor positive impact.

⁹⁹ BTOR of Mission for Loan No. 1146-PAK, 16-22 December 1994.

¹⁰⁰ BTOR of Loan Review Mission 23 July to 1 August 1995.

¹⁰¹ BTOR of Loan Review Mission 16-23 May 1996.

¹⁰² National Drainage Sector Project BTOR, ADB Special Loan Administration Mission, 6-8 January 1998.

¹⁰³ Loan Agreement (National Drainage Sector Project) between the Islamic Republic of Pakistan and Asian Development Bank, Dated 6 December 1996, Loan Number 1413 PAK(SF). Schedule 5, paragraph 13.

however, no clear indication that the NDSP will be responsible for implementing the CRB plan,¹⁰⁴ nor any explicit provision for funding its implementation.

144. ADB staff explains that there were advantages to be gained from integrating the implementation of the EMP for CRBIP with the NDSP. For example, some aspects of the plan would benefit from being dealt with in a basin-wide context. The Panel accepts that this may have been the result, had these components of the NDSP been implemented in a full and timely manner.

145. But the result of the decision to transfer the EMP to NDSP was that the Stage III Project lost control of the implementation process. The progress in implementing the mitigative measures became dependent on the progress of the NDSP. And while construction in CRBIP continued, implementation of the NDSP was stalled for reasons that apparently had nothing to do with the CRBIP.

146. At the time that the Supplementary Loan for Stage III was processed and then approved in July 1999, it was obvious that the NDSP was not going to become the program that was originally envisioned. The Supplementary Loan to CRBIP Stage III was essentially done in the form of a transfer of surplus money from the NDSP. No measures had yet been taken to implement the measures from the CRBIP EMP.

147. As in the case with the EIA, the new loan provided ADB with an opportunity to formalize an obligation to implement the mitigatory environmental measures through a covenant in the Loan Agreement. Rather than just transferring general surplus funds from the NDSP to CRBIP Stage III, the budget, as well as the responsibility for implementing the EMP, could have been brought back to Chashma. This would have ensured that mitigation measures were implemented in step with the construction activities. But the Bank did not take advantage of the opportunity presented by the Supplementary Loan to bring the EMP back to the Project. As a result, non-implementation has continued.¹⁰⁵

148. Soon after the approval of the supplementary loan it was realized that there would be a surplus available in Stage III. ADB missions in November 2000 and March 2001 both recommended transferring the responsibility for financing the implementation of the EMP back to the CRBIP, but this was never done.

149. In the meantime, funding for two components under the five priority mitigatory measures - mapping of sandy soils & measurement of soil physical characteristics, and identification of barrier soil areas - were included in a proposal for a Salinity Management Plan. The plan was submitted for funding, using Stage III funds, in June 2001, but funding for the plan was never granted.

150. In November 2001, only partial implementation of the components for one of the five priority measures -- the Irrigation Management Program -- was reported. For the remaining four measures immediate implementation under the NDSP or SMP was recommended. An updated proposal for implementing these measures was presented, with an estimated cost of US\$747,000. The proposal did not discuss the issues of how financing and implementation would be secured.

¹⁰⁴ The next sentence in the Loan Agreement reads "WAPDA-W's Environment Cell shall be responsible for the preparation of the EMP and its implementation." This clearly refers to the EMP for the NDSP, not for CRBIP.

¹⁰⁵ The Panel has reviewed the reports of ADB missions regarding the NDSP between 1996 and June 2001. We have found no evidence that any of these missions ever discussed implementation of the CRBIP EMP in the context of NDSP.

The ADB mission in May 2002 instructed the PMC to “further monitor” the progress on financing for implementation of the environmental measures.

151. In November 2002, the implementation status of the five mitigatory measures was essentially the same as a year earlier, the most important difference being that no funds had been made available for the components that had been included in the Salinity Management Plan. It was also reported that issues regarding agro-chemicals had been included in the routine extension program in Punjab.

152. In February 2003 ADB stated, in its response to the Request for Inspection that “work on the EMP for the Project is to commence in April 2003,”¹⁰⁶ However, at a meeting between ADB and the NDSP on 11 August 2003 it was confirmed that even by that time, no specific budget had been allocated under the NDSP for the implementation of the CRBC-EMP. ADB and NDSP agreed to implement the EMP on a top priority basis by the Environmental Management Units that were about to be established at the federal and provincial levels. But first the implementation plan was to be revised yet again.

153. A new proposal was released in January 2004.¹⁰⁷ According to the proposal, four of the five priority measures that had been identified earlier will be implemented in a first phase during the year 2004. The Sandy Soils Investigation Program would be carried out, along with the setting up of an Environmental Monitoring and Evaluation System, during a second phase in 2005.

154. The proposal was discussed at two Stakeholder Consultation workshops and three community consultations 10-13 February 2004. This was the first consultation ever regarding implementation of the EMP. More than 10 years earlier, as part of the preparatory studies for the EMP, social survey interviews had been conducted in 10 villages in the Stage III areas. (Management says interviews were done in 29 villages,¹⁰⁸ -- 19 of those villages were in CRBIP Stage I and II areas. The focus group discussions that Management refers to were all conducted in villages outside the Stage III area.)

155. While the proposal was distributed in advance of the consultation, the participants that represented civil society still did not have access to the full 1995 EMP and were thus not in a position to know which suggested measures in the Plan were *not* proposed for immediate implementation. Participants brought up the need for continuous consultation.¹⁰⁹

156. After the consultations, a final plan was produced on 20 May 2004 by the Federal Environment Management Unit of NDP. Most significantly, two new program were introduced: an Irrigation Management Program that aims to form Farmers Organizations (apparently still on a trial basis since it only covers six distributaries) to address issues of rising water tables and of equitable water supply, and a program for assessment of the ecological impacts of CRBIP on national parks, sanctuaries and wetlands.

¹⁰⁶ Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation Project Stage III, ¶ 80.

¹⁰⁷ Draft CRBIP-EMP Proposal for the Implementation of Selected Mitigatory Measures. National Drainage Programme, January 2004.

¹⁰⁸ Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation Project Stage III, ¶ 80.

¹⁰⁹ Stakeholders Consultation on Environment Management Plan CRPIP, 10-13 February 2004, p 8.

157. Furthermore, the survey of areas with sandy soils will be done during the first year. While this may seem encouraging, it is also an acknowledgement that no funds have yet been secured for the implementation of *any* environmental measures after May 2005. Unless the NDSP is extended it will not be a possible source for such funds, as the NDSP closing date is 31 August 2005. According to ADB staff, the Government of Pakistan has requested an extension of the closing date to 31 December 2005 and ADB envisages a further extension beyond that date.¹¹⁰

158. The Panel concludes that:

- Nine years after the presentation of the CRBIP Environment Management Plan there are still no satisfactory plans or financial arrangements in place for securing the implementation of the plan.
- There has not been any adequate process that has enabled the informed and meaningful participation of affected communities of the project area in the implementation of the EMP.

5.3.3. Summary of Conclusions on Compliance

159. The Panel has found that ADB has failed to comply with requirements under its environmental policies on the following counts:

- The CRBIP Stage III project should have been classified in environmental Category C
- No IEE or EIA was produced prior to appraisal and at the time of approval of the project loan.
- No covenant on the implementation of mitigative environmental measures was included in the 1992 loan agreement.
- The Bank has failed to enforce the covenant in the Stage III Loan Agreement that requires an environmental impact assessment to be made for CRBIP Stage III.
- In 1999, at the time of supplementary financing, the Bank again failed to require a full EIA of the project, and to include a covenant in the new Loan Agreement to secure the implementation of identified mitigating measures.

5.4. Harm Caused

160. In trying to assess the harms that may have been caused by the numerous instances of non-compliance that have been documented in the previous sections, the Panel has been faced with a number of questions, some of which are difficult or impossible to answer. These include:

- Would a proper IEE and a full scale EIA, had they been undertaken before assessment and approval of the loan in 1991, have identified any significant environmental problems that were not addressed in the SIEE? Would sufficient mitigating measures have been proposed and included in covenants? Would such measures have been implemented, and proven to be effective?

¹¹⁰ E-mail from ADBs South Asia Regional Department to the Inspection Panel, 13 April 2004.

- Would the EIA for Stage III that was proposed by the 1994 IEE and the 1995 EMP have identified new problems and measures? Would there have been sufficient commitment from all parties to incorporate the identified measures into binding agreements on implementation?
- Could the delays in implementation of selected measures that was caused by problems in the NDSP have been avoided, had the responsibility for implementation remained with the CRBIP projects?
- Which measures would have been prescribed in covenants in a new loan agreement for the 1999 Supplementary Loan, had a full appraisal of the project been made?
- Would proper consultations and public participation in the drafting of an EIA and in the planning and implementation of an EMP have made any difference in terms of the identification and prioritization of issues and/or the efficiency of implemented measures?

161. And, last but not least:

- What actual negative impacts has the Stage III project caused in the project area and downstream?

162. Starting with the last issue, any assessment of the environmental impacts is severely constrained by the lack of information. This relates both to baseline data, and to current data regarding a number of fundamental environmental indicators. The EMP report contains clear statements to the effect that even in 1995, sufficient baseline data were not available.

163. In other cases, data may be available in various government agencies and administrative units, but rarely in a form that would readily allow for them to be compiled or analyzed in project or sub-project levels. To collect and evaluate such data would be one of the roles of an Environmental Monitoring and Evaluation System (EMES) for the CRBIP. The EMP contained a detailed proposal for establishing an EMES, as an essential component of any EMP. According to the proposal, a major task in establishing the EMES would also be to refine baseline data on agro-ecological divisions by incorporating spatial and quantitative data. The proposal outlined a monitoring program with detailed parameters, methodologies, schedules and responsible agencies for M&E of Water, Land, Cross-drainage, River, Biotic, Socio-cultural, Economic, Demographic and Human use issues. Specific data to be collected and analyzed included:

- Irrigation water quality;
- Groundwater levels;
- Groundwater quality;
- Surface runoff;
- Flooding; historical flood data in Stage III, details of all planned cross-drainage structures (will they prove effective?), size of the main runoff watersheds and location of the main problems;
- Population growth and human carrying capacity;
- Domestic water supplies; and,
- Livestock; the future health of the grazing lands.

164. While the EMES was listed by the WEC, the TA consultant and ADB's Environment Specialist as being one of the ten most important issues that were covered by the EMP, it was not on the list of five issues that were considered in December 1994 to be most important to implement.¹¹¹ There is no mention of the EMES in the implementation plans of 1995. The updated 2001 proposal for implementation briefly suggests that the Project Impact Monitoring and Evaluation consultants should be requested to identify how EMES would be integrated with PIME activities, but in the revised implementation draft of January 2004 the original EMES proposal from the EMP was again put forward for implementation – although not in the first stage.¹¹²

165. In spite of the lack of reliable quantitative and qualitative data, it is still possible to make observations about some of the environmental changes that have taken place in the project area. Sources of information include the complaints that have been submitted to the GRSC, of which almost one third relate to the diminishing availability of grazing land and fuel wood.¹¹³ The deteriorated quality of large tracts of forestland is also readily observed in the project area. For other issues, such as the status of the underground water table, reliable sets of data covering an extended period of time would be necessary in order to assess any changes.

166. As for the issues relating to what difference it would have made if more detailed studies had been conducted, and if more or better mitigating measures had been identified, an analysis will obviously largely have to rely on assumptions. Still, there is some information available that can be useful in helping to determine what the results may have been if ADB policies and procedures had been followed. These include:

- 167. For assumptions about which issues and measures may have been identified by a pre-appraisal EIA, the results of the work with and discussions about the 1994 IEE and the 1995 EMP may provide guidance.
- 168. For assumptions about what a full appraisal in 1999 may have lead to, it would be reasonable to assume that all the measures that had already been proposed in the SIEE, the IEE and the EMP, but had not yet been implemented, would have been incorporated in a new EMP, for which the funding and implementation schedules would have been secured in the budget. The same assumption can be made for those new issues that had been identified after the IEE studies, the most prominent of which is the flood risks for areas on the west bank of the canal.

169. As for identifying issues that may have come out of a proper consultation processes, the issues that have been raised by representatives of the communities (including in the most recent consultation on the draft EMP Implementation Plan) may provide some guidance.

170. Table 1 provides an overview of when, over time, the various environmental impacts areas of Chashma Stage III were identified and how they were viewed (i.e. positive and/or

¹¹¹ BTOR of Environment Specialist's for TA 1629 mission 16-22 December 1994, p 2.

¹¹² Draft CRBIP-EMP Proposal for the Implementation of Selected Mitigatory Measures. National Drainage Programme, January 2004, pp 29-34.

¹¹³ The loss of fuelwood and the increased pressure on grazing land can be directly attributed to increased population pressures in the project area. As noted in Table 1, however, the Project's impact on the availability of fuelwood and grazing land was not recognized as a problem at the time of the 1990 Feasibility Report. In fact, all studies before the Grievance Redress and Settlement Committee End-of-tenure Report in January 2004 predicted that there would be minor-to-moderate positive impacts on forests, trees and fuelwood.

mitigable or negative). In 1990 seven impacts areas were reported. All were considered at the time to be either positive or mitigable impact areas: flooding, pesticides, fertilizer, waterlogging, salinity and fodder (onsite and offsite). At the time of the stakeholder consultations in 2004 five of these impact areas were still being discussed as unresolved problems, and new issues had been added.

Table 1: Identification of Environmental Impact Areas

Env. Impact Areas	1990 ¹	1991 ²	1994 ³	1995 ⁴	2004 ⁵	Consultation ⁶
Fodder Onsite	+	+	+	+		
Offsite	+	+	+	-		
Fuelwood						-
Waterlogging	+	-	-	-	-	-
Salinity	+	-	-	-		-
Population Growth	o	+	-	-		
Flooding	+	+	+	-		-
Pesticides	+	-			-	-
Fertilizer	+	-			-	-
Cross Drainage			-	-		-

+ = Positive or mitigable impact area
 - = Negative impact area
 o = Neutral impact or impact unknown

1 - Technical and Economic Feasibility Report, Stage III, March 1990

2 - Summary Initial Environmental Examination, Stage III, November 1991

3- Initial Environmental Examination of Stage III, March 1994

4- CRBC Environmental Management Plan, 3 March 1995

5- Draft CRBC-EMP Proposal for Implementation of Selected Mitigatory Measures, January 2004

(- = Adverse impact noted and mitigatory measures proposed)

6- Stakeholder Consultation, Environmental Management Plan, National Drainage Program, 10-13 February 2004

171. Keeping in mind the limitations due to the lack of data and the need for making assumptions about the results of alternative courses of action, the Panel has made the following observations regarding a few of the negative impacts that may have been caused by non-compliance with ADB's environmental policies and procedures.

Flooding

172. The risk for flooding of land and villages on the right bank of the main canal was clearly not foreseen before the project was approved. The extent of flood risks that are due to changes in the dynamics of hill torrents and in land use were also not properly assessed.

173. Having observed that the sill levels of some FCCs are significantly higher than the surrounding land the Panel finds it difficult to understand how it was possible *not* to predict the flooding and ponding that has occurred upstream of these structures. But it is not self-evident that a more detailed EIA would necessarily have anticipated this problem. However, the plan for the EIA that was proposed in the 1995 EMP addresses these issues head on by asking a dozen questions that relate to the details and effectiveness of cross drainage structures, runoff problems,

flooding in the floodplain areas etc. It is also possible that the problems could have been highlighted if consultations with farmers had been part of a proper EIA process.

174. Had the problems been identified, either before appraisal or in an EIA in 1995, there would still have been time to modify the designs in order to avoid some of the flood damage. Had the project been fully assessed in 1999, the flood protection and resettlement plans would have had to be incorporated in and financed by the project. The severe constraints, both in terms of time and money, that contributed to the very unsatisfactory outcome of the 2001 flood protection and resettlement 'crash program' (see Chapter 8) could have been avoided.

Agricultural Chemicals

175. The Feasibility Report and the SIEE expected the use of fertilizers in the project area to increase by 56,000 nutrient tons (it does not quantify the projected increase of pesticides), but did not anticipate that these chemicals will cause any significant environmental impacts.

176. The assessment that the increased use of agricultural chemicals would not lead to any significant impacts was, however, based on the assumption that an agriculture extension program would ensure the efficient use of the chemicals. The Panel has not been able to find any evidence to suggest that this has happened (while it is mentioned in a report by the PMC that the issue was integrated into agriculture extension programs in Punjab in 2002, not one of the farmers the Panel spoke to had heard of this).

177. On the contrary, such programs are repeatedly called for. The 1995 EMP proposed a five year Agrochemicals Agricultural Extension Project; the *Project Impact Monitoring and Evaluation Studies* (PIME) report of December 2002 indicated the need for the use of safer chemicals and appropriate Integrated Pest Management Training. The January 2004 draft proposal for the implementation of the measures from the EMP proposes activities for promoting the judicious use of fertilizers, training of farmers in Integrated Pest Management (IPM), and monitoring the use of agrochemicals.

178. As of today no such monitoring has taken place, neither of the use of chemicals nor of the effects of that use. It is, however, reasonable to assume that rapidly increasing volumes of agrochemicals are entering the natural systems in the project area. WAPDA staff in the project area informed the Panel that limited studies had been done by independent research institutions of the levels of agrochemicals in the runoff in the project area. They indicated that there was cause for concern.¹¹⁴

Forests and Grazing Land

179. In spite of the predicted rapid increase of population in the project area, the feasibility study and the SIEE did not discuss the effects of this increase on the demand for fuel wood.

180. The issue is, however, discussed in the IEE. It makes the observation that human pressures had already resulted in increasing use of vegetation for fuelwood, fodder and building

¹¹⁴ Discussion with head of WAPDAs WEC, 6 April 2004.

materials. The four Government Reserve Forests in the project were already in poor condition, but the Provincial Forest Departments were eager to rescue the Reserves that the IEE considered to be threatened with destruction by the CRBIP.

181. The 1995 EMP does not propose any measures to address the problem. This is noted by ADB's Environment Specialist who reported that "fuelwood demand in the area per day would be 2.4 million kg after the completion of the canal. The present tree cover clearly cannot meet this requirement. Thus, if there is no massive tree planting campaign, finding fuel wood will be one of the major problems in the area."¹¹⁵

182. Forest issues were not covered in the January draft proposal for implementation of EMP measures, but the need for social forestry and an extensive tree planting program was brought up at the consultation in February 2002.¹¹⁶

183. During the field visit the Panel could observe an almost complete absence of trees (with the exception of a eucalyptus plantation) in Rach Triman, which the IEE had reported to be one of two Reserve Forests that was in better condition than the other two. Signs were visible, however, of recent logging of large trees, and parts of the area were being developed for irrigation. Conflicts were reported between inhabitants of adjacent villages, who had held certain user rights to graze their animals and collect forest products in the reserve, and recent settlers who had encroached on the land.

184. With regard to the availability of grazing land, the feasibility study predicted that there would be a surplus of feed available, and that rangelands could be converted to other uses. The SIEE echoed this assessment, as did the IEE. It is, however, clear that the loss of access to grazing land has been one of the most common issues among the complaints that were submitted to the GRSC. Taken together loss of access to fuelwood and grazing is raised in one third, or more than 1500, of the individual complaints. Even though the Panel did not have access to a breakdown of this figure, loss of grazing land appears to be a major problem.

Waterlogging and Salinization

185. With regard to waterlogging and salinization, it is highly unlikely that any physical harm would already have been caused after such a short period of irrigation. Potential harms are more likely to be found in the way in which the project will be able to address the problems if and when they occur. The delay in undertaking surveys of problem soils (it has been more than nine years since the surveys were proposed in the EMP) could very well result in the project being completed and the loan closed before any effective mitigatory measures are designed and implemented. In particular, if a need for the construction of subsurface drains is identified, this would be a very costly undertaking. Funds for this purpose would then have to be found outside of the project.

¹¹⁵ BTOR of TA 1629: Finalization of Environment Management Plan Mission 16-22 December 1994, p 2.

¹¹⁶ Stakeholders Consultation on Environment Management Plan CRPIP, 10-13 February 2004, p 13.

Agro-Industries

186. ADB's Environment specialist identified, during his visit in December 1994, a number of issues that were not covered by the proposed implementation plan but that would need to be addressed in the future. One concern was the development of agro-industries, in particular the sugar industry, which would "add a series of new environmental problems to the area."¹¹⁷ This issue was also raised in the consultations on the implementation of the EMP, but it is not covered by the proposed plan. The Panel's impressions from the field suggest that there are a number of issues related to pollution and waste management in the sugar industry that have not been properly addressed.

¹¹⁷ BTOR of TA 1629: Finalization of Environment Management Plan Mission 16-22 December 1994, p 2.

6. Socio-economic and Cultural Impacts

187. The panel has considered the following issues with regard to compliance by ADB's staff with instructions, policies and procedures related to the socio-economic and cultural aspects of the project:

- 1) Whether the required procedures for social analysis and planning have been adhered to.
- 2) What have been the harms caused by non-compliance?

6.1 The Policy framework

188. The following Bank documents are considered in this context:

At the time of loan approval in December 1991:

- Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986

At the time of Supplementary Financing in July 1999

- OM Section 47 "Incorporation of Social Dimensions in Bank Operations", 7 January 1997

189. Box 5 summarizes the most relevant principles and procedures with regard to social dimensions that are contained in these documents.

Box 5 Social Dimensions - Policies and Procedures

Staff Instruction: Socio-cultural Impacts of Bank Projects, 17 September 1986

The Bank "...has an obligation to ensure that the potential socio-cultural implications of a project are considered as explicitly as possible in project design and appraisal in the interest of ensuring the overall viability of the project."¹¹⁸

"Socio-economic and cultural factors affecting the success of development projects may include settlement/ resettlement ... needs and interests of local communities ... rights of tribal/ethnic minorities, cultural integrity and traditional land use control."¹¹⁹

"In a project where socio-cultural variables are likely to be important, considerations essential for social acceptability should be addressed during the project cycle" and it is important "that an analysis of possible social impacts be made during the processing of such projects".¹²⁰

¹¹⁸ *Staff Instruction: Socio-cultural Impacts of Bank Projects*, 17 September 1986, ¶ 3.

¹¹⁹ *Ibid.* ¶ 4.

¹²⁰ *Ibid.* ¶ 4.

OM Section 47: Incorporation of Social Dimensions in Bank Operations, 7 January 1997

OM 47 requires a number of social dimensions to be considered, including poverty reduction, enhancement of the role of women in development, and avoiding or mitigating the adverse effects of development on vulnerable groups¹²¹.

The Bank shall seek to “provide social safety nets and compensation mechanisms, particularly for vulnerable groups (e.g., children, indigenous people, people who are economically and socially disadvantaged, disabled persons, etc.) that may be adversely affected by project interventions and are unable to absorb the resultant economic, social and environmental impact”¹²².

Where necessary, the Bank will conduct “a social analysis during the preparation of a project so as to ensure that the project design and implementation reflect the needs, demands and absorption capacities of the affected people; such analysis will also identify measures to avoid the negative economic or social impact of the development intervention on vulnerable groups that do not have the capacity to absorb the shocks of the resultant changes”¹²³.

The first step, an Initial Social Assessment (ISA) is required for every project “in order to identify the people who may be beneficially and adversely affected by the project”. “The ISA should identify key social dimensions (such as involuntary resettlement, indigenous peoples, poverty reduction, and women in development) that need to be addressed under the project” and be undertaken as early as possible in the project cycle, “preferably by the time of fact-finding for a project preparatory technical assistance (PPTA) or other project preparatory study”¹²⁴.

In cases where the ISA reveals that social dimensions are likely to be important, “a Social Analysis must examine all socioeconomic facets that may be important ... for determining the appropriate implementation arrangements.”¹²⁵ “A Social Design is a plan that describes the procedures and implementation schedules for preparing and mobilizing beneficiaries to participate or for developing and strengthening the institutional capabilities of beneficiary groups to participate in the project.”¹²⁶

In pursuing the social objectives the Bank will adopt “a participatory development process in which the stakeholders are provided with opportunities to actively influence and share control over the project and decisions that affect them at all stages of the project cycle”¹²⁷.

The Bank will “ensure that project design and implementation arrangements include provisions to monitor and evaluate the benefits of the project”¹²⁸. “The treatment of social dimensions will become more and more specific and focused, with quantifiable and monitorable indicators developed as project processing advances”¹²⁹. Reviews will be undertaken to “assess the

¹²¹ Incorporation of Social Dimensions in Bank Operations, 7 January 1997, ¶ 2.

¹²² Ibid. BP ¶ 3 (iv).

¹²³ Ibid. BP ¶ 4 (iii).

¹²⁴ Ibid. OP ¶ 6.

¹²⁵ Ibid. OP ¶ 7.

¹²⁶ Ibid. OP ¶ 8.

¹²⁷ Ibid. BP ¶ 4 (i).

¹²⁸ Ibid. BP ¶ 4 (iv).

¹²⁹ Ibid. BP ¶ 5.

participation of stakeholders, ... improve the absorptive capacity of target groups, and mitigate adverse effects on vulnerable groups”.¹³⁰

6.2 Social impacts of the project

6.2.1 Request

190. The Requesters assert that a “lack of comprehensive and integrated planning and design [and] absence of socioeconomic survey, in violation of the ADB policies [caused] flawed decision making in this project, adversely affecting the rights and interests of the claimants.”¹³¹ “The CRBIP was designed based on the basis of physical conditions with little consideration for other factors” including “actual cropping patterns and socioeconomic and cultural conditions.”¹³²

6.2.2 Response

191. Management states, “at the time when the Project was processed in 1991, there were no operational policies and procedures specifically relating to involuntary resettlement and social analysis of projects.”¹³³ However, Management submits “that in carrying out the Feasibility Study for the Project, the socio-cultural impacts of the project were taken into account in assessing the social and economic characteristics of individuals.”¹³⁴

6.2.3 Findings

192. The 1986 Staff Instruction on Socio-cultural Impacts of Bank Projects (¶ 4) requires that an analysis of possible social impacts should be made during the processing of the projects.

193. The Technical Assistance document for the Feasibility Study of CRBIP Stage III notes that the required technical, social, institutional and economic analyses of Stage III were not been addressed adequately in earlier studies. Stage III also has a number of characteristics that are different in nature and scale to earlier stages including (i) the active and extensive rod kahi system which should be transformed into a perennial canal irrigation system, (ii) settlement and development patterns because of the location, and (III) the scale and conditions of the project area.

194. The Terms of Reference for the Feasibility Study note that, since most farmers in the study area are accustomed to different modes of irrigation practices such as rod kahi and tubewell irrigation, settlement and organizational arrangements among farmers are crucially important to achieve the intended benefits from the project facilities. Hence the study was required to:

¹³⁰ Ibid, BP ¶ 6.

¹³¹ Chashma Inspection Request Filed with the Board of Inspection Committee under the Inspection Procedures of Asian Development Bank, November 19, 2002, ¶ 40.

¹³² Ibid. ¶ 40.

¹³³ Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation project (Stage III), February 2003, ¶ 96.

¹³⁴ Ibid. 144.

- Identify the prevailing social and cultural constraints in transforming the prevailing Rod Kohi agriculture into irrigated agriculture
- Investigate cadastral status, land ownership and absentee problems and propose measures to overcome these issues
- Investigate the existing farmers organizations, and strengthen farmers' absorptive capacity for irrigated agriculture.

195. Under the Feasibility Study, the National Fertilizer Corporation (NFC) undertook a Benchmark Socio-Economic Survey of the Stage III area. The survey was primarily designed to investigate ten socio-economic parameters. However, the Benchmark Survey did not adequately focus on the data that would identify and evaluate the possible social and economic impacts of the project.

196. Before the NFC was contracted to do the survey, a proposal for a more extensive and targeted survey had been submitted. This proposal was more focused on the considerable social and economic transformation that would be set as a result of the CRBIP. The proposal was rejected on the grounds that it was too costly. Three new proposals were invited, out of which the NFC was selected.¹³⁵

197. The Feasibility Report that was presented to the ADB for assessment of the project does contain sections that contribute more to the understanding of certain sociological characteristics of the project area. In particular, an appendix on "Settlement and Sociological Issues" discusses the economic, social and political changes that are likely to occur.¹³⁶ Some of these issues are discussed in more detail in Chapters 4 and 8 of this report.

198. But the Feasibility Report generally fails to identify and propose mitigating measures regarding a number of significant negative impacts of the project, such as the likely:

- Loss of income and livelihoods
- Damage to land
- Loss of productive agricultural land
- Severance of agricultural holding
- Social and socio-economic effects on various categories of people due to the disruption of the rod kohi system.

199. It also does not propose any system or parameters for monitoring the potential adverse impacts.

200. An early indication that socio-economic and cultural dimensions had not been sufficiently dealt with came in 1992, in an internal ADB evaluation of the TA that had financed the Feasibility Study for CRBIP Stage III. The overall assessment was that the TA would have significantly benefited if more time and resources had been made available in order to (i) further assess important sector issues and carry out intensive socioeconomic and cultural studies early during implementation of the TA; and (ii) adequately reflect these concerns in the project design.

201. The evaluation emphasized that in-depth social analysis must precede engineering design. This implies that it is not sufficient to just carry out the social analysis, as was done under

¹³⁵ Communication from ADB's South Asia Regional Department to the Inspection Panel, 27 February 2004.

¹³⁶ Technical and Economic Feasibility Report, CRBIP Stage III, March 1990, Appendix 6.

the Project, but that the findings of such analysis must be fully interfaced and integrated into the Project design. It was pointed out that more use should have been made of the experiences from the first and second stages of the project, including the effects of these projects on land ownership and power patterns, after which specific strategies and a coordinated set of activities should have been developed in order to achieve explicit purposes.

202. The evaluation is critical not only of the study, but also notes that the Bank shares responsibility for the shortcomings;

- in not including more aspects in the terms of reference (opportunity cost of water)
- in the improper timing of the socioeconomic studies, and
- in the insufficient provision of resources for carrying out the TA.

203. The evaluation explicitly states that while the outlined approach should have been followed in designing and carrying out the TA, it could still be used in the ensuing stages to ensure that realistic expectations were set and an appropriate concept and design evolved for Stage III. It is understood from the Panel's interviews with ADB's staff that the evaluation was not followed up through any additional studies. ADB staff did make an effort to deal with some of the problems that it had highlighted primarily by insisting on establishing a unified management system for the project.¹²⁵

204. As has been shown in Chapter 3, the Bank had an obligation to do a full appraisal of the project before 1999 supplementary loan to CRBIP Stage III was approved. At that time, the Bank had adopted OM 47 on *Incorporation of Social Dimensions in Bank Operations*, which contains a number of more specific requirements for social analysis and planning that would have been applied in a new appraisal. Under OM 47 the identification of vulnerable groups, and the need to provide safety nets and compensation mechanisms, had become mandatory requirements. OM 47 also requires a much higher degree of participation of stakeholders and an integration of social development considerations in project design,

205. Thus, the preparations for the supplementary loan provided the Bank with an opportunity to take remedial action by supplementing the existing studies, and undertaking a proper social analysis that included assessing the important new issues that had emerged since the initial loan approval (most notably the issues of flooding and resettlement). Identifying impacts on vulnerable groups, formulating the necessary safeguards and compensation mechanisms and incorporating them in the plan for project implementation would also have been required. But as no new assessment of the project was done, this opportunity was missed.

206. But the responsibility of Management to implement OM 47 is not restricted to the assessment and approval stages. The requirements for applying approaches "in which the stakeholders are provided with opportunities to actively influence and share control over the project and decisions that affect them" explicitly applies "at all stages of the project cycle" (issues regarding participation are discussed separately in Section 6.3 below).¹³⁷ Requirements regarding the development of monitorable indicators, of provisions for monitoring and evaluation, and for undertaking reviews of implementation are obviously applicable to the implementation stages of the project.¹³⁸ On the issue of identifying people who are likely to be adversely affected, OM 47

¹²⁵ Some of the conclusions in ¶¶ 183-186 were challenged by ADB in 1992, and are still challenged by ADB Management in its comments to the Inspection Panel's Draft Report dated 23 April 2004.

¹³⁷ *Incorporation of Social Dimensions in Bank Operations*, 7 January 1997, BP ¶ 4 (i).

¹³⁸ *Ibid*, BP ¶ 4(iv).

states that it “will continue with more and more refinement in the succeeding stages”.¹³⁹ Although the OM expects that the Social Analysis and Social Design will be done before project approval, it would defeat the intentions of the OM if the Bank did not also have an obligation to ensure that the social dimensions are properly dealt with in projects where this was not done.

207. While some steps have been taken in recent years, e.g., Social Study and Action Plan Study for the flood affected communities and 2000-2001, Socail Assessment Study in 2001, and the work under GRSC, to address some of the requirements under OM 47, many others remain unfulfilled. Aspects of the adequacy of measures taken to address the problems are discussed in section 6.5, after some of the key impact areas have been examined.

6.2.4 Conclusions on Socio-cultural assessment

The Inspection Panel finds as follows:

- 208. The Feasibility Study for CRBIP Stage III does not adequately analyze and identify the possible social and economic impacts of the project, such as those mentioned in ¶ 194 and ¶ 198, besides land acquisition and mobility issues, and does not 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.
- 209. After the adoption of OM 47 the Bank has had an obligation to implement the relevant provisions in 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 mechanism 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.
- 210. 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.

6.3 Participation

6.3.1 Request

211. The Requesters assert that the project suffers from a serious lack of institutionalized mechanisms for information sharing and consultation with the affected people. The project implementation process has been non-transparent and hence failed to obtain the informed consent of the affected people. They claim that “NGOs involved in the advocacy campaign who have constantly engaged with the ADB and with the project authorities have been refused vital

¹³⁹ Ibid, OP ¶ 5.

information with regard to resettlement and land acquisition, technical issues and environmental impacts”. Local communities have not been allowed to participate in the valuation of land and other property that has been acquired or lost due to the project.¹⁴⁰

6.3.2 Response

212. Management admits that the Project design did not incorporate specific institutionalized mechanisms for stakeholder participation, but claims that “stakeholder participation has been ensured during Project implementation. During numerous meetings and interviews with stakeholders, ADB staff and consultants have discussed various aspects of the project, including ... the flood protection, resettlement, compensation and rehabilitation aspects.” Project authorities have also “explained to the people the status of land acquisition and payments related to built-up property”.¹⁴¹

213. To illustrate “the consultative and participative approach used by ADB under the Project”, Management refers to

- the NDC report on Social Survey and Action Plan, and the ensuing flood protection and resettlement plan, which Management claims were done in accordance with policy requirements of “informed, consultative and participative approaches”,
- the surveys for the CBI report that formed the basis for the March 2002 Multi-Stakeholder Workshops, which “involved discussions by the consultants with stakeholders”, and
- the Multi-Stakeholder Workshop itself, which “was attended by ADB, the EAs, and community representatives including NGOs and villagers”.¹⁴²

214. Management also refers to the participation of “elected representatives of the people” in the GRSC, “an effective, realistic, time-bound mechanism to resolve all pending matters”.

6.3.3. Findings

215. There is no indication in the documentation that the local communities were consulted in the preparatory stages of the Project. The Panel finds no evidence in the Feasibility Report of any consultation process. The team that assessed the settlement and sociological issues speak of field investigations and discussions, and “somewhat more structured” interviews, but there is no indication that any of this went beyond the mere gathering of information rather than seeking opinion. While the 1986 Staff Instruction on Socio-cultural Impacts of Bank Projects did not require any consultations or participation, OM 23 on Project Benefit Monitoring and Evaluation, issued in 1987, did at least require an assessment of the “desire and ability” of beneficiaries and NGOs to participate in the implementation and subsequent operation of project facilities.¹⁴³

216. The first instance of consultations that Management refers to took place in late 1996 and early 1997. OM 47 on Incorporation of Social Dimensions in Bank Operations was issued while

¹⁴⁰ Chashma Inspection Request Filed with the Board of Inspection Committee under the Inspection Procedures of Asian Development Bank, November 19, 2002, ¶ 73.

¹⁴¹ Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation project (Stage III) in the Islamic Republic of Pakistan, February 2003, ¶ 135.

¹⁴² Ibid. ¶ 136.

¹⁴³ OM 23 (Project Benefit Monitoring and Evaluation), 30 March 1987, ¶ 13.

the Social Survey and Action Plan consultations were already going on, but consultations on matters relating to resettlement were already called for in the 1994 Staff Instruction on Involuntary Resettlement. However, as will be shown in Chapter 7, the report of the NDC team was not shared with the communities, and consultations effectively ended when its recommendations were rejected by the project authorities - with the approval of the Bank. As is also documented in Chapter 7, no resettlement plan was ever produced, and the “crash program” by which the protection and resettlement measures were decided upon did not in any way meet the most basic requirements for “informed, consultative and participatory approaches”.

217. The elaboration of the CBI report does seem to meet such requirements, but it must then be kept in mind that the report was nothing more than a discussion paper for the ensuing Multi-Stakeholder Workshop.

218. As for the Workshop, the Requesters point out that Management makes “extensive references” to the event and refers to the action plan that was produced as ‘consensual and agreed between all parties’, but never mentions the controversies that surrounded it.¹⁴⁴ In the concluding session of the workshop, one of the Requesters read out a statement in which the affectees and civil society organizations declared that the Multi-Stakeholder Dialogue had “totally failed to address the core concerns of the affected communities and civil society organizations” and “we don’t consider ourselves part of any process or agreement that does not address our fundamental rights ...”.¹⁴⁵ Management does, however, refer to several instances when the NGOs have declined invitations to attend meetings, primarily in the setting up of the GRSC, and concludes that “solutions cannot be found unless the engagement of all parties is meaningful and constructive”.¹⁴⁶ But Management does not discuss the explicit demands that the Requesters have formulated, and which they consider prerequisites for *making* their participation meaningful.

219. The reasons given by the Requesters for refusing to “become formal part” of the negotiation on the GRSC included the “inadequacy and unrealistic nature” of the proposed committee. They also refer to their experiences of previous efforts to engage in a dialogue.¹⁴⁷ One such experience refers to the deficient decision-making process on resettlement, which - as discussed above - Management considers to have been “informed, consultative and participative”.

6.3.4 Conclusions on Participation

220. OM 47 requires the Bank to set up participatory processes in which stakeholders are provided opportunities “to actively influence and share control over the project and decisions that affect them at all stages of the project cycle”. The obligation includes, where necessary, to develop procedures and implementation schedules for strengthening the institutional capabilities of beneficiary groups to participate.

221. Apart from the initial phase of resettlement planning, Management does not refer to any more opportunities for such participation between the adoption of the OM in January 1997 and the CBI consultations that started in August 2001. These were the five most intensive years of project implementation, and included the decision on supplementary financing when, as has been discussed in Chapter 3, Management was obliged to make a full reappraisal of the Project.

¹⁴⁴ Additional Information from the Requesters (Second Supplement), 25 February 2003, Section III.

¹⁴⁵ Ibid, Attachment 4 (according to list of attachments, attachments not numbered).

¹⁴⁶ Ibid, ¶ 141.

¹⁴⁷ Additional Information from the Requesters (Second Supplement), 25 February 2003, Section III.

222. The isolated efforts to engage affected communities and civil society organizations in a dialogue have suffered from a lack of continuity and clearly defined frameworks. None of the efforts has resulted in any processes or structures that would allow representatives of affected peoples or civil society organizations to participate in the execution and follow-up of agreed measures, or that would make possible a regular and institutionalized information sharing. Even without going into any discussions about shortcomings in terms of its composition and mandate, the most recent experience of the GRSC illustrates the problem. After an eight-month spate of intensive activity, the committee has now been dismantled and follow-up is handed back to the EAs and project consultants. As of 1 January 2004 there is again no forum where the voices of the affected people and their representatives can be heard, and where they can execute the right to participation and to "influence and share control over the project".

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

6.4 Harm Caused

224. In this section, a number of negative social impacts have been identified. However, due to the absence of sufficient baseline information, as well as of current data, the Panel is not in a position to determine the magnitude of the harm caused to the affected people.

Water management and distribution system

225. The Panel observed during the field inspection that many farmers were blocking the distributaries in order to raise the water level. By doing so, they could divert irrigation water to fields that were situated well above the watercourses. In some cases, pumps were installed, almost all of them are illegal and at risk of being made inoperable by the authorities. The Report of Irrigation Management Specialist, assigned as recommended by GRSC to explore the quality of water distribution arrangement on the watercourse, among others, mentions the existence of 22 illegal pipes along Distributary 49 alone.¹⁴⁸ The report describes "Blockades were erected in the distributary channels downstream of the outlets in order to raise water level for diverting more water into watercourses."¹⁴⁹ The same report also states that the water distribution arrangements on watercourses is "very poor".¹⁵⁰ Adopting the legal means of obtaining water entailed ill affordable costs for the payment of license fees, cost of machinery and running cost of pumps. The watercourses could have been better designed by involving the Water Users Associations. But the Water Users Associations that had been set up for the purpose of participating in the design and construction of only the minor watercourses were later dissolved, resulting in deprivation of opportunities on the part of the beneficiaries for their further involvement.

226. It seems possible that this problem might have been better understood, and better strategies adopted, had the extent of involvement of the water users in various stages of project cycle been significantly greater. This is because one of the objectives of the participation process

¹⁴⁸ End-of-Tenure Report submitted by Irrigation Management Specialist, April 2004, p. 14.

¹⁴⁹ *Ibid.* p. 12.

¹⁵⁰ *Ibid.* p. 38.

is to educate/train the beneficiaries regarding systematic appropriation of irrigation water as well as operation and maintenance of the canal to their benefit.

Impact on rod kohi agriculture

227. The Discussion Paper for the 2002 Multi-stakeholder Workshop¹⁵¹ states: “the traditional system of hill torrent irrigation – rod kohi - was the mainstay of agriculture and subsistence in this area for centuries. While this was a harsh and unpredictable system, it was a system the communities had learned to utilize”. Before the canal, some of these people had access to rod kohi water.

228. The Requesters claim that the project has affected the rod kohi system negatively by massive diversions and disturbances to the floodwater courses to ensure the safety of the main canal, and has thus deprived a large population from using the floodwater.¹⁵² Management accepts that such effects have occurred, by saying that they have not occurred albeit in a limited strip of land (maximum of about 2 Km, depending on the scale of floods) along the main canal. “Communities sufficiently far way from the main canal are safe and can continue rod kohi irrigation without increased risk of flooding.”¹⁵³

229. The GRSC also recognized the ‘exclusion of land previously irrigated by Rodh Kohi’ as one of the categories of grievance.¹⁵⁴ Two different types of problems that have resulted from the interference with the Rodh-Kohi system, and that appeared in the complaints submitted by the communities, are (i) flooding and (ii) lack of water.¹⁵⁵ Lack of water is also referred to in the Discussion Paper.

Impact on vulnerable groups

230. The Requesters state: “Socially and economically vulnerable groups such as Siraiki ethnic minority living in NWFP, Baloch tribal groups, small farmers and tenants, and women have been victimized due to the project interventions”. They add that most of the affected people are “already vulnerable, and have little capacity and resources to cope with the project-imposed sudden and abrupt changes.”¹⁵⁶

231. Management, in its response, does not respond to the allegation with regard to other vulnerable groups, except in relation to women and resettlement.

¹⁵¹ Workshop on Social Impacts, Discussion paper prepared by the Consensus Building Institute, Cambridge, Mass., USA, February 2002, page 19.

¹⁵² Chashma Inspection Request Filed with the Board of Inspection Committee under the Inspection Procedures of Asian Development Bank, November 19, 2002, ¶ 41.

¹⁵³ Response of ADB Management to the Board Inspection Committee on the Request for Inspection of the Chashma Right Bank Irrigation project (Stage III), February 2003, ¶ 65.

¹⁵⁴ Chashma Right Bank Irrigation Project (Stage III), Final Report on the Grievance Redress Process, February 2003, ¶ 9 (Table 4).

¹⁵⁵ Translated (from Urdu into English) version of the original copies of the grievances, 2004

¹⁵⁶ Chashma Inspection Request Filed with the Board of Inspection Committee under the Inspection Procedures of Asian Development Bank, November 19, 2002, ¶ 10.

232. The GRSC, in its recommendations,¹⁵⁷ acknowledged the following adverse impacts on vulnerable peoples:

- (i) Reduced the access of the landless to surrounding land for livestock grazing and fuel,
- (ii) Loss of livelihood due to reduced access to land for livestock grazing and fuel,
- (iii) Unsafe settlements (22) west of the canal due to the construction of the flood protection embankments,
- (iv) Women often have to walk considerable distances to a distributary and then to a watercourse to water their livestock because the bridges are too far apart, and
- (v) Adverse impact on communities that have not directly benefited from the canal due to incomplete FCCs and water accumulations on mismanaged distributary tails.

233. Specifically for people living in the flood impact zone, the GRSC identified two vulnerable groups:

- (i) those who are landless, and
- (ii) those who own land but only in the official flood impact zone.¹⁵⁸

234. Almost one third (32.4%) of the complaints received by the GRSC related to the reduced opportunity for grazing and the loss of access to fuel wood.¹⁵⁹ These are consequences that are likely to affect the poorer sections in society to a greater extent than others. Furthermore, they are impacts that were not foreseen in any of the preparatory documents for the project.

235. These adverse effects on vulnerable people amount to severe lifestyle disruptions, livelihood losses, and disruptions in social and physical mobility. To date, most of the mitigatory measures recommended by the GRSC have not been implemented.

Land acquisition

236. The lands that have been appropriated for CRBIP Stage III is estimated to be 6061 acres in NWFP and 9800 acres in Punjab. However, very little land was legally acquired by the project before it was taken possession of, and in most cases the formal acquisition process has only been initiated retroactively.

237. The project started claiming farmers' land even before construction of the main canal started, but as late as July 2003 only 50 percent of the awards for compensation had been announced in Punjab, and only 44 percent in NWFP.¹⁶⁰ The share of cases where compensation had actually been paid to the former landowners was even smaller. As a result, farmers who lost their land may have waited for as long as 7-8 years before receiving any compensation. The GRSC described the situation as "shocking", and the delays as "unconscionable and repulsive".¹⁶¹

¹⁵⁷ Recommendations for Adverse Impact Mitigation and Grievance Redress and Settlement, GRSC, Dera Ismail Khan, 15 October 2003.

¹⁵⁸ Ibid, page 12.

¹⁵⁹ Final Report on the Grievance Redress Process. Inter-Office Memorandum from ADB-SARD, 13 February 2004, ¶ 9 (Table 4).

¹⁶⁰ For example see Final Report on the Grievance Redress Process submitted to BIC, on 13 February 2004 at page 8, ¶ 22.

¹⁶¹ Recommendations for Adverse Impact Mitigation and Grievance Redress and Settlement, GRSC, Dera Ismail Khan, 15 October 2003, p 2.

238. While the speed of processing the awards seems to have accelerated during the last year, only two thirds of the awards had been announced in NWFP by 31 January 2004. According to information furnished to the Panel by WAPDA, the acquisition proceedings were scheduled to be completed by June 2004.

239. The Panel heard repeated complaints during its field inspection of corruption being partly responsible for dilatory payment as well as inequitable compensation. The procedure adopted in making payment, whereby the land owners have to travel to the office of the Land Acquisition Collector (located in the WAPDA compounds) in order to collect their money, also raises questions of transparency as well as questions of inconvenience to the applicants for compensation. The GRSC comments¹⁶²: “it is very strange why the cheques of the rightful claimants are not already prepared and disbursed to them in their own villa ges”.

240. The third category of complaint relates to the levels of compensation. Farmers whom the Panel talked to invariably testified that the compensation they had received was insufficient for buying a piece of land of a size and quality equal to the land that they had lost. Several farmers said they could only buy between 10 and 20 percent of the area that they had lost. Many also complain about the inequality of compensation levels between different areas.

Other Losses

241. According to the GRSC, in addition to the losses discussed above, other negative impacts include:

- (a) damage to land,
- (b) severance of agricultural land holdings,
- (c) loss of standing crops, orchards and trees
- (d) loss of dwellings,
- (e) restrictions on mobility due to insufficient number of bridges at appropriate locations,
- (f) restriction or denial of access to cultural properties including burial grounds,
- (g) lack of access to potable water as a result of damage to existing supply lines which were not restored,

242. Compensation and mitigative measures for these adverse impacts have been recommended by the GRSC, but most remain to be implemented. Difficulties, apart from the commitment of the responsible agencies, include the lack of records of losses suffered by individual farmers, i.e. with regard to losses of trees and crops.

6.5 Adequacy of measures taken to address the problems

243. The inadequacy of the GRSC with regard to its mandate for activities such as long-term monitoring and implementation of its own recommendations as well as of the entire project is discussed in Chapter 3 of this report.

244. As recommended by the GRSC, three local specialist consultants were recruited by ADB as staff consultants under an ADB funded TA with the title “Rural Livelihood Enhancement

¹⁶² Ibid., page 3.

through Participatory Resettlement in Irrigation Development”.¹⁶³ Their mandates were mainly to identify the villages or households that are eligible for support under GRSC recommendations, and to propose plans for implementation. With the GRSC dismantled, there is now no other structure in place, other than the project EAs, to follow up on these processes.

245. As stated above, one of the categories of grievances received by GRSC is “exclusion of land previously irrigated by rod kahi”. The compensation policy laid out to mitigate this issue is to include such land in the Cultivable Command Area of CRBC. The farmers will continue to suffer until such lands are brought under a perennial source of irrigation.

246. One of the charges to GRSC was to identify measures to mitigate adverse impacts on the more vulnerable in the population – women, small landholders and landless. The GRSC was also to explore and recommend program options to extend opportunities to the poor who are displaced from their land and other assets. Though the percentage breakdown of grievances presented in the entitlement matrix provides evidence as to the extent of the various types of harm, it does not address the socio-cultural issues (e.g., access to town, severance and the loss of support networks, dispersal of community, gradual disappearance of graveyards, conflict between farmers and between farmers and landlords). Nor does it propose any appropriate measures to rectify them.

247. GRSC, from a broader gender perspective, points to a number of such issues as girl enrolment and retention rates in schools; mother and child health care; strengthening of women’s roles in leadership, representation and decision making for effective participation under the new local government system and involvement of women in the canal water management for domestic use. However, it does not provide any concrete recommendations related to these issues. A Gender Specialist was assigned to develop a plan for measures to be taken. Among other recommendations, the Gender Specialist’s report of 21 April 2004¹⁶⁴ stresses on mainstreaming gender in canal water management for domestic and livestock watering by adequately considering men’s and women’s roles, needs, access to and control over resources and decision-making.

248. GRSC talks of providing canal water allowance for domestic use for villages with saline ground water and a high percentage of landless inhabitants as an entitlement in compensation for reduced opportunity for grazing and fuel-wood collection. It is doubtful that just an assurance of freshwater supplies as compensation is sufficient, or even relevant, for those people (women, small holders and landless) who are vulnerable to risks of further impoverishment.

¹⁶³ TA 4127-PAK.

¹⁶⁴ Consultancy Report prepared by Gender and Social Development Specialist, April 2004.

7. Involuntary Resettlement

249. The Panel has considered the following issues with regard to compliance with ADBs staff instructions, policies and procedures related to involuntary resettlement:

- 1) Whether the resettlement procedures properly followed; and
- 2) If not, what harm has been caused by non-compliance?

7.1 The Policy Framework

250. The following bank documents are considered in this context:

At the time of loan approval in December 1991:

- Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986

At the time when the need for resettlement due to flooding was identified in 1995:

- Staff Instructions on Involuntary Resettlement, 15 February 1994

At the time of Supplementary Financing in July 1999, and when resettlement was planned for and implemented in 2000-2001:

- OM Section 50 “Involuntary Resettlement”, 7 January 1997

251. Box 7 summarizes the most relevant principles and procedures with regard to involuntary resettlement that are contained in these documents.

Box 7 Involuntary Resettlement - Principles and Procedures

Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986

“Socio-economic and cultural issue affecting the success of a development project may include settlement/resettlement...”¹⁶⁵

“... the environment Specialist, as part of their review should be consulted by projects staff to help identify socio-cultural issues and on possible mitigation measures as necessary”.¹⁶⁶

Staff Instructions on Involuntary Resettlement, 15 February 1994

The stated objective is to “ensure that the people displaced by a project receive benefits from it and they should be at least as well-off and possibly better-off than they would have been without the project”.

- During project preparation the feasibility of resettlement must be established.
- A detailed resettlement plan, with a timetable and a budget, should be prepared.
- Alternative relocation sites should be presented in the plan, indicating the preferred site selection of the communities.

¹⁶⁵ Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986, ¶ 4.

¹⁶⁶ Ibid, ¶ 5.

- The full costs of resettlement should be included in the total cost of the main investment project.
- The participation of communities to be resettled is called for.

OM Section 50 “Involuntary Resettlement”, 7 January 1997

The basic principles of the Policy are avoidance of resettlement wherever feasible, minimizing of resettlement where displacement is unavoidable, and ensuring that those who are displaced will be at least as well-off as they would have been in the absence of the project.

The latter is to be achieved through

- compensation for losses of assets and livelihoods,
- assistance for relocation including provisions of relocation sites with appropriate facilities and services, and
- assistance so that their economic and social future will generally be at least as favorable as without the project.

Resettlement should be part of project design from earliest stages and should, as far as possible, be executed as part of a development project or program.

- A resettlement plan, with a timetable and a budget, should be prepared.
- People should be informed and closely consulted on resettlement and compensation options.
- Particular attention should be paid to the poorest affected persons (without legal title or assets, female-headed households, other vulnerable groups). Absence of formal legal titles to land should not be a bar to compensation.

7.2 Request

252. The Requesters’ main complaints¹⁶⁷ regarding ADBs handling of involuntary resettlement issues during project planning and implementation are:

Identification of need for resettlement

253. At least 22 villages are subject to the risk of flooding that was not foreseen at the time when the project was appraised. ADB has failed to undertake the necessary studies to enumerate the affected villages. Villages that subsequent surveys have not considered to be at risk, notably Sokkar village, have been hit by floods. ADB has failed to undertake a comprehensive social and environmental impact assessment of project induced flooding, and the full extent of such impacts is still not known.

Resettlement planning

254. The Social Survey and Action Plan that was proposed in 1997 for developing arrangements that complied with Bank policies was not delivered until 2001. Affected villages in the North West Frontier Province were excluded from the survey, and additional villages that were identified to be at risk were also not covered.

¹⁶⁷ Adapted from ‘Inspection Request for Chashma Right Bank Irrigation Project Stage III’, 19 November 2002, ¶ 14, 53-59.

255. Affected people were not properly informed and consulted. The resettlement option that was preferred by almost all of the surveyed 12 villages was disregarded in the subsequent decision making process. As a result villages have had to accept unsatisfactory flood protection measures or inadequate cash compensation.

256. Management was aware of the resettlement problems when supplementary financing was approved in 1999, and could have used the occasion to enforce the 1995 Policy in order to better protect the rights and interests of the communities, but these aspects were ignored.

257. There is still no comprehensive rehabilitation plan for the affected villages.

Implementation and follow-up

258. Force and threats have been used to make people leave their homes, even in the absence of resettlement arrangements.

7.3 Response

259. Management claims¹⁶⁸ that ADBs policies related to involuntary resettlement have been followed during project implementation.

Identification of need for resettlement

260. Management agrees that the risk for flooding was underestimated at appraisal. The successive increase in the number of villages that were identified as flood-prone was on account of the phased progress of construction of the main canal. Flooding that has occurred is, in some instances including in Sokkar village, unrelated to the project.

Resettlement planning

261. When resettlement came up as an issue, staff was concerned that affected people were compensated in accordance with the Involuntary Resettlement Policy. Management says that the delay in developing the Social Survey and Action plan was 'unfortunate' and confirms that the NWFP government did not agree to take part in the process. The 2001 Social Survey and Action Plan was done in accordance with the Policy.

262. Stake-holder participation has been ensured. Management denies that there had been a decision not to accept the proposed resettlement plan, but also concedes that the decision to pay cash compensation or offer protection bunds was made by WAPDA. After further consultations agreement was reached to provide flood protection for eight villages and cash compensation for relocation for 14 villages. The construction of bunds in the NWFP villages was according to the wishes of the communities.

Implementation and follow-up

263. Management says that in 1999 resettlement and related issues were still under survey. Consequently, "related costs could not be finalized and therefore could not be included" in the

¹⁶⁸ Adapted, unless otherwise indicated, from 'Response of Management to the Board Inspection Committee on The Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III) (Loan 1146-PAK) in the Islamic Republic of Pakistan', February 2003, ¶ 88, 96-108, 135-137

supplementary loan proposal.¹⁶⁹ Even if a full appraisal had been done, it would not have made any difference to resettlement.

264. When further concerns were raised after implementation of the SSAP, ADB undertook additional visits and organized consultative workshops.

7.4 Findings

265. The findings of the Inspection Panel, divided into one section on the degree of compliance with Bank policies and another on the consequences of non-compliance, are presented below.

7.4.1 Compliance with Bank policies

Identification of need for resettlement

266. In the Feasibility Study for the project displacement is only discussed in the context of the need to make way for irrigation canals and facilities. While no such need was identified by the Feasibility Study, the work of the Grievance Redress and Settlement Committee in 2003-04 seems to indicate that such displacement has in fact occurred.¹⁷⁰ The Inspection Panel has not looked closer at this aspect.

276. The issues that have been raised in the Request with regard to resettlement are linked to the new flood risks that are associated with the construction of the main canal and flood carrier channels. The Feasibility Study did not foresee any such flooding. Flood risks were only discussed in terms of flood events that exceeded design capacity.

268. A Design Report that was presented in October 1994 did draw attention to the flood risks associated with superpassages, the main type of cross-drainage structures that had been recommended in the Feasibility report. The 1994 Design Report rejected superpassages on the grounds that they cause excessive flooding of upstream land, and they were expensive. It was proposed that they be replaced by other types of structures.

269. But, although it also took note of the associated flood risks, an ADB Technical Review Mission in December “agreed that the construction of superpassages offers better prospects” with regard to ensuring adequate discharge and flexible water management in the end reach of the canal. As a result of the preference for superpassages, “the meeting agreed on the need to analyse and take remedial measures to protect the villages upstream of the canal against increased flooding which may be caused by the construction of superpassages.”¹⁷¹

¹⁶⁹ Response of ADB Management to the Board Inspection Committee on Additional Information Requested and Supplement to the Request for Inspection of the CRBIP (Stage III), February 2003, ¶ 14.

¹⁷⁰ The GRSC Entitlement Matrix contains a compensation policy for persons who have lost “house in ROW of the main canal” and other project infrastructure. Point 8.1, Annex 1 to the GRCS End-of-tenure Report, D.I. Khan January 2004.

¹⁷¹ BTOR of Technical Review Mission 16-22 December 1994.

270. A study was commissioned, and a first report in August 1995 clearly recommended resettlement of the affected villages. The option of building protective dikes around the villages was dismissed either for economic or for safety reasons. A second report based on further studies was delayed until December 1996. It indicated that 25 000 acres of land and 10 villages were at risk of being flooded. The report presented four protection alternatives, one of which was resettlement, but evaluation of the merits of the alternatives was deferred to a “latter part of the Flooding Studies” which did not materialize until the end of 2000.

271. The number of villages at risk was not adjusted until June 2001. Then the total number of affected villages was estimated to be 26. By the time this number was arrived at, the canal had already been completed, and the villages were facing an acute and immediate risk of being flooded. Only three months later Sokkar village was hit by a flood before the protection bund was constructed.¹⁷²

- 272. The Panel notes that both ADB and the EAs were aware of the flood risks that were associated with the decisions that was taken on the final design of the cross-drainage structures were taken. It seems reasonable to assume that the possible flood effects of building superpassages was known also in at the time of the Feasibility Study and project Appraisal in 1990-91. However, at the time these risks were not considered.
- 273. The 1994 Staff Instructions assumes that the need for resettlement is identified before appraisal. The Panel interprets the spirit of said Staff Instructions to imply that once failure to identify these potential need for resettlement during project preparation and appraisal was understood, care should have been taken to quickly and accurately assess the risks. This was not done within a reasonable time.

Resettlement planning

274. A first survey of the preferences in villages affected by flooding was done in July 1996, focusing on 11 villages. As a result of the survey eight villages expressed preference for embankments, one village wanted to be resettled, and two were undecided.¹⁷³

275. While this can appear to be a solid majority for protection, the report also discusses the reasons why people did not want to be resettled. In addition to a general reluctance to leave their homes and land, these reasons also included concerns about the difficulty in obtaining new land, as well as fears that compensation for resettlement would be insufficient to cover replacement costs and payments would be delayed.¹⁷⁴ Experiences from Stage II of the project supported these concerns. The report recommended that meetings with design engineers should be held in the

¹⁷² Whether the flooding in Sokkar was related to the project or not is a matter of controversy on which the Panel has not been able to come to a conclusion.

¹⁷³ WAPDA in its comments to the report for the 2002 Multi-Stakeholder Workshop refers to another result. 1 of the undecided villages later opted for resettlement.

¹⁷⁴ Management in its response to the Draft Report of the Inspection Panel argues that these concerns “would be misplaced in a resettlement plan under which land and houses are to be provided in advance by the Government”. But no such plan was proposed at the time, nor implemented later. In fact, the villagers have indeed had to face most of the difficulties that they feared in 1996.

villages in order to tailor plans to farmers' wishes. When land is lost, the report suggested that people must be given land for land.¹⁷⁵

276. In April 1997, the ToR for a Social Survey and Action Plan (SSAP) were drawn up by ADB's resettlement specialist. The ToR called for a Social Analysis in accordance with ADB's Guidelines for Incorporation of Social Dimensions in Bank Operations: development of a Participative Flood Protection Plan, and a Resettlement Plan in accordance with the Bank's Policy on Involuntary Resettlement.

277. Due to a number of reasons, which included a lengthy process for recruitment of an appropriate team of consultants, and in spite of ADB's efforts, work on the SSAP did not start until August 2000. As a result, no action plan was yet available when ADB's Board of Directors approved the supplementary financing in June 1999, more than four years after the flood risks had been identified. The document that went to the Board states that "relocation arrangements are being made for villagers who will be affected by floods".¹⁷⁶ This is in itself at least slightly misleading, since arrangements were still only 'being made' to get a contract signed so that a study could be commenced.

278. More importantly, sufficient arrangements for resettlement (or for flood protection) were not provided for in the scope or budget of the additional financing agreement. This is confirmed by Management when it informed BIC that (resettlement) "related costs could not be finalized and therefore could not be included pending completion of the surveys".¹⁷⁷ In its response to the Draft Report of the Inspection Panel, Management claims that tentative allowances were made for land acquisition/resettlement associated with flooding under the line item for Land Acquisition, and that there was "adequate allowance for cost escalation and contingencies".¹⁷⁸

279. But the need for resettlement of a substantial number of villages introduced *a whole new policy area* into the CRBIP, which had not been considered in the appraisal of the 1991 loan and for which no provisions were made in the 1992 Loan Agreement. OM 50, which was in force in 1999, requires "a detailed resettlement plan with timebound actions specified and a budget" to be submitted "in any case, before project appraisal".¹⁷⁹ Furthermore, "the full costs of resettlement and compensation, including costs of social preparation and livelihood programs" should be included in the Project costs and benefits.¹⁸⁰ In the light of these requirements it is clearly not sufficient to only refer (retroactively, at that) to an increase in the budget for land allocation and to "cost increases and contingencies".

280. By the time the SSAP started, the flood affected villages in NWFP had been excluded from the scope of the survey. An ADB mission in November 1999 had made a rather strong statement that "ADB policies require a survey, and non-compliance would lead to the Bank reconsidering its involvement in the NWFP part of the project"¹⁸¹. When the provincial authorities

¹⁷⁵ Although the latter comment was based on the example where a farmer becomes landless as all his land is situated in the "right-of-way" of the canal, the recommendation is clearly made in the context of people's concerns regarding inadequate compensation, late payments and difficulties in obtaining new land. There would have been no justification for the authors of the report to make this recommendation unless it was relevant to the issues addressed in the survey.

¹⁷⁶ Optimising Existing Investments in the Water Resources Sector in Pakistan, ¶ 54. ADB June 1999.

¹⁷⁷ Response of ADB Management to the Board Inspection Committee on Additional Information Requested and Supplement to the Request for Inspection of the CRBIP (Stage III), February 2003, ¶ 14.

¹⁷⁸ Comments of ADB Management to the Inspection Panel on the Panel's Draft Report on the CRBIP (Stage III), May 2004, p 49.

¹⁷⁹ OM 50, ¶¶ 2 and 7.

¹⁸⁰ Ibid, ¶. 8.

¹⁸¹ BTOR of ADB's Special Project Administration Mission 9-16 November 1999, ¶ 8.

presented ADB with the *fait accompli* of having built protection bunds, the ADB took no further action.¹⁸² However, ADB's resettlement specialist continued to insist that a plan should also be prepared for these villages.

281. The results of the study were presented in February 2001.¹⁸³ After consultations, 11 out of 12 affected villages had expressed a clear preference for resettlement, provided that they would receive land on the eastern side of the canal and be properly compensated for their losses.

282. The study recommended that the project should provide the resettled households with new houses, that they should not be given any monetary compensation, and that a social unit should be placed in the resettled villages for at least one year. This was intended to prevent people from returning to their old villages where they may fall victim to some future flood.

283. But a number of issues that were specified in the Terms of Reference for the SSAP had not been dealt with. These included the preparation of:

- an institutional framework for land acquisition and resettlement;
- standards for compensation and specific provisions for vulnerable groups to restore their economic and social base;
- a framework for the participation of affected people in settling entitlements and in implementation, land acquisition, and resettlement;
- a monitoring and evaluation plan including time frames and key indicators; and
- a time frame and implementation schedule which provide for relocation before any danger of increased flooding.¹⁸⁴

284. ADB's resettlement specialist proposed that if protection is not viable, ADB should convince WAPDA that the relocation option that was preferred by the villagers was the best option. The specialist recommended that the Consultants, as was specified in their ToR, should now prepare detailed Flood Protection Plans and Resettlement plans *based on the preferences* of each village. Resettlement Plans should provide full details of the development of the preferred resettlement sites. Consultations on the options should follow, and each household's agreement with a particular option documented and included in the final plan.

285. However, WAPDA did not agree to acquiring valuable potentially irrigated land on the eastern side for resettlement.¹⁸⁵ In a meeting on 31 March 2001 it was concluded that the preference of most villages might have been caused by making the resettlement alternative too attractive. The NDC consultants were instructed to work out flood protection and resettlement options for all villages. Preference was to be given to solutions that do not require resettlement, and the construction of new houses should be avoided.

¹⁸² Management, in its response to the Draft Report of the Inspection Panel, explains that the March 2000 ADB Mission visited these villages and "interviewed randomly selected villagers who did not indicate any strong objections to the bunds that had been provided". There is no reference to such a visit in the BTOR of the mission, although the report lists 57 other people the Mission met. This can hardly be considered an appropriate way to deal with what the previous mission had described as an ADB policy requirement.

¹⁸³ Report for Social Survey and Action Plan (Flooding to the West of the Canal), National Development Consultants, February 2001.

¹⁸⁴ Terms of Reference, Part B: Resettlement Plan. In Report for Social Survey and Action Plan (Flooding to the West of Main Canal). National Development Consultants, February 2001.

¹⁸⁵ ADBs Management is obviously aware of this decision. However, in its response to the Request they unnecessarily confuse the issue by denying that such a decision was taken. The denial is motivated by insignificant factual errors in the Request, which were probably due to the fact that the Requesters don't have access to the relevant documentation.

286. ADB's preliminary comments to the SSAP report had been made available to the participants in the meeting at WAPDA, but the official comments were only submitted two days later. The Bank did not comment on the shortcomings of the study regarding participation in the settling of entitlements, development of institutional frameworks, livelihood issues for vulnerable groups etc. ADB also rejected the proposed resettlement option by questioning whether the resettlement package that was offered had not been too attractive and thereby influenced the preference for resettlement. Rather than supporting the recommendation by the resettlement specialist, that detailed Flood Protection Plans and Resettlement plans should be prepared *based on the preferences* of each village, the Bank suggested that the "preferences of the 12 villages should be reviewed in the light of" ADBs comments, which included a proposed alternative resettlement option. Detailed plans should be prepared by the NDC consultants, "in close consultation with WAPDA and the engineering consultants" but with no reference to further consultations with the 11 villages whose preferences had just been rejected. Only when the two plans had been completed should they be taken back to the villagers, who would be asked to come to a final decision.

287. There is no indication that any further consultations with the affected communities were carried out between February and May. No representatives of the project affectees attended the 31 March meeting; and affectees and civil society representatives claim that they did not even get access to the first SSAP report until March 2002.¹⁸⁶

288. NDC's second report was presented in May 2001. It contained designs and cost estimates for flood protection embankments for all 12 villages. There were also cost estimates for two cheaper resettlement alternatives in which the main savings compared to the original proposal was on housing: the proposed cash compensation for a house was only Rs 10, 000, while the first proposal has estimated the cost for constructing a a new house at Rs 56,000. The title of the document, "Supplementary Report - Flood Protection Plan", confirms that these brief cost estimates for resettlement do not constitute a Resettlement Plan. The ADB did not renew its call for such a plan to be prepared.

289. A second round of 'consultations' followed the release of the Supplementary Report. But, judging from the documentary evidence that has been made available to the Panel, it was not as much a consultation as a campaign to convince affected villagers to select the option that was preferred by the project.

290. The Project Management Consultant informed WAPDA that the new resettlement options included some provisions that would make them seem more attractive than flood protection. He suggested that flood protection be the preferred option and that this option be promoted by accommodating reasonable additional wishes of the villagers. ADB gave its full endorsement to these comments. On WAPDA instructions, a team visited each village on May 16 and 17 in a bid to convince the villagers to accept the proposed embankment solution. It was noted in the follow-up that some villagers who wanted compensation did not get their statements recorded.

291. Additional villages had also been identified as being flood prone. A survey undertaken in June indicated that a total of 26 villages were possibly at risk of flooding.

292. On 11 June ADB was informed that only two villages had opted for flood protection. Instead, most asked for cash compensation in order to arrange for their own resettlement. The proposed resettlement options had apparently been made so unattractive that they had been

¹⁸⁶ Requesters' Supplement to the Chashma Inspection Claim 25 February 2003, Section 3.

rejected by all the remaining villages.¹⁸⁷ A ‘crash program’ was launched with the objective to compensate in a short period all the people that preferred this option.

293. Proposed Guidelines for Consultation of Affected Villages gave the consultation teams the main task to advise the affected persons/villages on the best solution in each particular case. WAPDA’s preference for flood protection should be made known to the villagers. The Guidelines that were adopted were considered to be as much as possible in compliance with ADB guidelines.

294. If people still opted for resettlement, a draft of Criteria for Compensation argued that it would seem most attractive to the project if villagers would arrange for their own resettlement. The criteria aimed at encouraging the villagers to opt for that option.

295. An ADB specialist raised a number of concerns regarding the adequacy of the proposed provisions for self-resettlement, including the lack of provisions for loss of land and of access to drinking water, and the availability of land for the villagers to move to. The PMC replied that most villagers had land elsewhere and were eagerly waiting for the money so they could move. A simplified method for assessment of compensation had been agreed. Compensation for land was not considered, as people would still be allowed to cultivate their land, and it could complicate the procedures.

296. As of 20 June 2001 the number of potentially affected villages was considered to be 26. 3,500 persons in 600 households were estimated to require resettlement and there was a need to intensify the consultation process. A previously agreed approach to provide flood protection and emergency measures where villages could not be consulted had been abandoned. Instead immediate payment of compensation would be given highest priority. Assessment would be based on a simplified yardstick.

297. Documentation of the last stages of the consultation process seems to be scarce, but together with information gained in interviews it is evident that the process was gradually completed along the lines that had been established in the middle of June 2001.

298. Based on the above detailed account, the panel concludes:

- 299. No resettlement plan was ever prepared. This constitutes a clear violation of OM 50.
- 300. 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.
- 301. 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.

¹⁸⁷ The Project Management Consultant later observed that the fact that villagers “were offered unrealistic resettlement options ... might have had a negative impact on later consultations and tempted villagers to demand compensation in stead of accepting flood protection”. BTOR of Special Loan Administration Mission 4-9 March 2002. Attachment 3, p 2.

- 302. 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.
- 303. 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.

7.4.2 Implementation and follow-up

304. Reports from various ADB sources over the ensuing year illustrate the slow process of assessment and compensation, as well as a persistent uncertainty about the numbers of affected households.

305. By 7 July 2001 a total of 250 households had been assessed, but only 152 compensated. By the end of the year 396 out of an estimated 499 affected households had been assessed and compensated. At the end of March 2002 the number of households was reported to be 515, out of which 440 had received compensation. In July 2002 it was reported that all affected households, now believed to be 481, had been compensated. As all the above figures include compensation for mosques, the final figure of actual households is 462, as confirmed by the Participatory Assessment Specialist in April 2004.¹⁸⁸

306. An ADB review mission, that would have included a resettlement expert, was scheduled to come to Pakistan on 13 September. However, the mission had to be postponed due to the events in the United States on 11 September.

307. The next ADB mission that visited the project, in March 2002, tried to assess the gaps in the resettlement process, and to ensure the removal of people from the danger zone. The Project Management Consultant estimated the cost for additional works “that would seem necessary to comply as much as possible on ADB guidelines for involuntary resettlement” to total some 44 million rupees (US\$ 737,000), which would cover land and assistance to 480 families, completion of a household census, and some infrastructure.¹⁸⁹ The panel notes that, per household, this additional amount is about equal to the estimated total cost of the resettlement option that was preferred by the villages and outlined in NDCs first proposal in February 2001, but then rejected for being “unrealistic”.¹⁹⁰

¹⁸⁸ End of Tenure Report of the Participatory Assessment Specialist, April 2004, pp 7.

¹⁸⁹ The draft document was included as Attachment 3 to the BTOR of Special Loan Administration Mission 4-9 March 2002.

¹⁹⁰ The cost per household in PMC’s draft is Rs 91 000. The budgeted amount in the NDC report was Rs 29 million for 420 households, or 69 000 per household. This estimate only covered land and houses. In a revised budget in NDC’s May report the costs for schools, mosques, a dispensary, four biogas plants, drinking water, sewage and contingencies were included. This only increased the cost to Rs 32,4 million. The land costs were probably underestimated in both reports, but only amounted to 9 000 per family. Even if land cost was doubled, and the additional facilities included, the total amount per family would only reach Rs 87 500. The total compensation that was approved for self-resettlement of 481 households was only Rs 17,7 million, or less than Rs 37 000 per family. NDC’s estimate of the compensation for houses alone had been 60 000 per household..

308. It was agreed that WAPDA would submit data on the affected villages, including the number of households and persons, and the amounts of compensation paid. WAPDA would also assign an officer in charge of resettlement and mobilize a team to do a household census. Upgrading of compensations, and provision of land and housing were called for.¹⁹¹

309. The following ADB mission held a high level meeting in Islamabad to request support for action consistent with the ADB Resettlement Policy.¹⁹² ADB had modified the household census proposal and now proposed the “preparation of a comprehensive plan for resettlement, including the identification of alternative lands and sharing the project benefits with the affected people”.¹⁹³ The plan was to be completed by consultants in June-August 2002.

310. The draft Terms of Reference for preparation of the plan again spoke of the proposed action as a “minimum requirement for compliance with ADB policy”. It was made clear that additional measures for the households that had been paid compensation for self-resettlement would not imply compensating them once again for their houses, but “a viable living arrangement needs to be established where none is currently available”. The proposal included, as a first step, to “prepare ... a population record of the total population affected by land acquisition and land conversion, including the West Bank affectees”. It proposed that flood risk affectees should, in addition to the compensation already received for their houses, be provided with a house plot in the command area and be eligible for priority assistance to restore livelihoods including credit, training and extension. Finally, it proposed that a plan for monitoring and evaluation of milestones, including an independent review upon completion, should be prepared in order to ensure that all outstanding issues had been addressed by the end of ADB’s involvement.¹⁹⁴

311. This initiative, which was described as a resettlement audit, was however immediately abandoned. Priority was given to an initiative that would produce quick and practical outcomes in order to address a wider range of issues raised in the Initial Complaint under the Inspection Procedures that was filed by the Requesters in the end of May. As a result the GRSC was established. In the Terms of Reference for the GRSC the preparation of records of the affected population had been replaced by the task to collect the information necessary for reviewing received grievances. Priority assistance to help restore the livelihoods of the resettled households was replaced with general recommendations for support to project-affected persons. The proposals for housing plots in the command area, and for independent monitoring and evaluation, had been dropped.

312. The entitlement matrix that was presented by GRSC, and the GRSC’s recommendations regarding compensation and other measures¹⁹⁵ contain one positive innovation with regard to the displaced people in the flood impact zone, in that they identified two categories of vulnerable groups among them. These were the landless households, and households that only had land in the flood impact zone. For the former group, the right to a housing site in the command area was proposed, along with a shifting allowance and a one-time subsistence allowance¹⁹⁶. The second group would only be given a house plot outside the command area.¹⁹⁷ The Government, however, has set a maximum limit of 100 households that may benefit from these provisions. A

¹⁹¹ BTOR of Special Loan Administration Mission 4-9 March 2002, Attachment 2.

¹⁹² BTOR of Loan Review Mission 5-12 May 2002, point 2.

¹⁹³ Ibid, point 5.

¹⁹⁴ Ibid, Attachment B: Terms of Reference for Preparation of a Resettlement Plan.

¹⁹⁵ Recommendations for Adverse Impact Mitigation and Grievance Redress and Settlement. GRSC October 15, 2003.

¹⁹⁶ Ibid, Recommendation 11.

¹⁹⁷ Ibid, Recommendation 12.

Participatory Assessment Specialist was assigned to undertake a survey of how many households may be eligible. He identified 7 landless households and 16 households with land and dwellings only in the official flood impact zone.¹⁹⁸ These would be eligible for the specified additional compensation measures. Other resettled households, however, are simply assumed to have been able to restore their livelihoods, and no measures have been proposed to assess their situation.

313. On the basis of these facts the Panel concludes that:

- 314. ADB's own assessment in 2002 clearly shows that the Bank at the time did not consider that the requirements of the Policy on Involuntary Resettlement had been complied with in the resettlement process.
- 315. Several of the measures that were proposed by ADB staff in order to fulfill those requirements have never been implemented, either by the GRSC or through any other process.

7.4.3 Summary of Conclusions on Compliance with ADBs policies

316. The Bank's Policy on Involuntary Resettlement was adopted, and the corresponding OM 50 was issued, well before the planning for flood protection and/or resettlement was initiated in 1997. The Bank was thereby required to follow the policy, and it has repeatedly stated its intention to adhere to the Policy and Procedures.

317. It can be argued that the first priority in the ABD Policy on Involuntary Resettlement is to avoid or minimize the need for resettlement, and that this would justify the efforts made by the project proponents to try to persuade the people to opt for flood protection measures. This argument, however, disregards the clear recognition of resettlement as a viable option that was identified in the early flood studies and formed the basis of the terms of references for the SSAP. The argument also contributes to a lack of understanding of the negative dynamics that developed when the clear preferences that were expressed by the majority of the villages in the initial consultations were rejected.

318. Another common concern, both in numerous documents and in interviews that the Panel has conducted with ADB staff, is the urgency with which the resettlement program was planned and implemented, due to the approaching rainy season in 2001. The Panel has no reason to question that this was a real and truly felt concern of all the people that were involved at the time. Still, for many villages one, and for some villages even two rainy seasons had already passed—fortunately without much rain—since the main canal was constructed and the villagers were exposed to the risk of flooding.

319. 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.

¹⁹⁸ End-of-tenure Report of the Participatory Assessment Specialist, April 2004, pp 7.

- 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.

7.5 Harm Caused

320. The absence of reliable data on the extent to which affected persons have been identified, consulted and compensated makes it difficult for the Panel to assess the extent of harm caused by the multiple failures to comply with ADB's Policy on Involuntary Resettlement. The harms include:

- 321. The rights of the affected people to be informed and to participate in making decisions about their resettlement has been violated.
- 322. 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.¹⁹⁹ This should not have come as a surprise, since this is exactly what ADB and its experts had warned may happen if new houses weren't 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.²⁰⁰
- 323. 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.²⁰¹

¹⁹⁹ BTOR of Special Loan Administration Mission 4-9 March 2002, Attachment 3.

²⁰⁰ End of Tenure Report of the Participatory Assessment Specialist, April 2004, pp 11-30.

²⁰¹ Management objected, in its comments on the Draft Report of the Inspection Panel, that "in the absence of substantiation, this conclusion by the Panel can not be taken at face value". The Panel notes that:

- In 2002 the PMC had suggested that the compensation already paid should be upgraded by 23 %, as the compensation paid in 2001 had been based on estimates of 1998 rates for built-up property. This was never done. Attachment 3 to BTOR of ADB Special Loan Administration Mission, 4-9 March 2002.

324. 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.

325. 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.

- ADBs Resettlement Specialist in a “Review of the Process of Land Acquisition and Compliance with the Involuntary Resettlement Policy” expressly states that it is “difficult to judge restoration of socio-economic base – no M&E baseline or follow-up assessments”. However, it was “likely that land price increases are outstripping the interest rate for delayed payment”, which would mean that the compensation that is eventually paid will be insufficient for purchasing an equal amount and quality of replacement land. Page 3 of Appendix 3 to BTOR of ADBs Loan Review Mission 5-12 May 2002.

- More recently the Participatory Assessment Specialist’s survey in December 2003-March 2004, most respondents who had not moved yet mentioned lack of financial resources as the main reason. It is, of course, possible that many of them have used the compensation money for other purposes. But 24 villagers explicitly stated that they were willing to shift if properly compensated. Ibid pp 72-78, 81, 85 and 88. This indicates a strong possibility that the compensation paid to households that have shifted has not covered their costs.

8. Indigenous Peoples

326. The Panel has considered the following issues with regard to compliance with ADB's staff instructions, policies and procedures related to indigenous peoples:

- 2) Whether the policy and procedures were properly followed; and
- 3) If not, what harm has been caused by non-compliance?

8.1 The Policy Framework

327. 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",²⁰² while OM 23 on Project Benefit Monitoring and Evaluation required benchmark information to be obtained and analyzed about "tribal minority groups".²⁰³ OM 21 on Environmental Considerations in Bank Operations only addressed the issue by indirect reference in a footnote²⁰⁴ that explained that rights of tribal/ethnic minorities was one among several socio-cultural factors to be considered in the pre-appraisal and appraisal stages of the project cycle.

328. Staff Instruction: Indigenous People, 15 February 1994 was in effect when the supplementary loan was approved in 1999. ADB's Policy on Indigenous Peoples is dated 17 April 1998, but Operational Procedures were not issued until 21 December 2000 – more than a year after the Supplementary Loan. Still, the fact that the Policy was adopted before the Board's approval of supplementary financing for CRBIP Stage III in July 1999 is significant, as the 1994 Staff Instructions explicitly referred to the coming Policy.

329. The following Bank documents are thus being considered in this context:

At the time of loan approval in December 1991:

- Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986
- OM 23 on Project Benefit Monitoring and Evaluation, 30 March 1987

At the time of Supplementary Financing in July 1999:

- Staff Instruction: Indigenous People, 15 February 1994
- The Bank's Policy on Indigenous Peoples, 17 April 1998

At the time the request for inspection was filed, 19 November 2002:

- OM Section 53 "Indigenous Peoples", 21 December 2001

330. Box 8 summarizes the most relevant principles and procedures with regard to indigenous peoples that are contained in these documents.

²⁰² Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986, ¶ 4.

²⁰³ OM 23 on Project Benefit Monitoring and Evaluation, 30 March 1987, ¶ 8.

²⁰⁴ OM 21, Environmental Concerns in Bank Operations, 8 February 1988, footnote to ¶16.

Box 8 Indigenous Peoples - Principles and Procedures

Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986

The instructions make explicit reference to “rights of tribal/ethnic minorities, cultural integrity and traditional land use control” as factors affecting the success of development projects. Where such variables “are likely to be important, considerations essential for social acceptability should be addressed during the project cycle”.²⁰⁵ As part of their review, project staff is instructed to consult the Environmental Specialist to help identify issues and possible mitigation measures.

Staff instruction issued 14 February 1994: Indigenous Peoples

The instructions give a fairly broad definition of indigenous peoples that “include ‘indigenous and ethnic minorities’, ‘tribal groups’ and ‘scheduled tribes’ who have a social and cultural identity distinct from the dominant society that makes them vulnerable to being disadvantaged in the development process”. Such groups can be characterized by, for example, close attachment to ancestral territories, self-identification or identification by others as a distinct cultural group, presence of customary social and political institutions, and primarily sustenance-oriented production.²⁰⁶

The Staff Instructions state that the specific objective of the Bank’s policy “will be to ensure that indigenous peoples do not suffer adverse effects during the development process [but] receive culturally compatible social and economic benefits”, and that the strategy “must be based on the informed participation of indigenous peoples themselves”.²⁰⁷ The policy that was adopted (see below) contains similar language, and adds that strategies must include “clear mechanisms for accurate, objective analysis of their circumstances”.²⁰⁸

The Bank’s Policy on Indigenous Peoples, 17 April 1998

The Policy essentially provides the same definition of indigenous peoples as the Staff Instructions, but emphasizes the diversity of approaches for identifying indigenous peoples and contexts in which they can be found. To ensure appropriate identification of indigenous peoples, the process must involve consultations with indigenous peoples organizations, NGOs and experts. At the same time it states that “determination of a distinct identity for indigenous peoples would be based in the requirements of applicable national law”.

On processes, the Policy makes clear that indigenous peoples should be a specific concern in the Initial Social Assessment that has to be made for all ADB projects. It clarifies the requirement of the Staff Instructions that any project that affects indigenous peoples should incorporate “an indigenous peoples development plan that is consistent with the Bank’s policy” by specifying in an Appendix what such consistency entails.

Among other things, the Plans should be prepared during project design, and take into full account the desires and preferred options of the indigenous peoples affected by the project. It should also take into account local patterns of social organization and resource use, and avoid creating dependency of indigenous peoples on project entities. When required, the plan will

²⁰⁵ Staff Instructions on Socio-cultural Impacts of Bank Projects, 17 September 1986, ¶ 4.

²⁰⁶ Staff instruction issued 14 February 1994: Indigenous Peoples, ¶ 1.

²⁰⁷ Ibid, ¶ 2.

²⁰⁸ Policy on Indigenous Peoples, Asian Development Bank 1999, p 27.

include capacity building in order to support the effective participation of the indigenous communities.

OM Section 53, Indigenous Peoples, 21 December 2000

In addition to summarizing the main points of the policy, the Operational Procedures section of the OM mainly provides more detailed instructions on how to ensure that indigenous peoples issues are integrated at all stages of project planning and appraisal. A detailed checklist for indigenous peoples issues in the Initial Social Assessment and Social Analysis documents, as well as an outline of an Indigenous Peoples Development Plan, are attached.

8.2 Request

331. The Requesters claim that there has been a lack of independent and comprehensive socioeconomic and cultural surveys and social and environmental assessments that constitute a violation against, among others, the Banks Indigenous Peoples Policy. This has resulted in a distorted and incomplete understanding of the people affected and the range of problems that they face. Vulnerable groups such as the Siraiki speaking minority in NWFP and Baloch tribal groups have become victims of the project.²⁰⁹

332. The indigenous rod kahi irrigation system has not been considered as an alternative. Instead these systems have been negatively affected by diversions and disturbances to the flow of water.²¹⁰

333. The Request refers to ADB's Appraisal report that speaks of an in-migration of tribal Pakhtuns "of historic proportions" and predicts that the population of the area in 2000 will be almost double that which would be estimated without the project. The report throws no light on the adverse impacts of this, nor does it discuss ways to assist traditional local communities in dealing with the situation.²¹¹

334. The failure to analyze and develop mitigation measures regarding disruptions of rod kahi system and in-migration violates the Indigenous Peoples policy.²¹²

8.3 Response

335. Adverse impacts on minorities alleged in the Request were without basis and had been addressed in compliance with the Staff Instructions on Socio-cultural Impacts (1986) and OM 21. Management points out that specific Staff Instructions, a Policy and an OM on Indigenous

²⁰⁹ Inspection Request for Chashma Right Bank Irrigation Project Stage III, 19 November 2002, ¶ 10.

²¹⁰ Ibid, ¶ 56.

²¹¹ Ibid, ¶ 68

²¹² Ibid, ¶ 69.

Peoples were only adopted years after the appraisal of the Project.²¹³ In the feasibility study, in the judgment of ADB staff, no adverse impacts were identified that needed to be addressed. Management quotes Appendix 6 on Settlement and Social Issues where it says that there may be a marginal increase in tension, but this is not likely to disrupt development in the CCA.

336. Staff has not come across any evidence that ethnic tension as a result of the project is an issue, including in the evaluation of Stages I and II under the PIME study. The Requesters refer to the 1998 PPAR to support the claim that the project caused ethnic tension, but ignore the fact that the study says that assessment is impossible due to the lack of baseline data. In-migration can be seen as an indicator of positive development in the command area.

337. The Terms of Reference of the GRSC include application of ADB's Indigenous Peoples Policy where legally possible.²¹⁴ The GRSC is an adequate mechanism for dealing with the issues. The committee will address any substantiated concerns.

8.4 Findings

338. The preparatory documents regarding technical assistance for a feasibility study for Stage III observed that Stage III differed from the previous stages and required detailed analysis of, among other things, "settlement and development issues of concern because of the scale of the project in essentially remote and virgin lands with a diverse indigenous population".²¹⁵

339. The Benchmark Socio-Economic Survey of the project area that was carried out in 1990 by the National Fertilizer Corporation does not address tribal/ethnic minority issues at all, except by listing the number of bradaris/tribes in different village categories. The issue of migration is discussed (and in some detail), but only in terms of out-migration from the surveyed villages (see also discussion in Chapter 4).

340. The Panel notes that the Feasibility Report recognizes the risks of marginalisation of less powerful groups, and of ethnic tension, to a somewhat greater extent than what is implied in Management's response:

- 341. The study noted that powerful but minority Pakhtun clans already ruled over more numerous but lesser Jat zamindari. Due, in part, to a growing wave of Pakhtun migrants, politics of D.I. Khan city had already changed. The report recognized that the project would enhance the political influence of those who own land, and noted that considerable land was going to outsiders, including Pakhtun tribals, who were looking for land throughout the area. Rod kahi farmers were more apt to sell.
- 342. The report states that the older inhabitants clearly felt threatened by the Hill Pakhtun migration. There was an undercurrent of fear in those villages where Pakhtuns have purchased agricultural land and already some resistance in Taunsa to outsiders coming to buy land. Mahra, a large Jat village, had sold 30 percent of its land in the

²¹³ Adapted, unless otherwise indicated, from 'Response of Management to the Board Inspection Committee on The Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III) (Loan 1146-PAK) in the Islamic Republic of Pakistan', February 2003, ¶ 127-134.

²¹⁴ Ibid, ¶ 6, 13, 17 and 148.

²¹⁵ A "diverse indigenous population" in this context can not be equated to mean "Indigenoues Peoples" as the term is used in international law or in ADB policies.

previous five years, and many regretted having sold. There was a growing anger and social tension due to land issues.

343. Such observations warranted, at least, the collection of more quantitative information and analysis of data to enable monitoring of the development in terms of OM 23.²¹⁶

344. Both the Feasibility Study and management tended to assess the effects of in-migration and possible social tension only from an economic and Project perspective but not as an issue that concerns, in the words of the Staff Instructions, “the rights and interests of tribal/ethnic minorities, cultural integrity and traditional land use control”:

- 345. Both described land purchases by outsiders as a positive trend. The Feasibility Study expected investors to bring their capital and labor to develop the land. Zamindars from central Punjab knew how to use water and tractors, and understood the Green Revolution package. Management claimed that in-migration can be seen as an indicator of positive development in the CCA.²¹⁷
- 346. The discussion about social impacts was mainly confined to the issue of how disruptive in-migration would be to the social stability in the project area: according to the Feasibility Report a political response “that combined anti-Pakhtun sentiments with frustrations of poor Seraikhi-speaking peasants who, having sold their land, might increasingly feel *bypassed by the benefits* of canal irrigation” could not be ruled out.²¹⁸ However, the reassuring but unsubstantiated conclusions that were drawn were that resistance to land purchases by outsiders would decline as the local inhabitants *experienced the benefits* brought by the canal, and that “it is doubtful whether the *Seraikhi* movement will gain sufficient force or direction to disrupt the development in the CCA”.²¹⁹
- 347. ADB’s Appraisal document mentions the predicted population increase²²⁰ but does not refer to its impact on indigenous/tribal peoples. It also contains a brief outline of the local pattern of landholding in relation to the predominant tribes and peoples, but does not discuss how this is likely to be affected by the project.

348. The panel did not find any proposals for dealing with, or mitigating, possible negative impacts on any specified ethnic groups.

349. More specifically, the panel has not been able to find evidence that any attempt has ever been made to identify which groups or communities are to be considered as “Indigenous Peoples” in terms of the Banks policy from 1994 onwards. The compatibilities between Bank policy and Pakistans national legislative frameworks have also not been addressed.

²¹⁶ “Benchmark information should be prepared during the implementation of a feasibility study ... to ... (ii) give consideration to the needs of communities which may be adversely affected by the project: and (iii) serve as a basis for benefit monitoring and evaluation”. OM 23, ¶ 3.

²¹⁷ Response of Management to the Board Inspection Committee on The Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III) (Loan 1146-PAK) in the Islamic Republic of Pakistan, February 2003, ¶ 133.

²¹⁸ Quotes taken from ‘Response of Management to the Board Inspection Committee on The Request for Inspection of the Chashma Right Bank Irrigation Project (Stage III) (Loan 1146-PAK) in the Islamic Republic of Pakistan’, February 2003, ¶ 131.

²¹⁹ Quote: Ibid.

²²⁰ Appraisal of the Chashma Right Bank Irrigation Project (Stage III) in Pakistan, November 1991, ¶ 58

350. ADB's Policy clearly states that "to ensure proper identification of indigenous peoples within a country, the government, regional and national indigenous organizations, nongovernment organizations and relevant experts must be consulted".²²¹ While it was not the responsibility of the GRSC to ensure compliance with this requirement, the Terms of Reference for the Committee did include a review of "the applicability in each case of entitlement: of (...) ADB's Policy on Indigenous Peoples (1998)".²²² However, the issue was never on the agenda of the Committee.²²³ One member of the GRSC, the International Resettlement Specialist, made the assessment that the policy was not applicable to any groups or people in the project area, and reported his conclusion to the GRSC Chairperson, , but there was never any involvement of representatives of any of the groups that may have made a claim to be covered under the ADB policy. As Management has rightly pointed out, the 1998 Policy Paper on Indigenous Peoples does not contain the requirement for consultations in the identification process (it was only added in December 2000). Thus, even if the GRSC did what required of it under its Terms of Reference, this was not sufficient for Management to claim that ADB's policy requirement has been met.

351. According to the Requesters the Siraiki speaking minority that makes up a substantial part of the population in the project area is a group that maintains a distinctly separate culture that goes far beyond a common language. They argue that this separate cultural identity is widely recognized, as evidenced, for example, by the fact that many political parties have separate Siraiki units of their organizations, that Siraiki has been identified as a separate language in some population censuses, and time is allocated on radio and television for broadcasts in the Siraiki language. The Pakistan Oppressed Nations Alliance, which organizes many ethnic groups in Pakistan, recognizes the Siraiki speakers as constituting a separate nation.²²⁴

352. On the other hand, Siraiki speakers are not awarded any special status under Pakistani law. The primary understanding of 'minorities' in a legal context in Pakistan is based on religion, and there are a number of constitutional provisions for religious minorities.²²⁵ One article in the constitution does, however, provide for the fundamental right - enforceable in a court of law - of sections of citizens that have a "distinct language, script or culture" to preserve and promote the same.

353. But in terms of political rights the Constitution only provides explicit recognition and distinct status to "Tribal Areas" that are administered either under the President directly or via Provincial governors. While one of the Federally Administered Tribal Areas is adjacent to the northern parts of the CRBIP, the project area itself is not, and Siraiki speakers are not among the ethnic groups for whom this special status is awarded.

354. On the basis of these findings the Panel concludes that:

- 355. 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.

²²¹ OM 53/BP, ¶ 4.

²²² Terms of Reference for a Grievance Redress and Settlement Committee, February 3, 2003, ¶ 15 (b).

²²³ The Panel has received contradictory information on whether the whole GRSC ever discussed the issue. Management's comments to this paragraph in the Draft Report of the Panel seems to confirm that it did not.

²²⁴ Interview 2 April 2004.

²²⁵ Indigenous Peoples and Ethnic Minorities in Pakistan – Constitutional and Legal Perspectives. Shaheen Sardar Ali and Javaid Rehman, 2001.

- 356. 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.²²⁶
- 357. 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). 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 is 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.

8.5 Harm Caused

358. In order to determine whether the non-application of the Staff Instructions, the Policy and OM 53 has caused any harm, it would again be necessary to identify which groups, if any, these policies are applicable to in the project area. It is outside the scope and competence of the Panel to undertake such an analysis as part of the inspection. The Panel also wants to emphasize that according to the policy, such identification shall be undertaken as a consultative process.

359. The Panel is thus unable to determine whether any harm has been done to indigenous peoples. Certain related issues, that are independent of whether the impacts are suffered by indigenous peoples or by other sections of society, are however discussed in the Panel's investigation of Benefit Monitoring and Evaluation (Chapter 4) and Socio-economic and cultural impacts (Chapter 6).

²²⁶ BIC in its report to the ADB Board comments on the fact that the staff instructions that were applicable in 1999 said that the Indigenous Peoples Development Plans should be prepared during project design. As the design phase had been completed prior to the issuance of the instruction, BIC suggested that these instructions *may* not be within the scope of the Inspection Policy.²²⁶ However, the said staff instructions only relate to the issue of timing as an element to be considered *in order to ensure the successful development* of indigenous peoples development plans. In our opinion, this cannot be read to mean that no plan should be developed later if the project failed to do so earlier.