



**ADB Accountability Mechanism
Compliance Review Panel**

**Final Report
to the Board of Directors**

**on
CRP Request No. 2004/1
on the Southern Transport Development Project in Sri Lanka
(ADB Loan No. 1711-SRI[SF])**

22 June 2005

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About the Compliance Review Panel

The Compliance Review Panel (CRP) is a 3-member independent body, appointed by the ADB Board of Directors (Board) that carries out the compliance review phase of the ADB Accountability Mechanism. People who are directly, materially and adversely affected by an ADB-assisted project in the course of its formulation, processing, or implementation can file a request for compliance review with the CRP after going through the consultation phase of the Mechanism.

The CRP investigates whether the harm suffered by project-affected people is caused by ADB's non-compliance of its operational policies and procedures, and recommends to the Board remedial actions. The CRP reports directly to the Board on all activities, except for specific activities where the CRP reports to the Board Compliance Review Committee (BCRC), to clear its terms of reference for a compliance review and to review its draft monitoring reports. BCRC is a standing Board committee of 6 members.

Currently, the CRP consists of Augustinus Rumansara as Chair, and Richard Bissell and Vitus Fernando as members.

Augustinus Rumansara is an Indonesian national. Before joining the CRP, he worked with the private sector in Indonesia at BP (formerly British Petroleum) as Vice-President for Integrated Social Strategies. Prior to that, he worked for many years with civil society organizations from grassroots community groups to regional and international NGO advocacy networks. His work included facilitating advocacy activities of Indonesian NGOs with national and foreign governments, and multilateral development banks to promote concerns for human rights, equity and justice, people's participation, good governance, sustainable development, and environment conservation.

Richard Bissell, a United States national, is an international economist currently serving as a senior executive with the National Academy of Sciences, Washington, DC. He has worked extensively in the past on enhancing community participation in development with the World Commission on Dams, the World Bank Inspection Panel, and the United States Agency for International Development.

Vitus Fernando, a Sri Lankan national, is currently working on a series of policy and institutional issues related to international development cooperation. He has held senior positions with a variety of multilateral and bilateral agencies, and at the national level, with the Ministries of Planning and Economic Affairs; Fisheries; and Environment and Forests in Sri Lanka. He was the director of the Asia/Pacific Program of the International Union for Conservation of Nature.

For more information on the CRP, visit www.compliance.adb.org.

Acknowledgements

The Compliance Review Panel (CRP) wishes to acknowledge and record its thanks to the following, within and outside the Asian Development Bank (ADB), as well as persons who requested that their identities be kept confidential, for cooperating with the CRP, communicating their views, and assisting the CRP in its investigation of the request under the Southern Transport Development Project (STDP):

- the Requesters and STDP affectees
- Executive Directors representing Sri Lanka and Japan on the ADB Board of Directors
- Officials from the Government of Sri Lanka, including those from the Ministry of Finance, Ministry of Highways, the Road Development Authority, and the Central Environmental Authority, as well as officials from Sri Lankan institutions, including the University of Moratuwa
- ADB Management and staff at ADB Headquarters and at ADB's Sri Lanka Resident Mission
- Board members
- Japan Bank for International Cooperation (JBIC) officials in JBIC's Head Office in Tokyo and its Representative Office in Colombo and
- STDP consultants including Finnroad, Halcrow Group Ltd, Resources Development Consultants Ltd, and Roughton International.

Abbreviations, Glossary and Currency

Abbreviations

ADB	Asian Development Bank
AP	affected people/person
BIC	Board Inspection Committee
BCRC	Board Compliance Review Committee
BP	Bank Policy
BTOR	Back-to-Office Report
CEA	Central Environmental Authority
CRP	Compliance Review Panel
CT	combined trace
DMC	developing member country
EFR	environmental findings report
EIA	environmental impact assessment
E/S	engineering services
EIRR	economic internal rate of return
EMP	Environmental Management Plan
FA	final alignment
FT	final trace
GOSL	Government of Sri Lanka
GP	Guidelines on Operational Procedures
GSS	Gama Surakeema Sanvidhanaya
IEE	initial environmental examination
ISA	initial social assessment
ISIA	initial social impact assessment
JBIC	Japan Bank for International Cooperation
JO	Joint Organization of the Affected Communities of the Colombo Matara Highway
LARC	Land Acquisition and Resettlement Committee
MOH	Ministry of Highways
MOU	Memorandum of Understanding
MOTH	Ministry of Transport and Highways
NDF	Nordic Development Fund
NPV	net present value
OCR	Office of the Compliance Review Panel
OESD	Office of Environment and Social Development
OM	Operations Manual
OP	Operational Procedures
OT	original trace
PAI	Project Administration Instruction
PCI	Pacific Consultants International
PILF	Public Interest Law Foundation
PMU	Project Monitoring Unit
PP	project/program profile
PPTA	project preparatory technical assistance
RDA	Road Development Authority
RIP	Resettlement Implementation Plan
RRP	Report and Recommendation of the President

RSC	Road Safety Component
SARD	South Asia Department
SEIA	summary environmental impact assessment
SHC	Southern Highway Component
SLRM	Sri Lanka Resident Mission
SPF	Special Project Facilitator
STDP	Southern Transport Development Project
TA	technical assistance
USPA	United Society for Protection of Akmeemana
WID	women in development
WSA	Wilbur Smith Associates, Inc.

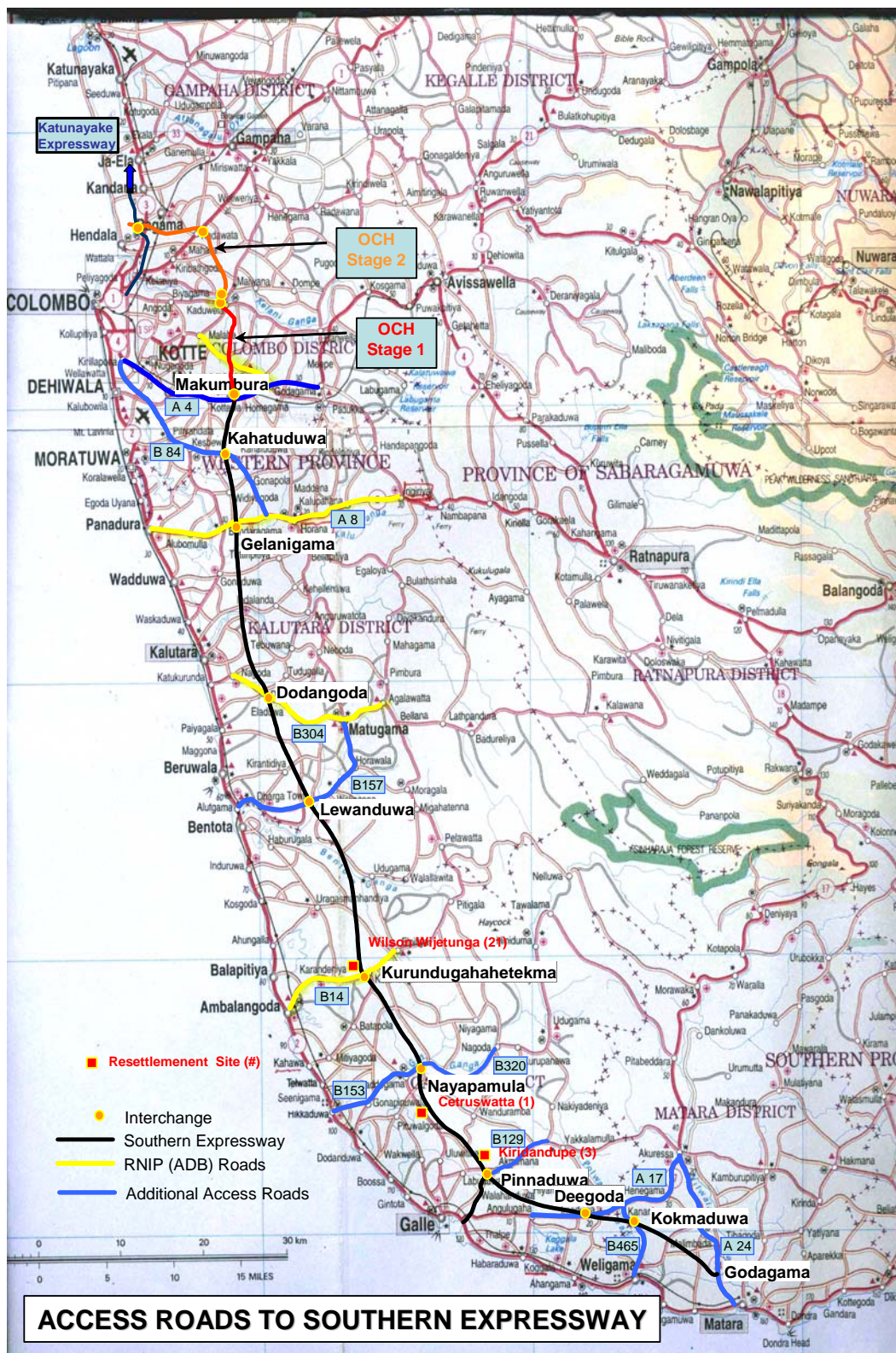
Glossary

ha	hectare
km	kilometer
m	meter
Grama Niladhari	village level administrator
perch	size of land, 1 perch is approximately 25 square meters
RoW	right of way

Currency

\$	US dollar
SLR	Sri Lankan rupee
¥	Japanese yen

Map



Executive Summary

1. A request for compliance review (Request) on the Southern Transport Development Project (STDP) in Sri Lanka was filed with the Compliance Review Panel (CRP) by the Requesters, the Joint Organization of the Affected Communities of the Colombo-Matara Highway. The CRP found the Request eligible and the ADB's Board of Directors (Board) authorized a compliance review. The CRP issued its Draft Report after carrying out its investigation and obtained comments from Requesters and Management. The CRP now issues its Final Report to the ADB's Board of Directors (Board) after considering the comments received.

2. This report outlines the following:

- a description of the STDP, with its scope and cofinanciers
- a summary of the Request and its eligibility
- the CRP's terms of reference and methodology in carrying out the investigation
- the STDP history with milestone events from initial project processing to current project activities
- the salient issues identified by the CRP in its investigation
- the CRP's findings and assessments of possible violations of ADB's policies and operational procedures in response to Requesters' concerns and
- the CRP's conclusions and recommendations for bringing the Project back into compliance with ADB's policies and operational procedures.

3. The CRP examined the wide range of issues raised by the Requesters against the standards established in specific ADB operational policies and procedures applicable to the Project at the time decisions were taken. In the main body of this report, it can be seen that the CRP found in some cases that either the noncompliance alleged by the Requesters did not occur or the facts, upon examination of the full documentary record, did not support the Requesters' interpretation. In some other cases, the CRP determined that the issues were actually relevant with regard to policies not enumerated by the Requesters.

4. The CRP concludes that there have been, at some time during the Project from project processing to its implementation, lapses of compliance with the following applicable ADB policies and operational procedures:

- (i) **Operations Manual (OM) Section 20¹: Environmental Considerations in Bank Operations.** The CRP finds that Management cannot be satisfied with the sufficiency of the environmental impact assessment (EIA) done in 1999 and the ensuing Environmental Findings Report (EFR) for the ADB section. Also, the Galle access road has not received an adequate review of its environmental impacts, and some stretches of the FT well away from the CT need more attention. Public information and participation in the environmental review process has been inadequate since late 1999.
- (ii) **OM Section 21²: Gender and Development in Bank Operations.** The CRP finds ADB out of compliance before Board approval where no gender analysis was done although the RRP stated that the Project had significant impact on

¹ Issued 7 January 1997.

² Issued 7 January 1997.

women. After Board approval, the commitments made for special gender action plans have not appeared in the implementation or monitoring details of the Project.

- (iii) **OM Section 22³: Benefit Monitoring and Evaluation.** The CRP, in reviewing both the benchmark analysis in the project documentation, as well as the monitoring system that has been developed to date, comes to the conclusion that the Project cannot be in compliance with this OM until further steps are taken.
- (iv) **OM Section 40⁴: Formulation and Implementation of Loan Covenants.** Since the CRP finds that various policies and commitments have not remained in compliance over time, especially with regard to resettlement, the failure of Management to restore compliance is, by itself, a matter of non-compliance with OM Section 40 since many of the issues involved commitments made at Board approval, and in the RRP and the Loan Agreement.
- (v) **OM Section 47⁵: Incorporation of Social Dimensions in Bank Operations.** The loss of compliance with this OM Section derives in part from the shifting of the traces, along with an absence of analysis of the Galle access road. The emphasis of the OM, however, is on the vulnerability of certain population groups and households, which need to be identified and assisted throughout the process to ensure they are better off after the Project is completed. The weakness of the Management Information System (MIS) and the rudimentary income restoration program are serious breaches of compliance that will pose major challenges to bring the Project back into compliance with this OM.
- (vi) **OM Section 50⁶: Involuntary Resettlement.** The CRP concludes that compliance with this OM Section has been problematic since Board approval, with the significant shifts of the trace without public participation. The CRP is also concerned about Management's inattention to independent monitoring and the need for supporting performance in the areas of compensation and resettlement.
- (vii) **Project Administration Instruction (PAI) No. 5.04⁷: Change in Project Scope or Implementation Arrangements.** The CRP has identified a number of major changes in the Project that might normally trigger a review by the operations department, and believes that the Project is out of compliance until a formal determination on the change of scope issue has been settled.

5. In the final section of this report, the CRP makes its recommendations to the Board.

³ Issued 7 January 1997.

⁴ Issued 12 December 1995.

⁵ Issued 7 January 1997.

⁶ Issued 7 January 1997.

⁷ Issued December 2001.

I. Introduction

1. On 2 December 2004, the Compliance Review Panel (CRP) registered a request for compliance review (Request) on the Southern Transport Development Project¹ (STDP or Project) in Sri Lanka. The Request was submitted by the Joint Organization of the Affected Communities of the Colombo Matara Highway (JO or Requesters). The Request is in Appendix 1. The CRP met in December 2004 and determined that the request was eligible, and as required under the CRP Operating Procedures, recommended to the ADB's Board of Directors (Board) to authorize the CRP to conduct a compliance review. The CRP Eligibility Report and other related compliance review documents are posted on the CRP website www.compliance.adb.org and provided in the CRP's Registry.² The CRP received the Board's authorization on 11 January 2005 and commenced its investigation on the Request.

2. The Request was filed after the complaint submitted by JO to ADB's Special Project Facilitator (SPF) in June 2004 entered step 7 of the consultation phase of the ADB Accountability Mechanism, which enabled the Requester to have the parallel process of both consultation and compliance review. The SPF concluded the consultation process on 1 February 2005 without any agreement reached by the parties. The complaint and milestone events of the consultation process are provided in the SPF's Complaints Registry.³

3. In accordance with para. 40 of the CRP Operating Procedures, the CRP issued its Draft Report upon completion of its review, which was provided on 6 May 2005 to ADB Management and the Requesters for comments. The Requesters' Response was received on 8 June 2005 and Management's Response on 9 June 2005. In accordance with para. 42 of the CRP Operating Procedures, the CRP has considered their responses and made changes it deems necessary before issuing to the Board on 22 June 2005 this Final Report with its findings and recommendation to ensure project compliance. The CRP attaches to this report the Requesters' Response in Attachment 1 and ADB Management's Response in Attachment 2.

4. The Board will, after considering the CRP's recommendations, make the final decision regarding any measures to bring the Project into compliance and/or to mitigate any harm, if appropriate. In accordance with para. 45 of the CRP Operating Procedures, the CRP will, within 7 days from the Board's decision, release to the Requesters the Board decision, and the CRP Final Report with the responses attached, and then post them on the CRP website.

5. The CRP conducted an extensive review of available documentation in Manila and in Colombo. It also carried out interviews with the Requesters and project affectees, and a wide range of current and past staff, consultants, and contractors associated with the Project. With the support the Government of Sri Lanka (GOSL), the affected people of Sri Lanka, and ADB staff, the CRP visited the project site twice to become familiar with the issues and challenges faced by all stakeholders.

6. Both ADB Management and the Requesters provided extensive comments on the CRP Draft Report in sharing their views on specific events, observations, and evidence essential to

¹ ADB. 1999. *Report and Recommendation of the President (RRP) to the Board of Directors on a Proposed Loan to the Democratic Socialist Republic of Sri Lanka for the Southern Transport Development Project* (R189-99), at <http://www.adb.org/Documents/RRPs/SRI/rrp-R189-99.pdf>.

² At [http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-RegistryMatrix-S7.pdf/\\$FILE/STDP-RegistryMatrix-S7.pdf](http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-RegistryMatrix-S7.pdf/$FILE/STDP-RegistryMatrix-S7.pdf).

³ At <http://www.adb.org/SPF/registry.asp>.

assess the compliance of the project. The CRP has carefully considered these comments which in some cases have sharpened the text of this report, and in others, the CRP has let the views of Management and the Requesters speak for themselves in the attachments to this report. Readers of this report will understand that, even after extensive presentation and review of evidence about some decisions and events stretching over the past 9 years, the CRP is not in a position to come to a clear-cut conclusion in all cases. What the CRP can say, however, is that the evidence is sufficiently clear in a number of areas central to a decision on policy compliance.

7. The Requesters and ADB Management both went beyond their immediate mandate of commenting on the findings and conclusions of the CRP Draft Report itself, by making various observations about the accountability mechanism and its processes. While the Board paper establishing this mechanism⁴ does not provide for these observations at the project review stage, they are pertinent for the Management-led review to be carried out after 3 years from December 2003, when the mechanism became effective.⁵ These matters may have emerged owing to this being the first case investigated by the CRP under the new accountability mechanism, and the 2 parties were not certain of the issue boundaries to be treated in this process. The 2 parties raised issues, among others, of (i) composition of the CRP; (ii) identification of individual ADB staff for fault and professional censure; (iii) drawing conclusions about handling of past inspection requests; (iv) breadth of recommendations; (v) disclosure of project-relevant documents; and (vi) issues of perjury and corruption.

8. The CRP does not attempt to incorporate these "institutional issues" raised either by ADB Management or the Requesters into this report. The CRP considers it untimely and inappropriate for Management to provide such views in a report focused on bringing the project into compliance. The CRP knows well the history of the accountability policy; the process for working with a 2-member panel; and the management of CRP's activities, including determination of eligibility on "preliminary questions", methodology of the compliance review, and interpretation of ADB's operational policies and procedures.

9. The CRP thinks it is important that ADB Management, as well as current and future Requesters, keep in mind the CRP's purpose as stated in the Board paper "to investigate alleged violations of ADB's operational policies and procedures [in any ADB-assisted project] that have resulted, or are likely to result, in direct, adverse, and material harm to project-affected people, and to make recommendations to ensure project compliance, including recommendations, if appropriate for any remedial changes in the scope or implementation of the project."⁶ This central purpose of the CRP was re-emphasized also at a later stage in the Board paper in discussing the content of the final report.⁷ CRP understands that both Requesters and ADB Management may wish the CRP had more and less authority, respectively, but the CRP has relied solely on the scope of its functions as defined by the Board paper.

10. The Board paper also listed a valuable set of principles to guide the CRP, and these principles have been foremost in the CRP's thinking as this first case has unfolded: "(i) enhance ADB's development effectiveness and project quality; (ii) be responsive to the concerns of project-affected people and will be fair to all stakeholders; (iii) reflect the highest professional and technical standards in its staffing and operations; (iv) be as independent and transparent as

⁴ ADB. 2003. *Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism (R79-03)* at http://adb.org/Documents/Policies/ADB_Accountability_Mechanism/ADB_accountability_mechanism.pdf.

⁵ Ibid., para. 147.

⁶ Ibid., p. iv.

⁷ Ibid., para. 126.

possible; and (v) be cost-effective, efficient, and complementary to the other supervision, audit, quality control, and evaluation systems already existing at ADB."⁸ Again, certain specific principles may not always be viewed sympathetically by ADB Management or Requesters in pursuit of their separate goals, but such short-term concerns should not be allowed to erode the foundation of the accountability mechanism. The CRP is of the firm conviction that it has faithfully applied these principles to every stage of this controversial and multi-faceted project. In the long run, the value of the accountability mechanism to ADB will be determined in large part by strong and clear adherence to these principles laid down by the Board.

II. Description of the Project

A. Scope

11. The STDP consists of "(i) the Southern Highway Component (SHC), the construction of a new southern highway (the Project highway) linking Colombo with Galle, the capital of the Southern Province of Sri Lanka, and Matara; and (ii) the Road Safety Component (RSC) to assist the Government to address Sri Lanka's serious road traffic accident situation."⁹ The highway to be constructed is about 143 kilometers (km), a main alignment of about 128 km and about 15 km of access highways for the 9-km Panadura access road and the 6-km Galle access road.¹⁰ STDP also supports policy and institutional reform. STDP has a 2-fold primary objective: (i) to spur economic development in the southern region of Sri Lanka and (ii) to significantly reduce the high rate of road accidents. The STDP's secondary objective is poverty reduction.

B. Agencies and Financing

12. STDP is funded by ADB; the Japan Bank for International Cooperation (JBIC); the Government of Sri Lanka (GOSL); the Nordic Development Fund (NDF); and the Swedish International Development Cooperation Agency (Sida). The total Project cost was estimated in the RRP at \$295.9 million, with main financing from JBIC (40%), ADB (30%) and GOSL (25%) as the borrower. Sida finances consulting services for the road safety component while NDF finances consulting services and equipment supply under the road safety component, and project management consulting services.¹¹ For the 128-km highway, JBIC finances the 67-km northern part of the highway component while ADB finances the 61-km southern portion.¹² The 15-km access road construction includes the 6-km Galle access road which is in the ADB section. The 9-km Panadura access road is in the JBIC section, and the CRP understands that this access road was dropped in 2000 and delinked from the Project as the environmental impact assessment (EIA) approval required for this link had to be obtained. Upgrading of this

⁸ Ibid., para. 58.

⁹ RRP, i.

¹⁰ Ibid., para. 51.

¹¹ Ibid., ii.

¹² *Report of the Board Inspection Committee to the Board of Directors, Asian Development Bank on the Request for Inspection of Southern Transport Development Project, Sri Lanka submitted by USPA, April 2002*, p. 1 also at http://www.adb.org/Inspection/Projects/r84_02.pdf. Management Response in Appendix 7, para. 2. However, these figures have been quoted differently in various ADB documents including the RRP and in back-to-office reports (BTORs) by various ADB missions. The RRP quotes the ADB section as 60 km. A BTOR of an ADB mission dated 6 January 2005 quotes the ADB section as 59 km and the JBIC section as 69 km. The CRP understands from JBIC that in March 2000 at JBIC's loan appraisal the JBIC section would be about 75 km. The CRP understands from its discussions in April 2005 with Finnroad, the Management Consultant for the Project, that the JBIC section is 66.55 km (package 1 constituting 34.9 km and package 2 constituting 31.65 km) while ADB is financing 65.2 km of the highway, including the Galle access road of 5.5 km.

access road is to be accomplished under another highway project. STDP is implemented by the Road Development Authority (RDA) as executing agency for the highway component.

C. Status of Project

13. The Board approved the ADB loan for the Project on 25 November 1999, with an expected project completion date of 31 December 2005. The Loan Agreement (between ADB and the Democratic Socialist Republic of Sri Lanka, as the borrower) and the Project Agreement (between ADB and RDA) were signed on 16 December 1999. The ADB loan was declared effective on 30 October 2002 due to delays in complying with loan effectiveness conditions, particularly the submission of a satisfactory resettlement implementation plan (RIP). All cofinancing agreements are in place.



STDP highway under construction.

14. As of 31 May 2005, about \$29.3 million or 34% of the ADB loan has been disbursed. About 82% of the contract awards under the ADB loan have been made. The loan closing date is scheduled on 31 December 2006. The overall project implementation progress has been rated by the operations department concerned, South Asia Department (SARD), as "satisfactory" in the project performance report as of 31 May 2005. Under the ADB section, a stretch of about 5 km in the area where one group of the Requesters resides, has not yet been delivered to the contractor for construction. There are 2 contract packages under the JBIC section. Package 1 for a 4-lane highway was awarded in April 2005, and package 2 for a 2-lane highway is expected to be awarded later in 2005. As of the time when the CRP visited Sri Lanka in April 2005, there was no physical construction on the JBIC section.

III. Request for Compliance Review

A. Requesters

15. The Request was filed by the Requesters as an umbrella organization for Gama Surakeema Sanvidhanaya (GSS) and United Society for Protection of Akmeemana (USPA). The Requesters individually named are Sarath Athukorale, L.D.L. Pathmasiri, and A.A.D. Sunil Ranjith Dayaratne, and 25 other identified project-affected people who have asked that their

identity be kept confidential. The CRP found the evidence of authority of representation of the 25 people by the Requesters satisfactory.

16. The CRP notes that GSS and USPA had filed requests under the previous inspection policy. GSS, an organization of residents in the northern section, claimed that they were negatively affected by the Project as a result of ADB's violations of a number of its policies and filed an inspection request with the Board Inspection Committee (BIC).¹³ A similar request was filed by USPA, another local organization in the ADB section.¹⁴

17. The CRP also notes that after considering these 2 requests and the response of Management, BIC concluded that there was insufficient basis to recommend an inspection to the Board. The CRP further notes that BIC recommended to the Board that "Management should make strenuous efforts to use its good offices to bring about effective mediation and a satisfactory resolution of the outstanding resettlement issues."¹⁵ From March to September 2002, RDA and the Ministry of Highways (MOH) conducted intensive consultation and mediation with community representatives and affected people to understand and address their concerns. Consequently, the number of affected people was claimed to be reduced from 240 to 32 households. Further, GOSL and ADB resorted to an ADB-funded third party, independent of GOSL and the affected households, done by a local NGO (Arthacharya Foundation) supplemented by the advice of an independent international resettlement specialist.¹⁶

18. The CRP noted the new evidence provided by the Requesters to the CRP, among others, new information on issues of adequacy of environmental and social assessments for the final trace (FT); Management response during the previous inspection requests built partly on a court case irrelevant to the FT; and clarifications on what constitutes a corridor and its width.

B. Request

19. The Request was first filed with the CRP on 14 November 2004, but lacked the "requisite basic information" referred to in para. 30 of the CRP Operating Procedures. Subsequent email correspondence between the CRP and Requesters followed on 18 November 2004, 1 December 2004, and 2 December 2004 before the Request was registered. The Requesters claimed that the RRP and its attached documentation were for a trace known as the Combined Trace (CT). The Requesters claimed that at least 40% of CT has since been altered by the RDA

¹³ Details on the GSS request are at http://www.adb.org/Inspection/projects/southern_transport_gss.asp.

¹⁴ Details on the USPA request are at http://www.adb.org/Inspection/projects/southern_transport_uspa.asp.

¹⁵ *Report of the Inspection Committee to the Board of Directors on Southern Transport Development Project Inspection Request by Gama Surakeema Sanvidhanaya* dated March 2002, para. 28(i), also available in http://www.adb.org/Inspection/Projects/r77_02.pdf.

¹⁶ *Management Report to the Board of Directors on the Outcome of the Recommendations of the Board of Inspection Committee as Adopted on 12 April 2002 dated December 2002* (IN. 342-02) also available in http://www.adb.org/Inspection/projects/IN342_02.pdf. This third party mediation report, referred to in the Management Report, was completed in March 2003, and it stated that the number of affected households was reduced from 32 to 31, with 8 affected households representing 26%, who had positively changed their minds in favor of mediation. Of the remaining households, 17 objected to the trace and land acquisition and 6 could not be interviewed, had division of family members on the matter, or could not make a decision. Confusion could result from the figures cited in this Management Report: that in March 2002, 240 households out of 5,683 affected households were objecting to the Project; and in September 2002, the number of objectors was reduced to 32 affected households. The Request is filed by JO with 25 named individuals and the number of objectors covered in the third party mediation report do not tally with the number of objectors met by the CRP in April 2005. Either the numbers have significantly increased since September 2002 or were not accurate at the time of reporting in December 2002. The CRP notes that no further Management Report was issued to the Board after the Management Report of December 2002.

to a trace referred to as the FT, for which the required studies and consultations have not been done according to ADB policies. The Requesters claimed to be suffering from, or will be suffering from, harm as a result of noncompliance by ADB of its operational policies and procedures under the Project as follows: loss of homes; loss of livelihoods; damage to the environment; degradation to wetlands; dispersion of integrated communities; damage to 5 temples; negative effects of resettlement; and human rights violations.

20. The Requesters specifically stated alleged violations of ADB's operational policies and procedures which have caused harm to them, including environment; involuntary resettlement; incorporation of social dimensions in ADB operations; governance; economic analysis; benefit monitoring and evaluation; gender and development in ADB operations; processing of loan proposals; formulation and implementation of loan covenants; procurement of goods and services; and anticorruption.

21. The Requesters sought remedies from ADB including:

- (i) payment of full compensation for resettlement;
- (ii) conduct of gender analysis;
- (iii) reconsideration of the best alignment for the road trace in order to minimize the number of persons to be resettled;
- (iv) conduct of an initial social assessment for the FT;
- (v) provision of adequate land to persons for replacement;
- (vi) completion of an EIA for the FT;
- (vii) full consultation with affected people after completion of the new assessment documents; and
- (viii) as first steps, suspension of disbursements under the credit, and a full investigation of the highway by an independent committee.

C. Eligibility of Request

22. The CRP conducted a desk-based review and discussed the Request with ADB Management and staff as well as the Board member representing Sri Lanka. An eligibility review mission, consisting of Mr. Rumansara, Chair, CRP and Mr. Zeliuss, Secretary, CRP, was carried out in Sri Lanka from 6 to 10 December 2004. This mission met with the Requesters and other project-affected people, GOSL and RDA officials as well as staff from ADB's Sri Lanka Resident Mission (SLRM) and JBIC's Representative Office in Colombo. This mission reviewed the situation at various project sites and discussed with stakeholders including the Requesters.

23. The CRP found that the Request was not subject to any exclusions under para. 26 of the CRP Operating Procedures. The CRP also found that the Requesters had claimed probable direct and material harm owing to ADB's actions and omissions. The CRP further found that the claimed harm was linked to those requesting the compliance review and that the direct and material harm cited by the Requesters is likely to be linked to ADB's alleged failure to follow its operational policies and procedures in formulating, processing or implementing the Project.

IV. Conduct of Compliance Review

A. Terms of Reference

24. Following the submission of its Report on Eligibility,¹⁷ the CRP prepared its draft terms of reference (TOR) for the compliance review. Upon issuance of Board decision authorizing compliance review, the CRP submitted on 11 January 2005 its draft TOR to the Board Compliance Review Committee (BCRC) for its clearance, as required under the CRP Operating Procedures. The TOR, as cleared by the BCRC on 21 January 2005, was posted on the CRP website on the same day. The TOR is in Appendix 2.

B. Methodology

25. The CRP carried out its work expeditiously and as transparently as possible. Mr. Rumansara, Chair, CRP, is the Lead Reviewer taking primary responsibility for the compliance review, with assistance from Mr. Bissell and Mr. Fernando, part-time CRP members. The CRP was assisted by the Office of the Compliance Review Panel in its review. On 5 April 2004, the CRP received a request from the Requesters for Mr. Fernando to be excluded as a panel member on this Project as he had worked for GOSL as an advisor to the Ministry of Forestry and Environment from 1997 to 1999 and had a conflict of interest. The Requesters cited this period in their complaint on the failure of the EIA process and the unwillingness of the Ministry of Environment to follow correct procedures. The CRP responded on 7 April 2005 noting the lateness of the request and its inappropriate suggestion that the CRP was examining GOSL's compliance. The CRP stated that it did not see a conflict of interest but that Mr. Fernando asked to be excused from the STDP review so that the compliance review would not be delayed. The CRP informed the Requesters that the STDP review would be completed by Mr. Rumansara, as Lead Reviewer, and Mr. Bissell.

26. Following the CRP's eligibility determination, the CRP on 20 January 2005 referred the Requesters' allegations of fraud and corruption, and procurement irregularities to the ADB's Auditor General and the Central Operations Services Office, respectively; and informed the Requesters that these matters were referred to these offices. The OCRP informed the ADB President on 18 January 2005 the CRP's view that the satisfactory conduct of its compliance review necessitated the termination of SARD's so-called "compliance review" initiated in April 2004 which unfortunately entails both contacts with Requesters on compliance issues and a potentially publicly released report at the same time when the CRP is handling the matter. The ADB President informed CRP to approach Vice-President (Operations 1) representing Management in carrying out its compliance review.

27. The CRP consulted and met with ADB Management, staff and consultants; the Requesters including project-affected people; GOSL officials, including those from RDA and the Central Environmental Authority (CEA); the Board member representing Sri Lanka and other Board members; and JBIC. In its review of the ADB files, the CRP found materials incomplete and not satisfactorily maintained. Not all material documents on project processing and implementation were on file either at ADB Headquarters or SLRM and some project implementation files were still retained in ADB Headquarters although the Project was delegated to SLRM in March 2004. The CRP members for this review, Mr. Rumansara and Mr. Bissell, also carried out a mission to Sri Lanka that included site visits along the highway and some of

¹⁷ At [http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-EligibilityReport.pdf/\\$FILE/STDP-EligibilityReport.pdf](http://www.compliance.adb.org/dir0035p.nsf/attachments/STDP-EligibilityReport.pdf/$FILE/STDP-EligibilityReport.pdf).

the land acquired, as well as meetings and interviews. A list of persons contacted by the CRP is in Appendix 3.

28. In carrying out its review, the CRP has dialogued with JBIC and encountered a different view about the scope of its review on the JBIC-financed section. JBIC believes that the CRP has no jurisdiction over policy compliance in the JBIC section. The CRP is of another view as the STDP was prepared and presented to the Board in the RRP as one single project, that is, the entire road project and not just the ADB-financed section. The Board approved the ADB loan, as well as the cofinancing arrangements and the assurances spelled out in the RRP for the Board's consideration on giving its decision. It was clear that the commitments made in the ADB policies, most notably on environment and resettlement would be adhered to in the implementation of the Project.¹⁸ These commitments assured in the RRP and in other ensuing documents such as the RIP applied to the whole project.

29. In addition, at the time of its consideration of the RRP, the Board was fully aware of JBIC's intention to finance part of the Project and the Board did not take the opportunity to limit the applicability of ADB policies, and the arrangements and assurances given in the RRP. The CRP reiterates the objective of the accountability mechanism policy, which focuses on ADB's own accountability, and not on other entities, such as cofinanciers, in its investigation.



CRP discussing with Requesters and project-affected people.

30. The CRP engaged the services of 2 independent consultants (Mr. Arne Dalfelt on environment and Mr. Cielito Habito on economic analysis) and a translator in Sinhala (Mr. D.P.L. Walter Silva) to assist in its investigation.

V. Project History

A. Project Milestones and Chronology

31. The CRP notes that the Project has a long history since the 1980s in terms of various studies carried out by GOSL on the construction of a highway, followed by ADB's involvement since 1996 to ADB's processing and project approval in 1999, to ADB loan effectiveness in 2002, and continuing project implementation thereafter. The CRP also notes that complaints and concerns on the Project were made known to ADB commencing in early 1999 from an individual on the proposed alignment causing unnecessary social, environmental and economic dislocation to June 1999 during appraisal from residents in the Bandaragama area on the lack

¹⁸ RRP, Assurances section, para. 104(ii) on Environmental Matters and para. 104(iv) on Resettlement.

of information. More complaints and concerns mounted over the years and at various events, including at ADB's Annual Meeting in 2002, by growing numbers as evidenced by formal requests to ADB under the previous inspection function. The CRP highlights the following milestones on the STDP before ADB's involvement, and project processing and implementation. Appendix 4 provides a chronology of main events on the STDP and the Request.

B. Activities before ADB's Involvement

32. By the early 1990s, the congestion and problems of access to the southern parts of Sri Lanka along the only existing highway (A2) reached a critical stage due to urbanization along the road, and traffic accidents were a large problem. The CRP notes that Sri Lanka had never constructed a greenfield expressway, instead opting for upgrading and marginal improvements of the road network existing at independence. The construction of a new road was intended to be one of the main catalysts for the development of the country's southern region. In late 1980s when STDP was first conceived, varying traces of the 128-km long road were discussed and studied by GOSL. As envisioned, the highway would ultimately have 4 to 6 lanes, although it was intended that the initial configuration to be constructed under the Project would have 2 lanes. However, land would be acquired for the 4/6 lane highway.

33. In 1993, GOSL commissioned a study that included examining 4 possible alignments for an expressway. In 1994, GOSL commissioned the University of Moratuwa to prepare an EIA for what came to be known as the original trace (OT). This EIA, completed in 1996, considered basically a corridor about 122 meters (m) wide. This EIA was not approved by the CEA as it wanted further alternatives to be considered. In October 1996, an economic feasibility study of the Southern Highway was also commissioned by GOSL and this study also selected the OT as the optimum. After completion of this study, RDA commissioned a 120 m-wide topographic survey of most of the alignment of the OT. For those sections that were surveyed, a centerline and vertical profile were produced on plans at a scale of 1:1,000, and from these, land acquisition plans were developed and the land acquisition process started.

C. Project Design and Processing until Board Approval

34. In April and May 1996, ADB carried out a fact-finding mission in Sri Lanka on a proposed technical assistance (TA) activity for the proposed Southern Highway Project from Colombo to Matara, and the Aide-Memoire prepared by ADB in May 1996 was confirmed by GOSL.¹⁹ In December 1996, GOSL forwarded to ADB the 1996 EIA. In December 1996, ADB fielded a follow-up fact-finding mission stating it was not able to associate with the proposed Southern Highway Project unless environmental and social impact studies were done in accordance with ADB policies and this Project would require substantive resettlement and compensation for affected households.²⁰ ADB stated that it was also aware that environmental and social impacts would be very substantial and would be likely to require extensive and costly mitigation measures.²¹

35. In October 1997, ADB approved a project preparatory technical assistance (PPTA) for the Southern Transport Corridor Project (TA 2892 SRI), with ADB financing \$1,000,000, to undertake a feasibility study to determine the viability of the STDP including a study of alternatives. The consultants engaged under this TA were Wilbur Smith Associates (WSA). WSA submitted an inception report in May 1998. In November 1998, ADB, GOSL, and the

¹⁹ Para. 3 of 10 December 1996 Memorandum of Understanding (MOU).

²⁰ 10 December 1996 MOU.

²¹ 2 May 1996 Aide-Memoire and also referred to in the 10 December 1996 MOU.

consultants identified the CT as the preferred trace. WSA submitted its final report in March 1999. WSA noted in the feasibility study that GOSL continued to prefer alignments well inland and believed that a more inland route would have the greatest effect while recognizing that this may hinder the attraction of local traffic and would require lengthier connections to A2.

36. The feasibility study considered 4 alternative traces:

- (i) upgrading the existing A2 and providing by-passes for the main urban centers;
- (ii) new construction on the line of the OT;
- (iii) Alternative Trace – deliberately conceived as an alignment more likely to attract short distance traffic (consequently, also having shorter connections and more likely to relieve congestion on the existing A2); and
- (iv) Combined Trace – as a "compromise" which combines much of the OT with closer connections to Galle and to the coast near Colombo thereby making the OT more attractive to traffic using the A2.

37. The feasibility study recommended the CT as the basis for progressing with the Project due to the extent of preparatory work completed and level of government commitment. The report also mentioned that alternative traffic alignments closer to the coast were investigated and shown to attract greater traffic volumes. The CT followed the OT for about 60% of its length, and avoided a number of sensitive wetlands and watersheds as well as densely populated townships and urban areas.

38. The PPTA 2892 Final Report of March 1999 included an Initial Social Impact Assessment (ISIA) and an Initial Environmental Examination (IEE) on the CT as the preferred trace, and recommended a "more precise definition" of the detailed alignment and a "more detailed mapping" of an approximately 3-km wide corridor to minimize resettlement.

39. The Social Impact Assessment (SIA) carried out by the University of Colombo in March 1999 also considered the CT, and was based on information gathered from questionnaires and surveys on directly affected people along an 80m-wide right of way (RoW) measured from the centerline of the CT.²² The SIA study noted that socio-economic household interview surveys were conducted for a representative sample of locations along each of the alternative "build" options. Some surveys were also conducted for additional information from what was believed to be indirectly affected persons in a wider band of 3 km.²³

40. In February 1999, ADB changed its classification of the STDP from a "Category B" project made in 1997 to a "Category A" project as WSA had recommended a new road for the Project and had identified several significant environmental impacts resulting from the Project with recommendations on further assessments on these impacts, including involuntary resettlement, hydrological impacts, fisheries, aquatic ecology, and wetlands. Accordingly, RDA requested the University of Moratuwa to conduct a new and updated "Category A" EIA for the CT as well as the OT. Since 60% of the CT was the same as the OT, the RDA chose to update

²² The consultants noted that estimates of the numbers of project affected persons were based on detailed assessments of population densities along each trace and consideration of the general location of specific alignment options. They also noted that additional investigations during preliminary design along the selected alignment are necessary using more detailed mapping to reassess these "order of magnitude of impacts".

²³ The SIA study noted that approximately 40 km of the ADB section alignment and 15 km of the JBIC section alignment were changed such that many of the households that were surveyed in March 1999 under the earlier SIA study would no longer be affected by the Project land acquisition. This study also notes that households along the new alignment sections including the Galle access road were not included. The 1999 survey findings are, therefore, not applicable for 41 percent of the final alignment. Updated SIA, November 2000.

the 1999 EIA where much of the text from the 1996 EIA was copied. There was no updating of information from the 1996 EIA itself. Detailed studies were carried out in the corridor of 400 feet (122 m) width marked by RDA as the proposed acquisition limits for the Original RDA Trace. For the CT, the sections of the trace which deviated from the Original RDA Trace near the Colombo end and Galle were studied as the balance part of the trace was common with the Original RDA Trace.

41. This EIA required transparency and public consultation. In addition to 2 public hearings in Panadura and Galle on 3 July 1999 and 10 July 1999 and receipt of 287 comments, the CEA held numerous discussions with the RDA and other interested agencies to come to a mutually acceptable conclusion. This consultation apparently did not adequately cover the need for public participation, as dissatisfaction and opposition began to grow.

42. In March 1999, ADB approved another PPTA (TA 3184 SRI) for the Southern Transport Corridor Project, with ADB financing \$150,000²⁴ after completion of the feasibility study in March 1999. This TA was to assist RDA to implement the development and poverty impact study, the enhanced economic analysis and prepare the summary environmental impact assessment (SEIA) report. Statements have been made to the CRP that the discussions between the ADB and the GOSL had largely reached a stalemate over the issue of economic return, with calculations then showing a rate of return lower than 10%, and it was important to do additional analysis to sort out these disagreements. The studies were completed by August 1999. This TA specifically highlighted that an ADB loan for the STDP was included in ADB's 1999 Country Assistance Program for Sri Lanka. The CRP is surprised that this PPTA 3184 is not referred to in the text of the RRP presented to the Board, which specifically cites PPTA 2892 as the project from which the STDP developed.²⁵

43. In implementing PPTA 2892 and PPTA 3184, and to process the STDP, in line with ADB's project processing cycle, ADB carried out fact-finding in April-May 1999. During the fact-finding, ADB noted that a satisfactory road link to Galle was not included in the Project. RDA and ADB agreed to include such a link in the Project and it was consequently included in the Report and Recommendation of the President (RRP), as far as the CRP can establish, without any social or environmental assessments. This fact-finding was followed by appraisal in June-July 1999.

44. Under PPTA 3184, the SEIA Report for the proposed new highway was prepared with assistance from a consultant firm. The SEIA Report was circulated to the ADB Board on 20 July 1999, 120 days prior to Board approval of the Project as required. The SEIA discussed environmental and social issues in what it called the highway corridor of 3-4 km in width. This corridor is not the same as the one described in the 1999 EIA prepared by the University of Moratuwa with basically a 1-km study corridor²⁶ (i.e., 500 m on each side of the middle alignment), although the belt differed for various sub-studies. The CRP notes that the accuracy of this SEIA has been questioned by some ADB staff.

45. In May 1999, RDA submitted the EIA Report to the CEA for environmental clearance and approval, as well as to ADB for review and comments. On the basis of this EIA Report, RDA's responses on the comments received from the public and public hearings, RDA's subsequent responses on clarifications made by the Technical Evaluation Committee (TEC) appointed by the CEA, CEA issued to RDA on 23 July 1999 a letter granting approval for

²⁴ The amount was increased in August 1999 to \$190,000 to prepare road legislation and regulations.

²⁵ Para. 3. PPTA 3184 is referred to in Appendix 6 of the RRP.

²⁶ Also confirmed in April 2005 by the University of Moratuwa to the CRP consultant.

implementation of the Project along the CT subject to 58 conditions. CEA also published in August 1999 a notice of its approval of the EIA "subject to specified terms and conditions" in 3 Sri Lankan newspapers (Sinhala, Tamil, and English) The conditions included (i) avoiding the Weras Ganga/Bolgoda lake wetland by moving the trace to the Original RDA Trace and avoiding the Koggala and Madu Ganga wetlands; and (ii) selecting the final trace which should minimize the relocation of people.

46. In adjusting the CT to meet CEA's concerns, RDA requested flexibility from CEA on the location of the FT to either move the FT to the original RDA trace or any other trace that would have no impact on the wetlands/recreational area.²⁷ CEA responded that the EIA study of the project had considered only two alternate traces and that if the FT is to be different from either of the traces, a supplementary EIA study would have to be carried out for the new trace.²⁸

47. On 3 September 1999, ADB's Office of Environment and Social Development (OESD) acknowledged CEA clearance and terms and conditions forwarded to ADB and stated that "most of the CEA's comments were covered by mitigation measures and management plan proposed by Government and Bank consultants." On 7 September 1999, OESD supported the resettlement action in the CEA's conditional approval with modifications that minimum compensation for acquired land, including land with structures, should be at replacement value, not present market value.

48. From 4 to 6 October 1999, the ADB loan negotiations were held. On a separate matter, on 28 October 1999, a contract, funded by ADB under Loan 1649-SRI: Road Network Improvement Project, was signed between the RDA and the Design Consultants (WSA. in association with Resources Development Consultants, Pacific Consultants International, and BECA International Consultants) to carry out the engineering design services²⁹ for the ADB section. After the loan negotiations, the RRP on the Project together with the attached finalized legal agreements were circulated on 3 November 1999 to the Board for its consideration and approval. The Board approved the ADB loan on 25 November 1999.

D. Project Implementation after Board Approval

49. Following Board approval, from 7 to 10 December 1999, ADB fielded an inception mission in Sri Lanka. From its Aide-Memoire, it is clear that subsequent changes in the alignment were to be made. On 16 December 1999, the loan agreement and project agreement under the ADB loan were signed.

50. In December 1999 and January 2000, the detailed design consultants for the ADB section walked the length of the ADB section except the Akmeemana area to enlist inputs to the design and final adjustment to the alignment. RDA carried out an information campaign and meetings were held in 19 divisional secretariats on the ADB section. The CRP notes that RDA made an effort to engage with many local residents and affected people after the FT was decided.

²⁷ RDA's letter to CEA of 6 August 1999.

²⁸ CEA's letter to RDA of 12 August 1999. On 25 August 1999, the CEA conditional approval, the RDA's request to change the condition to moving the trace to the original RDA trace or a trace that would not have an impact on the wetlands, and the CEA's reply were sent to ADB.

²⁹ The services included (i) preliminary engineering; (ii) detailed engineering; (iii) contract documentation and procurement assistance; (iv) preparation of a resettlement implementation plan; (v) additional services on economic, environmental and social aspects; and (vi) assistance to RDA in the preparation of the project implementation and operation. SIA Updated Report, November 2000.

51. On 17 January 2000, RDA officially confirmed the FT as the accepted basic alignment for the ADB section.³⁰ From this FT, further adjustments were supposed to be made for technical reasons, minimizing resettlement, separation of communities, minimizing impact on places of environmental or cultural significance and road safety hazards.

52. On 24 January 2000, RDA wrote CEA that design consultants had considered the CT to meet CEA's conditions of avoiding a road traversing through the wetlands in Koggala and Madu Ganga. The FT deviated from the approved trace at a few locations and had shifted westward by about 1 km within the study area defined in the EIA report. The RDA requested approval for the FT.

53. In March 2000, WSA issued its Inception Report on the ADB section, which contained its assessments of the limitations of both the EIA and the SIA and its recommendations for remedying these limitations. RDA did not implement those recommendations. This Inception Report also referred to communications with ADB staff, in which ADB agreed to the need for additional environmental surveys on the basis of the changes to the FT and the limitations of the SIA and EIA.

54. On 29 March 2000, for the JBIC section, the CRP understands that RDA and the design consultants³¹ signed a contract which included services for (i) review of feasibility study; (ii) preliminary and detailed engineering for the proposed highway; (iii) detailed engineering designs for widening of access roads; (iv) preparation of contract documents; and (v) overseas training for RDA staff.

55. On the ADB section, in June 2000, WSA provided RDA with a detailed map of the 3-4 km wide corridor within which the FT was to be located. Soon afterwards, further deviations were suggested based on discussions by WSA, RDA, and ADB. WSA noted the need for additional EIA and social assessment work for the major deviations in the highway alignment between the CT and the FT in line with CEA's conditions of approval, including the need to avoid the wetland catchment areas of Koggala Lake and Madu Ganga. The FT in the ADB section follows only 12 km of the route subjected to the 1999 EIA. In the JBIC section, 24 km of the road alignment still follows the CT. With the final adjustments, the FT lies in most areas closer to the OT. Once the FT had been determined, the major deciding factor for the final alignment was the location of interchanges with local feeder roads.

56. Because 75% of the alignment on the ADB section had changed, WSA conducted a socio-economic survey of a 30% sample of the population to be affected along a 100-m band of the new alignment and the 6-km Galle access road of the ADB section. The final alignment (FA) was determined with findings from the household survey in order to reduce the number of houses to be affected. As WSA could not carry out a household survey for a 5-km stretch on the ADB section in the Akmeemana area due to objections raised by the local residents, it got information with assistance from the Grama Niladaris (village level administrators) of Ihalagoda South, Ihalagoda West, and Pinnaduwa.

57. From May to August 2000, the 1999 SIA was updated for the ADB section and completed in November 2000. WSA studied the environmental impacts of the FT and prepared the Environmental Findings Report (EFR) in November 2000. A similar EFR was produced by

³⁰ *Preliminary Engineering Design and Detailed Engineering Design for the Southern Transport Development Project on the ADB-Funded Section – Final Design Report* dated November 2000, prepared by WSA, p. 3-2.

³¹ Pacific Consultants International (PCI) in association with Japan Bridge and Structure Institute Inc. and Resources Development Consultants.

the design consultants for the JBIC section in December 2000, which noted that due to the shift away from the CT, additional surveys and analysis were needed for portions that were different from the CT. The CRP understands that the EFR for the JBIC section concluded that the EIA on environmental and social aspects of the Project was applicable to the FT and that JBIC views that a supplementary EIA is not necessary for the FT.

58. In 2001, an "Entitlement Matrix" for affected people was published by RDA in English and Sinhala newspapers and a booklet was also circulated by RDA in these 2 languages to inform the public about the FT and the "Entitlement Matrix".

59. On 12 November 2001, the Monitoring Committee of the "Proposed Southern Expressway Development Project" met. The establishment of such a monitoring committee is a requirement of the Government's environmental approval process. The meeting was chaired by the Director General CEA and included the Secretary, MOH and RDA officials. The Minutes of the meeting recorded, with respect to the FT, CEA's confirmation for the Bolgoda (Bandaragama) area that RDA should adopt the OT as indicated in the CEA's conditions of approval of the EIA. The minutes also recorded that CEA wanted an undertaking from the RDA that the FT is within the corridor studied in the EIA report and approved by the CEA. The Secretary, MOH stated that this had already been done as mentioned in the RDA's 2 letters to CEA of 24 January 2000.

60. The CRP notes that 4 letters were sent to CEA requesting it to issue a letter confirming that the final RoW determined after the detailed engineering designs were approved by CEA: the first 2 letters of 24 January 2000 from the Chairman RDA; the third letter of 22 January 2002 from the Secretary, MOH; and the fourth letter of 26 April 2004 from the Director, Project Monitoring Unit (PMU), STDP. On 31 May 2004, CEA issued a letter to the Director, PMU, STDP confirming validity of the original CEA approval for the FT based on the maps submitted by RDA, and based on an assurance from RDA that the final alignment was within the band studied in the 1999 EIA, stated that no further approvals were required in order to proceed with the Project.

61. In October 2002, ADB loan effectiveness was declared. The loan effectiveness, typically expected within 3 months from loan signing, was held up mainly due to the execution of the JBIC loan agreement and RDA's submission of a RIP satisfactory to ADB. The JBIC loan agreement was signed in March 2001 and effective in May 2001. It was however only in October 2002 when the ADB loan effectiveness took place, with the submission of a satisfactory RIP. ADB's Chief Compliance Officer approved the RIP in October 2002 subject to certain conditions, also set out in the ADB loan agreement, except for one additional requirement on ex-post monitoring and evaluation. In January 2003, RDA awarded the civil works contract and the notice to proceed was approved in April 2003.

62. Specific to the JBIC section, on 25 March 2004, RDA wrote CEA referring to a letter from JBIC requesting confirmation that the final right of way, determined after the detailed engineering design, had been approved by CEA. CEA in a letter of 19 April 2004 reiterated that the Project was granted environmental approval on the basis that the final RoW falls within the 3-km corridor as proposed by the EIA. In the same letter the CEA asked for supporting evidence confirming that the final right of way falls within the approved corridor with respect to the detailed engineering design. The CRP notes that the CEA's letter of 31 May 2004, referred to above, stating that no further approvals were required, applied to both JBIC and ADB sections.

E. References to ADB under its Previous Inspection Function

63. Between November 2001 and March 2002, there were 4 requests from project-affected people filed under the previous inspection policy. The first 2 requests were filed by GSS and USPA. The BIC concluded that there was insufficient basis to recommend an inspection to the Board. The third request was filed by seven local community groups residing along the highway as the "Affected Communities of Dodangoda; Gamagoda; Nugethota, Akuratiya; Athkadura Parana Janapadaya; Kurundugaha Haethakma; Kokmaduwa; and Sultanagoda, Akurugoda." The fourth was filed by a group called "The Organization of Victims of Colombo-Matara Highway and Entrance Ways – Kahatuduwa." The CRP notes that the third and fourth requests were deemed ineligible by BIC because it concluded that the claimants did not present reasonable evidence that their rights and interests had been or were likely to be directly, materially, and adversely affected by a failure of ADB to follow its operational policies and procedures.

64. Also during this time, the CRP notes that ADB fielded at least 8 missions to expedite declaration of loan effectiveness. Some of these missions also tried to address complaints that were filed by the 4 groups dissatisfied with the Project.

F. References to Sri Lankan Judicial Authorities

65. The CRP notes that there have been references to the Sri Lankan judicial authorities by various persons interested or involved in the Project. As early as 1999, an NGO - the Public Interest Law Foundation (PILF) - filed an application relating to environmental matters under this Project with the Sri Lanka Court of Appeal which delivered its order in November 2001 dismissing PILF's application and ordering PILF to pay costs to CEA. PILF appealed to the Supreme Court, but its appeal was denied. The Supreme Court, however, deleted the order of costs to be paid by PILF to CEA. PILF did not represent the interests of the affected people under the Project. In 2002, objections were made by at least 50 project affectees, to Sri Lanka's Court of Appeal which resulted in a panel of retired Supreme Court judges ("Judicial Committee") finding on 28 October 2002. The finding was that the deviations at the disputed areas of Bandaragama and Akmeemana can be considered "feasible and desirable" if the government procedures relating to deviations were followed and that the affected people were given an opportunity to make representations on the FT.

66. In 2002, 53 project affectees filed writ applications in Sri Lanka's Court of Appeal which dismissed the applications in May 2003. This led to an appeal by 3 sets of appellants representing 43 project affectees to Sri Lanka's Supreme Court which on 20 January 2004 upheld the Court of Appeal's discretion to deny the appellants the writ relief sought. The Supreme Court awarded each appellant SLR75,000 to be paid by RDA as compensation for infringement of their rights under the constitution and principles of natural justice; to preclude further delays, misunderstandings, and allegations of victimization, directed that the appellants had the right to accept the compensation and to hand over possession of their lands without prejudice to their rights of appeal in respect of the amount of the compensation; and directed RDA to pay the appellants costs of the appeals and reimburse them sums paid by the appellants as costs, expenses and fees of the Judicial Committee. The Supreme Court also noted that some of the appellants had previously complained to the Human Rights Commission in Sri Lanka.

67. In November 2004, some project affectees filed with the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Geneva. The CRP informed the OHCHR in March 2005 that the CRP was investigating the matter filed by the Requesters in this current

Request. In April 2005, during its visit to Sri Lanka, the CRP noted 8 applications have been made in February 2005 by project affectees (2 from the Bandaragama area and 6 from the Akmeemana area) to the Court of Appeal, including an interim relief order preventing the divisional district secretariat concerned and other respondents including RDA from taking over their lands.

G. References to ADB's Special Project Facilitator

68. The JO filed a complaint under the ADB accountability policy with ADB's SPF which was registered in June 2004. The complaint was determined eligible in July 2004. Following the consultation process of the ADB accountability mechanism, the complainants went through an agreed course of action in November 2004 (and for some time, a parallel process with the CRP when JO filed a request in December 2004). The SPF concluded the consultation process in February 2005.³²

VI. Issues

A. General

69. The CRP has considered the activities above and state below their observations of the following main issues during project processing, during Board approval, or during implementation under these headings. These issues will be considered in the CRP's findings and assessments with the applicable operational policies and procedures according to when the alleged acts or omissions took place. The CRP notes that JBIC's construction loan for the JBIC section was approved in 2001 after its engineering services (E/S) loan for preliminary and detailed engineering design, which included additional environmental studies. The CRP also notes that this JBIC loan approval was based on the FT and not the CT.

B. Project Processing Activities

70. The CRP notes that in May 1996, ADB proposed a feasibility study for the Project, which materialized in PPTA 2892 in October 1997. In May 1996, ADB also proposed³³ that with a detailed feasibility study, ADB might then consider an engineering loan to undertake detailed engineering, the necessary environmental and social impact analyses (which will by themselves be substantial tasks), preparation of bidding documents, etc. ADB also assumed the engineering loan modality would be adopted. In December 1996, ADB proposed that a TA grant for feasibility studies in 1997 (this was the PPTA 2892) be followed by an engineering loan in 1997 to finance detailed engineering design and procurement, followed by a subsequent investment loan to finance the major construction. The TA engineering loan to carry out detailed engineering design and procurement proposed under the December 1996 Memorandum of Understanding (MOU) did not materialize in ADB's 1997 or 1998 Country Program for Sri Lanka. Under ADB's business lending operations, a TA engineering loan would lead on to an investment project if the parties agree to the investment project.

71. The CRP draws attention to the sequence and timing of the following events: TA feasibility study in PPTA 2892 approved in October 1997; the proposed engineering loan which did not materialize in ADB's 1998 Country Program for Sri Lanka; the second PPTA 3184 approved in April 1999; and WSA's engagement in October 1999 as the preliminary and

³² At <http://www.adb.org/SPF/registry.asp>.

³³ Aide-Memoire of 2 May 1996.

detailed design consultant. At the time of WSA's proposed engagement by direct selection instead of competitive selection, using funds under Loan 1649-SRI(SF): Road Network Improvement Project, ADB required that the engineering design works must commence early in 2000 to provide inputs required for a 1999 loan approval. ADB was also clear that the project processing schedule required the preliminary design to be completed prior to appraisal. ADB staff have brought to the attention of the CRP the need for an engineering loan to precede a construction loan given this greenfield project with its manifold socio-economic implications. In ADB's business practices on its lending operations, one would expect a longer time frame for processing projects from project fact-finding stage to loan approval,³⁴ but in this case, this was done hurriedly. The CRP notes that, in contrast, JBIC approved the Project with a construction loan in 2001, much later than ADB, after providing an engineering services loan.

C. Project Approved by the Board

72. The Board considered the Project and approved it based on the RRP, the SEIA and other supporting studies and documents. The CRP notes that the EIA studied the OT based on a fixed alignment and the CT based on a feasibility trace. The EIA was done without the benefit of preliminary engineering design. The IEE and ISIA on which the resettlement plan was based also focused on the CT. The RRP issued on 3 November 1999 stated in para. 78 that the "Project received Central Environment Authority clearance on 25 July 1999" without acknowledging that there were 58 conditions attached to the CEA's approval. The follow-on discussion in the same paragraph of the RRP of the SEIA, originally issued on 20 July 1999 and circulated in full as Supplementary Appendix E of the RRP, likewise failed to indicate the existence of the CEA's conditions, including those likely to force a substantial change of trace.

73. The SEIA Report did not refer to a specific trace, but the document from which such a "summary" is drawn, the EIA, referred to the CT as the best alternative in achieving RDA objectives. The SEIA Report referred to a new road which is 128 km in length connecting to the existing road network in 14 locations (Chapter II). In the SEIA Report, several terms were used to refer to the Project such as "highway corridor", "project area", "corridor" and "3-km corridor" which creates confusion about the definition of the Project. There were no detailed maps on which the project highway was based, which could have provided a clearer definition of the project. The RRP uses these terms as well as "project influence" and adds further to the confusion.

74. At the time of the Board consideration, the discussions focused on a 3/4-km corridor along the CT where the highway was to be located and that a final alignment needed to be determined through detailed design. The CRP also notes that the studies, upon which the RRP were based, focused on the CT and did not have the benefit of detailed mapping. The CRP notes that other interpretations of what constitutes the "Project approved by the Board" have been raised by SARD, as the operations department which designed and is implementing the Project.

75. One significant issue during Board discussion of the Project was the issue of change in alignment. The RRP states in para. 81 as follows: "Because one of the primary criteria for final alignment selection will be minimizing social impacts, including resettlement and severance of communities, etc., it is anticipated that the final number of families to be affected by the Project could be substantially less than previously estimated." This issue was brought up at Board discussion and comfort was expressed with this assurance in the RRP. At no point in the RRP

³⁴ ADB. January 1994. *Report of the Task Force on Improving Project Quality*. para. 68.

was the possibility raised that the CT could be significantly modified, in contrast to minor changes allowed for final alignment.

D. ADB Loan Effectiveness

76. The ADB loan was made effective after about 30 months from loan signing. The CRP notes that loan effectiveness conditions should be minimized under ADB's procedures as required under Project Administration Instruction (PAI) No. 2.01 issued December 1998. The CRP also notes that in January 2001, ADB downgraded the project performance rating of the STDP from "Satisfactory" to "Unsatisfactory" under its PAI No. 5.03 on "Project Implementation Status Classification" issued 1 June 1995, as a result of GOSL not completing the cofinancing agreement with JBIC. The CRP is surprised by the reason for the ADB downgrade of the project performance rating when ADB itself imposed this loan effectiveness condition without ensuring that it was timely or realistic. It should also be noted that there was no reference to the delay in the submission of a satisfactory RIP though this was still an outstanding matter and was the stumbling block before the ADB loan could be declared effective.

77. There were 2 conditions which held up declaration of ADB loan effectiveness. One was the execution of the JBIC loan agreement and the other was submission of a satisfactory RIP.³⁵ The CRP finds that both conditions were unrealistic given that for JBIC cofinancing, an E/S loan agreement had been signed in August 1999 and that the work of the preliminary and detailed design consultants was expected to be completed by March 2001; and that for the RIP, ADB had already indicated that there were substantial impacts by the resettlement under the Project, and that the figures given in the RRP on a projected decrease of affected persons actually saw a substantial increase. The JBIC E/S loan agreement (for ¥381 million, about \$3.6 million) was to be followed by a JBIC investment loan agreement (for ¥18,770,000,000, about \$177 million) which was signed in March 2001 and made effective in May 2001.

78. The RRP states that ADB had assisted RDA in developing a resettlement plan complying with GOSL's procedures and ADB's policy on involuntary resettlement but this assistance did not appear to be enough. The RRP stated that up to 800 families "may"³⁶ need to be relocated, and that the cost for land acquisition for the entire Project was \$19 million. However, the RRP also stated that the number of families "could be substantially less than presently estimated".³⁷ This was not the case, as the number of families to be resettled under the Project (excluding commercial enterprises, etc.) grew to about 1,294 as of May 2004. The cost of resettlement has already reached about \$50 million. The CRP understands that as of 31 March 2005, about 222 affected households under the Project (86 in the ADB section and 136 in the JBIC section) have yet to be resettled.³⁸ The figures given by Management and the Requesters in their responses to the CRP Draft Report are at considerable variance. Management states that as of end April 2005, 168 households have yet to be relocated (44 from the ADB section and 124 from the JBIC section).³⁹ On the other hand, the Requesters state that about 2,000 affected persons (about 1,000 for each section) have to be relocated.⁴⁰ These disparities in numbers lead to 2 observations: the importance of establishing and maintaining an

³⁵ *Loan Agreement (Special Operations) on the Southern Transport Development Project between the Democratic Socialist Republic of Sri Lanka and Asian Development Bank dated 16 December 1999* (Loan Agreement), Section 6.01 (a) and (b).

³⁶ Para. 80.

³⁷ Para. 81.

³⁸ Figures given by SLRM in April 2005.

³⁹ Management Response, Appendix, para. 11.

⁴⁰ Requesters' Response, p. 12.

accurate and up-to-date management information system (MIS) of all affected people as soon as possible, and making those numbers available to the public so that misconceptions do not proliferate.

79. The CRP notes that ADB fielded many missions to expedite this particular loan effectiveness condition, and the ensuing contradictions provided by ADB staff in advising GOSL to ensure that the RIP complied with the ADB's guidelines on involuntary resettlement. One ADB mission stated that RDA would have to address ADB's requirement for an RIP for all affected persons "(except in disputed areas [Bandaragama and Akmeemana])" while another ADB mission stated that this condition of a satisfactory RIP also applied to disputed areas.⁴¹

E. ADB Cofinancing with JBIC and Other Cofinanciers

80. ADB plays a leading donor role in road projects in Sri Lanka. The RRP states that ADB and Japan are expected to be the most active funding agencies in the road sector as both have projects planned over the next few years to address priority investment needs of the primary and secondary road networks.⁴² The RRP also states the ADB maintains close dialogue with JBIC on ongoing and future projects to actively explore cofinancing possibilities whenever the opportunity arises. However, in this Project, the cofinancing arrangements appear unclear and fragmented. At appraisal in June 1999, tentative cofinancing from the Overseas Economic Cooperation Fund, Japan (OECF) was planned, and JBIC cofinancing was stated in the RRP as this was firmed up after appraisal. JBIC was established in October 1999, with the merger of OECF and the Export-Import Bank of Japan. Other cofinanciers like NDF had firmed up earlier during the processing stage, and these were made on the basis of necessary project documentation from ADB as the "lead agency".

81. The RRP was however silent on the ongoing JBIC E/S loan agreement of 4 August 1999, and did not reflect that the JBIC investment loan agreement would ensue from the E/S loan where the project was expected to be completed by March 2001. ADB assumed the lead agency role as it was involved in financing or working with GOSL in finalizing various studies required for the Project, including environmental and social assessments, which were the basis for other cofinanciers to support the Project. The RRP presented to the Board for its approval covered the entire Project, with total project cost of various cofinanciers, including JBIC.

82. The JBIC loan agreement with GOSL was signed on 30 March 2001, and the JBIC loan was effective from 1 May 2001. A procedural agreement was drafted between JBIC and ADB in August 2001 but was not signed or followed up by ADB on its finalization. This draft procedural agreement provided for general matters on coordinating the administration of their respective loans and advising each other on matters concerning the Project, the borrower, and other matters of common interest through coordination, exchange of information, and consultation.

83. The CRP notes that in an MOU of 14 September 2001, ADB and GOSL agreed with JBIC that the RIP would apply to the "entire STDP and that no differentiation would be made between the ADB and JBIC sections." It should also be noted that ADB expected the joint arrangement with JBIC for management consultant service from Finnroad to provide for substantial harmonization. The Finnroad services were paid by a third cofinancier, NDF, which may have introduced complications not researched by the CRP.

⁴¹ MOU of 14 September 2001 and Aide-Memoire of 12 December 2001.

⁴² RRP, para. 26.

84. In the Minutes of Discussion between JBIC and GOSL, RDA agreed that the Project will adhere to JBIC's "Environmental Guidelines for ODA Loans" dated October 1999, and GOSL agreed that it will ensure that all environmental mitigation measures identified in the EIA and in the approval by the CEA are properly implemented in the E/S contract and during the construction, operation, and maintenance of the Project. This condition is similar to that in the ADB loan agreement in Schedule 6, para. 9.

85. ADB played a pivotal role in bringing JBIC and other cofinanciers to the Project, and shared with them its studies and reports up to Board approval. On cofinancing with NDF and Sida, this does not pose any significant problem. On JBIC cofinancing, after Board approval of the Project, the Project has effectively been treated as two separate projects, with ADB and JBIC having their own detailed design consultants and administering their respective components. However, on matters relating to RIP, the ADB policies and procedures apply throughout for both sections during project design and implementation.

86. The CRP notes that ADB's supervision monitoring over the JBIC component on implementation of the resettlement issues is limited. On environment matters, ADB financed and assisted in the preparation of studies and assessments which were taken on board by JBIC, and any ADB acts or omissions in complying with its operational policies and procedures necessarily impact the JBIC section, at least until Board approval of the Project. For example, ADB financed and assisted GOSL in preparing the SEIA for the whole project. ADB designed the Project with a Management Consultant to supervise the highway for the entire project, and agreed on the Management Consultant's terms of reference. ADB also required the establishment of a Project Coordinating Committee, with ADB and JBIC representatives as members, to coordinate the ADB and JBIC components, with the Management Consultant serving as the its secretariat.

87. The CRP has consulted with JBIC as part of its compliance review of the Project. The CRP has already noted above its views on JBIC's concerns. The CRP also notes that JBIC has shared its views based on supervisory missions as recently as April 2005, and it is gratifying to see that their missions have raised issues similar to those raised in this report. The CRP also consulted with other cofinanciers, NDF and Sida, on its compliance review of the Project.

F. Adjustments to the Combined Trace

88. ADB's detailed design consultants, WSA, made a comment on the changes to the OT in their Inception Report of March 2000. On the environmental issues it says: "Only 12 km of the [CEA] approved route are on the same alignment as the previous 1999 EIA survey work. The remaining approximately 50 km of the approved route from Kurundugahahetekma to Matara lie between a few hundred meters and 2.5 km from the CT. Similarly, on the JBIC-funded section, only 24 km of this route are on the same alignment as the previous EIA/SIA work. The remaining 44 km from Kottawa to Kurundugahahetekma are anywhere between a few hundred meters and 3 km from the CT."

89. The distance between the traces has been an issue of disagreement. The "Safeguard Mission" conducted its own comparison⁴³ and came up with the conclusion that at least 26 km of the FT alignment extended beyond a 2 km corridor centered on the CT, 15 km extended beyond a 3 km corridor, and 5 km extended beyond a 4-km corridor of the ADB section. For the JBIC section, the figures were that at least 14 km of the FT alignment extended beyond a 2-km

⁴³ Draft Safeguard Report of 1 February 2005, Annex 1, p. 13.

corridor centered on the CT, 12 km extended beyond a 3-km corridor, 9 km extended beyond a 4-km corridor, 8 km extended beyond a 5-km corridor, and 3 km extended beyond a 6-km corridor.⁴⁴ The distances between the FT and the OT, however, are less than the figures above.

G. References to Sri Lankan Judicial Authorities

90. The CRP has considered the various decisions reached by the Sri Lankan judicial authorities on referrals from this Project in investigating the matter but notes that these decisions do not bind ADB as it is not a party to the cases. The CRP defers to the jurisdiction of, and decisions reached by, the various Sri Lankan judicial authorities, whether a Judicial Committee of retired Supreme Court judges, Court of Appeal or the ultimate Supreme Court, and the decisions delivered. The CRP views that its investigation is only based on ADB's acts or omissions in following with its applicable operational policies and procedures.

H. Safeguard Review

91. In the CRP's Eligibility Report, the CRP viewed that the satisfactory conduct of its compliance review necessitated the termination of SARD's so-called "compliance review" initiated in April 2004. SARD initiated this review in response to a Board member's query by a memo of 22 March 2004 requesting an update on the highway construction and clarifications on changes in the route approved by the Board in the RRP, including the cost implications of any alterations and the implications for the continued validity of the EIA and the RIP. SARD's response to the Board member of 5 April 2004 stated that the ADB section civil works contract had been awarded with work carried out about 10% and that "reviews of progress on land acquisition, compensation and resettlement have found a high level of satisfaction among affected persons". SARD also stated that the RRP approved by the Board in 1999 "considered a 3-4 km wide corridor in which the final alignment of the expressway was expected to be located. The Environmental Impact Assessment studied the 3-4 km wide corridor. The final alignment that was subsequently chosen for the expressway is contained within this corridor and so was contemplated by the Board Approval. The Board Inspection Committee considered this issue and determined that allegations of non-compliance with ADB's policies and procedures, including in relation to selection of the final alignment, were unfounded." This statement by SARD is not correct as the EIA studied a belt of 1 km, that is, 500 m on either side of the middle alignment of the OT and the CT.⁴⁵ WSA's Inception Report of March 2000 stated that for the ADB section, about 50 km of the FT is between a few hundred meters and 2.5 km from the CT and for the JBIC section, 44 km is between a few hundred meters and 3 km from the CT.

92. The CRP notes that the conduct of this internal "compliance review", later called "safeguard review", was scheduled for completion less than 2 months from its commissioning but was extended to more than 7 months to December 2004, when the recovery program from the tsunami diverted the resources and time of all available staff. The CRP recorded its view on the impropriety of continuing such a review at the same time as the CRP was carrying out its investigation. The work was subsequently halted at a draft version stage. The review was done by SARD in close collaboration with the Regional and Sustainable Development Department with its responsibilities for environment and social safeguard compliance and the Office of the General Counsel with its responsibilities for legal matters. The draft report has several versions, with the latest version presented from SLRM (in charge of the review) to Director General, SARD for his approval by a memo of 1 February 2005 ("Draft Safeguard Report of 1 February

⁴⁴ Ibid., p. 13.

⁴⁵ Based on information given by the University of Moratuwa in April 2005.

2005") and another version from 3 safeguard review mission members of 18 January 2005 ("Draft Safeguard Report of 18 January 2005") which was not accepted by SLRM as the mission report.

93. The CRP raises this issue to illustrate how divided opinion was within ADB over the degree of compliance and the response necessary to bring the Project back into compliance. The only explanation for such confusion at this advanced stage of project implementation is that the project managers did not take a rigorous approach to ensuring step-by-step compliance during the course of project formulation and detailed design. Each specific failure to take compliance issues into account along the way can be explained, in most cases, by circumstances on the ground; and the overall impact resulting from the accumulation of failures becomes clear, as will be explained below, and therefore cannot be excused.

94. This review was supplemented by a peer group review; a high-level mission fielded by SARD in August 2004; and a mission on environmental studies fielded in October 2004 by the South Asia Transport and Communications Division within SARD, the division administering the Project before it was delegated to SLRM in March 2004. SPF's course of action in October 2004 under the consultation process also had a workshop on the safeguard review. A report was promised to the Requesters for public disclosure. They were given a discussion note in October 2004 but not a report, resulting in their refusal to engage with SARD. The CRP commends the operations department in carrying out both problem-solving and compliance audit functions on its projects, but as a procedural matter advises that these measures stop when the Accountability Mechanism is invoked by claimants, as their continuation would undermine the process of carrying out problem-solving and/or compliance review investigation effectively and efficiently.

VII. Findings and Assessments

A. Environmental Considerations in ADB Operations

95. **Policy and Operational Procedures:** The relevant policy standards for environmental considerations are Operations Manual (OM) Section 20 (BP and OP)⁴⁶ issued 7 January 1997. The latter constituted ADB's environmental assessment requirements. The CRP will also consider the selective applicability of ADB's environment policy of November 2002 and the subsequent OM F1 of 29 October 2003.

96. The ADB categorizes projects into three groups, each of which requires a different level of environmental review. For ADB assisted projects efforts should be made to adhere to the ADB procedure from the earliest project development stages. These categories are explained in OM Section 20/OP as follows:

Category A: Projects expected to have significant adverse environmental impacts. An environmental impact assessment (EIA) is required to address significant impacts;

Category B: Projects judged to have some adverse environmental impacts, but of lesser degree and/or significance than those for category A projects. An initial environmental examination (IEE) is required to determine whether or not significant environmental impacts warranting an EIA are likely. If an

⁴⁶ BP is Bank Policy and OP is Operational Procedures.

EIA is not needed, the IEE is regarded as the final environmental assessment report;

Category C: Projects unlikely to have significant environmental impacts. No EIA or IEE is required, although environmental implications are still reviewed.

97. This OM Section 20/OP, being the "Environmental Assessment Requirements of the ADB" is also supported by environmental guidelines for selected infrastructure projects, issued in 1990. For projects classified as Category A projects an EIA must be carried out ideally during the feasibility study of the project. An SEIA report highlighting the main EIA findings will also be prepared and submitted to the ADB Board at least 120 days before it considers a project. The original EIA should be made available to Board members on request and if requested may also be made available to the NGOs through the Board member representing the country concerned, or through ADB's Depository Library Program, except where confidentiality rules would be violated.

98. In the preparation and review of the EIA and SEIA reports, both government as well as ADB environmental requirements must be met. ADB will encourage the borrower to take into account the views of affected groups including NGOs. The borrower should clear the EIA before the SEIA is submitted to the Board, or at the latest, before the project is implemented. Where the government clearance has not been received before the RRP is circulated to the Board, a loan covenant requiring government clearance of the EIA before project implementation should be included in the project agreement.

99. The Project was classified by the projects department in 1997 as a Category B project, and an IEE had been prepared by consultants and submitted to ADB for review. The consultants had developed four alternative traces during the Feasibility Study, and recommended a completely new road for the Project. The IEE consultants identified several significant environmental impacts from the Project and recommended further assessments of these impacts. The CRP finds it puzzling that ADB had even categorized the project as a Category B project as all 4 alternatives for consideration under PPTA 2892 involved significant environmental and social impacts. Also, as early as 1996, ADB was of the view that environmental and social impacts of the project would be very substantial, would require detailed study, and would be likely to require extensive and costly mitigation measures. A draft TOR for an EIA had been proposed by the consultants to study in-depth the extent of significant impacts and to provide detailed recommendations on mitigation measures and environmental management plan. Based on the IEE consultant's findings OESD proposed the Project be recategorized as a Category A project. This was approved by the Chief, OESD in February 1999.

100. **Requesters' issue #1:** There was no EIA and SEIA for the FT being implemented and therefore not in compliance with GOSL environmental requirements. An EIA was produced in 1999 and approved by the CEA. The FT is not covered by the 1999 EIA, and therefore there is no EIA for the Project. The EIA Report described two different road alternatives, the CT and OT. The Trace on which the Expressway is to be constructed is a trace referred to as the FT. In many places and particularly in Bandaragama and Akmeemana, this is a new trace altogether.

101. **Finding:** The issue of compliance with GOSL's environmental requirements has been dealt with by the Sri Lankan judicial authorities and is not an issue for CRP. No EIA was produced explicitly for the FT. The 1999 EIA, done for the CT and OT, did not have the benefit of knowing the exact trace for the highway.

102. The view of ADB and RDA is that the highway is going through an ecologically homogenous region where the landscape is already altered by people that the environment issues are not likely to be significantly different between the FT and the CT, and the deviating areas of the FT are basically covered by the 1999 EIA. However, there are wetlands, rivers and lakes to avoid, and urban settlements and communities to be disturbed as little as possible and smaller patches of ecosystems to look out for. Therefore CEA stated that if the trace deviated from either the CT or the OT, a new EIA or an EIA addendum must be made.

103. CRP's view is that for the areas where the 2 main deviations were made, an EIA addendum should be made. This was also suggested by WSA in 2000, and seems to be the current view of ADB as it sent, in early 2005 a renewed request to the University of Moratuwa to do a rapid Supplementary Environmental Assessment study for the FT.

104. The CRP is of the opinion that there are substantial grounds for arguing that the Project lost its compliance at the time of the adoption of the FT, when new areas not included in the 1999 EIA were included in the Project and also when it failed to meet the broader goals of an EIA process, such as public consultation. An EIA was intended to involve a broad range of stakeholders, especially those who will be most affected by the Project, and some of them may have been denied that opportunity in this case. An EIA also provided the explicit opportunity to balance the various dimensions. In this project, for instance, there are tradeoffs between environmental protection and the impact of resettlement. Such issues should have been aired deliberately and publicly in order to maximize stakeholder understanding and acceptance.

105. **Requesters' issue #2:** ADB approved a loan for a Category A project without an adequate EIA particularly for sections on (i) description of the project, (ii) description of the environment, (iii) environmental impact and mitigation measures, (iv) alternatives, (v) economic assessment, (vi) institutional requirement and environmental monitoring program, (vi) public involvement, and (viii) conclusion. The environment and anticipated impacts and mitigated measures are not described.

106. **Finding:** The draft EIA was reviewed by the appropriate staff in different parts of ADB, and their judgment was that the EIA was adequate for a Category A project. The adequacy of an EIA is more a matter of judgment than an absolute standard, and the CRP finds the process of approval by the ADB, leaving aside the issue of the definition of the trace, to be sound. A number of environmental issues are addressed in an adequate way, while the whole report appears to have a bias towards the engineering aspects of the assessments. The EIA is good on hydrology and drainage issues, water and flooding issues, soils and construction materials aspects, and on other important issues for road engineering and construction like noise and air pollution, spills etc. However, it is weaker on renewable natural resources and ecology, inland fisheries and aquaculture, wetlands for migratory birds, and on health issues such as increased HIV/AIDS risk, prostitution, and impacts on insect borne diseases, but most of all it is weak on possible induced developments. The latter is of particular concern owing to the highway's potentially severe induced impacts. For a highway project like the STDP, the EIA might have included an analysis of possible future development scenarios and their potential environmental impacts caused by highway induced activities.

107. The acronym "EMP" has several applications. The most common interpretation is that it means Environmental Management Plan (EMP), and this is also the interpretation given by ADB and the CRP. However, in the context of the 1999 EIA, the SEIA Report, and the CEA's approval conditions, the acronym "EMP" was used to describe an Environmental Monitoring Plan, and in other cases it means an environmental mitigation plan. The 3 interpretations are

not the same in that an EMP contains a broader set of issues including mitigation requirements, monitoring requirements, institutional requirements, staff training requirements, and budget requirements.

108. The Loan Agreement⁴⁷ requires that the GOSL shall ensure that all environmental mitigation measures identified in the SEIA Report and the approval of the CEA are incorporated in the project design and followed during the construction, operation and maintenance of the Project. While the Project proceeded without producing any environmental monitoring plan, ADB had a new environment policy in November 2002⁴⁸ with a clear requirement for developing environmental management plans as part of the environmental assessment process for Category A projects. Thus, the above-mentioned requirements would now be done through the EMP developed and approved prior to the commencement of the highway construction. This EMP for both sections of the Project was completed by Finnroad in April 2004, reviewed by ADB and forwarded to RDA in December 2004, and is currently being considered by CEA. The EMP will be updated if necessary after environmental updates on the FT have been conducted. The finalization of the EMP is urgent as the ADB section has already been under construction for more than 21 months.

109. Because of some uncertainties about how well the EIA and the 2 EFRs covered the possible impacts along the FT, effective monitoring of the environmental impacts and social issues becomes important. RDA has limited institutional capacity for environmental monitoring activities, something that concerned WSA which therefore recommended an environmental monitoring function in the Project Management Unit. The RDA has used the Management Consultant for this purpose and has yet to establish its own environmental unit. Considering the amount of supervision and control needed as indicated in the "Environmental Assessment Requirements of the ADB" and in the assurances in the RRP, it seems difficult to satisfy the project-related monitoring requirements and long-term needs without additional staffing.

110. **Requesters' issue #3:** The data used in the 1999 EIA was out of date. The expressway was constructed through hills (instead of abandoned paddy fields as specified in the CT) and created risks of landslides and floods.

111. **Finding:** Data in the 1999 EIA was built partly on information and surveys from the 1996 EIA and partly as data generated during the 1999 assessment. Revisions to the CT required by the CEA were the results of the findings of the EIA of the need to reduce environmental disruption and enhance the protection of wetland areas. The design consultants for the ADB section and the JBIC section have noted the deviations from the CT and recognized the need for additional studies on environmental and social impacts for design considerations. Additional information has been made available from the 2 EFRs on the ADB section and the JBIC section, and further studies will be done as mentioned above. The CRP has not seen any assessments stating a need for specific studies on the risk of landslides. The CRP believes that this technical risk factor should be carefully studied.

112. **Requesters' issue #4:** A proper examination of alternatives was not considered.

113. **Finding:** The EIA process did consider improving and widening the existing road as well as other road alternatives and improvement of the existing Colombo-Matara railway. This is

⁴⁷ Schedule 6, para. 9.

⁴⁸ ADB. 2002. *Environment Policy* (R154-02), para. 65. See also OM Section F1/OP issued 29 October 2003, para. 25.

considered in chapter 4 of both the 1996 and the 1999 EIA. The final PPTA Report identified impacts of four alternative alignments within a 10-15 km wide corridor before choosing the CT as the preferred alignment. However the CRP has not found evidence about any reconsideration of alternatives by RDA before shifting the CT, especially to minimize the need for resettlement. The negotiation of the RDA with the CEA over the final conditions of the EIA approval process appears to have focused on environmental concerns.

114. Thus, in the sense that alternatives needed to be examined for basic project choices, the policy has been met; on the other hand, the several realignments of the trace in this project have created opportunities to re-examine alternatives for social as well as environmental purposes and it is not clear that all the parties involved wanted to re-open the alternatives for a balanced consideration of all issues.

115. **Requesters' issue #5:** The public was not involved in assessment. The notification of the EIA to the public was inadequate. The CEA public hearings were not sufficient. There was no public education program.

116. **Finding:** The 1999 EIA was brought to public attention by the RDA, through hearings and consultations during May/June 1999. The holding of 2 hearings along a trace nearly 130 km does not provide adequate opportunity for all those affected to engage in consultation about a major infrastructure project. In addition, there is no evidence that the EIA, after CEA approval and realignment to the FT, was brought to public attention other than meeting the legal requirements of a notice in the newspaper that the EIA had been approved. It is apparent that the newly-affected persons were not consulted on the FT before it was gazetted in May 2001.

117. The ADB policy requires the EIA process to involve the affected people in project design, which is similar to GOSL requirement. ADB's requirements for EIA preparation prescribes the following on the section on "public involvement":

"describe the process undertaken to involve the public in project design and recommended measures for continuing public participation; summarize major comments received from beneficiaries, local officials, community leaders, NGOs, and others, and describe how these comments were addressed; list milestones in public involvement such as dates, attendance, and topics of public meetings; list recipients of this document and other project related documents; describe compliance with relevant regulatory requirements for public participation; and summarize other related materials or activities, such as press releases and notifications." ⁴⁹

118. The 1999 EIA Report did not mention any consultations with affected people during the preparation of the study but mentioned the public meetings held in the preparation of the 1996 EIA for the OT which were in the 14 Divisional Secretariat Offices on the OT route. The CRP finds these 1996 consultations insufficient for the 1999 EIA preparation requirement of consulting with affected people. On the 1999 EIA Report, the CRP notes that there are no records of special attention given to public consultations for affected people in areas where the CT is different from the OT by 40%.

119. As required by GOSL's environmental law,⁵⁰ RDA made the 1999 EIA available for a specific amount of time at RDA headquarters and at the 16 divisional secretariat offices within

⁴⁹ *Environmental Assessment Requirements of the Asian Development Bank* dated March 1998, p. 21.

⁵⁰ National Environmental Act No. 47 of 1980.

the area affected by the highway. CEA conducted 2 public hearings, in Panadura on 3 July 1999 and in Galle on 10 July 1999. RDA received 287 comments and presented them to CEA. The CEA's TEC met to discuss the EIA report and in approving it mentioned that the total number of families to be displaced was not given in the EIA report due to lack of data; the actual social cost could not be fully estimated; and detailed information about the project should have been made available to the local people prior to the EIA.

120. In the process of complying with the CEA's conditions, the detailed design consultants were engaged to determine the FT and final alignment. In finalizing the trace, they walked along the FT and discussed with people and some Grama Niladaris of the divisions along the FT. The CRP notes that these discussions did not constitute consultations.

121. The CRP could not find any record that ADB had reviewed RDA's activities in carrying out the public consultations undertaken during the preparation of the EIA, given the level of detail required for public participation in the ADB's EIA requirements.

122. **Requesters' issue #6:** In their approval they (CEA) recommended alterations to the trace. The RDA made further alterations and is now using a trace different to that in the EIA or that recommended by the CEA. This trace is known as the FT.

123. **Finding:** Under ADB's new environment policy, an EIA is described as a project life cycle assessment process and should not cease after its approval but should continue through detailed design and construction implementation. This is especially true in the case of a road such as the STDP, which was revised several times following CEA approval. The CRP understands that some of the changes to the CT are natural consequences of final engineering design and environmental considerations.

124. **Requesters' issue #7:** The SEIA was inadequate and the SEIA presented to the Board does not cover the FT.

125. **Finding:** The SEIA Report identified the principal findings from both the 1999 EIA as submitted to the CEA and the IEE for the CT. It was submitted to the Board on 20 July 1999 to satisfy the 120-day requirement for Board consideration of the Project. The SEIA did not refer to the CT but referred to a 3-km wide corridor, which by most calculations did not cover all of the FT sections as eventually determined. The CRP does not find that the SEIA adequately served its purpose of informing the Board and others about environmental assessments of the FT.

126. CEA informed RDA of its conditional approval for the implementation of the Project on 23 July 1999, and the details of the CEA's conditional approval were received by ADB in August 1999. No updates or amendments were made to the SEIA circulated to the Board after the CEA conditional approval was given. The Board discussed and approved the Project on 25 November 1999.

127. An issue of concern is that the ADB staff undoubtedly knew about the substantial changes being contemplated by the RDA through discussions with the CEA in the EIA approval process from June to September 1999. The discussions were clearly leading to a recommendation with an agreed-upon shift of substantial proportions in the trace. The most logical reason to issue such an inaccurate SEIA 3 days before the formal receipt of the CEA's approval, would be an imperative to get the loan approved before the end of 1999. Despite the best efforts of the CRP, it has been unable to obtain an explanation as to why there was such time pressure. The CRP has received feedback from senior GOSL officials that the Project

would have avoided some of the problems feeding this compliance review if more time had been taken.

128. **Requesters' issue #8:** ADB did not assist its developing member countries (DMCs) in enhancing education, public awareness and capacity building. No such work is being done by the DMC government or agencies connected with the GOSL or ADB. Monitoring and evaluation of compliance with environmental requirements of loans were not done in construction work.

129. **Finding:** In addition to environmental assessment, OM Section 20/BP calls for the incorporation of environmental protection measures, promoting projects to enhance environment, and training ADB staff and DMC counterparts.

130. The CEA's conditional approval required RDA to forward CEA an environmental monitoring plan and that the monitoring program be implemented "as soon as possible". The SEIA Report identified the need for RDA to develop a systematic monitoring plan to address the environmental monitoring requirements presented in the report, and that the plan should provide an efficient, comprehensive, and effective convention for ensuring that construction and operation of the Project are monitored for environmental compliance.⁵¹ The ADB loan agreement specifically stipulated that the Borrower ensure that all environmental mitigation measures identified in the SEIA Report and in CEA's approval be incorporated in the project design, and followed during the construction, operation and maintenance of the Project.⁵² The CRP notes that the environmental monitoring plan issue was not addressed by ADB in its project supervision until May 2004 during the safeguard review mission. The issues of institutional strengthening and support for the EMP are addressed above.

131. **Requesters' issue #9:** No EIA is done for the Galle access road.

132. **Finding:** At the time of the completion of project documentation for Board approval, the access roads were given little attention. The SEIA Report, both in the project definition and the map of the Project, shows no access roads. When a decision was later made to include the Galle access road in the ADB loan, it was determined that, according to the CEA and GOSL regulations, it does not need an EIA because it is only 6 km long. This is below the 10-km length that CEA sets as a minimum limit for doing an environmental assessment. The Galle access road is also considered by CEA to be an upgrade of an existing road, and requires relocation of less than 100 families. However, according to others, including road engineers, the changes in alignment will be so significant that it must be considered at least in part to be a new road.

133. This access road is expressly included as part of the highway construction in the RRP, funded under the ADB section. This access road was never reviewed through an EIA, as required by ADB policy. Compliance with ADB policy therefore remains lacking.

134. **Summary:** A number of environmental policy issues are of concern to the CRP. To begin with, the Project was not designated a Category A project for purposes of environmental review until early 1999, unusual for a greenfield highway project. At that point, it became clear that the Project would require more in-depth analysis for appraisal and Board approval, with ADB committed to conclusion before the end of 1999. Nevertheless, the CRP does believe that no EIA should be accepted nor an SEIA be submitted to the Board when it was known to Management that the trace being described could vary much in the light of CEA's conditional

⁵¹ Appendix 3, para. 4.

⁵² Schedule 6, para. 9.

approval. Whatever legal or technical argument may be offered, the approach taken by Management in clearing these key environmental documents clearly violated the spirit of the OM Section 20. As a result, the time since Board approval in late 1999 has been unduly occupied with filling the gaps in the environmental and social provisions of the EIA as affected by the new trace, the final alignment, and the inclusion of the Galle access road. The EMP is only now being considered for approval, much later than allowed under the policy, with earthmoving equipment having engaged in major construction for the last year. Finally, the consultation requirements of OM Section 20 have been out of compliance since the second half of 1999, causing undue public alienation from a project that intended and could still have enormous benefits for the population of the entire region.

B. Involuntary Resettlement

135. **Policy and Operational Procedures:** The relevant policy standard for resettlement at the time of appraisal and approval can be identified in OM Section 50 (BP and OP) issued 7 January 1997, and the policy standard for social dimensions is OM Section 47 (BP and OP) issued 7 January 1997. The CRP treats them together in this part because the issues are so intertwined. In the design of the Project, ADB utilized OM Section 50 for further guidance in negotiating the loan agreement. Since the loan was not approved by the Board until the end of 1999, the borrower was aware of the expectations of the ADB with regard to involuntary resettlement, and indeed, the issue became the cause of the delay in loan effectiveness for several years.

136. The RRP recognized the challenge of this road project, cutting through an area of long-established settlements and place-based livelihoods. The potential displacement implications for both individuals and the cohesion of communities were substantial. As a result, the RRP called for a number of conditions above and beyond the standard assurances associated with such projects:

- The Government and the RDA will ensure that relocation, resettlement, and compensation of all persons who are adversely affected by the Project will be carried out in accordance with the Resettlement Implementation Plan, as agreed between the Government and Bank, the Bank's *Policy on Involuntary Settlement* and *Handbook on Resettlement*, so that project-affected persons will improve or at least maintain the standard of living they were enjoying before the implementation of the Project.⁵³
- The following principles will apply for the entitlements and compensation of project-affected persons:
 - The Government and RDA will ensure that all compensation payments will be made to project-affected persons prior to their relocation;
 - The Government and RDA will ensure that vulnerable groups, such as households headed by women, will be provided with an adequate entitlement package which will include entitlement to built housing, assistance to build housing with materials and labor, and other administrative and technical assistance as required;
 - The Government and RDA will ensure that a special compensation package is made available to untitled land users and squatters;

⁵³ RRP, para. 104 (iv).

- The Government and RDA will ensure that project-affected persons who are operating commercial enterprises are provided with an assessment of the development of small business areas with access to markets to assist them in finding suitable sites for new businesses if cash compensation alone is insufficient; and
- The Government and RDA will ensure that they will assist project-affected persons purchase land for farming and livelihoods if so required.⁵⁴
- RDA will contract with an independent monitoring agency acceptable to the Bank by no later than 30 June 2000 to supervise and monitor the Resettlement Implementation Plan. The services of the monitoring agency will extend until the completion of all compensation, resettlement, and relocation under the Plan.⁵⁵

137. The RRP identified the affected population as follows. "The Project will require acquisition of about 1,100 hectares of mainly agricultural land, and up to 800 families may need to be relocated (an average of seven families per kilometer)."⁵⁶ The RRP then went on to note that the FA had not yet been defined, and that "Because one of the primary criteria for final alignment selection will be minimizing social impacts, including resettlement, severance of communities, etc, it is anticipated that the final number of families to be affected by the Project could be substantially less than presently estimated. A resettlement implementation plan for the Bank-financed portion of the SHC, to include a complete census of affected people and lost assets, and resettlement and relocation arrangements for the affected people, will be submitted by RDA to the Bank for review and acceptance no later than April 2000. Loan effectiveness will be contingent upon the Bank's acceptance of the plan, and also upon the Government making available to RDA in its budgets for 2000 and 2001 the allocations required to implement the plan".⁵⁷

138. An attractive aspect of the presentation to the Board was the commitment of the RDA to disclose its construction plans and to consult with local populations about land acquisition processes, compensation policy, and resettlement options for the affected people. The RDA's Land Acquisition and Resettlement Division produced information about the project in booklet form for broad dissemination. As explicitly stated in the Summary Land Acquisition and Resettlement Plan submitted to the Board, "The highway's alignment selection and technical design generally will be carried out in consultation with local communities, with the objective of minimizing environmental and social impacts, the latter including the requirement to resettle local residents."⁵⁸

139. Following approval of the Project by the Board, 2 key items on loan effectiveness were specified in the draft Loan Agreement attached to the RRP: "a Resettlement Implementation Plan satisfactory to the Bank, based on a final highway alignment and detailed measurement surveys shall have been approved by the Borrower" and "funds sufficient in amount to be satisfactory to the Bank shall have been allocated by the Borrower to RDA in the Borrower's budget for Fiscal Year 2000 and Fiscal Year 2001, in order to implement the Resettlement Implementation Plan."⁵⁹

⁵⁴ RRP, para. 104 (v).

⁵⁵ RRP, para. 104 (vi).

⁵⁶ Para. 80.

⁵⁷ Para. 81.

⁵⁸ RRP, Appendix 9, para 5 (i).

⁵⁹ Loan Agreement, Section 6.01(b) and (c).

140. It should be pointed out that the parties agreed that all policies with regard to resettlement of affected residents in the ADB section would be applied equally to those displaced in the JBIC section. The CRP notes that efforts were made to bring both sections into a parallel clearance process for decisions on resettlement plans, environmental protection, and awarding of contracts. With regard to safeguard issues, some decisions have been taken independently and some collaboratively. For instance, when the RIP was formulated for the FT in 2002, the JBIC examined the RIP and found it was acceptable in October 2002. ADB subsequently reviewed the RIP in the context of effectiveness for the ADB loan and separately concurred in the Plan. Since that time, JBIC has mounted a series of independent monitoring missions, including review of resettlement issues, but has also participated in some ADB-organized missions. The role of Finnroad as the Management Consultant for both sections has probably provided some technical consistency, although its role with regard to the key resettlement and environmental issues has been limited.

141. The Requesters have made a series of allegations relating to OM Section 50/BP and OM Section 47/BP: among others, that the selection of the FT did not avoid or minimize involuntary resettlement and the option was selected without exploring all viable project options; that the payment of compensation for lands taken was not provided as described in OM Section 50 or in the RRP; that the poor conditions of the resettlement sites were in violation of policy and the RRP; and that no Initial Social Assessment (ISA) or Social Analysis was carried out for portions of the FT where it deviated from the CT. The Requesters have also alleged that restoration of income has not occurred, that the resettlement plans are not available to the public, especially in Sinhala, and monitoring is not being done as provided by policy and the RRP. Each of these needs to be examined in the context of relevant policies and the Loan Agreement.

142. **Requesters' issue #1:** The selection of the FT did not avoid or minimize involuntary resettlement, as required by ADB policy, and the option was selected without exploring all viable project options. They also claim that a potential trace that would minimize the resettlement through abandoned paddy fields for much of its length beside high-tension cables could have been used.

143. **Finding:** OM Section 50/BP para. 2 states that "Involuntary resettlement should be an important consideration in project identification. For any project that requires relocating people, resettlement should be an integral part of project design and should be dealt with from the earliest stages of the project cycle, taking into account the following basic principles:

- (i) Involuntary resettlement should be avoided where feasible.
- (ii) Where population displacement is unavoidable, it should be minimized by exploring all viable project options.
- (iii) If individuals or a community must lose their land...they should be ...(c) assisted so that their economic and social future will generally be at least as favorable with the project as without it. Appropriate land, housing, infrastructure, and other compensation, comparable to the without-project situation, should be provided to the adversely affected population...."

144. The Project has experienced several, substantial changes to the CT as outlined earlier in this report. The guidance from the resettlement policy and from the Loan Agreement was clear – to minimize resettlement in the course of choosing the FT and FA. With each change of the

trace, however, the number of families to be resettled increased. The RRP, based on the CT, estimated that 800 families (or about 3,800 people) "may"⁶⁰ be displaced. By the time the FT was established, nearly 1,300 families would have to be relocated, along with another 6,000 families "affected" and needing some kind of compensation.⁶¹ The explanation provided for the increase in displacement between the CT and the FT was the demand by the CEA that the CT would have to avoid the Bolgoda Lake and the wetlands related to Koggala Lake. It is not clear from the record that ADB ever insisted on an explicit discussion of tradeoffs between meeting the CEA's environmental demands and the policy requirements to minimize displacement. The CRP has been unable to find any discussion of tradeoffs recorded by any ADB review missions on this matter. During the CRP's visit to the Akmeemana area in April 2005, the Requesters showed to the CRP that the number of houses which will be destroyed by the FT is much higher than if the trace went back to the OT. The Requesters pointed out that instead of the final alignment going back to the mostly abandoned and unproductive fields on the OT in 1996, the FT will now go through a populated area. The CRP also notes that ADB has not provided a clear rationale to the public in the Akmeemana section for the move of the CT back to the general location of the OT in that area.

145. **Requesters' issue #2:** Resettlement compensation has been delayed and inadequate, and the conditions of resettled project affected people have worsened. The Requesters specifically allege that no land is being given to farmers to replace their lands being taken. As their land is their cultural heritage and is a major source of income and food supply to their families, the failure to provide alternate land means that appropriate land as required by ADB policy is not being supplied. They also claim that payments of compensation made to people resettled in the Matara area in March 2001 and in many other areas is not in any way sufficient to ensure their economic and social future would be at least as favorable as without the project. Many people are not even able to construct a home for themselves and are living in temporary sheds with no money to complete even a basic home.

146. **Finding:** OM Section 50/OP, para. 2 provides that involuntary resettlement should be an integral part of project design and should be dealt with from the earliest stages of the project cycle, taking into account the basic resettlement principles. The Requesters' allegations about compensation start with their concern that some farmers had not received land-for-land compensation. ADB's *Handbook on Resettlement: A Guide to Good Practice* dated 1998 is clear on this issue: "Cash for land acquisition has never been a satisfactory mode of compensation if it is not paid at replacement values. There is also the risk that the APs might spend their cash quickly and become impoverished, or that women's and children's subsistence needs might not be met if cash compensation is paid to the head of the household. In many cases, land-based resettlement programs work better than non-land options. Where there is insufficient replacement land of reasonable quality, income-generating and retraining schemes may be suitable alternatives. The aim is to establish multiple options to enable APs to select the best option to restore their lost incomes."⁶²

147. According to the Social Impact Assessment,⁶³ agriculture is the predominant activity in the project area. 13% of the farmers have total land areas of less than 40 perches (about 1,000 sq. m.) and 23% of properties range in area from 41 to 80 perches. More than one-third of properties cover between 81 perches and 1 acre (about 4,000 sq. m.). 27% are large properties between 1 and 4 acres. According to officials and affected people interviewed by the CRP, there

⁶⁰ Para. 80.

⁶¹ Draft Safeguard Report of 1 February 2005, Annex 1, pp. 34-35.

⁶² ADB. 1998. *Handbook on Resettlement: A Guide to Good Practice*. p. 6.

⁶³ WSA. November 2000. *Social Impact Assessment, Updated Report*, para 2.2.13.

is no natural "replacement land" in terms of area, fertility and location. The people, in most cases, wish to stay in their community, and they then sort out their preferred options for land, livelihood, and housing. The vast majority of families in that situation opted for cash compensation instead of the RDA resettlement sites (226 out of 1,294 families chose these sites). As is typical with such projects, the RDA was tasked with answering complaints with regard to compensation as they arose in the course of resettlement. The implementing agency is tasked by the policy to offer the affected people an option to receive either land or cash without biasing them in one direction or the other. Here the history of resettlement and compensation in Sri Lanka needs to be noted. GOSL itself acknowledges that the history of compensation for affected families is one of disappointment and frustration. Prior projects have prompted claims that remain unsettled for decades. In this case, then, the fact that the authorities appeared to be shifting to both generous and relatively prompt cash compensation undoubtedly encouraged affected people to choose that option.

148. ADB heads of departments appear to have been misinformed by their own staff, in some cases, about problems in the compensation area. The Back-to-Office Report (BTOR) of a multi-project review in November 2003 included the statement that "the EA has established an excellent rapport with APs and the progress in paying compensation and Land Acquisition and Resettlement Committee (LARC) payments to APs is satisfactory."⁶⁴ A contrary, warning signal had been hoisted just months earlier, when a review mission in September 2003 noted that "The Mission found that there were conflicting views between the supervision consultants and the management consultants regarding the progress of land acquisition and resettlement."⁶⁵

149. In fact, the problems with compensation may have been alleviated somewhat through the establishment of LARCs in 2003, but the program could not yet be called "successful". The LARCs were intended to speed up the process and generally resulted in awards being higher than that required under standard legislation.⁶⁶ If agreement could not be reached at the LARC, affected people could appeal to a higher Committee, or separately to the Grievance Redress Committees (GRCs) which were supposed to be established in late 2003. This Project ushered in a new approach for resettlement in Sri Lanka, with more generous compensation, described as "replacement cost for assets" instead of the depreciated market value as prevailed before, and was then combined with the frequent generosity of the LARCs when valuations were appealed. This has resulted in much larger awards than might have ever been seen before.

150. The more routine grievances, generally associated with construction damage, were supposed to be handled by the GRCs, but following a decision to establish them, virtually nothing happened, according to the Management Consultant reports. Even in 2005, ADB oversight was still ineffective in stimulating the operation of the GRCs, and with construction gearing up, the inventory of complaints was sure to grow. A second problem is that compensation has sometimes been delayed. Despite the emphasis in the Loan Agreement that adequate funds be allocated by GOSL to RDA in GOSL's budget to implement the RIP, ADB did not adequately press GOSL to make available adequate funds for compensation on a timely basis. As recently as 2004, ADB reminded the Ministry of Finance that adequate funds were not made available. In May 2004, it was estimated that while the Treasury had paid up SLR1,838.90 million (about \$19 million) for such purposes, in fact another SLR2,055 million (about \$21.4

⁶⁴ BTOR dated 8 January 2004, Resettlement Review Mission in India and Sri Lanka conducted 14-30 November 2003.

⁶⁵ BTOR dated 30 September 2003, STDP Review Mission, 17-18 September 2003.

⁶⁶ BTOR dated 1 February 2005, Annex 1, p. 33.

million) was required for that year.⁶⁷ It is unlikely that the Project was ever brought into compliance on the timely compensation issue.

151. **Requesters' issue #3:** Resettlement sites have not been ready for those displaced, especially in terms of infrastructure such as roads and water.

152. **Finding:** The ADB's *Handbook on Resettlement: A Guide to Good Practice* dated 1998 cites the need to "ensure that relocation sites are completed with all amenities before any relocation takes place."⁶⁸ This Handbook goes on to say that "all relocation must be completed one month before construction commences."⁶⁹ It is evident that this requirement was not met. Some affected families, especially the landless, apparently moved precipitously to their resettlement parcel of land before the sites were considered ready, in part to use the additional compensation offered by RDA so as to avoid renting a house. The CRP understands that other affected families who chose the RDA resettlement sites had no choice but to move in prematurely, given the start of construction, the scarcity of rental space in the area, and their desire to live as closely as possible to their home villages.

153. A literal reading of the policy would suggest that the onset of road construction could not have occurred without completion of the resettlement sites. That was made more difficult here owing to the decision of the RDA to undertake the construction of the resettlement villages themselves, or to let the affected people construct their own houses, instead of contracting out the whole process. One also has to keep in mind the arduous permitting process required for installation of any central services, such as electricity. Closer supervision of RDA's resettlement sites might have prevented this element of the process from falling out of compliance. Nevertheless, the CRP is persuaded that RDA is making an effort at the current time to close the gap between promise and reality in the resettlement sites.

154. **Requesters' issue #4:** No Initial Social Assessment (ISA) carried out for resettlement in areas where the FT deviated from the CT. No social analysis was carried out since no ISA was done. The Resettlement Plan attached to the RRP does not cover the FT. The Requesters further allege that those resettled appear to be considerably worse off, even those over a year after being resettled.

155. **Finding:** OM Section 50/OP para. 1 provides that an initial social assessment (ISA) is required for every development project in order to identify the people who may be beneficially or adversely affected by the project. Para. 2 goes on to say "If the ISA identified that resettlement is likely to be involved in the project, a resettlement plan should be prepared preferably in conjunction with preparation of the project feasibility study. Resettlement plans should be built around a development strategy; and compensation, resettlement, and rehabilitation packages should be designed to generally improve or at least restore the social and economic base of those to be relocated."

156. In OM Section 47/BP para. 4 states that "reviews will be undertaken during the initial years of project implementation, particularly where significant social dimension aspects form part of the project, to assess the participation of stakeholders (including beneficiaries), improve the absorptive capacity of target groups, and mitigate adverse effects on vulnerable groups." Para. 5 states that "The process of identifying potential beneficiaries and people likely to be adversely affected will start right at the stage of project identification and will continue with more

⁶⁷ Minutes of the STDP Coordinating Committee Meeting #37, 27 May 2004.

⁶⁸ p. 59.

⁶⁹ p. 57.

and more refinement in the succeeding stages of project processing. Also, analysis will become more focused on key social aspects at successive stages." Para. 6 states that "an Initial Social Assessment (ISA) is required for every development project in order to identify the people who may be beneficially and adversely affected by the project. It should assess the stage of development of various subgroups, and their needs, demands, and absorptive capacity. It should also identify the institutions to be involved in the project and assess their capacities. The ISA should identify the key social dimensions aspects (such as involuntary resettlement, indigenous peoples, poverty reduction, and women in development) that need to be addressed under the project. The ISA should be undertaken as early as possible in the project cycle, and preferably by the time of fact-finding for a PPTA or other project preparatory study."

157. It is important to be clear which documents have not been produced and what impact that may have had. The ISA called for in ADB policy, in this case called an Initial Social Impact Assessment (ISIA), was produced in March 1999 by WSA as part of the preparatory work. It compared the impacts of four different traces, including both the OT and the CT. Judging by its analysis of the resettlement impacts, the project developers could justifiably choose the CT as the route impacting the fewest families. When, during CEA review of the EIA but before Board approval, the CT faced significant alteration, there is no evidence that ADB staff pressed for a revised ISIA that would include the trace requested by the CEA among the options. Instead, the FT was adopted without conducting the consultations and analysis characteristic of the process required by ADB policy for an ISA.



A house under construction at an STDP resettlement site.

158. It should also be remembered that the 1999 ISIA did not cover the Galle access road at all, since it was not part of the Project in early 1999.

159. **Requesters' issue #5:** The Social Impact Assessment (SIA) has not been completed for the FT, and thus ADB failed to incorporate social dimensions in the project. The Requesters specifically allege that many of the affected persons along the Southern section to suffer harm are women, children and old people, including the destruction of their homes, the failure to supply accommodations of any kind or give compensation.

160. **Finding:** OM Section 47/BP, para. 2 provides that it is ADB's policy to focus on people in its development efforts by giving specific consideration to social dimensions such as enhancement of the role of women in development and avoiding or mitigating the adverse effects of development on vulnerable groups. OM Section 47/BP, para. 3 provides that ADB will

seek to help the poor in DMCs by providing improved access to water supply, sanitation and to promote activities and policies that help women develop their potential, and increase their productivity and their share in the rewards of development.

161. The University of Colombo carried out the first SIA for both the ADB and JBIC sections in March 1999, implementing a survey of 50% of households along the CT. When the alignment changed substantially for 41% of the highway, RDA realized they needed a revised SIA, and turned to WSA in 2000 to update the 1999 survey along the ADB section as well as for the Galle access road. The survey was carried out in May-August and delivered in November 2000.⁷⁰ The resulting report was a combination of sections from the 1999 report combined with new survey results from WSA for selected portions of the new alignment. Also in the JBIC section, a socio-economic study was made as part of the E/S loan. The process was thus brought into compliance.

162. **Requesters' issue #6:** No consultation was done at the stage of project identification or planning for those affected on the FT. More than 18 months after the decision on the trace was taken, some of the affected persons were told that they would have "to lose their land and houses." They were told not to complain as this was of no use. Others were not told at all.

163. **Finding:** OM Section 47/BP, para 4(i) states that ADB will encourage a sense of ownership of ADB-assisted projects on the part of stakeholders (e.g., beneficiaries, the DMC government, the executing agency, and the people adversely affected by the project); this sense of ownership will be facilitated by adopting a participatory development process in which the 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, beginning with project identification; etc.

164. It is difficult to be precise about the degree of information shared and understood on both sides. When CEA was involved, especially in reviewing the EIA in 1999, some public meetings were organized. By July 1999, with that approval in hand, the GOSL completed its consultative process, and then only implementation remained. Likewise, on the ADB side, the issuance of the SEIA in July 1999 and the completion of the Board preparation documents marked the end of its principal public consultations and the CRP finds that the public consultations on the FT for areas not covered by the CT to be inadequate. Formal consultation with the communities clearly declined. At the same time, the hostility of some of the additional families affected by the FT did not facilitate the process of consultation, and growing mutual distrust eroded the goodwill generated by the participatory approach taken before July 1999.

165. **Requesters' issue #7:** The Requesters specifically allege that gender analysis has not been done. No review has been done to assess participation of stakeholders taken during initial years of the Project. Potential beneficiaries and people likely adversely affected have not been identified at the correct time.

166. **Finding:** OM Section 47/BP, para. 4 (ii) provides that ADB will conduct gender analysis that will identify the obstacles, if any, faced by women in benefiting from development activities that are supported by ADB; and design these activities so that these obstacles are mitigated or removed; and para 4(iii) provides that ADB will conduct, where necessary, 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.

⁷⁰ WSA. November 2000. *Social Impact Assessment Updated Report*.

167. Para. 7 of OM Section 47/OP goes on to say that "In cases where the ISA reveals that social dimensions and the associated processes are likely to be important, the PPTA or subsequent project preparatory study will be formulated to include the conduct of a social analysis. The Social Analysis must examine all socioeconomic facets that may be important for determining the scope and content of a project and for determining the appropriate implementation arrangements."

168. The issue of gender analysis as a stand-alone issue is addressed below. More generally, after the determination of the FT, the project consultants were asked to "update" the SIA for the ADB section. Additionally, in the ADB section the householders along the 5-km Akmeemana section refused to cooperate and so the updated SIA lacked essential household data. Their refusal to respond to the SIA survey resulted in part from a collapse of consultation over the shift from the CT to the FT, which was known to some residents in the Bandaragama area who might be affected by the Project as early as July 1999 and to others at a later date. The relationship between the project affectees and the Project precipitously declined thereafter.

169. **Requesters' issue #8:** Most resettled people are being reduced to poverty. Some have improved, but this is the minority. ADB policy requires affected people to be individually compensated before civil works contracts are awarded or similar milestones occur. Nearly 50% of those due for compensation are not still compensated more than 1 year after the contracts were awarded.

170. **Finding:** The Loan Agreement in Schedule 6, para. 13(a) states that the "Borrower and RDA shall ensure that all compensation payments and all entitlements not related to compensation payments shall be made to Project affected persons prior to their relocation." The Loan Agreement also states that the "Borrower and RDA shall ensure that relocation, resettlement and compensation of all persons who are adversely affected by the Project or who will be relocated as a consequence of the Project (Project affected persons) shall be promptly and efficiently carried out in accordance with the Resettlement Implementation Plan, as agreed between the Borrower and the Bank, the Bank's Policy on Involuntary Resettlement, and the Bank's Handbook on Resettlement dated 1998, such that Project affected persons will improve or at least maintain the standard of living they were enjoying before the implementation of the Project."⁷¹

171. The development purpose of the resettlement policy is to ensure that affected families reach at least restored, and preferably improved, standards of living relative to their former lives. One element of this policy provision is uncontested – one must have reliable data about the affected families before they move in order to measure their income restoration later. Clearly, the failure to conduct a timely social survey impairs the ability of monitors to conduct an authoritative review of this issue. Some argue that GOSL has not met the ADB's requirement to create an adequate data system constructed to monitor each family, although measures are now being taken to establish a viable MIS for implementing this program. As of the writing of this report, the MIS is still dysfunctional. The attempts by RDA to organize an adequate MIS have now been abandoned, as of late 2004, and complete responsibility handed over to the Management Consultants. They are now hiring new staff and putting a new system in place.⁷² On the other hand, interviews reveal that to some degree the system of field-based resettlement assistants has allowed RDA and the PMU to have some degree of knowledge, possibly

⁷¹ Schedule 6, para. 12.

⁷² Finnroad, External Monitoring of Land Acquisition and Resettlement, Monthly Report No. 21 – February 2005, dated 7 April 2005, pp. 9-10.

anecdotal, about those families failing to make the transition to sustainable restoration of income. The CRP understands that most of the resettlement assistants have now left RDA having completed their time-bound assignment to facilitate the move of affected people to other sites by the end of 2005.

172. The second element of this issue – actual programs for restoration of income – has encountered greater delays. The RIP spoke of training programs for skill development, small business development, women's development and public service development. The approach of OM Section 50 to resettlement as a "development process" drives the need for these training and income restoration programs. If the approach is not incorporated early in the project, it will never have the impact desired by the policy, and yet, by 2004, virtually nothing had been done to put these development programs in place. According to the most recent monitoring report, the income restoration program was belatedly launched in November 2004, with discussions of needs with various groups of affected people. Some important additional steps have not been taken, e.g., more extensive employment of APs by the contractor, launch of training courses, and most importantly, the completion of a full income restoration plan that would trigger the mobilization of institutional resources to implement programs in the communities.

173. **Requesters' issue #9:** Long after the policy came into effect and resettlement commenced, the RIP is still not available. In 2001, the RDA stated in a letter to ADB that a Sinhala version was available at every Divisional Secretary's Office. In June 2004, RDA promised that the RIP would be available in Sinhala at all Divisional Secretary's Offices within one month. It is still not available 5 months later.

174. **Finding:** OM Section 50/BP states that "The affected people should be fully informed and closely consulted on resettlement and compensation options. Where adversely affected people are particularly vulnerable, resettlement and compensation decisions should be preceded by a social preparation phase to build up the capacity of the vulnerable people to deal with the issues. Social preparation would also be necessary to obtain cooperation for the project to proceed in cases where there is likely to be significant social resistance."⁷³

175. Lack of availability and accessibility of key documents undermines essentially all other aspects of the Project. Its importance cannot be overstated, especially the fact that the most important documents for the affected people might have been available in English but certainly not in Sinhala. If the trace had remained in the status described in the RRP – subject only to minor changes of a final alignment – compliance could have been assumed. Unfortunately, this time period coincided with the shift to the FT, which in large sections of the road, involved entirely new cohorts of families who thought they would be untouched by construction. The numerous changes of the trace over the years did little to reduce public confusion.

176. Since the definitive word on the FT could only be when the government gazetted the FT in May 2001, it can safely be said that at that time all affected families realized they were to be impacted. ADB and RDA did not post the RIP on their websites until May 2004, and even now, there is no link from the project web page to the RIP, forcing readers to know they have to locate the topical page for involuntary resettlement where the STDP plan is indexed. The CRP understands it was not until October 2004 when RDA distributed 200 copies of the Sinhala translation to divisional secretaries and RDA project offices. One can conclude that the lack of compliance has occurred since 1999 at 2 levels: ADB has not assisted RDA in making adequate

⁷³ Para. 2(v).

information available to the affected people; and ADB itself has violated the disclosure policy and staff instructions on disclosure of Resettlement Plans⁷⁴ for much of the period since 1999.

177. **Requesters' issue #10:** Monitoring is not being done and ADB is not ensuring compliance with the involuntary resettlement policy.

178. **Finding:** The Loan Agreement states that "RDA shall execute a contract with an independent monitoring agency acceptable to the Bank by no later than 30 June 2000 to supervise and monitor the Resettlement Implementation Plan, including grievance procedures and resolution of disputed claims for compensation, under terms of reference prepared in accordance with the Bank's Handbook on Resettlement and acceptable to the Bank. The services of such a monitoring agency shall extend until the completion of all compensation, resettlement and relocation under the Resettlement Implementation Plan."⁷⁵

179. The issue of monitoring (and more broadly, supervision) arises across most of the issues raised by the Requesters above. The CRP recognizes the supervision challenge in this Project. The Project, as negotiated between ADB and the Borrower raised the bar substantially on resettlement standards. The frequent references in the RRP and the Loan Agreement to full compliance with OM Section 50 and the ADB's *Handbook on Resettlement: A Guide to Good Practice* dated 1998 convey the commitment by both parties to an impressive new age in the quality of resettlement – to create a new "gold standard" or Sri Lanka and potentially for the South Asian region. Having set out such ambitious and laudable goals, however, the CRP has to conclude that ADB was not sufficiently serious about actually implementing those provisions. Adequate monitoring and supervision in this case would have required far more than the usual drill.

180. One central aspect of successful management of the RIP, for instance, was the appointment of an independent monitoring agency to report on the completion of tasks as noted above. Initially, RDA did achieve compliance with the Loan Agreement on this issue by naming a local firm as such a monitor. By 2002, however, the RDA cited inadequate performance, and with ADB's agreement, did not appoint a new independent monitoring agency. Instead, RDA appointed, with ADB's agreement, Finnroad, the Management Consultant for the Project to simultaneously serve as "monitor". While the Management Consultant firm may have hired a qualified individual for the monitoring activity, his impact on the project would only last as long as he was there, when in fact the idea of an independent agency was meant to provide lessons and precedent for future projects as well. This decision by ADB was a retreat from the vision of a new, higher standard of resettlement laid out in the RRP. It was also a violation of the ADB Loan Agreement, and ADB staff agreement to the move in the February 2003 Review Mission does not offset the mistake made.

181. The CRP finds it difficult to understand how ADB could have agreed to the Management Consultant as the equivalent of "independent external agency" when its client is RDA and without taking any affirmative action in remedying the absence of third-party monitoring as required under the Loan Agreement. The extent of the mistake became clear by March 2004, when the Management Consultant submitted a report describing the resettlement process as a "success" thus far.⁷⁶ It is not the job of the independent monitor to be reassuring to the implementing agency. The fact that the Management Consultant (also serving as independent

⁷⁴ Memo from Vice-President (East) and Vice-President (West) to ADB staff on Disclosure of Resettlement Plans dated 3 November 1999.

⁷⁵ Schedule 6, para. 14.

⁷⁶ Finnroad, Land Acquisition and Resettlement External Monitoring Report No. 10, March 2004, p.3.

monitor) could come to such a conclusion when other staff reports were increasingly disenchanted with RDA performance indicates why the earlier agreement was such a mistake. The CRP has been informed by Management's response to its Draft Report that ADB will engage a third party external monitor or a possible solution of conducting independent audits of resettlement monitoring, funded by an Advisory Technical Assistance, so that reporting would be directly to ADB. The CRP notes that this suggestion is at variance with the original project design of RDA appointing and dealing directly with the independent monitoring agency and of enhancing RDA's institutional capacity to implement the Project.

182. **Requesters' issue #11:** Loan covenants in Schedule 6 of the Loan Agreement are being violated, and ADB has not monitored the loan covenants, especially those on resettlement.

183. **Finding:** OM 40/BP titled "Formulation and Implementation of Loan Covenants" states that "the general approach to noncompliance will be to seek corrective measures in order to attain the objectives of the project."⁷⁷ The substantive violations of the covenants cited in connection with this policy are the same issues already treated above. The additional relevance of this policy lies only with regard to remedies, and whether ADB is carrying out its responsibility to enforce the covenants in its loan agreement. While OM Section 40 provides the option of suspending or terminating a loan operation for violation of covenants, the provision cited above illustrates the general approach taken by ADB to violations, i.e., to bring the Project back into compliance. There is no automatic invocation of particular remedies under this policy, leaving ADB with the discretionary judgment to apply the provisions as it sees fit. At the same time, the policy makes clear the requirement that ADB staff do everything in their power to maintain compliance with all policies through the use of specific covenants, and there is no doubt that the substantial lapses on resettlement policies in certain time periods suggest staff did not pay adequate heed to the norms established in OM 40.

184. **Summary:** Compliance on issues of resettlement and social impacts needs to be differentiated by each stage of the Project. At the time of loan approval by the Board in 1999, the Project appears to have been in compliance, if one allows for a gross underestimate of the number of families to be relocated and affected by the Project. The estimate may have been the best that could be provided from aerial mapping of the CT, but the resulting dramatic rise in the number of APs reinforces the conclusion that the Project suffered from being rushed to approval before the FT was set and preliminary and detailed engineering work done. Following loan approval, the lack of compliance becomes quite stark. With the designation of the FT and the FA determined in response to various forces including the CEA's conditions, Management and staff lost their focus on maintaining compliance with resettlement policies. The arduous work of negotiating the FT included too little attention to minimizing resettlement, and almost no attention to public consultation, a core aspect of OM Section 40. Only when the APs began to complain did ADB Management and staff make some efforts to bring it back into compliance, with limited progress in the 2004 period. It would be difficult to portray the Project as in compliance at this point, given the lapses that occurred earlier that are difficult to redress, e.g., removal of families before resettlement were prepared with utilities or full compensation had been paid.

C. Governance

185. **Policy and Operational Procedures:** ADB considers governance in the context of management of the development process. The relevant governance policy is imbedded in OM

⁷⁷ OM Section 40, issued 12 December 1995, para 5.

Section 54 issued 13 January 1997.⁷⁸ It defines what governance means for ADB, identifies elements of good governance, and indicates ways in which ADB will address governance issues in its developing member countries. The OM Section, however, is not clear on project-specific applications and what specific acts or omissions would constitute violations of this OM Section.

186. Governance is defined as "the manner in which the power is exercised in the management of a country's economic and social resources for development." Governance is also related to the effectiveness of use of development assistance, impact of development programs and the absorptive capacity of borrowing DMCs.

187. Accountability, participation, predictability and transparency have been identified by ADB as mutually reinforcing elements of good governance as follows:

- (i) Accountability makes public officials answerable for government behavior and responsive to the entity from which they derive authority.
- (ii) Participation recognizes that people should not only be informed, but also be granted a real possibility to affect the outcome of a project or a development process. Activities of NGOs and community groups offer complimentary means of channeling the views of private citizens.
- (iii) Predictability refers to the ability of people to understand and anticipate certain events and decisions that are based on existence of laws, regulations and policies to regulate society and ensure their fair and consistent application.
- (iv) Transparency refers to the availability of information to the public and clarity about government rules, regulations and decisions. ADB encourages disclosure of information in general and that information on ADB assisted activities are disseminated widely to the public at large.

188. Governance as described above offers little guidance on project specific requirements. Although the Requesters have alleged many governance related policy violations they can only be reviewed within the general context described in the OM Section 54/BP.

1. Governance issues before and after Board Approval

189. The executing agencies for the Project were for the Southern Highway Component, RDA and for the Road Safety Component, MOH. Part of the Project included management assistance for coordination, for developing an approach to managing, operating and maintaining the highway after its completion and for a reform program to be developed.

190. In the period of 1995 to 1999, ADB approved a number of small-scale TA projects to examine contract approval procedures and formulate recommendations improving procurement and project implementation performance.⁷⁹ This assistance would benefit all externally financed projects, including the proposed STDP and ultimately all government financed projects. In addition to the above mentioned initiatives, ADB has also engaged in a dialogue with the GOSL on a number of significant policy issues such as the National Highways Act, improving the efficiency of road sector agencies, a national road policy and the maintenance of the road network.

⁷⁸ OM Section 54 has only a Bank Policy (BP) part, but no Operational Procedures (OP) part to operationalize the BP part.

⁷⁹ TA 2433-SRI: Improvement of Contract Approval and Implementation Procedures; TA 2950-SRI: Establishment of Sri Lanka Tender Support Bureau; and TA 2745-SRI: Improvement in Project Implementation in Sri Lanka.

191. An important part of the Project was to assist the GOSL to strengthen its capacity for policy analysis, formulation and management. In preparation for the Project, a number of studies were initiated and several alternatives for the new highway were discussed. Disclosure of information and participation requirements of ADB related to specific policies is discussed especially in the chapters on environment and involuntary resettlement above. The public information in several of the studies and processes related to the change of traces left much to be desired.

2. Issues raised by the Requesters

192. The Requesters' allegations are reviewed within the main elements of ADB's policy on governance. The OM Section acknowledges that these governance elements are complementary and mutually reinforcing.

(i) Accountability

193. **Requesters' issue:** Senior RDA officials are neither accountable nor responsible for actions that they are taking. The Requesters further allege that ADB did not focus on public sector management (i.e., the overall functioning of Government including line ministries, departments and agencies).

194. **Finding:** The CRP is not focusing on government actions. The lack of specificity in the allegation makes it difficult for the CRP to make a judgment on whether ADB has done enough to assist government officials to improve accountability under ADB operations. ADB has over the years made considerable efforts to assist the GOSL to improve the effectiveness of government institutions and their responsiveness to the public at large, and specifically to people negatively affected by ADB-assisted projects. This is especially true in the area of compensation for land acquisition under the STDP resettlement scheme. As described above, ADB provided substantial assistance to public sector management over a number of years.

(ii) Participation

195. **Requesters' issue:** The Requesters allege that paragraphs 7, 8 and 15 of the OM Section are violated as the GOSL and ADB have failed to secure a meaningful participation in the Project by the affected people. They further allege that no attempt was made to use local NGOs to establish an optimal trace and that representatives (JO) as NGOs receive no recognition from the RDA nor any attempt at any discussion was made with JO or their constituent NGOs and there is a lack of support for cooperation with NGOs. The participation violations are claimed are understood to refer specifically to the following:

- (i) RDA has supplied only some blue leaflets outlining the compensation package in very general terms;
- (ii) RDA held only 2 meetings in Bandaragama with the affected persons after the initial announcement in February 2001, the second was in August 2004; and
- (iii) CEA had 2 public meetings along a stretch of 128 km for discussions regarding the expressway. Notices were published only in Government-controlled newspapers. People who were to be affected were not invited. All those present were from the CT which was not being used.

196. **Finding:** It is the view of the CRP that the initiative to produce a leaflet in a simple language to affected people was a good one. CRP members examined a copy of the leaflet

during their field visit and found the tone more promotional of the highway and its purported benefits and less focused on the rights of those to be affected. Beyond that, CRP is of the opinion that the active participation and involvement of affected people and NGOs have been less than what is prescribed in several ADB policies. The GOSL made extravagant commitments in this regard. In the Resettlement Plan of July 1999, the GOSL said that "A public information campaign and consultative process in the Project area started in March and will be ongoing throughout the implementation phase. ... RDA-LARD will also involve APs and other affected people in meetings to jointly make decision regarding selection of resettlement sites and to refine income restoration programs. In sum, all resettlement activities throughout the Project area will be carried out with the participation of the affected people and communities."⁸⁰ CRP considers raising expectations in this way, and then omissions by ADB staff to advise the GOSL of obvious shortcomings in meeting them, to constitute a breach of compliance with other ADB policies and procedures, which are more specifically addressed above.

(iii) Predictability

197. **Requesters' issue:** The affected people were informed about the FT long after the trace was decided.

198. **Finding:** The CRP agrees that ADB has a responsibility to assist the borrower to ensure that people are informed and are given a possibility to present their views before issues are decided upon. Such decisions should be predictable in the sense that they should derive from clear laws, rules or guidelines that are accessible to the public.

(iv) Transparency

199. **Requesters' issues:** Requesters claim that the availability of information from the RDA and CEA has not been up to even the lowest standard of disclosure. More specifically the Requesters claim that:

- No Resettlement Implementation Plan (RIP) has been available from government institutions and that only one copy has been supplied by ADB;
- The CEA letter on approving the highway had to be specially requested; and
- The Resettlement Implementation Plan was not available in Sinhala in any place, including the RDA head office.

200. **Finding:** The information received by CRP, on the availability of the RIP, during its field visit was in line with what is alleged by the Requesters. This issue is discussed in the chapter on involuntary resettlement and it is clear that ADB staff had a responsibility to assist and guide the GOSL to disclose plans and decisions that are directly affecting people and provide a possibility for them to engage and have a say in the process that affects them directly, especially since the GOSL's own document indicated a commitment to do so. Also during the field visit, CRP was assured that the decisions from the CEA were public and accessible to any interested party. On the issue of translation in Sinhala, it is a clear policy requirement that affected people should be fully informed and closely consulted meaning that the RIP should be available and in a language that the affected people can understand. It is CRP's understanding that the translations came late and had a limited circulation.

⁸⁰ RDA. July 1999. *Resettlement Plan*. p. 29.

201. **Summary:** The general nature of OM Section 54 does not provide a simple standard for determining compliance. As a result, in the discussion above, the CRP has provided instances of where ADB could have paid more attention to maintain compliance with this OM Section. But the CRP believes that the most critical parts of OM Section 54 are covered in OM Section 20 and OM Section 40, especially with regard to transparency and participation. In each of those discussions, we have noted specific instances of non-compliance that caused damage to the Project.

D. Economic Analysis

202. **Policy and Operational Procedures:** Economic analysis of projects are carried out prior to their financing and when necessary throughout the project cycle. The relevant policy requirements can be found in OM Section 36 (BP and OP) issued 12 November 1997.⁸¹ Economic analysis seeks to promote the best use of a country's resources, consistent with national and sector development goals. The analysis attempts to determine whether a particular project provides an acceptable level of economic benefits relative to economic costs. For the full economic net benefits to occur, financial sustainability must be assured.

203. The OM Section 36/OP explains that economic analysis of projects cover the following steps: (i) assessing the rationale of the project; (ii) defining project objectives; (iii) forecasting effective demands for project outputs; (iv) choosing least-cost design for meeting demands; (v) determining whether economic benefits provide an adequate return on economic costs; (vi) assessing whether the project's net benefits will be sustainable throughout the life of the project; (vii) identifying the distribution of project effects; and (viii) enumerating the non-quantifiable effects of the project that may influence project design and the investment decision.

204. When new guidelines for economic analysis were made in 1997, greater emphasis was given to projects producing outputs that meet people's needs directly and the realization that economic benefits of projects would not fully materialize unless attention is paid to cost recovery and financial sustainability, to environmental effects and to the distributional effects of projects.

205. As in any project proposed for ADB financing, this Project was evaluated on the basis of best information available and under circumstances prevailing at the time of appraisal. Under those circumstances, the CT had been adjudged to be the most appropriate trace for the Project after evaluating it against other feasible options. The RRP and the analysis embodied therein were thus based on the CT as the intended configuration of the Project. Consequently, it was expected at the time of project approval that the Project was to be implemented with CT as the basis for establishment of a more precise alignment of the highway.

206. In the course of project implementation, GOSL decided to undertake deviations from the CT, justifications for which are explained above. It is this subsequent deviation of FT from CT, and actual conditions that have prevailed thereafter, that the Requesters contend has led to violations of OM Section 36.

1. Economic Analysis at the time of Project Appraisal

207. The CRP has discussed with the Requesters, GOSL representatives, and ADB staff on the economic analysis. The CRP has engaged a consultant to assist it in carrying out its investigation on the issues relating to economic analysis, including the economic analysis based

⁸¹ This OM Section is based on ADB's *Guidelines for Economic Analysis of Projects* of February 1997.

on the CT as summarized in the RRP. Based on these technical inputs and the discussions above, the CRP is of the view that this economic analysis was properly executed and done with due diligence. The thoroughness with which the various components of the economic analysis were undertaken is evident from the available documentation, including the feasibility study undertaken under TA 2892 SRI. The feasibility study went through a rigorous review process that considered detailed comments from GOSL and ADB. The various comments were adequately addressed by ADB consultants, in some cases leading to revisions/additions to the analysis. Beyond this, the economic analysis was further subjected to review by the ADB loan fact-finding mission and a subsequent peer review, lending strong credence to the final assessment of quantifiable costs and benefits of the project. Thus, the result of the economic analysis summarized in the RRP indicating an Economic Internal Rate of Return (EIRR) of 14.5% and Net Present Value (NPV) of SLR1,474 million (about \$14.7 million) was treated with reasonable confidence. The sensitivity analysis further indicated that these results are fairly robust, with the Project remaining economically viable even with cost increases of up to 25% or reduction in benefits of up to 20%.

208. As with most major road projects, the quantitative assessment of benefits from the project captures an incomplete picture of the total economic benefits to be derived from it, and therefore understates the full economic benefits from the Project. It is clear that the Project's benefits go beyond the quantifiable benefits measured in the evaluation, which are confined to transport cost savings based on reduced vehicle operating costs, reduction in cost of road accidents, and benefits from newly generated traffic as a proxy, albeit an inadequate one, for economic development benefits. The economic development benefits – i.e. the generation of new livelihoods and employment from increased economic activity expected to be spurred by the new highway – are the primary justification for the project by the GOSL. While difficult to quantify with any degree of precision and therefore usually excluded from the quantitative benefit assessment, these un-quantified benefits are nonetheless expected to be substantial. It is to be noted that, on the one hand, these economic development benefits are likely to be greater the farther inland the highway is located. On the other hand, the fact that it is a limited access highway reduces the spontaneous development impact along the road. In any case, the EIRR of the Project as assessed in the RRP would have been higher had it been possible to more fully quantify the economic development benefits to be expected from the Project.

2. Economic Analysis at the time of Board approval

209. Under ADB policies, it is essential that the Board be provided with accurate, adequate information about the economic analysis at the time of approval. A contention of policy violation at the Board approval stage, might be valid under two conditions: (a) that the GOSL decision to deviate from CT could have been anticipated by ADB staff before the Project was presented to the Board, and (b) that the shift to FT or a configuration reasonably close to it, would have substantially changed the basis for the economic analysis, being one of the key factors for the Board to consider.

210. Documentation and discussions with representatives from the GOSL, consultants and staff reveals that ADB staff was aware that changes in the alignment of the Project would be made before the Project was presented to the Board.

211. Precise calculations of return on investment arising from a shift to the FT are not available. However, the original economic analysis was undertaken for alternative scenarios/traces whose location largely covered the configuration of the FT. Also, ADB's prior assessment results of the Project make it possible to reasonably infer what the result would be if

the Project based on the FT were subjected to an economic analysis. Given information available prior to the RRP, the Project based on FT would have satisfied the minimum economic criteria of an EIRR of 12% and a positive NPV, and thus would have been accepted. Thus, even if a shift to FT had been made at the time of Board approval, the Project would have still passed the requirements of standard economic analysis in accordance with OM Section 36.

212. OM Section 36 says that "Economic analysis of projects are carried out prior to their financing and when necessary throughout the project cycle." As no updated analysis was made prior to or since Board approval, regardless of knowledge of a change in alignment, the CRP assumes that such an update or new analysis was not regarded as necessary by Management.

3. Economic Analysis at the time of Project Implementation

213. Recent information indicates substantial increases in construction, land acquisition and resettlement costs of the Project. The Table below summarizes how total project costs and resettlement costs have changed since the time of the original feasibility study undertaken by WSA in 1988. The numbers of persons, households and structures affected have also dramatically increased, especially upon preparation of the RIP. Thus, as of October 2002, the RIP indicated a total project cost of \$323 million (SLR31,008 million under the prevailing exchange rate),⁸² with a rupee cost almost 50% higher than what it had been estimated to be at the time of ADB approval in late 1999 (\$295.9 million or SLR21,097.7 million at the then prevailing exchange rate).⁸³ Resettlement costs had more than doubled from what was assumed in the RRP. Resettlement costs accounted for 9.2% of total project financial costs as of the October 2002 figures in the RIP, far in excess of the percentage in the original estimate of only 1.6 percent, and in the RRP of 6.0%. A further estimate of project costs as of 2005 has been made based on the latest information available on total construction costs (excluding land acquisition and resettlement), amounting to SLR31.16 million.

⁸² The exchange rate of SLR96 = \$1 was used for this computation for 2002.

⁸³ The exchange rate used at the time (1999) was SLR71.3 = \$1.

Table
Evolution of Project Costs, 1998-1999-2002-2005 (SLR million)

	WSA Feasibility Study		RRP		RIP		Latest estimate	
ITEM	Dec 1998		Nov 1999		Oct 2002		Mar 2005	
	OT	CT	CT		FT		FT	
	Economic		Financial	Economic	Financial	Economic	Financial	Economic
Capital costs	11,693	10,552	19,832	11,130	28,146	15,571	31,159	17,238
Resettlement costs	184	172	1,265	993	2,861	2,246	3,167	2,486
Total construction costs	11,877	10,721	21,097	12,123	31,008	17,818	34,327	19,725
Resettlement costs % of Total	1.5	1.6	6.0	8.2	9.2	12.6	9.2	12.6
Persons to be resettled	3,127	2,924	3,800		20,340		20,340	
Households	N.A.	N.A.	800		5,683		5,683	
Commercial establishments	N.A.	N.A.	50		151		151	
Total structures affected	N.A.	N.A.	N.A.		1,488		1,488	

N.A. = not applicable

214. Using this information, together with the economic analysis undertaken at the RRP, a recomputation of the Project EIRR and NPV has been undertaken. Based on these recomputations, the Project remained economically viable in 2002 with an EIRR of 15.1% and NPV of SLR 3,489.6 million, indicating slightly improved economic viability compared to the 1999 analysis, even under increased costs. The reason economic viability improves even under higher costs is that the benefit streams have also improved with the two-year delay in project implementation. This is because the corresponding values of transport cost savings, accident cost savings and generated traffic benefits increase through time as traffic on the existing road system becomes more congested with normal traffic growth.⁸⁴ Recomputation of viability for 2005 yields an EIRR of 14.7% and a NPV of SLR 3,197.4 million, again indicating continued economic viability of the project. Delayed completion of the project leads to slightly lower EIRR compared to the 2002 computation.

4. Issues raised by the Requesters

215. The CRP has also considered specifically the three elements of economic analysis singled out by the Requesters as having been violated under the changed circumstances of the Project.

216. **Requesters' issue #1:** Forecasting demand was done without proper consideration. More specifically, the Requesters claim that the CT being closer to the coast would attract more traffic, that the shift of trace caused a link to highway A2 to be cancelled, that the entrance to Galle has been cancelled, that the model does not take into account of the most logical junctions to be used, and lastly that significant traffic growth has been driven by earlier duty-free incentives provided to government officials.

217. **Finding:** The Requesters cite "forecasting effective demand for project outputs" as one of 3 provisions of economic analysis that have allegedly been breached. Insofar as economic analysis done prior to Board approval is concerned, this is not deemed to be the case. Indeed, assessment of the quantified benefits from the project was considered to be on the conservative

⁸⁴ It is for this same reason that the original feasibility study indicated improving project viability with delayed project implementation.

side. First, traffic growth rate was assumed to slow down in all future years, a conservative scenario given that the rate of increase in motor vehicle ownership tends to outpace income growth beyond a certain level of per capita income. Second, the analysis did not assume a growing rate of diversion of traffic from the A2 coastal road to the new highway through future years, in spite of the likely worsening of congestion in the former as the vehicle fleet continues to grow through the years. Third, the traffic forecasts for the new highway did not take full account of the likely generation of additional traffic to and from the inland areas along the alignment of the project highway. This was because of the inherent difficulty of quantifying with any degree of precision such consequence of putting a new highway where there was none before. On the other hand, ADB experience with new road projects elsewhere, including in Pakistan and Thailand,⁸⁵ suggests that in such situations, annual traffic growth rates exceeding 10% are common. These observations imply that the quantified benefits used to calculate EIRR were prudently and conservatively estimated. Thus, insofar as economic analysis done prior to ADB approval is concerned, forecasting of effective demand for project outputs is deemed to be properly done.

218. The CRP understands that the link between Panadura and A2 will be considered as part of another project. There is no change in the point of origin on the northern end of the highway at Kottawa, and no anticipated difference in traffic volume forecasts. On the issue of the Galle access road, a new link on the south side of Galle will permit a fast connection to the project highway.

219. **Requesters' issue #2:** Choosing the least cost design is required as part of the economic analysis.

220. **Finding:** The Requesters reference to OM Section 36/BP might suggest a misunderstanding, i.e., that ADB always adopts least cost. In projects where economic benefits may not be readily calculated like social sector projects this may be the case.⁸⁶ However, for transport projects benefits are quantifiable and least cost is generally not a sufficient criterion as it does not provide a guide to economic returns. For STDP these economic benefits have been quantified, permitting computation of EIRR and NPV, which provide a more complete basis for assessing the desirability of a project, or alternative configurations thereof. Under such circumstances, the least cost alternative may not necessarily be the most appropriate one, as corresponding benefits may vary such that this alternative may conceivably have the lowest economic return or net benefit in spite of its least cost.

221. The Requesters claim that the FT is costing more than double in SLR terms and almost 50% more expensive in \$ terms. The increase in the cost of the Project has two major explanations – the largely increased land acquisition and resettlement costs and the largely increased construction costs due mainly to the delays in the Project. Some of these increased costs would have also incurred to the choice of CT as the trace for the highway. The increased costs are presented in the Table.

222. **Requesters' issue #3:** "Adequate Return" computation is incorrect. The Requesters presented the following specific claims:

⁸⁵ Reference is made to project completion reports for Loan 758-PAK(SF): Farm to Market Roads Project; and for Loan 943-THA: Second Highway (Sector) Project, Loan 1027-THA: Third Highway (Sector) Project, and Loan 1098-THA: Fourth Highway (Sector) Project.

⁸⁶ "If benefits cannot be valued, economic costs are assessed against project objectives with a view to minimizing the cost of achieving them." (OM Section 36).

- (i) The costs for the FT have not been computed or used in the economic analysis. **Finding:** This claim is correct, as is explained above.
- (ii) The cost of land and resettlement in the RRP are incorrect and not reflecting the current building costs. **Finding:** This claim is correct. Although the Resettlement Plan had made special studies for this purpose, the price assumptions were on the low side. The increased costs are well reflected in later documentation and more importantly in the "replacement value" compensation standards.
- (iii) The RIP gives a new cost for land and resettlement of SLR2,861 million; more than double that given in the RRP. The increase of 126% in the budget has not been updated in any publicly available economic analysis. **Finding:** This claim is true. If the cost of land and resettlement was increased to SLR2, 861 million as suggested, the EIRR would decrease from 14.5% to 13.1%.
- (iv) A high residual value of 80% after 20 years has been made. This is an overvaluation. **Finding:** The high residual value reflects the judgment of the value of cost of land, considerable earthwork, drainage and structures with a lifetime well beyond a twenty year period. This is explained in the RRP, Appendix 10, para. 11.
- (v) Revaluation of the loan repayments at the fast depreciating rate of exchange as recommended under the guidelines of Appendix 29 has not been done. **Finding:** The Requesters' reference to revaluation of loan repayments due to a fast depreciating exchange rate is not an issue in determining economic viability of the project. Appendix 29 is mainly concerned with a discussion of analysis and sensitivity testing techniques, and does not make the recommendation suggested. Loan repayments do not enter into an EIRR calculation. Moreover, the SLR was not fast depreciating at the time of loan processing.

223. **Finding:** The economic analysis based on the CT as summarized in the RRP was properly executed and done with due diligence. The quantitative assessment of benefits from the project captures an incomplete picture of the total economic benefits to be derived from it, understating the full economic benefits from the project. Even under substantially increased costs from the time of project approval in 1999, a recomputation of the viability indicators of the Project shows that it remains economically viable, with an EIRR of 15.1% and NPV of SLR3,489.6 million (about \$36.34 million). The CRP is of the view that while the economic analysis does not violate ADB policy, there have been substantial changes in the impacts and attendant costs of the project as a result of deviations from the CT.

224. **Summary:** The CRP has looked carefully at the complaints of the Requesters and the original analysis submitted to the Board. The CRP has also asked for an independent review of the economic analysis from an expert with a fresh view of the assumption, costs, and benefits. Allowing for the fact that a number of variables have changed since the 1999 analysis, with increases and decreases in various elements of the cost-benefit calculation, the CRP is impressed by the robustness of the original analysis performed in 1999. Because the numbers allow for substantial changes in costs and benefits, with the result still falling within the permissible range for Board approval of the project, the CRP does not conclude that OM Section 36 fell out of compliance.

E. Benefit Monitoring and Evaluation

225. **Policy and Operational Procedures:** There are two OM Sections which are applicable at the time of loan processing: OM Section 22 (BP and OP) issued 7 January 1997 and OM Section 47 (BP and OP) issued 7 January 1997. The relevant parts of these OM sections are as follows:

- OM Section 22/BP, para. 2 provides that benefit monitoring and evaluation (BME) provides information about the benefits and impacts of projects to assist both ADB and DMCs in improving the effectiveness of development and related investment policies. The paragraph also provides that BME activities include preparation and analysis of benchmark (baseline) information and that BME comprises 3 distinct activities: (i) preparation and analyses of benchmark (baseline) information; (ii) monitoring benefits during implementation and after completion of a project; and (iii) evaluation of the benefits of the completed project.
- OM Section 22/BP, para. 3 provides that benchmark information comprises quantitative and qualitative information about important social and economic characteristics of individuals and groups affected by the proposed project.
- OM Section 22/OP, para. 1 provides that benchmark information should normally be prepared during the project design stage for groups that will be affected either beneficially or otherwise by the project; and that for projects where detailed benchmark cannot be obtained during the project design stage, this must be prepared during the early phases of project implementation.
- OM Section 47/BP, para. 4(iv) provides that ADB will ensure that project design and implementation arrangements include provisions to monitor and evaluate the benefits of the project; indicators for monitoring and evaluating benefits will be based on the project framework matrix that is to be developed during the preparation of the project.

226. The CRP notes that several studies were conducted which contained benchmark information on the Project. Prior to Board approval, an ISIA was conducted by WSA in March 1999. This report describes a monitoring and evaluation plan which consists of internal and external monitoring and evaluation; and mentions the types of indicators and benchmarks to be used. The University of Colombo also conducted a social impact assessment on the CT in March 1999. The Development Impact Study in August 1999, also attached as appendix 2 in the RRP, included a social economic profile of the project area. The RRP, para. 72 provides BME arrangements for the Project, including RDA engaging a suitable domestic institution to identify and monitor the Project's development impacts.

227. **Requesters' issue:** The benchmark information for the 40% of the Project was not carried out.

228. **Finding:** The CRP finds that the Project Framework in the RRP did not include outputs, indicators of achievements and means of verification on social issues. The CRP is not aware of a detailed framework matrix especially for benefit monitoring during early phase of project implementation.

229. The CRP notes that a monitoring plan for resettlement had been included in the RIP approved by ADB in October 2002. CRP also notes that an Environmental Management Plan is currently in development that should improve the monitoring of accomplishments against baseline measures.

230. After changes to the CT were made, and the FT was identified, a socio-economic survey was carried out by WSA on portions of the FT that were different from the CT. An updated SIA Report was prepared for the ADB section which covered a 100-m RoW. In the JBIC section, a similar survey was prepared for the FT as part of the E/S loan. The CRP finds that the updated SIA prepared by WSA in November 2000 is limited and that additional assessments are needed to establish baseline information on project beneficiaries along the FT.



CRP discussing with project-affected people.

F. Gender and Development in Bank Operations

231. **Policy and Operational Procedures:** There are 2 relevant policies and operational procedures which were applicable to gender and development at the time of loan processing. They are OM Section 21 (BP and OP) on Gender and Development issued 7 January 1997 and OM 47 (BP and OP) issued 7 January 1997.

- OM Section 21/BP, para. 2 states that "Improving the status of women is one of the five strategic objectives of the Bank. It is the policy of the Bank to explicitly integrate gender considerations into all aspects of Bank operations. This entails ... undertaking gender analysis in projects; and facilitating gender considerations to be addressed at all stages of the project cycle, including identification, preparation, appraisal, implementation, operation and maintenance, and postevaluation."
- OM Section 21/BP, para 4 provides that on gender planning, ADB formulate specific strategies to bring about equal opportunities for men and women.
- OM Section 21/OP, para. 7 provides that gender analysis and women in development (WID) consideration will be undertaken as "routine", especially in projects that have a significant social dimension, at all stages of the project cycle, namely identification, preparation, appraisal, implementation, operation and maintenance, and postevaluation. Para. 7 also provides the following: that a

preliminary review will be undertaken during the project identification stage to identify any potential gender issues or differential impact on men and women; that detailed gender analysis will not be required for projects that, *prima facie*, have no significant gender impact; and that during project implementation, monitoring of WID concerns and components is equally important.

- OM Section 47/BP, para. 2 provides that it is ADB's policy to focus on people in its development efforts by giving specific consideration to social dimensions in its projects in its DMCs, and that the specific social dimensions identified for such consideration include enhancement of the role of WID and avoiding or mitigating the adverse effects of development on vulnerable groups.
- OM Section 47/BP, para. 3 provides that, in addressing social dimensions, ADB will promote activities and policies that help women develop their potential, and increase their productivity and their share in the rewards of development; and provide social safety nets and compensation mechanisms, particularly for vulnerable groups that may be adversely affected by project interventions and are unable to absorb the resultant economic, social, and environmental impact.
- OM Section 47/BP, para. 4(iii) provides that in pursuing these social objectives, ADB will conduct gender analysis that will identify the obstacles, if any, faced by women in benefiting from development activities that are supported by ADB; and design these activities so that these obstacles are mitigated or removed.

232. **Gender and Development Considerations before and after Board Approval:** During project preparation an ISIA was conducted for the CT as part of PPTA 2892. The report indicated that female-headed households ranged from a high of 22% on the A2 highway to a low of 15% on the OT and the modified alternative traces.⁸⁷

233. An SIA was also prepared by the University of Colombo in 1999 and based on its findings, a Resettlement Plan was prepared and attached to the RRP. Para. 59 of this plan provides that "the Project will develop programs, particularly income generation projects to help meet the needs of female-headed households, including assistance through social support, service, employment and means of subsistence." Para. 60 of this Plan provides that to achieve these objectives, the project resettlement unit will engage a Woman Services Officer (WSO) for each of the two field offices as team members to work with female-headed households; and that in particular, the WSOs will involve the women in the planning and design of income restoration programs, including access to basic amenities like food, water, and household energy sources.

234. In August 1999, ADB conducted a development impact study under TA 3184, which was later attached as Supplementary Appendix A to the RRP. The report indicated that there was a disproportionately high rate of female unemployment, double that of males. The same report stated that expansion of formal sector employment, notably in manufacturing and services, might be expected to have a particularly favorable impact on the high rates of unemployment among females and youth. In both cases, existing unemployment is partly due to unwillingness to take up jobs, such as work on plantations. If more "clean" formal sector jobs become available, it may be expected that more women and youth would wish to take up employment. The community based assessment component of the development impact study suggested that increased female participation in the labor force and increased employment take-up by women

⁸⁷ ISIA Report, March 1999, Section 4, p. 11.

could be the most significant gender impacts of the Project. The RRP reflected this gender and development issues, and provided in para. 80 that the resettlement package "also makes specific provision for households headed by women, the elderly and people with disabilities."

235. After the Project was approved by the Board and the FT was identified, the SIA was updated by WSA on the parts of the ADB section where the trace departed from the CT. The report mentioned that out of the 109 sampled residential households, 11 were female-headed households, of which 50% were over the age of 70. The report recommended that "households such as these are at great risk of being severely affected by land acquisition. They must be given special consideration and assistance to move, build their houses, resettle and restore or improve their living standards and income levels. ...Providing special assistance to improve the living standards and income levels of very poor households should be a priority."

236. An RIP was approved in October 2002, based on the 1999 SIA and updated information on the FT. The CRP notes that Chapter 6 of the RIP on Economic Rehabilitation and Income Restoration Program did not include a special program on the restoration of income of female-headed households.

237. Gender issues identified in the ISIA Report were not studied during project preparation and were also not incorporated in the project log frame and RRP elements in the project design, implementation arrangements and monitoring. The ADB Loan Agreement had a provision requiring RDA to ensure that the categories of project affected persons consisting of vulnerable groups, such as female-headed households, are provided with an adequate entitlement package.⁸⁸ The fact that gender was not dealt with in the SIA reports was also confirmed when it was included in the terms of reference for updating of SIA studies in the following years.

238. **Requesters' issues:** The issue raised by the Requesters is that there was no review or research on Gender and Development done on the FT. Also there was no consideration for improvement of the status of women on the FT.

239. **Finding:** The CRP finds that the impact of the Project on women is significant and that no separate gender analysis was done for the STDP during project preparation as required by OM Sections 21 and 27. Analysis of gender and development issues in studies conducted prior to Board approval was inadequate. This inadequacy was reflected in the RRP and its attached Resettlement Plan and Development Impact Study which failed to include an analysis of gender issues in the project. Loan covenants as a result also did not include measures to address gender and development issues in the Project. The CRP notes that this lack of focus on gender and development issues extends to the conduct of monitoring and evaluation of the Project.

240. The CRP notes that there is not an adequate program on the restoration of income for female-headed households in the RIP and that ADB approved an RIP that was inadequate. The impact of the Project on women is significant. The CRP finds that some gender planning as required under OM Section 21/BP, para. 4, has been done in the Resettlement Plan but this was basically restricted to the issue of giving limited assistance to female-headed households and businesses. This aspect was however not satisfactorily carried out in the RIP. The CRP concludes that ADB did not ensure that WID issues were adequately considered for the CT and were not done for the FT.

⁸⁸ Schedule 6, para. 13(b).

241. **Summary:** The CRP concludes that Management did not adequately take WID issues into account in the design and implementation of the Project, as called for in OM Section 21 and OM Section 47. While some useful analysis was undertaken in the ISIA, and intentions to provide for the disadvantaged status of women were stated, there was little follow-through, with gender issues left out of the project log frame and key RRP elements such as monitoring. Even the RIP is lacking adequate attention to the gender issues highlighted in the policies and in the survey data conducted before Board approval. There is no visible intention in the most recent project reports to address this absence of compliance.

G. Processing of Loan Proposals

242. **Policy and Operational Procedures:** The relevant operational policies and procedures on Processing of Loan Proposals are identified in OM Section 34 (BP and OP) issued 13 January 1997.

243. OM Section 34/BP provides the following relevant to the Requesters' claims:

- It is ADB's policy to "fully involve the developing member country (DMC) government, the borrower, the executing agency, and the project beneficiaries at all stages of project cycle beginning from project identification." (para. 2)
- It is ADB's policy to "list every loan to be processed, after its inclusion in the Country Assistance Program or after concept clearance for it is obtained, in appropriate detail in the Bank's publication ADB Business Opportunities (ADBBO). A project or program profile (PP) ... will be initially prepared will be initially prepared to coincide with the listing in ADBBO of the project or program. ... A more complete PP will be prepared following appraisal and updated annually thereafter during project/program implementation. The purpose of the PP is to provide as much information as possible to the public and as early as possible to ensure adequate debate, dialogue, and participation by all parties concerned, including affected populations, at the formative stages of the project." (para. 5)
- It is ADB's policy to "examine different aspects of a project in distinct stages in increasing detail and to involve the DMC government and project beneficiaries at key stages of the project cycle. These stages include project identification; project preparatory technical assistance (PPTA); fact-finding; the Management Review Meeting (MRM), ...; pre-appraisal and appraisal of the project in the DMC; and finally, loan negotiations." (para. 7)

244. **Requesters' issues:** ADB has not involved project beneficiaries in all stages of the project cycle. The RRP prepared is inaccurate as it covers a different area from where it is being implemented.

245. **Finding:** The CRP views the involvement of the beneficiaries in the following ways: at relevant stages during PPTA 2892, PPTA 3184, and the 1999 EIA preparation; providing information on the Project through the PP and RRP; and responding to the concerns of project affectees during this stage. There has not been "full involvement" of the project beneficiaries at "all stages of project cycle beginning from project identification" as required under OM Section 34. There has however been some involvement, depending on various factors including the stage of project processing, the project profile updated till March 2000, and whether ADB took

active measures to engage project beneficiary participation when it knew that potential project affectees were concerned about the Project.

246. The CRP finds that when ADB knew of project affectees concerns on the Project at appraisal stage in June 1999, it took steps to advise RDA that the affectees be properly informed of the project proposal. Similarly, when other project affectee concerns on the Project were communicated to ADB during project processing from May to October 1999, ADB responded to these concerns. It is a matter of interpretation as to how "full involvement" of project beneficiaries can be ensured. As mentioned earlier in this report, the CRP notes that on the 1999 EIA Report, there are no records of public consultations for affected people in areas where the CT is different from the OT by 40%. However, the CRP notes that after the 1999 EIA Report was submitted to the CEA, there were 2 public hearings and 287 comments were received. ADB's review of RDA's activities on public involvement in the 1999 EIA preparations was also lacking.

247. The CRP finds that ADB was obliged to prepare a "more complete" project profile (PP) following appraisal and update it annually during project implementation. ADB did not, however, update the PP. Also, the information in this updated PP contains minimal, incomplete and incorrect information, e.g., there is no reference to the road safety component, no reference to the cofinanciers, and the ADB section is stated to be about 55 km of the highway (when the RRP states 60 km). That the PP was not updated annually when there were 4 inspection requests during the period 2001-2002, and when ADB took significant measures to involve public participation in the finalization of the RIP before loan effectiveness in October 2002, was and is still, a failure on ADB's part to provide information on the Project to the public at large, and to the requesters in the previous inspection requests, as required under OM Section 34.

248. On the Requesters' claim that the RRP was "inaccurate" as it covers "a different area from where [the project highway] is implemented", the CRP is of the view that the RRP as presented to the Board for its approval was based on the CT, and contemplated that a final alignment needed to be determined through detailed design. The CRP will discuss below its views on whether the Project at a later stage turned out to be different from what was approved by the Board.

H. Cofinancing

249. **Policy and Operational Procedures:** The CRP has considered the cofinancing arrangements under the Project in the context of ADB's operational policies and procedures on cofinancing. The relevant operational policies and procedures are identified in OM Section 29 (BP and OP) issued 12 December 1995. It is not necessary for the Requesters to make specific allegations of violations of ADB's policies and procedures as it is for the CRP, in the course of its investigation, to ascertain whether possible violations of ADB's operational policies and procedures have occurred.

250. This OM section is based on the Board policy paper⁸⁹ which acknowledges the need to improve the efficiency of ADB's operations in maximizing cofinancing from official sources such as matching project cycles of various donors and closer coordination in project preparation and supervision. This OM section highlights the objective of ADB's cofinancing operations to promote official cofinancing (para. 2).

⁸⁹ ADB. 1995. *The Bank's Cofinancing Strategy* (R80-95).

251. Under OM Section 29, ADB assumes a lead role in arranging official cofinancing, and other types of cofinancing such as through bilateral sources, by determining the scope of the project, the possible sources, and the mode of cofinancing, and inviting potential cofinanciers to participate in project processing activities such as appraisal. When ADB taps cofinancing sources, it ordinarily requires the cofinancier's commitment before, during or after project appraisal when ADB considers the provision of the project loan.⁹⁰ OM Section 29/OP, para. 5 also provides that depending on the extent of ADB's role in administering the funds provided by official sources on a joint or parallel basis, ADB may enter into a separate agreement with the cofinancier specifying the responsibilities of ADB and the cofinancier. OM Section 29/OP, para. 7 provides that ADB usually tries to limit the number of cofinancing arrangements for a project to minimize complications in project administration and operation. OM Section 29/GP,⁹¹ para. 11(v) states that generally, ADB prefers to finance the consulting services contract of a cofinanced project to enable better control of project supervision.

252. The cofinancing arrangements above indicate that the need to clearly demarcate ADB's role with its cofinanciers, as official or bilateral sources, in scoping out ADB's responsibilities in its project review and monitoring of cofinanced projects, as part of ADB's project administration of the cofinanced project. These arrangements are a follow-on from ADB's provision of periodic progress reports to cofinanciers in all cofinanced projects as "part of its general supervision and monitoring of project implementation" under OM Section 29/OP, para. 2.

253. **Cofinancing arrangements:** The JBIC, NDF, and Sida cofinancing under the STDP are on a parallel basis, that is, the cofinancing is for separate parts of the Project as identified in the RRP and the ADB Loan Agreement. On JBIC cofinancing, the funding is for a separate contract package for part of the highway; for NDF, it is for the Management Consultant for the highway, and consulting services and equipment for the road safety component; and for Sida, it is for specialist consulting services under the road safety component. In the cofinancing by these donors, there was no allocation made to ADB to administer their funds and ADB's involvement was limited specific to the activities specifically funded by the donors. For example, ADB reviewed and agreed on the terms of reference for the consulting services funded by NDF and Sida. On the JBIC section, contract packaging and award was done by JBIC under its own procurement procedures.

254. **Finding:** The CRP finds that the cofinancing arrangements with these cofinanciers have not posed any significant problems in terms of ADB's general supervision and monitoring of project implementation, considering the large-scale size of this greenfield project. However, ADB's arrangements with JBIC on the cofinancing in terms of actual ADB supervision and monitoring are unclear. ADB's preliminary work on project design from PPTA 2892, PPTA 3184 and the ensuing project investment loan on the highway component, were taken into account by JBIC in providing its loan for the JBIC section.

255. However, it appears that both institutions have effectively treated the Project as 2 separate projects, when the detailed engineering design studies were carried out by ADB's consultants on its section in November 1999 and by JBIC's consultants on its section in May 2000. Both institutions appear to be applying different policies on common matters such as environment. The JBIC loan for its section applies the JBIC's "Environmental Guidelines for ODA Loans" dated October 1999. However, on environment, ADB specified in its RRP and Loan Agreement that the environmental mitigation measures identified in the EIA and in the

⁹⁰ OM Section 29/OP, para. 5 (v).

⁹¹ GP is Guidelines on Operational Procedures.

CEA's approval of the Project – the entire project – are incorporated in the design of the highway, and followed during construction, operation, and maintenance of the project highway. This is consistent with OM Section 29/BP, para 31 that the environmental requirements for ADB-assisted project apply to all projects cofinanced by ADB but was not checked by ADB on the references to ADB's policies in the JBIC loan. Also, ADB required RDA in its Loan Agreement to ensure that the Project – the entire project – adhered to ADB's "Environmental Guidelines for Selected Infrastructure Projects (Highways and Roads)".⁹²

256. On resettlement, ADB's inception mission in December 1999 after Board approval stated that RDA will prepare 2 RIPs (one for the ADB section and another for the JBIC section), that the RIP for the JBIC section would have to comply with ADB's requirements on resettlement, and that ADB would review it and give its comments to RDA and JBIC; and on this basis, the RDA will finalize the document and submit it formally to JBIC for its approval. This however was not the case, as the RRP and the ADB Loan Agreement envisaged one RIP agreed upon between the ADB and RDA for the entire Project, and that the RIP had to be satisfactory to ADB, based on a final highway alignment and detailed measurement surveys approved by GOSL.⁹³ These environmental and resettlement provisions apply to the entire project.

257. Although the CRP does not find non-compliance with ADB's policy on cofinancing, it wishes to record its views on how the cofinancing arrangements under the STDP could and should have been better articulated and designed. For example, JBIC had an E/S loan preceding its investment loan which ADB should have factored in its project cofinancing plan and arrangements, project take-off and implementation on common activities, and effective consideration of loan effectiveness conditions. The CRP views the cofinancing arrangements carried out by ADB unclear in ensuring proper discharge of ADB's role on general supervision and monitoring of the entire project when, as a lead agency, it actively sought cofinancing sources and made specific ADB policies applicable to the entire project.

258. The CRP finds that the arrangements carried out by ADB during its regular project administration and review missions have considered the JBIC section and involved all cofinanciers. However, the statements of ADB staff reveal that there is no clear-cut role of ADB in overseeing the JBIC section on matters of common interest such as environment and resettlement, as both institutions have effectively treated the highway as two separate projects. It is not clear whether ADB will be able to effectively monitor the RIP for the JBIC section and whether ADB will be able to apply its environmental requirements in the JBIC section during construction. The CRP finds the informal arrangements made by ADB unsatisfactory as they do not articulate clearly ADB's role as lead agency in designing and processing the Project, and the ensuing role ADB has in its general supervision and monitoring of implementation of the entire project.

I. Change in Project Scope or Implementation Arrangements

259. **Policy and Operational Procedures:** The relevant provisions relating to ADB's "operational policies and procedures" on change in project scope or implementation arrangements are in PAI No. 5.05 issued 1 June 1995. This PAI has been replaced by PAI No. 5.04 issued December 2001. Both PAIs are relevant, as the change to FT was made in January 2000 and there has been no action taken by ADB to date. PAI No. 5.05 expressly states that changes to project scope can take place in response to changing environment during project

⁹² RRP, para. 104(ii) and ADB Loan Agreement, Schedule 6, para. 10.

⁹³ RRP, paras. 81 and 104(iv); and ADB Loan Agreement, Section 6.01(b) and Schedule 6, para. 12.

implementation and also expressly states that a major change in cost is defined as any change in overall project cost exceeding 10%.⁹⁴ PAI No. 5.04 also notes that unexpected changes in circumstances during implementation can happen and singles out a major change in route, e.g., a deviation through a town not previously included in the scope or a major shift in the physical location of the road that involves an entirely new set of stakeholders and distribution of benefits and impacts.⁹⁵ Whether the change is minor or major is a matter for the operations department implementing the project to decide in the course of its routine project administration activity.

260. ADB's project administration and review: As part of ADB's administration and review of the Project, ADB checks on compliance with loan covenants contained in the Loan and Project Agreements. This regular supervision and monitoring is an intrinsic part of ADB's routine project administration activities contained in its PAIs. ADB committed its resources and intensive inputs from ADB staff (including the fielding of at least 7 review missions) and the hiring of an international consultant, to ensure that loan effectiveness was finally in place after about 30 months with a satisfactory RIP for the entire project. However, ADB did not exercise similar efforts, from its review missions since December 1999 to the present, to check whether the change from CT to FT required any change in project scope as part of its routine project administration activity. ADB did not check in January 2000 or soon thereafter when RDA made its decision on the FT.

261. Finding: The CRP understands from discussions with ADB staff that ADB has not made a determination as yet on the question whether there is any change of project scope or implementation arrangements, and there appears to be a divergence of views on whether studies should be carried out first to determine the nature of change (minor or major according to ADB procedures) or whether a preliminary change should be determined first, followed by studies. There are no formal discussions by ADB with RDA on ADB's assessment of the FT, including whether the change from the CT to the FT constituted a change of project scope or implementation arrangements, especially since the RDA has confirmed in a letter to the CEA that the FT is included in the project description covered by the 1999 EIA.

262. The CRP notes that this determination has not been made even when ADB has been put on notice in various review missions and reports of the following changes that would constitute a change in project scope: the change from CT to FT; the increase of the JBIC investment loan from \$120 million to about \$180 million; the EFRs on the ADB and JBIC sections on the deviations which resulted in changes to the environmental impacts and required mitigation measures; and the finalized RIP which pointed to a different set of stakeholders and a significant increase in the number of resettled families from up to 800 families (about 3,800 people) to 1,294 in May 2004. The CRP also notes that when the RIP was approved in October 2002, ADB stated that about 6,000 households were affected by the Project. These changes necessarily point to a change in scope resulting from a change in costs of resettlement and resulting socio-economic impacts.

263. The CRP notes that ADB has exercised diligence in the conduct of various studies such as background noise monitoring report and a safeguard compliance review. The CRP understands the various views put forward by the staff on whether studies should be carried out first before actually determining any change of project scope or vice-versa. The CRP finds that that at some point of time, as early as from January 2000 when ADB first knew of RDA's decision to shift to the FT, ADB should have made a determination of change of project scope.

⁹⁴ Paras. 1 and 4, footnote 1.

⁹⁵ Paras. 1 and 6.

The CRP notes that there has been a considerable time lapse during the project implementation period and does not see a justification for the view in Management's Response that it will process a change only when RDA conducts "certain social and environmental studies needed in advance of the processing of any change in scope" and ADB finalizes these studies and assessments. It is unclear what these "certain" studies are and how long the process will take when it is evidently clear that the circumstances point to a change in scope.

VIII. Conclusions

264. The CRP concludes that there have been, at some time during the Project from project processing to its implementation, lapses of compliance with the following applicable ADB policies and operational procedures:

- (i) **OM Section 20⁹⁶: Environmental Considerations in Bank Operations.** The CRP finds that Management cannot be satisfied with the sufficiency of the EIA done in 1999 and the ensuing EFR for the ADB section. Also, the Galle access road has not received an adequate review of its environmental impacts, and some stretches of the FT well away from the CT need more attention. Public information and participation in the environmental review process has been inadequate since late 1999.
- (ii) **OM Section 21⁹⁷: Gender and Development in Bank Operations.** The CRP finds ADB out of compliance before Board approval where no gender analysis was done although the RRP stated that the Project had significant impact on women. After Board approval, the commitments made for special gender action plans have not appeared in the implementation or monitoring details of the Project.
- (iii) **OM Section 22⁹⁸: Benefit Monitoring and Evaluation.** The CRP, in reviewing both the benchmark analysis in the project documentation, as well as the monitoring system that has been developed to date, comes to the conclusion that the Project cannot be in compliance with this OM until further steps are taken.
- (iv) **OM Section 40⁹⁹: Formulation and Implementation of Loan Covenants.** Since the CRP finds that various policies and commitments have not remained in compliance over time, especially with regard to resettlement, the failure of Management to restore compliance is, by itself, a matter of non-compliance with OM Section 40 since many of the issues involved commitments made at Board approval, and in the RRP and the Loan Agreement.
- (v) **OM Section 47¹⁰⁰: Incorporation of Social Dimensions in Bank Operations.** The loss of compliance with this OM Section derives in part from the shifting of the traces, along with an absence of analysis of the Galle access road. The emphasis of the OM, however, is on the vulnerability of certain population groups and households, which need to be identified and assisted throughout the process to ensure they are better off after the Project is completed. The weakness of the

⁹⁶ Issued 7 January 1997

⁹⁷ Issued 7 January 1997.

⁹⁸ Issued 7 January 1997.

⁹⁹ Issued 12 December 1995.

¹⁰⁰ Issued 7 January 1997.

Management Information System (MIS) and the rudimentary income restoration program are serious breaches of compliance that will pose major challenges to bring the Project back into compliance with this OM.

- (vi) **OM Section 50¹⁰¹ : Involuntary Resettlement.** The CRP concludes that compliance with this OM Section has been problematic since Board approval, with the significant shifts of the trace without public participation. The CRP is also concerned about Management's inattention to independent monitoring and the need for supporting performance in the areas of compensation and resettlement.
- (vii) **Project Administration Instruction (PAI) No. 5.04¹⁰² : Change in Project Scope or Implementation Arrangements.** The CRP has identified a number of major changes in the Project that might normally trigger a review by the operations department, and believes that the Project is out of compliance until a formal determination on the change of scope issue has been settled.

IX. Recommendations

265. The Compliance Review Panel (CRP) recommends that the Board approve the recommendations set out in paras. 266, 267 and 268 of the CRP Final Report.

266. The CRP has 2 categories of recommendations resulting from its investigation in this Project – measures addressing issues that may cause difficulties in complying with ADB's policies and operational procedures in ADB-assisted projects, and measures relevant to current implementation problems necessary to bring the Project back into compliance.

267. On the first category, the Board asks that Management take the following measures:

- (i) review selected road projects as to how changes of scope may make the application of environment and resettlement policies difficult.
- (ii) review cofinancing arrangements in selected projects to determine if such arrangements have a damaging effect on policy compliance for the whole project, and make recommendations to strengthen policy compliance for these projects.
- (iii) develop additional guidance for ADB's *Handbook for Resettlement: A Guide to Good Practice* dated 1998 for staff to develop major infrastructure projects with borrowers with little or no comparable project experience, especially in Category A projects. The guidance should particularly address the issues of implementing agencies having adequate institutional capacity and resources in carrying out and monitoring resettlement and ensuring that appropriate legislation is in place to carry out such resettlement.
- (iv) provide to the CRP with a copy to the Board, by 31 August 2005, a course of action with timelines on implementation of these measures for the CRP's monitoring and reporting to the Board.

268. On the second category, the Board asks that Management take the following measures:

¹⁰¹ Issued 7 January 1997.

¹⁰² Issued December 2001.

- (i) assess the environmental impacts of the Galle access road and any stretch of the ADB section on the Final Trace (FT) different from the Combined Trace (CT) including consulting project-affected people.
- (ii) ensure the incorporation of the environmental impact assessments and the recommended mitigation measures of any stretch of the ADB section on the FT different from the CT and of the Galle access road in the Environment Management Plan (EMP) for the Project.
- (iii) review the cofinancing arrangements in the STDP with a view to strengthening policy compliance for the whole project.
- (iv) conduct an analysis of gender issues on the Project and ensure that the programs under the Project adequately address these gender issues.
- (v) require that all affected persons (APs) be fully compensated by actual payment before they are moved.
- (vi) determine whether or not there has been a change of scope in the Project, as provided in Project Administration Instruction No. 5.04.
- (vii) assist in the income restoration program and the establishment of household benchmarks through the Management Information System (MIS) for the APs as called for in the Resettlement Implementation Plan (RIP).
- (viii) ensure that full project information, especially the essential elements of the RIP, be provided in an appropriate language to each affected household, rather than simply making it available at the district offices.
- (ix) help establish well-staffed monitoring of resettlement activities by an independent institution, forwarding concerns to RDA for urgent action from the APs.
- (x) require immediate provision of utilities and infrastructure to resettlement sites.
- (xi) require a special emphasis in the RIP and the income restoration program for women, if necessary by the allocation of additional staff to track their recovery as APs.
- (xii) assist in the preparation of a detailed project framework for benefit monitoring and evaluation (BME) activities to include outputs, indicators of achievements, and means of verification on social issues.
- (xiii) assist in the preparation of an additional assessment of project beneficiaries along the FT to establish baseline information for BME activities.
- (xiv) update the Project Profile (PP), or its equivalent by the Project Information Document, on the ADB website, where the latest posting is 15 March 2000, at least on a monthly basis with full information for all categories, until the Project is brought into compliance.

- (xv) provide to the CRP with a copy to the Board, by 31 August 2005, a course of action with timelines on implementation of these measures for the CRP's monitoring and reporting to the Board.

/S/ Augustinus Rumansara
Chair, Compliance Review Panel
22 June 2005



කොළඹ මාතර අභිවේගී මාර්ගයක් බලපෑම් ලක්වන්නන්ගේ එකාබද්ධ සංවිධානය
Joint Organization of the Affected Communities on Colombo-Matara Highway.
 No. 1, Baddegodahena Watte, Weedagama, Bandaragama, Sri Lanka.
 Tele/ Fax: 038-92840, 038-92871 e-mail: ggama@mail.ewisl.net

The Secretary,
 Compliance Review Panel,
 Asian Development Bank,
 Manila,
 Philippines

Date of this request: 14th November 2004

Dear Secretary,

Submission of Request for Compliance Review:
Southern Transport Development Project Sri Lanka, Loan SRI 1711

The Joint Organization of the Affected Communities on Colombo Matara Highway request the Compliance Review Panel to help us by examining ADB's compliance with its own policies and procedures with regard to the project mentioned above.

The Special Project Facilitator and the Office of the Special Project Facilitator should continue to handle and process the Complaint received on 9th June 2004, declared eligible on 5th July 2004 and for which there is a Course of Action approved by the ADB President. We do not wish the submission of this Request to be seen or acted upon as a request to stop the OSPF from following up on the Complaint.

The Joint Organization members include Unified Society for the Protection of Akmeemana (USPA), Gama Surakeema Sanvidhaniya (GSS), and many individuals along the Colombo Matara Highway. The President who is also an Affected Person is a signatory to this Request together with Officials of USPA and GSS. In support of the Requesters a few members of the Societies have also signed to confirm their agreement.

USPA and GSS are groups of people who are complaining about the Highway and seeking resolution of the problems caused by the Highway. The Requesters are the members of the Organisations and Societies.

We are familiar with the Operating Procedures of the CRP, and understand that the CRP will first examine whether this request meets its eligibility requirements.

We are aware that the ADB has failed to follow its policies/procedures, especially with regard to Environmental Impact, Involuntary Resettlement, Social Impact, Economic Analysis and Environmental Monitoring, and that in doing so; we have suffered and are suffering significant damage that we can describe.

We have prepared the attached list of the Policies and Guidelines that we consider to be breached. We believe there are many more and the CRP process will investigate all the breaches and not just those we have listed.

President S.A. Adikaramale

Treasurer Samila Dahanayake

Secretary H.T. Mandy

CRP Request

The specific damage related to these policy violations is described in the attached document headed “Harm to Requesters”.

Remedies

We would like ADB to help to remedy the harm in the following way.

The first step would be the suspension of disbursements of the loan by ADB.

This suspension is important as the GoSL is likely to dispossess many of the requesters and their neighbours of their Homes and Lands within the next few weeks. Human Rights are being breached at the request and the direction of ADB. Some of these Rights are incorporated in ADB Policies, others are the subject of International Law for example the “Right to a Healthy Environment” and “Right to Equality”. The material in this request indicates that ADB should not be lending until the Project is brought into compliance.

With the project disbursements suspended, the CRP should recommend that ADB require a full investigation of the Expressway by an Independent Committee with suitable technical skills with Representatives of the Requesters as members of the Committee. This Committee should recommend a trace which ensures that the project meets the criteria which were applied in selecting the Combined Trace (CT) as well as the guidelines and policies of ADB and JBIC and the laws of Sri Lanka. We recommend that the trace be the Combined Trace, as the CT would meet all the Social, Environmental and Economic policies and guidelines of the ADB. However if the Committee can find a trace equal to or better than the CT this would be acceptable.

The Committee having recommended a trace the following would be necessary.

1. Scoping is done and Terms of Reference for an EIA be established in cooperation with the Requesters.
2. An EIA Report. This should compare the Recommended Trace with the Combined Trace in all aspects covered by the EIA.
3. An SIA on the Recommended Trace.
4. An economic analysis of the Recommended Trace to check if it is viable in line with ADB guidelines.
5. A full EIA process as required by the laws of Sri Lanka which would include an opportunity for all the Affected Persons and relevant experts to be heard.
6. Compliance of all ADB Guidelines for project formulation and approval including public participation.

Should the Committee recommend the Combined Trace then the above tasks have already been completed.

The Project is rife with Corruption a fact that has been reported to the ADB Auditor General's department, but who failed to do a proper investigation.

Our request is that ADB should suspend disbursements for the Project until the Project Proponent and the Government of Sri Lanka ensure that:-

The Project complies with all ADB Policies and Operations Manuals especially those pertaining to Resettlement, Environment, Indigenous People, Benefit Monitoring & Evaluation, Incorporation of Social Dimensions, Governance, Economic Analysis, Processing of Loan Proposals, Procurement of Goods & Services and Anti-corruption.

We have previously attempted to take care of our concerns with the Bank staff. We attached a list of Contacts with the Bank to the SPF Complaint (Appendix 14).

We had requested an Inspection previously and this was rejected. We have "new evidence" as attached in "Inspection New Evidence".

We also attempted to find a solution with the Special Project Facilitator. This is a brief record of what happened

We submitted our complaint by delivering it to the Sri Lankan Resident Office, and by email on 8th June 2004. SPF confirmed having received on the Complaint on 9th June 2004.

On 5th July we were advised that our complaint was eligible.

The process of Review and Findings was completed on 17th September 2004. This is 52 days **beyond** the 49 days permitted by the ADB Accountability Procedures. OSPF declared this extra time was because the Government of Sri Lanka was trying to find a solution through the Prime Minister's Committee. This Committee has nothing to do with the OSPF or its proceedings as has been clearly demonstrated by its report and actions. This delay is a breach of ADB Policies.

It should also be noted that through errors in ADB the report did not reach the Complainants till 28th September.

The OSPF Report and Recommendations confirms many of the breaches of Policy as specified in the attached list. The OSPF recognized that there is no EIA, there is no SIA, and there are none of the required studies for the trace. They have further gone on to confirm that there are breaches of the Loan Agreement which have existed for several years.

The OSPF has produced a Course of Action which has been approved by the President. It contained a trumped up charge by the RDA against the Complainants for which there is evidence showing the accusation to be completely false. Subject to the removal of that item and some minor adjustments requested by the Complainants the Course of Action was accepted.

The Complainants will continue to use the facilities of the OSPF to find a solution in line with the remedies requested.

The delay forced into the process by the OSPF is unacceptable as the RDA used the time to harass the Complainants and SARD to attempt to cover their policy breaches. Whilst the OSPF have been advised of some of these incidents they have not been able to halt the RDA's activities. The recommendation by OSPF to RDA was ignored underlining the RDA and SARD's unwillingness to follow the OSPF process. This delay is being used to make corrections more difficult.

The delay is also reminiscent of the delays on the Inspection Process requested by ADB Management and granted by the Inspection Committee. The RDA used these delays to enforce its wishes on the Affected Persons.

A letter has been sent to the SPF regarding delays, which was also copied to the CRP Office.

We are referring our complaint to the CRP because there are breaches of Policy and Procedure that should be investigated. Despite the Project breaching ADB Policy in many ways the ADB still continues to push for the project to be delivered.

We represent an organization and a large group of people, please contact us through the address and contact information as described below.

Contact can be made with:-

Mr Sarath Athukorale,
President,
Joint Organisation of the Affected Communities of the Colombo Matara Highway
No 1 Baddegodahena Watte,
Weedagama,
Bandaragama,
Sri Lanka

By email to joacmh@sltnet.lk

Mr A.A.D Sunil Ranjith Dayaratne
Secretary
Gama Surakeema Sanvidhaniya,
"Pasan Niwasa",
Gelanigama,
Bandaragama
Sri Lanka

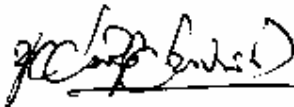
By email to ggama@mail.ewisl.net

Accountability Mechanism Southern Expressway

Request to the Compliance Review Panel. ADB



**Mr Sarath Athukorale,
President,
Joint Organization of the Affected Communities on Colombo-Matara Highway**



**L.D.L. Pathmasiri
Committee Member
United Society for the Protection of Akmeemana**



**A.A.D. Sunil Ranjith Dayaratne
Secretary,
Gama Surakeema Saravidhaniya**

Southern Transport Development Project CRP Request

Inspection New Evidence

Previous ADB Inspection actions with regard to this request

Gama Surakeema Sanvidhaniya (GSS) requested an Inspection in 2001. The Board Inspection Committee (BIC) recognised it was not frivolous and met the requirements for an inspection.

Copies of the requests and covering letter were attached to the SPF Complaint Appendix 3(a) and 3 (b). NB All references to Appendices are to the SPF Complaint.

In line with the 1995 Inspection Policy the Board Inspection Committee (BIC) asked for a response to the request from Management. After considerable delay permitted by BIC without any consideration of the requesters' position, they received a response. The response was legalistic and contained many factual errors. Without seeking any input from the Requesters the BIC decided on the basis of the Management Response to reject the Inspection Request.

As required by the Inspection Policy the rejection had to be reviewed by a member of the Inspection Roster. **He produced a report stating that he disagreed with BIC and recommended that an Inspection be carried out.**

However the ADB Board accepted the recommendation of the BIC to reject the Inspection Request, disregarding the Roster Member's conclusion. The report containing all the details on this request was issued by BIC in March 2002.

The original inspection request raised a number of other ADB policy violations in STDP, in addition to the issue of the EIA and the alteration of the traces. The ADB should have inspected those violations but did not.

Another organisation, Unified Society for the Protection of Akmeemana (USPA) requested an Inspection in 2001, copies were attached to the SPF Complaint Appendix 4(a) and 4(b). This request followed a similar pattern with Management maintaining the same errors in their Management Response. BIC decided against the Inspection and again the Roster Member recommended an Inspection should be done. The details of this request are in the report of the Board Inspection Committee dated April 2002.

Various other societies and individuals requested an Inspection during this same time. The Board Inspection Committee directly rejected these and no detailed reports were issued on these.

The failure of the inspection process to solve the problems of those affected by the project was one of the main reasons that ADB was forced to fully and properly review the Inspection process.

At the Annual General Meeting of ADB in Shanghai in 2002 a representative of GSS advised the President of ADB and the Senior Management of the many errors in the Management Response to GSS. The details of the errors were handed in summary form

to them (SPF Appendix 3 (c)). The USPA report was not yet available so that was not discussed.

ADB Management responded to the GSS list of errors on 26th July 2002 with a further set of inaccurate statements SPF Appendix 3(d). GSS replied to this demonstrating the inaccuracies of Management in their report using the various documents of ADB SPF Appendix 3(e). The President of ADB and ADB Management refused to consider this document.

A list of the errors in the USPA Management Response were attached to the SPF Complaint Appendix 4(c).

Since the rejection by BIC the Requesters have been taking actions through the Courts in Sri Lanka.

New Evidence

We are submitting the following “new evidence” so as to comply with the Accountability Function’s requirement that claims disposed of once cannot be brought before the new mechanism unless there is “new evidence”. We consider the following to be New Evidence and to be more than sufficient for an unbiased recommendation for a full inquiry and the project disbursements to be suspended. As the USPA and GSS inspection rulings were similar and the Court Actions produced a single Judgement we combine the New Evidence below.

Judicial Committee (SPF Appendix 8)

Members of GSS and USPA filed action in the Court of Appeal against the RDA and CEA. The Bench of Judges could see there was a large volume of evidence which required considerable time to hear, and that site visits would most likely be necessary. Therefore they set up a Judicial Committee with the agreement of all parties. The Court appointed three retired Supreme Court Judges with the eminent Chief Justice Parinda Ranasinghe to chair the Committee. Costs of the Committee were equally shared by State and petitioners. The villagers of Akmeemana and Bandaragama had to fund Rs.100,000/= between them.

The Committee had many days of hearings with all the parties present and represented by Counsel. They heard from many of the 50 petitioners and also their neighbours. Experts spoke on behalf of the RDA and CEA. The Committee spent two days accompanied by Counsel, the RDA, CEA, their experts and some of the petitioners visiting the sites under the guidance of first the RDA and then the Petitioners. All parties were given full opportunity to present their information except the evidence of one of the main wetland experts in Sri Lanka whose presence was rejected by the CEA.

The ADB had imposed a deadline for submission of the Resettlement Implementation Plan (RIP) which constrained the Committee as the completion of their report had to precede the submission of the RIP. Members of GSS & USPA visited ADB Colombo Office and asked them to extend the deadline by a week or two to give the Committee time to do a full investigation. This request was turned down and the Committee had to

rush their investigations. This is Further (and New) Evidence of ADB's unwillingness to co-operate in identifying and correcting the errors on this project and bringing it into compliance.

The Judicial Committee concluded that:

"The word "alteration" cannot and must not be construed to encompass only changes that are made voluntarily by a project proponent. Alterations made in pursuance of a direction made by one in authority too need subsequent examination and affirmation."

"The alterations affected in this case are in fact changes of a substantial character, nature and extent. They need to be approved afresh."

"...the deviations, both at Bandaragama and at Akmeemana, can only be considered feasible and desirable if the procedure set out in the NEA and regulation 17 relating to 'alterations' are complied with,...."

These decisions made by the Judicial Committee identify that the EIA process required for approval was necessary for the alterations.

This is New Evidence confirming that the FT is an "alteration" and that it lacks approval under the National Environmental Act.

Supreme Court Judgement (SPF Appendix 9)

Affected persons from both the Northern and Southern Deviations filed action in Courts against the RDA, CEA and associated parties. The judgement was issued on 20th January 2004 and is New Evidence.

1. It is a Supreme Court Judgement on the Expressway that was delivered **after** the Inspection Request was denied.
2. It is a **new confirmation**, by the Highest Court in Sri Lanka, of the contention of the Requesters that the RDA was constructing on an unstudied trace, which fact was disputed by the ADB at the time of the Previous Request.

The Judgement, delivered by the Supreme Court, gave clear decisions on several points which are relevant to the Breaches of ADB guidelines and to statements by ADB Management in its Response.

The Supreme Court judgement stated: -

- (1) That the deviations ("alterations") were not covered in the studies done for the EIA
- (2) That the petitioners in the case were affected by the Final Trace (FT), and **not** by the Original Trace (OT) nor Combined Trace (CT).
- (3) It found that the "final alignment" did **not** include "the petitioner's area."
- (4) That the RDA altered the route (to the Final Trace), after the CEA approved an earlier trace. The court held that **the deviations were "alterations" and as such the National Environmental Act required a Supplementary EIA to be done.**

- (5) That the CEA could not delegate its power to approve the deviation (“alteration”) to the RDA; thus only the CEA could approve the Final Trace. Which it had not.
- (6) That the people affected by the deviations were **entitled to prior notice and to be heard**
- (7) That the **Rights of the Petitioners under the Constitution of Sri Lanka had been violated.**
- (8) That the **Principles of Natural Justice had not been adhered to.**

****It should be noted that the Supreme Court has ruled that the deviations have not been legally approved. This is a breach of the ADB Policies.**

****The Court has ruled that the Affected Persons had not been given prior notice or been heard. This is also a breach of ADB Policies.**

****The Supreme Court ruled that the deviations (“alterations”) had not been studied in the EIA and required that a supplementary EIA be conducted. ADB Policies require that national environmental laws are adhered to and that projects with significant changes (as in this case), be re-appraised with new environmental and social documentation produced and approved as the case may be.**

1999 case on EIA - ADB Management misrepresented facts

In 1999 the Public Interest Law Foundation (PILF) took a case to the Court of Appeal regarding the Southern Expressway. This was nothing to do with the CEA ruling on traces, nor was it brought by the requesters.

The Board Inspection Committee denying our inspection requests gave as one of the reasons “The RRP made clear that the final trace to be followed depended on a ruling by the CEA, which reverted the ‘combined trace’ to the ‘original trace’. The CEA was subsequently **challenged in court for this** but upheld by both the Court of Appeal[s] and the Supreme Court (as cited in the Management’s Response). This material development had not been disclosed by the Requester.” (Our emphasis)

This statement by the BIC is incorrect for the following reasons

1. The Court of Appeal and Supreme Court case did not challenge the traces, it challenged the inadequacy of the EIA in researching alternatives to an Expressway.
2. The requesters were not parties to this case and were not even aware of the details of this case when the Inspection Request was made.
3. The judgement in fact stated that the Combined Trace was the approved one.

The requesters could not have known, indeed never expected, that the BIC would misunderstand the judgement especially as the legal premise and grounds had been clarified to ADB Counsel. Exposure of this must be New Evidence.

Following the preparation of the Inspection Request, at the meeting of some of the Requesters and others with a Mission from ADB Manila on 10th December 2001, ADB Counsel mentioned the PILF case judgement. As the Requesters were not involved in

the case they were not aware of the details of the judgement. Therefore they asked the lawyer who brought the action to clarify the matter with the ADB Counsel. This was done. It is difficult to comprehend how the judgement, with clarification of the issues provided to the Counsel, was subsequently so misinterpreted by ADB.

1. ADB Management had a copy of the judgement, which is also annexed to the Management Response. (SPF Appendix 4). ADB Management could not have read into it any issue about the traces.
2. ADB Management acted in bad faith. The lawyer who brought the PILF action informed ADB Counsel Mr. Arjun Goswami and the secretary to the BIC by fax. Significant excerpt is...

“The EIA was challenged by PILF on the basis that it had failed and neglected to address “environmentally friendly alternatives” adequately. In particular several alternatives, including a hinterland roadway, the expansion of the coastline railway and combinations of these as well as the TSM option had not been considered. The court ruled that alternatives had been considered on the basis of what the ‘experts’ said in the EIA.”

3. ADB Management was aware from the judgement that the requesters were not parties, further the lawyer who brought the case had stated this in his fax to Mr. Goswami...

“The communities who have petitioned the ADB’s inspection procedure were not parties to that case and hence their rights and interests remain unaffected by that decision.”

4. The Judgement of the Court of Appeal in the PILF case confirmed the choice of the combined trace stating...

“Needless to say, under judicial review procedure, it is not open to me to substitute my own views for that of the CEA which has thought it fit to accept the recommendation of the experts.....Southern Expressway which is depicted as the ‘combined trace’. ... as the best of all options or schemes.”

The Combined Trace was the approved one. The trace now being used in the areas relevant to this request does not follow even one metre of the Combined Trace.

We as requesters were not aware that the ADB would misrepresent the facts of the 1999 case. **We urge the SPF to read pages 3, 4 & 5 of the ‘Management Denial Response’** (Attached as SPF Appendix 3 (e))

Supreme Court Judgement 2004 regarding PILF case.

In the Requesters case in the Appeal Court the RDA counsel made preliminary objections that the case had already been adjudicated through the Judgement on the PILF case. However this was not accepted and the cases proceeded in the Court of Appeal and finally to the Supreme Court. The Appeal Court did not find the objections of the RDA

regarding the PILF case to be justified. The Supreme Court also did not accept the argument. Thereby confirming that the PILF challenge on alternatives was nothing to do with the issue of a trace that did not conform with the laws of Sri Lanka. The two issues were not related. Please note that the question of alternative modes of transport was not raised in the Inspection Requests.

This is New Evidence, ADB Management stated that the PILF case had conclusively decided on the matter. The Board Inspection Committee believed them. The Supreme Court judgement shows that the Management response was incorrect. The Final Trace is a new trace, for which no EIA has been done.

Location of the trace

In our requests for inspection the location of the trace and the fact that we were not informed of the new trace were central to the request.

The ADB Management made out that the EIA covered a wide area, the Supreme Court also heard arguments from the RDA and CEA with regard to “Project Area” and did not accept them. This is conclusive, within Sri Lanka’s legal framework, the EIA did not cover a wide area.

Maps showing the actual position of the traces (SPF Appendix 5 & 6)

The Management Response was very clear that the “Project was approved on the basis of a 3-4 km wide corridor”. In many places the Management Response to GSS stated that the Requester’s area was within this corridor. (Paragraphs 43, 57, 58, 63, 65, 66, 74, 77, 91, 95, 96, 97, 98 & 100.) The Requesters of the GSS Inspection were and are not within the corridor.

We have been advised that the only evidence the Bank Inspection Committee considers acceptable to prove this is an official map showing the distances between points. No official map was available to the Requesters (or the Public) at the time of the submission of the Inspection Request to show that the Final Trace was outside the Corridor.

Maps that the RDA had produced were only made available to the Courts during the cases. They were not available to the Affected Persons before hand and were only given to the Courts directly by the RDA. Copies of these maps are attached to the SPF Complaint as Appendix 5.

In fact there are other maps that were shown to Court which would have been further proof of the distances. The RDA promised in Court, to give them to the petitioners, but has not done so, despite written requests by the petitioners’ lawyers.

The maps attached show the individual traces and give the distances along the trace. From this it is clear that the supposed **3km band does not cover the Final Trace**. The Final Trace is outside the band that the feasibility study had agreed as the basis for the preparation of plans by the RDA and their consultants. The actual studied area was only 122 metres on the OT and 200 metres on the deviations recommended and included in the CT. The SIA only covered the trace itself.

For clarity a diagrammatic map of the Bandaragama deviation is attached showing the traces and the 3 km band. (Map 4)

Obtaining of “Consent” and Intimidation by RDA (SPF Appendix 12 & 13)

In August 2002 the RDA required to prove to ADB the consent of those who would be displaced. They also wanted to carry out surveying of the Final Trace. Because of the injustices they had suffered the affected people were not willing to give up their rights to their property so surveying was refused. The RDA then came with Police and the surveyors. The RDA Officers also used the presence of the Police to intimidate householders into signing questionnaires, which were later completed by RDA officials. Affidavits and Photographs are attached to the SPF Complaint.

The complicity of ADB, whilst not being provable is certainly indicated. Two of our leading members were attending an ADB consultation in Kathmandu on the Inspection Process. Whilst they were there, their Homes and Lands and those of their neighbours were invaded. The surveyors came with Police. According to them they were instructed by a phone call to go in that day. The ADB staff present in Kathmandu were advised of the actions of the RDA.

The above is New Evidence of the actions of RDA and the possible complicity of ADB. The lack of action by the ADB after this leads one to believe that they were silent but willing partners in this violation of basic Human Rights. The completion of forms by RDA Officers, the intimidation to obtain signatures, the willingness of ADB to use this information despite knowing how it was obtained, all of this is outside ADB policies. It occurred in August 2002.

ADB Manila Review Mission Site Visit (SPF Appendix 15c & 15d)

On 22nd May 2004, the Review Mission consisting of Ms Mulquenny, Ms Jayewardene and Mr Tsuji visited the Bandaragama and Akmeeemana areas. Mr Cooney and Mr Rinker from the Resident Office accompanied them. They were able to see the actual position of the Combined Trace, Original Trace and Final Trace. In Bandaragama by travelling the distance between the traces they were able to register the distance between the Combined Trace at Rammukkana and the Final Trace at Gelanigama, which was noted as 2.8km. The distance between the Original Trace at Weedagama and the Final Trace at Gelanigama was noted as 0.6 km. This is New Evidence of the actual distances between the traces as this exercise had not been done with anyone from ADB till then.

Social Impact Assessment

The Social Impact Assessment only covered the CT, as is clear from the SIA itself. **The SIA says that the questionnaire only covered the sample of houses actually along the trace.** The details in the tables concerning demographics and homes referred only to those on the trace itself.

This information was enhanced by “discussions” with people on attitudes to the Expressway being close to their house. These discussions were held in a 3km band centred on the Combined Trace. These discussions did not form part of the data in the SIA and hence could not have formed the basis for the Resettlement Plan.

The SIA was not available to the Requesters until a formal application was made through counsel in the Appeal Court case. This was long after the Inspection Request had been denied. Therefore the Social Impact Analysis is New Evidence on the corridor used for the RRP and on which the approval of the loan was based.

Feasibility Study

The feasibility study shows the reason for the CT being recommended as the only viable option in the EIA. The feasibility study was available only to RDA and ADB, not to the Requesters. One section was provided to the Requesters with the Board Inspection Committee report after the Inspection had been denied. The page attached to the SPF complaint as Appendix 11 is therefore New Evidence.

It is pertinent to note here that the Feasibility Study is still not available to the requesters due to the refusal by the GoSL to release it. We think that the Feasibility Study will reveal much New Evidence.

In order for the CRP to ensure they are adequately informed they would need to ensure that we are given a copy and are able to make our submissions on it.

Involuntary Resettlement (SPF Appendix 7) and Additional Evidence to the SPF

Since the Inspection Request the RDA and the associated government officials and the contractors have removed people from their homes. The way this was done is outside the guidelines of the ADB.

No Resettlement plan is available to the public. The Joint Organisation has received (30th April) a copy from the Resident ADB Office thanks to our request made in Manila on 17th March. Copies are not available at the Divisional Secretaries Offices in Akmeemana or Bandaragama or at the RDA Resettlement Offices, despite written requests and many visits. The Sinhala copy of the plan is not available at all Divisional Secretariats notwithstanding assurances by ADB that it was available. (ADB wrote on 28th Sept. 2001 in response to GSS letter of 11th Aug.2001.) Chairman RDA promised a Sinhala copy would be available within a month in June 2004. This is still not available 5 months later.

An extract of 12 pages in Sinhala was made available to GSS recently but omits vital pages like the sequence of acquisition steps, details of entitlements, resettlement sites etc., The English document is over 2 inches thick.

Details of the way people have had their homes destroyed without any payment of compensation is noted in the information given to SPF. Widows, disabled, children, old people, many have been left without shelter, without proper access to water and without sanitation. The Government Officials have insisted on the home owners destroying their

homes saying that if they did not they will never get anything. The powerless have little choice but to accept. This is very far away from all the policies of ADB.

It is contrary to the terms of the Loan Agreement that the ADB and the GoSL signed. The ADB is not ensuring that the Involuntary Resettlement Policy is followed. This would not have been known or even contemplated by any sane person at the time of the previous inspection request. This is New Evidence

Resettlement Monitoring

The ADB employed a monitoring firm whose only action is putting more pressure on people to leave their homes. They have certainly not been acting as monitors.

The monitors went to individuals, took photographs of their homes, gave exaggerated values for their properties and then asked if the people would accept such a sum. The answer was yes. Subsequently the compensation offered by the RDA did not come anywhere close to the sum suggested by the monitors.

Request by us for the Monitoring Report was made in Manila on 17th March 2004 and again to Mr. John Cooney, Country Director, Sri Lanka on 28th April 2004 with no success. This is yet more new evidence of ADB's lack of Transparency.

SPF Report and Recommendations confirmed there was no proper monitoring being done.

A recent survey by the respected NGO, Centre for Environmental Justice shows that 73% of resettled families were not satisfied with the compensation they received. 95% had not received their total compensation even though they had been dispossessed. (Document "Dream Road that destroys sustainable livelihood" available with SPF).

Request for Compliance Review: **Southern Transport Development Project**

Harm being suffered by the Requesters.

We are, or are likely to be, directly affected materially and adversely by the ADB assisted project known as the Southern Transport Development Project in Sri Lanka.

Homes - We have lost or will lose our homes, our land and our livelihoods as a direct result of the Expressway being built through our homes and lands and destroying our communities.

The ADB RRP and its attached documentation were for a trace known as the Combined Trace (CT). At least 40% of this trace has since been altered by the Road Development Authority (RDA) to a trace referred to as the Final Trace (FT). The alterations are most significant in the North near Bandaragama and in the South near Akmeemana. This change has multiplied the housing loss and is destroying the social and religious cohesiveness and economic self-sufficiency of our villages.

There are 1,315 homes at least being destroyed along the Final Trace. The ADB RRP had estimated 810 as per the Combined Trace and expected this number to be reduced when the final trace was drawn. The EIA stated the CT would destroy 622 houses. The RDA has recently told the media that 4,000 homes will be damaged. Further details have not been released to the Public.

Of the 1,315 homes to be destroyed by the FT 270 are in the Northern Deviation and 470 are in the Southern Deviation. The CT that was approved in the loan documentation would have destroyed only 40 and 50 homes respectively. **This is an eight-fold increase in these two deviations alone.**

Environment - The recent judgment in the Supreme Court confirmed that environmental studies and consequently agricultural, irrigation, social studies, economic analysis, etc., have not been done on the FT. This has resulted in unquantified and unforeseen damage. The facts below illustrate this further.

Livelihoods of many Farmers' have been irreplaceably lost with the change of Trace. The FT runs through productive paddy fields rather than abandoned ones as well as tea and rubber estates. Replacement agricultural land has not been provided to the majority of farmers. Many of us are suffering with loss of our homes as well as loss of our productive lands. This impacts severely on our future lives as compensation will not feed our families for generations as our lands have done.

The estimate of lands to be directly lost is nearly 1000 hectares of which 300 hectares are Paddy fields. The majority of the rest is rubber, tea and fruit and vegetable gardens, which contribute significantly to our economic well-being. The water flows and the water table itself will also be damaged and make fertile areas that are outside those acquired unproductive. The choice of the FT going through productive lands has caused material loss for many of us both directly and indirectly.

Wetlands - Our environment will also be considerably degraded. An example is the Panape Wetland close to Bandaragama. **This wetland was not in any of the areas**

studied. It is very important as an area of high bio-diversity and flood protection. The FT goes through Panape along with other wetlands and huge tracts of productive Paddy Fields. This trace will cause irreparable damage to this area of high biodiversity. ***If the Panape is left untouched as it has been for years it will be one of the places close to Colombo where people will be able to come and appreciate nature. The Panape is rich in biodiversity and would also be preserved for scientific study.***

One of the reasons for changing the trace was concern for wetlands, notably Bolgoda recreational area in the North and Koggala in the South. However Wetland Experts value the Panape Wetland, the paddy fields and the other wetlands along the Final Trace more highly than the area of wetlands the CT was passing through.

Social Structure - Hitherto integrated communities will be dispersed. We have extended family structures and up to 4 generations live within walking distance of each other. We will now be displaced and forced to live away from each other.

Temples - In the Bandaragama deviation there are 5 temples that will be damaged. Previously on the CT there were none to be affected. One of the Temples has an Orphanage and two have Meditation Centres. The loss of parts of our Temples and the severance of community from the temple is destroying the religious and cultural base of our society. Running an Expressway close to a temple means that the peaceful atmosphere, which is of intrinsic value to a temple, will be destroyed. There will be vibrations from the Expressway and constant noise of traffic. As the affected Monks say, sound barriers will not restore the peaceful environment. This means that Bana and Pirith will not be able to be practiced in a tranquil setting, as they should be. Affidavits from the Monks regarding the damage to the Temples are attached to the SPF Complaint Appendix 10(a).

Some of our members took the change of trace to the Court of Appeal. The Court appointed a Judicial Committee of three retired Supreme Court Judges chaired by a retired Chief Justice to investigate the change of trace. They took evidence directly for several days and spent two days visiting the various traces. The Committee strongly noted the lack of information to the affected people and damage to a Temple in particular. A copy of the Judicial Committee Report is attached. It is pertinent to note that on the approved Combined Trace no temples were to be affected.

Resettlement Practice - Direct harm has been caused to many of the Affected People by the way Involuntary Resettlement has been carried out. None of the people have access to the Resettlement Plan and their Entitlements. The ADB informed us in 2001 that the plan was available in Sinhala, but the Sinhala translation promised to the Chief Representative of JBIC in May 2004 is still not available to the people.

The Resettlement is being done in a very cruel and harsh manner contrary to the ADB Involuntary Resettlement Policy. Many people are suffering, particularly the disabled, the women and the elderly. People are being forced onto Resettlement sites without even water and electricity.

Affected Persons are told that they will get no compensation if they do not do as the RDA insists. Many have been forced to destroy their homes and live in wooden shacks, even elderly and widows are forced to break their houses and live in the kitchen or bathroom

only as the rest of the house is destroyed. Wells have been filled in, toilets destroyed, and the families left without any water or toilet facilities.

As a matter of practice throughout the trace full compensation has not been paid prior to eviction. Some are forced to fall into debt when they relocate, some to live in half built homes awaiting the money.

As the Resettlement sites in some cases are a long way from their homes many are also losing their livelihoods. No attempt has been made to replace these livelihoods. The labouring work being done on construction of the Expressway has been given to people from outside the area. We were informed and have since checked, and found this to be true. The labourers were employed by a company owned by the brother of the former Minister who was put in charge of the STDP by the previous Prime Minister.

The RDA's failure to inform and involve people has resulted in resistance in many places along the trace. They are now penalising these people by terrorising and forcing them out of their properties. They are neither fully compensated nor are there properly prepared resettlement sites or places to go.

Details of the way that Resettlement has been done can be found in the Additional Evidence supplied to the SPF. This was the result of site visits and interviews by Friends of the Earth Japan in the presence of the Chief Representative of the Japan Bank for International Cooperation. These were carried out mainly in the ADB section, as well as the one site in the JBIC section.

Further details of the harm being suffered can be provided.

Harm is due to ADB's Actions and Omissions

ADB has a series of Safeguard and other Policies which ADB Management is duty bound to follow. Many breaches of these have occurred and continue to occur. The harm we are suffering is because ADB Management has not complied with these Policies.

The Final Trace has not been covered by an EIA. The FT is outside the corridor recommended in the RRP and approved by the Board in 1999. There have been no Social Studies on the 48km of the Final Trace that are deviations from the Combined Trace. The viability of the Combined Trace was a marginal 12.2% with costs increased by 10% and benefits reduced by 10%. Costs have more than doubled compared to those used in the Economic Analysis of the RRP. Benefits have been reduced by much more than 10% by moving the trace away from the sources of traffic. No reappraisal of the Project has been done that is publicly available. The Final Trace has more than doubled resettlement. The actual number of homes for which resettlement is necessary is not being disclosed by the RDA only those within the Acquisition line of the Expressway. Those to be resettled because of underpasses overpasses or interchanges are not counted, nor their compensation assessed.

In 2001 ADB Management was advised of the harsh and inhumane way that Resettlement was being done. The methods used for Resettlement have not improved. The direct breaches of the Involuntary Resettlement Policy were advised to ADB and

CRP Request Harm

they have ignored all these. Neither the Resident Mission nor any of the visiting Missions have monitored Resettlement practices otherwise the suffering that is being forced on those who have been removed from their homes, their lands and their livelihoods would not be continuing. No information is supplied to those being resettled, neither a Resettlement Plan, an Entitlement Matrix, not even an analysis of the Compensation they are receiving. No information for them to understand their rights or even whether they have been robbed by the Resettlement Officers.

All the above are breaches of ADB Policies. From 2001 the ADB has been advised of this. In August 2001 President Chino was advised directly. An Inspection request in October 2001 gave details of the breaches. Inaccurate information given by ADB Management to the Board Inspection Committee denied us this Inspection. This inaccurate information shows ADB Management's complicity in the harm being done. ADB Management denials and active assistance to the Government of Sri Lanka is a direct cause of our suffering.

If the ADB had ensured compliance with policies, then we would not be suffering harm.

Human Rights violations are being committed within ADB's knowledge and connivance. ADB is party to those violations. This is clearly against Policy.

There are breaches of covenants of the Loan Agreement of which ADB management is aware. Disbursements of the Loan could have been suspended if not terminated. ADB Management has taken no action.

The disbursement of funds whilst the breaches occur permits the RDA and other authorities to continue to do harm to us. The granting of permission by ADB to the Government of Sri Lanka to sign a contract with Kumagai Gumi when the contract was for a trace that was not permissible within ADB's policies and cases were still in the Courts is causing harm to us. All these omissions and actions make ADB the direct and indirect cause of harm to us.

Request for Compliance Review:8th November 2004**Southern Transport Development Project**
Breaches of ADB guidelines and Safeguard Policies**OM Section F1 and F2 Environmental Considerations and Involuntary Resettlement and J4 Loan Covenants**

The above policies were issued on 29th October 2003. The majority of the planning of the project and the problems deriving from it were done prior to that date and therefore the previous policies will mainly be used as the basis for this document. At the end of this document we will include a section dealing with breaches that are currently occurring and fall under the above policies.

OM Section 20/OP Environmental Considerations in Bank Operations

This project has been classified as Environmental Category A. Category A projects are "Projects expected to have significant adverse environmental impacts." ADB OM sec. 20/OP Para 2. The bank policies require an environmental impact assessment (EIA) for category A projects. ADB OM sec. 20/OP Para 2.

An EIA was produced in 1999 and approved by the CEA. In their approval they recommended alterations to the trace. The RDA made further alterations and is now using a trace different to that in the EIA or that recommended by the CEA. *This trace is known as the Final Trace (FT)*

The Supreme Court Judgement has confirmed that in the Final Trace (FT) there are "alterations" to the trace and that the EIA does not cover these Alterations. There is therefore no EIA for the trace the STDP is now following. This is a fundamental requirement of ADB's policies.

The lack of an EIA is a violation of Bank Policy ADB OM sec. 20/OP Para 2.

According to ADB policies, "a typical EIA Report includes the following major elements: (i) description of the project, (ii) description of the environment, (iii) anticipated environmental impacts and mitigation measures, (iv) alternatives, (v) economic assessment, (vi) institutional requirement and environmental monitoring programme, (vii) public involvement and (viii) conclusion. The report is prepared by the borrower and reviewed/cleared by the EIA regulatory agency of the borrowing country and the bank" ADB OM sec. 20/OP Para 2. fn2.

As you will see from the list of points below, the Bank approved a loan for a category A project without an adequate EIA. This is a violation of the bank Policy on Environmental Considerations OM Section 20/OP.

a) The project, environment and the anticipated environmental impacts and mitigation measures, are not described in the EIAR as required in (i), (ii) and (iii) above.

CRP Request Policy Breaches

The EIAR described two different road alternatives, the Original and Combined traces. The trace on which the Expressway is to be constructed is a trace referred to as the Final Trace. In many places and particularly in the Bandaragama and Akmeemana areas this is a new trace altogether. Since there is no information on this new trace in the EIAR it does not meet the requirement in (i), (ii), (iii), (v) and (viii) above.

This is a violation of the Bank Policy ADB OM sec. 20/OP Para 2.

b) Anticipated environmental impacts and mitigation measures not described in EIA as required in (iii) above.

The EIA did not cover all the significant flooding and environmental impacts. The trace has now been changed. In the Northern section it will destroy the Panape Ela wetlands. The EIA did not cover these as they were not on the trace which was surveyed in 1996 and included in the 1999 EIA. In the Southern deviation it is going through large hills, deep valleys and many watercourses. None of these were included in the EIA. Further this area is known as being at significant risk of landslides. This is likely because of deep cutting of hills and at least requires mitigation measures. The Government department responsible for the avoidance and managing of landslides, the National Building Research Organisation, having seen what is being done has written to the Central Environmental Authority requiring an investigation and Mitigatory measures to be put in place. This hazard was not considered in the EIAR

This is a violation of the Bank Policy ADB OM sec. 20/OP Para 2.

c) Proper examination of alternatives required under section (iv)

As required the EIAR did not consider alternative modes of transportation in great depth, such as improvements to the railway system. Nor did it properly evaluate the use of improving the current road and use of bypasses. The criteria in judging an alternative, as defined in the Objectives of the Project, was that the project was to build a limited access Highway. EIA Ch. 3 Sec. 3.1)

The lack of investigation of alternatives is a violation of the Bank Policy.

d) Economic Assessment as required in (v) above is not adequate

The costs and benefits of the trace now being implemented will be significantly different from either of the traces given in the EIAR. Therefore the resultant EIRR will be wrong. An adequate assessment of the Trace being constructed has not been done. This is a violation of the Bank Policy.

e) Public not involved in environmental assessment programme as required under section (vii) above

The ADB policy describing an EIA states that a component of the EIA is public involvement.

- i). The first stage of public involvement as required by the National Environmental Act is in “Scoping”. This is where representatives, village leaders, etc. of all those possibly to be affected are invited to a discussion. This was done for other traces not for the Final Trace. Scoping was not done on the alterations made to the Final Trace.
- ii). Notification of the EIA to the public was done only through the Government owned newspapers. No attempt was made to advise the local people who might be affected.
- iii). CEA Public meetings - two along a stretch of 128 Kilometres is inadequate. Attendance for many would be almost impossible, for example the people of Kurundugahetekma would take about 4 hours by public transport to get to the meeting in Panadura, furthermore the cost would also be a factor.
- iv). Those being affected were not advised that the EIA was available in the Pradeshiya Sabha or the Divisional Secretariat in Bandaragama or Galle. Even if it were, a programme of educating the villagers on the rationale behind the road should have been carried out prior to the final traces being decided.
- v). RDA senior officials told local villagers in the Bandaragama area that the Expressway was not coming through the Gelanigama area.
- vi). The first people in the South heard was when Notices under the Land Acquisition Act were issued to them more than a year after the EIA was issued and long after the Loan was approved.
- vii). In the North some were told of its possibility more than one year after the EIA was issued and many, almost two years after it was issued.
- viii). The Divisional Secretary of Bandaragama, two years after the EIA was issued and approved told a newspaper published on April 22nd 2001 that “The problem is they have changed the route of the Expressway several times ...and [he] was therefore unable to identify those who would be affected.”
- ix). People were informed, they were not consulted, they were only told their homes and lands would be lost.

The lack of involvement means the EIA does not meet the requirements of OM sec. 20/OP Para 2, this is a violation of the Bank Policy.

f) Much of the data was out of date as it had been compiled prior to December 1996.

The EIA was based mainly on data that had been collected prior to December 1996 and at the time of review in 1999 it was out of date. It was inaccurate regarding all social data, for example, number of houses to be destroyed, costs of replacement housing, agricultural production etc. This is a violation of the Bank Policy.

g) SEIA is inadequate

According to Bank Policies a Summary Environmental Impact Assessment must be prepared ADB OM sec. 20/OP Para 3.

The SEIA was produced from the EIA but referred to the Combined Trace ignoring the decision to change to the Original Trace in the Bandaragama area. There is a reference to

the Original Trace in Paragraph 41, where it is considered unsuitable, as it would create “a greater need for resettlement”.

ADB Management has contended that the SEIA covered a some three kilometre wide band. The SEIA was based on the EIA which had studies of a 200 metre (or less) corridor with some environmental data up to a 2 km wide band. The SEIA has no data from outside the EIA band other than very general comments like “ the project are is tropical, the environment is generally quiet”. The SEIA is therefore really only covering a maximum of 2 km. If the 3km band were accepted as being covered by the SEIA for ADB purposes, then the band “centred on the Combined Trace” does not cover the Final Trace. The FT is more than 1½ km away (nearly 3 km in many places) from the Combined Trace, particularly in the Bandaragama area.

The lack of an SEIA for the area of the Final Trace is a violation of the Bank Policy.

As is clear from the points above the Bank approved a loan for a category A project without an adequate EIA or SEIA. This is a violation of the bank Policy on Environmental Considerations mentioned above.

h) SEIA presented to the Board and EIA do not cover Final Trace

Under Clause 4 of the OM20/OP there is a requirement to present the SEIA to the Board 120 days before it considers the project. The SEIA presented to the Board does not cover the area of the Final Trace, an SEIA for another area cannot be said to fulfil this requirement.

Clause 4 also requires the EIA to be made available to the Board and to locally affected people and NGOs. As there is no EIA for the FT this was not done.

The lack of an SIA and an EIA means the project does not meet the requirements of OM sec. 20/OP Para 4, this is a violation of the Bank Policy.

i) Government environmental requirements must be complied with.

Paragraph 14 (i) of OM 20/OP requires that Government environmental requirements must be met. The Supreme Court Judgement stated that the requirements of the National Environmental Act had not been met. That the Alterations required approval be done afresh. As this was not done it cannot be said that the Government Environmental requirements had been met.

This is a violation of OM 20/OP Paragraph 14 (i).

j) Alterations have changed the viability.

Paragraph 14 (ii)(b) requires that any changes carried out during the detail design stage should not change the financial and economic viability of the project. Alterations made during the detailed design stage have changed the viability. Firstly by more than doubling the cost and secondly by reducing the benefit as a result of moving the trace

away from the sources of traffic which was the reason for the CT according to the Feasibility Study.

If the Government did give such an assurance as is required under Para 14 (ii) (b), then it was breached. In any case the changes made violate the Policy of the Bank.

TO SUMMARISE – There is no EIA for the Final Trace the one approved by the CEA does not cover the area in which the Expressway is being constructed and is out of date. There was no public consultation. Many of the items required to be covered by an EIA were not covered. The SEIA is based on the EIA with minimal additional information. It does not cover the FT. The legal governmental requirements of Sri Lanka were not met.

These are violations of the bank's policy.

OM Section 50/BP Involuntary Resettlement

OM Section 50/BP Para 2 says, "Involuntary resettlement should be an important consideration in project identification. For any project that requires relocating people resettlement should be an integral part of project design and should be dealt with from the earliest stages of the project cycle, taking into account the following principles:

- (i) Involuntary resettlement should be avoided where feasible.
- (ii) When population displacement is unavoidable, it should be minimized by exploring all viable project options.
- (iii) If individuals or a community must lose their land...they should be...(c) assisted so that their economic and social future will generally be at least as favourable with the project as without it. Appropriate land, housing, infrastructure, and other compensation, comparable to the without-project situation should be provided to the adversely affected population...."
- a) Bank Policy requires resettlement to be avoided where possible. A trace through abandoned paddy fields for much of its length beside high-tension cables has not been used. This would have AVOIDED resettlement. The Bolgoda Lake Leisure area used to excuse the move in the North is many kilometres away. Subsequent excuse of 'wetlands' is not justified according to wetland experts. In the South the Combined Trace does not touch the Koggala lagoon. There are roads surrounding the Lagoon. The Combined Trace is outside those roads. If any move were needed to avoid some associated "wetlands" then a move of less than 200 meters would have sufficed.

Not using the Combined Trace is a violation of OM Section 50/BP Para 2 sub (i).

- b) A trace that would minimize the resettlement has not been used. In the Northern deviation Resettlement has been increased from 40 to 267. In the Southern deviation Resettlement has increased from 51 to 476. An increase is confirmed in RRP Appendix E Para 41. "While the original RDA alternative would have many of the same environmental consequences as the project corridor, it would result in a greater need of resettlement."

CRP Request Policy Breaches

The OT as marked on the ground and as described in the EIA would have less Resettlement than the FT. The FT has no financial, social, technical or environmental benefits to excuse the multiplied Resettlement.

Use of the FT is a violation of OM Section 50/BP Para 2 sub (ii).

- c) No land is being given to farmers to replace their lands being taken. As their land is their cultural heritage and is a major source of income and food supply to their families the non provision of alternate land means that appropriate land as required by policy is not being supplied.

This is a violation of OM Section 50/BP Para 2 sub (iii).

- d) The payments of compensation made to people resettled in the Matara area in March 2001 and since in many many other areas is not in any way sufficient to ensure their economic and social future would be at least as favourable as without the project. Many people are not even able to construct a home for themselves and are living in temporary sheds with no money to complete even a basic home. For details see the Additional Evidence given to the SPF on 26th June 2004.

This is a violation of OM Section 50/BP Para 2 sub (iii).

- e) Many Relocation sites have no water or electricity, in some cases not even the land is levelled or roads cut. These are required under OM Section 50/BP Para 2 sub (iii) (b)

This is a violation of OM Section 50/BP Para 2 sub (iii).

- f) OM Section 50/OP Paragraph 1 states "An initial social assessment (ISA) is required for every development project in order to identify the people who may be beneficially or adversely affected by the project."

No ISA was carried out in the areas of the deviations now being used as the FT.

This is a violation of OM Section 50/OP Paragraph 1.

- g) OM Section 50/OP Para 2 goes on to say "If the ISA identifies that resettlement is likely to be involved in the project a resettlement plan should be prepared, preferably in conjunction with preparation of the project feasibility study."

The Resettlement Plan as attached to the RRP does not cover the FT. It is based upon the SIA, which covers the CT only. This is a violation of the above policy.

- h) The Policy requires that those involuntarily resettled should be equal or better off. Those resettled all appear to be considerably worse off, even those over a year after being resettled.

This is a violation of OM Section 50/OP Paragraph 2.

OM Section 40/BP Formulation and Implementation of Loan Covenants

In the Loan Agreement Schedule 6 there are a series of covenants regarding Resettlement. Most of these are being violated, most notably the requirement to maintain the standard of living and compensation prior to their relocation. The RDA and local government officials are consistently paying only part of the compensation before relocation. Standards of living are much worse.

OM Section 40/BP Paragraph 5 regarding non-compliance recommends as a minimum to seek corrective measures. This is not being done and is a violation of OM section 40/BP paragraph 5.

OM Section 47/BP Incorporation of Social Dimensions in Bank Operations

Within the area covered by the Road there is Poverty, many old people and Single Women with household responsibilities. “It is the Bank's Policy to focus on people...” OM Section 47/BP Paragraph 2. None of the FT has been reviewed, investigated or specifically taken into account in the Planning of the Project. The Social Impact Assessment covered only the Combined Trace.

This is a violation of OM Section 47/BP Para 2.

Paragraph 2 goes on to say that this focus will be done “...by giving specific consideration to social dimensions...”. “The specific social dimensions identified for such consideration are ..(ii) enhancement of the role of women in development, ... (iv) avoiding or mitigating the adverse effects of development on vulnerable groups.”

In the Resettlement of Affected Persons along the Southern section many examples of harm being done to women, children and old people has been seen and continues to be seen. These include the destruction of their homes, the failure to supply accommodation of any kind or give compensation. For example a Widow and her family were left without a home, toilet facilities or access to water for months. She was forced to live in a shack of wooden posts covered with black polythene sheet along with her three children. After living like this for a long period the RDA eventually constructed a house for her and she was rehoused.

These are violations of OM Section 47/BP Para 2.

OM Section 47/BP Para 3 states “... the Bank will seek to (i) help the poor by providing ... (b) improved access to ... water supply, sanitation, ...” The RDA or their contractors have removed ‘poor’ from their houses, closed off their wells, buried their toilets and not replaced them, let alone given improved access.

This is a violation of OM Section 47/BP Para 3.

Paragraph 3 continues, “... help women ... increase ... their share in the rewards of development.” The destruction of their homes without replacement or compensation will not have done this.

This is a violation of OM Section 47/BP Para 3.

Paragraph 4 (i) very specifically states that “...the Bank will encourage a sense of ownership ... on the part of ... people adversely affected by adopting a participatory development process in which the 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, beginning with project identification.”

No consultation was done at the stage of project identification or planning for those Affected on the FT. More than eighteen months after the decision on the trace was taken some of the Affected Persons were told that they would have ‘to lose their land and houses’. They were told not to complain as this was of no use. Others were not told at all.

This is a violation of the bank's policy for participation and consultation OM Section 47/BP Para 4 sub (i) .

Paragraph 4 (ii) “.. the bank will conduct gender analysis ...” This has not been done, nobody has visited the area to do this. Representatives of the RDA visit houses along the Trace and tell the occupants that they will be losing their houses. Data has been collected from a limited number who sign a document which could affects their rights. The lack of analysis is a violation of OM Section 47/BP Para 4 sub (ii).

Paragraph 4 (iii) "...The Bank will conduct where necessary 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."

A social analysis is necessary given the numbers of affected persons, but none has been carried out in the 40% of the Project which has been altered. This is a violation of OM Section 47/BP Para 4 sub (iii).

Paragraph 6 states “Reviews will be undertaken during the initial years of project implementation.... to assess the participation of stakeholders...” No such reviews have been carried out to our knowledge. We as stakeholders have had to fight to be informed or heard. This is a violation of OM Section 47/BP Para 6.

OM Section 47/OP Incorporation of Social Dimensions in Bank Operations

Paragraph 5 states “The process of identifying potential beneficiaries and people likely to be adversely affected will start right at the stage of project identification.” As the project was intended to be developed elsewhere the identification of those likely to be affected was not started at the correct time, if started at all.

This is a violation of OM Section 47/OP Para 5.

OM Section 47/OP Paragraph 6 states, “An Initial Social Assessment is required for every development project in order to identify the people who may be ... adversely affected...” The project was intended to be done elsewhere, an ISA was not done on the FT.

CRP Request Policy Breaches

This is a violation of OM Section 47/OP Para 6.

OM Section 47/OP Paragraph 7 states, “The Social Analysis must examine all socio-economic facets that may be important ...” No Social Analysis was carried out on the FT.

This is a violation of OM Section 47/OP Para 7.

OM Section 54/BP Governance

a) Accountability under section A Paragraph 5 states that the Public Officials are accountable for their actions. We have been told by several senior RDA officials that they are neither accountable nor responsible for the work they are doing. As examples:- all the following have declared themselves as following instructions thereby indicating that they are not responsible for the actions they are taking: Mr Opanayake who was the Project Engineer for the Northern Section of the Expressway during most of its planning and now works on the Outer Colombo Highway Project, Mr Serasinghe who was in charge of the Resettlement for the Northern Section, Mr Immaduwa, Land Officer of the RDA during the early part of the development. Mr Moses Project Engineer.

Paragraph 14 requires the Bank to “focus on (i) public sector management (i.e. the overall functioning of Government, including line ministries, departments and agencies.)”. The lack of focus on this is a violation of the bank's policy OM Section 54/BP Para 14.

b) Participation Section B Paragraph 7, says that Government structures should be “flexible enough to offer beneficiaries and affected persons the opportunity to improve the design and implementation of ... projects.” This is clearly not so in the case of RDA as no participation has been permitted.

Paragraph 15 requires the Bank to “support (i) involvement of beneficiaries and affected groups in development programs and projects,”. The lack of support is a violation of Bank policy OM Section 54/BP Para 15.

c) Paragraph 8 states that participation should include non-government organisation (NGOs). No attempt was made to use the local NGOs to establish an optimal trace. We as NGOs receive no recognition from the RDA. No attempt at any sort of discussion has been made with any of our constituent NGOs or ourselves.

Paragraph 15 also says, “the Bank will support ... (iv) cooperation with NGOs.” The lack of support is a violation of Bank policy OM Section 54/BP Para 15.

d) Section D Transparency Paragraph 10, the ADB is certainly aware that the availability of information from the RDA and CEA has not been up to even the lowest standard of disclosure. The ADB, by accepting this, has violated its policy.

A) All the RDA has supplied are blue leaflets outlining the compensation package in very general terms.

B) No Resettlement Plan is available with either the Divisional Secretary or the Local RDA resettlement office. Requests for this have been denied. We, our societies and our representatives have asked the ADB to supply this or to arrange its supply. One copy has been supplied to us by ADB.

C) Only two meetings in Bandaragama of the RDA with the Affected Persons have been held in the village after the initial announcement in Feb. 2001, the second was in August 2004.

D) The CEA had two public meetings along a stretch of 128 Km. for discussions regarding the Expressway. Notices were published only in the Government controlled Newspapers. People who are to be Affected were not invited. All those present were from the Combined Trace which is now not being used.

E) The CEA letter approving the Expressway is not a public document and has to be specially requested. This letter materially affected us.

F) GSS have not even had acknowledgement to their letter dated 18th July 2001 to the ADB Resident Mission in Colombo.

G) The fact that Affected People were informed long after the trace was decided and were only informed that their properties would be acquired and not allowed to comment, confirms there was no Transparency.

H) People who have been dispossessed have not had access to the Resettlement Implementation Plan (RIP) or the entitlement matrix. Neither have they been given a breakdown of the compensation paid to them.

I) The RIP is not available in Sinhala in any place, including the RDA head office, even though both ADB and RDA said in 2001 that copies were available in all Divisional Secretariats.

Paragraph 17 requires the Bank to “focus on disclosure of information.” The lack of focus on this is a violation of the bank's policy OM Section 54/BP Para 16.

There is a focus on non-disclosure. One of the fundamental documents in this is the Feasibility Report. The ADB Management in making its case has used the Feasibility Report. This presumably contains a lot about the Expressway that would allow an understanding and clarity in dealing with the issue. A copy was requested on 18th May 2003 and it took until 28th October 2003 to refuse it as apparently the GOSL had refused to give its permission. As the ADB is aware the GoSL has a disclosure bill in preparation which mandates the disclosure of this sort of document. It seems unlikely and certainly wrong that the ADB despite this rejects the publication. It should also be noted that in the revision of the disclosure policy this would be an item that would not need Government permission to release. With the focus on disclosure it seems strange that it is not released.

Economic Effect of Poor Governance

CRP Request Policy Breaches

The Affected Persons have not been allowed to participate in the process, and transparency has been poor particularly as there is a lack of Accountability amongst the Senior Project Managers.

The five deaths at a protest on the construction of the Katunayake Expressway underlines the risks involved. The protesters have been all too willing to protect their property. One widow had discovered men in her house and challenged them. They were surveyors who had entered without her knowledge. The Police locked her up overnight. Court Proceedings have still not been completed.

Lack of support for participation to affected groups

The Bank is required under OM Section 54/BP Para 15 to support Affected Persons. Our society has written to your Sri Lanka Mission and not even received a reply. Letters from over 150 Affected Persons to President Chino complaining have not been answered, though 51 have definitely been received.

After copies were supplied to the Resident Mission they were still reluctant to reply. The Support has not been delivered.

The Bank has violated its policy by not providing support.

OM Section 36/BP Economic Analysis

OM Section 36/BP requires an Economic Analysis be carried out. Bank Policy OM Section 36/OP states that "... economic analysis of projects cover the following steps...(iii) forecasting effective demand for project outputs, (iv) choosing least-cost design for meeting demand...(v) determining whether economic benefits provide an adequate return on economic costs,..."

a) Forecasting demand was done without proper consideration as required by point (iii).

Forecasts are incorrect as the traffic forecasts are made assuming the use of the Combined Trace which is closer to the coast where higher volumes of traffic exist. The reason for the consultants suggesting the Combined Trace was to pick up the increased traffic volumes and make it economical. The trace changes, both in the North and the South will reduce traffic therefore the model should be redone.

The shifting of the trace in the North caused the link of the Expressway to the coastal highway via the Outer Colombo Highway to be cancelled. This will reduce the traffic willing to drive the additional 10 kms through villages on a two-lane road to join the Expressway. Undoubtedly it will significantly reduce the traffic which would join from the Coast and be heading for Central Colombo or North Colombo. Also traffic joining further South heading for Southern and Central Colombo.

In the South the entrance to Galle has been cancelled following the change to the trace. Access to the major hospital in the South has been removed. These will reduce the use and value of the Expressway to the many citizens in the South whom the STDP is claiming to benefit.

CRP Request Policy Breaches

The model does not seem to take account of the most logical junctions to be used by vehicles turning off the Highway for different parts of Colombo. The majority will be heading for the Centre and will need to leave and enter at km10.31. Only Port, Airport and Kandy bound traffic will continue beyond this point. Traffic leaving at km 6.25 is likely to be small.

The traffic growth over the years leading up to the calculation of the volume growth was driven significantly by duty free and part duty free concessions given to government employees. The growth has dropped to half following the removal of these concessions.

The above points show that the bank violated the Policy on Economic Analysis.

b) Choosing the least cost design is required as part of the economic analysis Point(iv)

The cheapest design has not been chosen. In all the documentation the CT was shown as the cheapest. The FT is costing more than double in Sri Lanka Rupee terms. In dollar terms it is almost 50% more expensive. No analysis has been done to show the FT is the cheapest. The FT is more expensive and the demand will be lower. However no clear analysis was done of the likely position. This is a violation of Bank's policy.

c) 'Adequate Return' Computation is incorrect. Point (v)

(i) The costs for the chosen trace, the FT, have not been computed or used in the economic analysis.

(ii) The cost of land and resettlement of Rs.1,265m (RRP page 73) includes only Rs.300m for Residential/Commercial Structures (RRP Appendix F Page 28). For residences alone the EIA shows a figure of Rs.458m for the CT and Rs.691m for the OT (EIA Chapter 6 Page 49). This is calculated at Rs.850 per sq foot which is less than one third of current building costs.

(iii) The Resettlement Implementation Plan gives a new cost for land and resettlement of Rs. 2,861, more than double that given in the RRP. We are told that even the current budget for Resettlement is insufficient to meet the required compensation, and the money has "run out." The increase of 126% in the budget has not been updated in any publicly available economic analysis.

(iv) In the computation a very high residual value of 80% for the road investment has been made. This is even after twenty years. Significant changes to the Expressway will be needed long before the residual value has been brought to zero. This decision significantly overvalues the road life remaining and affects the EIRR a great deal.

(v) The revaluation of the loan repayments at the fast depreciating rate of exchange as recommended under the guidelines Appendix 29 has not been done.

Given the above points it is clear the Economic Analysis is flawed and violates the policies of the Bank.

OM Section 22/BP Benefit Monitoring and Evaluation

In order to ensure improvement in the effectiveness of the Bank's development and related investment policies, Benefit Monitoring and Evaluation has to be carried out. Paragraph 3 requires Benchmark Information to be collected.

This has not been done for 40% of the Project as is mentioned above. OM Section 22/OP Paragraph 1 allows this to be carried out in the early phases of project implementation, but five years should not be necessary for that.

The bank's policy on Benefit Monitoring and Evaluation is being violated.

OM Section 21/BP Gender and Development in Bank Operations

OM Section 21/OP Para 2 states “improving the status of women is one of the five strategic objectives of the Bank.” Para 4 states “Gender Planning - to formulate specific strategies to bring about equal opportunities for men and women. Mainstreaming – to ensure that gender concerns and women’s needs and perspectives are considered in all aspects of the Bank operations and that women participate in development activities.” None of this has been considered, women are evicted from their homes along with their children. No Bank Staff, Bank Contractors or Consultants, RDA staff or their Contractors or Consultants have done any survey, review or any kind of research on Gender and Development on the Final Trace.

This is a violation of OM Section 21/OP.

Bank Policy is that gender considerations are addressed in all stages of the project cycle, Para 2. OM Section 21/OP Para 7 states “... gender analysis and WID considerations will be undertaken as a routine at all stages of the project cycle,...” Para 8 requires an Initial Social Assessment for every project. None has been done on the FT. This is a violation of Bank Policy.

OM Section 34/BP Processing of Loan Proposals

It is the bank's policy as stated in Para 2 and again in Para 7 “to fully involve ... the project beneficiaries” and consequently the project affected persons “at all stages of the project cycle beginning from project identification.” This has been violated as the Bank has not involved them.

Para 9 and 10 require an RRP to be prepared in line with the project to be implemented, the one produced is inaccurate as it covers a different area from where it is being implemented. Similarly it is clear that the one made available to the Public was inaccurate.

OM Section 38/BP Procurement of Goods and Services

Whilst the decisions under this section may be beyond the scope of CRP the procedures are not excluded. We see from the local newspapers that International Competitive Bidding procedures as laid down in Para 15 have not been followed. This is a violation of the above paragraph and Para 1 of Section 38/OP.

OM Section 55/BP Anti-corruption

Under the process of acquisition of Land the RDA has promised large bonuses to local government officials if they manage to make arrangements for the acquisition of all the properties relevant to the trace. The duty of these officials is to assist in the lawful acquisition and bonuses may induce them to misuse their position. This is against ADB policy. However RDA has denied this and we have been unable to obtain proof.

The construction company Kumagai Gumi has given goods and financial incentives to the previous Project Director according to the Newspaper reports, which have not been denied. Kumagai Gumi was disqualified in the pre-qualification review, but allowed to continue following a request to the Treasury Secretary by ADB.

ADB consultant Arthachariya interviewed affected persons and apparently advised the SLRM of numbers of opposing households which are less than one tenth of the actual number. This hurt the Affected People badly and helped the RDA and the ADB as Arthacharya numbers were given to the ADB Board, to convince them that there were very few opposing households. We believe that the report was done fraudulently, the consequent report to the Board was also fraudulent. We have been suffering as a result of this Fraud carried out by ADB Management and one of their Consultants to hide the truth of the situation on STDP.

OM Section F1/BP Environmental Considerations in ADB Operations

OM Section F1/BP Para 4 states “ADB assists DMCs to protect the health and productivity of the poor ... maintaining the long term productivity of ecosystems and reducing their vulnerability to natural disasters.” The Expressway is being constructed through large hills and deep valleys, cutting deep into these hills and filling the deep valleys. The results of this are self-evident, however the considerable suffering of the people in these areas with loss of sources of water and danger from landslides can be easily found from discussions with the residents.

The risk of landslides and floods was underlined with the disasters where there was considerable loss of life in areas close to the area of the Expressway.

No research has been done, no Mitigatory measures have been evaluated. The CT, the recommended and approved trace, was not through hills, it was in abandoned paddy fields for which the Mitigatory measures were well defined in the EIA and the SEIA.

Paragraph 5 requires “ADB assists DMCs to strengthen ... and (vi) enhance education public awareness and capacity building.” No such work is being done by the DMC government or agencies connected with the GoSL or ADB.

Paragraph 8 states “ADB addresses the environmental aspects of its operations through systematic application of procedures for ... (iv) monitoring and evaluation of compliance with environmental requirements of loans;” If monitoring or evaluation was being done the considerable problems visible in the construction work now being undertaken would not occur.

OM Section F1/OP Environmental Considerations in ADB Operations

Paragraph 4 states “ADB requires environmental assessment ... [it] is a process rather than a one time report ... that take place throughout the project cycle. Important considerations in undertaking environmental assessment include examining alternatives, identifying environmental impacts, ... developing appropriate management plans and monitoring requirements ... and ensuring information disclosure, meaningful public consultation and appropriate reporting of results.” This is not being done at all. ADB requires this to be done, but failures reported to ADB are not acted upon.

This is a violation of the Environmental Safeguard Policy.

Paragraph 28 deals with “Uncertainties in Location and Alignments of Infrastructure.” There is no process that has been advised to any of the Affected Persons of “... the agreed process to be followed for environmental assessment ...”

As this policy is new it may not have been included, but no attempt has been made to apply it on this project.

OM Section F2 Involuntary Resettlement

Whilst the Project itself was approved and implementation started before the Policy was issued there is a large volume of Resettlement that has been done after 29th October 2003.

Para 11 requires that “affected people are entitled to compensation to at least restore their economic and social base”. This is not being done with most resettled people being reduced to poverty. Some have improved, but this is the minority.

Paragraph 36 requires “..affected people to be individually compensated before civil works contracts are awarded or similar milestones occur.” This has not been done with nearly 50% of those due for compensation not still compensated more than 1 year after contracts were awarded. There were no other relevant milestones.

Para 45 says, “Public disclosure of resettlement plans ... is mandatory.” Long after the policy came into affect, long after resettlement commenced the Resettlement Plan is not available.

Para 45 also says that it must be “in a language that they can understand” the Sinhala version is always being promised but never available. In 2001 the RDA stated in a letter to ADB forwarded by ADB to GSS that a Sinhala version was available at every

Divisional Secretary's Office. In June the Chairman of RDA and other senior officers of RDA promised Friends of the Earth Japan in front of the Chief Representative of JBIC that the resettlement implementation plan would be available in SINHALA at all Divisional Secretary's Offices within one month. It is still not available two months later.

Para 46 requires Monitoring. This cannot be happening otherwise the gross breaches of the Involuntary Resettlement guidelines and policies would not be so blatantly violated.

Para 48 requires "The CCO supported by RSES must ensure compliance with the involuntary resettlement policy..." This is clearly not being done.

OM Section J4 Loan Covenants

"ADB is under an obligation to monitor and follow up these obligations contained in loan covenants." ADB has not monitored these covenants otherwise we would not have needed to advise SLRM that covenants were being breached, and had been breached for a long time.

Schedule 6 to the Loan Agreement contains a series of covenants. Clause 13(a) requires that all compensation is paid prior to relocation. This has not been done anywhere along the trace. This has been violated consistently. SLRM did not know about this until Friends of the Earth Japan in the presence of the Chief Representative of JBIC interviewed some resettled people.

Claus 12 of Schedule 6 states that the Borrower and RDA should follow the Bank's Policy on Resettlement. This has not been done. SLRM and Manila office should have insisted that the RDA correct the situation.

Paragraph 9 requires that all Land Acquisition was completed within 12 months of signing the civil works contract. As this was extremely unlikely when cases were before the Court ADB should not have permitted the signing of the Contract. It is not possible they were not aware that cases were in Court.

ADB had not been monitoring as required by OM Section J4 Loan Covenants

Under paragraph 6 of the OM on Loan Covenants there is a requirement to seek corrective measures. As these Covenants have been breached for a long period the ADB by now should have reached the legal remedy stage, and yet they are still only at the discussion stage.

ADB has not been seeking remedies for breaches as required by OM Section J4 Loan Covenants.

The above list of breaches and violations is not exhaustive but indicative of the very large number and importance of the breaches and violations ADB has committed or allowed to be committed.

CRP Request Policy Breaches

CRP Terms of Reference

CRP REQUEST NO. 2004/1 – REQUEST ON THE SOUTHERN TRANSPORT DEVELOPMENT PROJECT (LOAN NO. 1711 SRI[SF])

Terms of Reference for Compliance Review

Introduction

1. On 17 December 2004, the Compliance Review Panel (CRP) determined that the request for compliance review (Request) on the Southern Transport Development Project (Project) was eligible and recommended to the ADB Board of Directors (Board) to authorize a compliance review.
2. Under paragraph 122 of the accountability policy and paragraph 37 of the CRP Operating Procedures, the CRP provides its proposed Terms of Reference (TOR), including its scope of review, methodology and timeframe, for clearance by the Board Compliance Review Committee (BCRC). After clearance by BCRC, the CRP will provide the TOR to the Board and to all stakeholders, and post it on the CRP website, within 14 days from receipt of Board authorization of a compliance review. The CRP received the Board authorization on a no objection basis 10 January 2005.
3. The filing of a request does not suspend or otherwise affect the formulation, processing, or implementation of the Project unless agreed to by the borrowing country and by ADB.

Particulars of the Request for Compliance Review

4. Brief particulars of the Request are summarized below:

Project Name:	Southern Transport Development Project (Loan No. 1711-SRI[SF])
Country:	Democratic Socialist Republic of Sri Lanka
Requesters:	Sarath Athukorale, L.D.L. Pathmasiri and A.A.D. Sunil Ranjith Dayaratne and 25 other identified project-affected people who have asked that their identity be kept confidential
ADB operations department involved in designing and implementing the Project:	South Asia Department (SARD), with delegated responsibility to ADB's Sri Lanka Resident Mission (SLRM)
Project Status:	The ADB loan for the Project was approved by the Board in November 1999. As of 15 December 2004, about 27.4% of the loan has been disbursed and about 80% of the contract awards under the loan have been made. The loan closing date is scheduled on 31 December 2006.
Borrower of the loan:	Democratic Socialist Republic of Sri Lanka
Executing Agency for the highway component of the Project:	Road Development Authority

Other Cofinanciers:	Japan Bank for International Cooperation (JBIC), Nordic Development Fund (NDF), and Swedish International Development Cooperation Agency (Sida)
CRP:	Mr. Augustinus Rumansara, Chair, CRP is the Lead Reviewer taking primary responsibility for compliance review, with assistance from the part-time CRP members. The CRP will be supported by the Office of the Compliance Review Panel.
CRP contact person:	Mr. Rolf Zelius Secretary, CRP Email: crp@adb.org Tel: +632 632 4149

Purpose and Scope of Compliance Review

5. The purpose of the CRP is to investigate alleged violations by ADB of its operational policies and procedures in the Project that directly, materially, and adversely affects local people in the course of the formulation, processing, or implementation of the Project. The purpose of the compliance review is to focus on ADB's accountability in determining whether ADB has or has not complied with its operational policies and procedures in connection with the Project, and not to investigate the borrower or the executing agency. The conduct of these other parties will be considered only to the extent directly relevant to an assessment of ADB's compliance with its operational policies and procedures. After carrying out a compliance review, CRP will issue to the Board its findings and recommendations, including recommendations, if appropriate, for any remedial changes in the scope or implementation of the Project.

6. Based on the CRP's findings in its eligibility review of the Request, the CRP will consider ADB's operational policies and procedures, that were in effect at the time of Board approval with respect to the formulation or processing of the Project and those that were in effect when ADB's alleged act or omission took place with respect to the implementation of the Project. These policies are:

- (i) environmental considerations in ADB operations, Operations Manual (OM) Section 20, issued 7 January 1997;
- (ii) involuntary resettlement, OM Section 50, issued 7 January 1997;
- (iii) governance, OM Section 54, issued 13 January 1997;
- (iv) economic analysis of projects, OM Section 36, issued 12 November 1997;
- (v) incorporation of social dimensions in ADB operations, OM Section 47, issued 7 January 1997;
- (vi) processing of loan proposals, OM Section 34, issued 13 January 1997; and
- (vii) formulation and implementation of loan covenants, OM Section 40, issued 12 December 1995.

Conduct of Compliance Review and Methodology

7. The CRP will strive to carry out its work expeditiously, be as transparent as possible and ensure that there is engagement with Management and staff, the Requesters, project affected people, the Government of Sri Lanka and the Road Development Authority of Sri Lanka (the EA) and the Board member representing Sri Lanka.

8. In the wake of the tsunami that tragically affected a number of ADB developing member countries, including Sri Lanka, the CRP will initially concentrate its work in ADB headquarters in Manila, and exercise high sensitivity in following up with needed consultations and studies in Sri Lanka.

9. The compliance review will include the following:

- (i) consultation with all concerned stakeholders, including interviews as deemed necessary, with ADB Management, staff and consultants, the Requesters, cofinanciers and project-affected people, the Government of Sri Lanka and the EA, and the Board member representing the borrowing country, all of whom will be given an opportunity to record their views;
- (ii) coordinate, to the extent appropriate, with those of compliance review mechanism of any cofinanciers that is conducting a separate compliance review of the Project;
- (iii) review of ADB files and other documents related to the Project;
- (iv) carrying out site visits with the prior consent of the Government of Sri Lanka obtained by CRP;
- (v) holding public hearings in the project area;
- (vi) using consultants to assist the CRP in carrying out its work; and
- (vii) using any other investigatory methods that the CRP considers appropriate to carry out its work.

10. CRP will exercise discretion and maintain a low profile in Sri Lanka. CRP will not give any media interviews at any stage of the compliance review. CRP members will be subject to ADB's confidentiality and disclosure of information policy, including those provisions aimed at ensuring that confidential business information is not disclosed. When requested, CRP will withhold the identity of the claimants from other stakeholders. Any material or information submitted to any CRP members or the Secretary, CRP on a confidential basis from any party will not be released to any other parties without the consent of the party that submitted it.

11. Compliance review is not intended to provide judicial-type remedies and the CRP's findings and recommendations are not adjudicative. After carrying out a compliance review, CRP will issue a draft report of its findings and recommendations to Management and the Requesters for comments; both Management and the Requesters will have 30 days for comments; within 14 days from receipt of the comments on the draft report, CRP will consider the comments, and finalize the report, as deemed necessary, and issue to the Board its final report with its findings and recommendations, including recommendations, if appropriate, for

any remedial changes in the project scope and implementation. The CRP notes that the Requesters have identified a number of potential remedial actions in their Request. These will be considered during CRP's compliance review.

Timeframe

12. The CRP will carry out the compliance review expeditiously. Based on the nature and complexity of the Project and the potential policy violations, CRP proposes the following timeframe, in accordance with the compliance review steps set out in the accountability policy and the CRP Operating Procedures.

Step	Event	Expected Date
6	CRP's Draft Report. CRP will issue its draft report of its findings and recommendations to Management and the Requesters for comments.	6 May 2005
7	Management's Response and Requester's Response to CRP's Draft Report. Each party has opportunity to give comments within 30 days from receipt of the draft report.	13 June 2005 ^{*)}
8	CRP's Final Report. Within 14 days from receipt of responses, CRP finalizes its Report, based on comments received, and issues CRP's final Report to the Board, with responses from Management and the Requesters as attachments.	27 June 2005
9	Board's Decision: Board consideration of the CRP's Final Report within 21 days from receipt of CRP's Final Report. Release of the Board Decision and CRP's Final Report	July 2005 July-August 2005 (within 7 days from Board Decision)

13. These timelines do not take into account time needed for translation and extensions requested for filing responses, where additional time may be required. If the CRP should experience problems in keeping with the timeframe presented above, the CRP will seek BCRC's clearance of any proposed revised time schedule.

/S/ Augustinus Rumansara
Chair, Compliance Review Panel
21 January 2005

^{*)} Allowing for mail delivery.

List of Persons Contacted

The Compliance Review Panel (CRP) contacted the following persons, within and outside Asian Development Bank (ADB), in carrying out its investigation of the request under the Southern Transport Development Project (STDP or Project). This list is not exhaustive as it does not include persons who requested their identities be kept confidential.

Mr. Bernard Abeysekera, Resources Development Consultants Ltd, Sri Lanka
 Mr. Sirisena Amarasekara, Secretary, Ministry of Highways (MOH), Sri Lanka
 Mr. Megumi Araki, ADB staff
 Mr. S.A. Athukorale, Requester
 Ms. Priyathalal Chandesiri, Project affectee
 Ms. M.P.P. Chandrasiri, Project affectee
 Ms. Lalani Chandrika, Project affectee
 Ms. Chandrakanthi, Project affectee
 Ms. K. Chandrawathi, Project affectee
 Mr. John Cooney, ADB staff
 Mr. Philip Erquiaga, ADB staff
 Ms. Susila Malani Dahanayake, Project affectee
 Mr. A.A.D. Sunil Ranjith Dayaratne, Requester
 Mr. G.D.D. Dewapriya, Project affectee
 Mr. Toshiyuki Doi, Mekong Watch, Japan
 Mr. Sameer Dossani, NGO Forum on ADB, Philippines
 Mr. Tyrell Duncan, ADB consultant/ADB staff
 Mr. Shinya Ejima, Chief Representative, Japan Bank for International Cooperation (JBIC) Representative Office in Colombo
 Ms. Rawani Ellepale, Deputy Director General, Central Environmental Authority (CEA), Sri Lanka
 Mr. Ethugale A.U.K., CEA, Sri Lanka
 Mr. A. Denis Falconer, Roughton International, Halcrow Group Ltd, Sri Lanka
 Ms. Yue-Lang Feng, ADB staff
 Mr. M.B.S. Fernando, Chairman, Road Development Authority (RDA), Sri Lanka
 Mr. Amarasena Gamaathige, ADB staff
 Mr. Arjun Goswami, ADB staff
 Mr. G. Gunadasa, Project affectee
 Mr. K.M. Gunaratne, Halcrow Group Ltd, Sri Lanka
 Venerable Pannaki Hi, Dharma Chakra Temple, Project affectee
 Ms. Marla Huddleston, ADB consultant/ADB staff
 Ms. Manel Jayamanna, Director General, CEA, Sri Lanka
 Ms. Ruwani Jeyawardene, ADB staff
 Mr. K.P.S.L. Keerthisingha, Project affectee
 Mr. Tomoyuki Kimura, JBIC, Tokyo
 Mr. Tadashi Kondo, ADB staff
 Mr. Juha Kosonen, Finnroad, Sri Lanka Office
 Ms. K.D. Lalitha, Project affectee
 Ms. Kala Mulqueeny, ADB staff
 Mr. Cyril Mundy, Project affectee
 Mrs. Heather Mundy, Project affectee
 Mr. Natin Patel, ADB staff
 Mr. L.D.L. Pathmasiri, Requester
 Mr. Jayantha Perera, ADB staff

Ms. Niroshi Perera, Project affectee
Ms. W. Joslin Perera, Project affectee
Mr. Jagath Peththawadu, JBIC Representative Office in Colombo
Mr. Sam Pillai, ADB consultant
Mr. Alessandro Pio, ADB staff
Mr. Robert Rinker, ADB staff
Ms. Jessica Rosien, NGO Forum on ADB, Philippines
Mr. Juichiro Sahara, JBIC Representative Office in Colombo
Mr. John Samy, ADB staff
Mr. Kunio Senga, ADB staff
Mr. Francis Sharpley, ADB consultant
Ms. Noriko Shimizu, Friends of the Earth, Japan
Ms. Kanthi de Silva, CEA, Sri Lanka
Mr. Masayuki Tachiiri, JBIC, Tokyo
Mr. K. M. Tilakaratne, ADB staff
Ms. Paritha Tritasavit, ADB staff
Mr. Masa Tsuji, ADB staff
Mr. Daya Wasantha, Project affectee
Ms. Sri Widowati, ADB staff
Col. Nissanka N. Wijeratne, Director, STDP, MOH, Sri Lanka
Mr. Hemantha Withanage, Center for Environmental Justice, Sri Lanka/NGO Forum on
ADB, Philippines
Ms. Mishka Zaman, Manager, Asia Program, Bank Information Center, USA

Southern Transport Development Project Chronology of Events

Date	Event	Remarks
Project Preparation		
December 1996	Environmental Impact Assessment (EIA) on the New Southern Highway prepared by the University of Moratuwa for Road Development Authority (RDA) on the Original Trace (OT)	
9 October 1997	Project Preparatory Technical Assistance (PPTA) 2892 (Southern Transport Corridor Project) approved by ADB with ADB financing of US\$1,000,000	Feasibility study considered 4 alternative alignments
May 1998	PPTA 2892 Inception Report submitted by Wilbur Smith Associates (WSA)	
17 November 1998	Tripartite Meeting of Asian Development Bank (ADB) representatives, Government of Sri Lanka (GOSL) and Consultants	Combined Trace (CT) identified as the preferred trace
March 1999	PPTA 2892 Final Report submitted by WSA	Identified significant impacts of 4 alternative alignments
March 1999	Initial Environmental Examination (IEE) prepared as Volume VI of the Final Report for PPTA 2892	Considered 4 alternative alignments with CT as recommended alignment and basis for further preliminary design
March 1999	Initial Social Impact Assessment (ISIA) as Volume V of the PPTA 2892 Report Final prepared by WSA	<ul style="list-style-type: none"> Identified significant impacts of 4 alternative alignments Final Report examined CT based on a right of way (RoW) of 80 m
March 1999	1999 EIA report of CT and OT prepared by the University of Moratuwa upon RDA's request	<ul style="list-style-type: none"> Updated 1996 EIA report Recommended CT as alignment
March 1999	Social Impact Assessment (SIA) prepared by the University of Colombo	<ul style="list-style-type: none"> Considered CT Conducted socio-economic survey based on a RoW of 80 m
14 April 1999	PPTA 3184 (Preparation of the Southern Transport Development Project) approved by ADB with ADB financing of US\$150,000	PPTA included (i) undertaking a development impact study; (ii) updating the feasibility study's economic analysis; and (iii) preparing the summary environmental impact assessment (SEIA) report
Project Processing and Loan Processing		
21 April-7 May 1999	ADB STDP Fact-Finding Mission	Loan fact-finding is part of ADB's project cycle
4 May 1999	1999 EIA Report submitted by RDA to Central Environmental Agency (CEA) for approval	
8 June 1999	Public comments received on 1999 EIA report	287 comments received
24 June-7 July 1999	ADB STDP Loan Appraisal Mission	<ul style="list-style-type: none"> Loan appraisal is part of ADB's project cycle Referred to possible change of alignment
26 June 1999	Fax from ADB to RDA on site visit to Bandaragama	Indicated meeting with affected people in Bandaragama during appraisal
July 1999	Resettlement Plan Report prepared by	Based on SIA

Date	Event	Remarks
	RDA	
3 July 1999	Public hearing on 1999 EIA Report in Panadura	
10 Jul 1999	Public hearing on 1999 EIA Report in Galle	
20 July 1999	SEIA Report circulated to ADB Board of Directors (Board)	
23 July 1999	Conditional approval of EIA by CEA	With 58 conditions including suggested changes in alignment to avoid wetlands
6 August 1999	RDA requested flexibility from CEA on the location of the Final Trace (FT)	
12 August 1999	Letter from CEA to RDA	CEA required supplementary EIA if FT is different from CT or OT
24 August 1999	ADB financing for PPTA 3184 was increased to \$190,000 (from \$150,000) specifically for drafting road network regulations and legislation	
25 August 1999	RDA provided to ADB its 6 and 12 August 1999 letters to CEA	
August 1999	Development Impact Study prepared under PPTA 3184	Gave a description of the highway alignment and the towns it passes through
4-6 October 1999	ADB loan negotiations	Loan negotiations completed with the Report and Recommendation of the President (RRP) circulated to the Board on 3 November 1999
28 October 1999	RDA engaged WSA on a contract for the ADB section	Contract included (i) preliminary engineering; (ii) detailed engineering; (iii) contract documentation and procurement assistance; (iv) preparation of a resettlement implementation plan (RIP); (v) additional services on economic, environmental and social aspects; and (vi) assistance to RDA in the preparation of project implementation and operation.
25 November 1999	ADB Board approval of STDP	
Project Administration and Implementation		
7-10 December 1999	ADB Loan Inception Mission	
16 December 1999	ADB Loan Signing	Loan Agreement and Project Agreement signed
24 January 2000	RDA letter to CEA submitting FT and requesting CEA's approval	
7 March 2000	WSA submitted its Inception Report on ADB section to RDA	Indicated substantial change in alignment from CT to FT and recommended reassessment surveys on social and environmental consequences due to limitations of EIA and SIA
29 March 2000	RDA engaged Pacific Consultants International (PCI) on a contract for the Japan Bank for International Cooperation (JBIC) section	Contract included services for (i) review of feasibility study; (ii) preliminary and detailed engineering for the proposed highway; (iii) detailed engineering designs for widening of access roads; (iv) preparation of contract documents; and (v) overseas training for RDA staff.

Date	Event	Remarks
15 June 2000	WSA provided RDA with detailed map of the 3-4 km wide corridor	
4-15 September 2000	ADB Loan Review Mission	Reviewed the progress for developing the RIP
November 2000	WSA's Environmental Findings Report for ADB section completed	This is a component of the preliminary engineering and detailed design for the ADB section.
27 November 2000	WSA's SIA Updated Report of November 2000 completed	This is a component of the preliminary engineering and detailed design for the ADB section.
December 2000	PCI's Environmental Findings Report for JBIC section completed	This is a component of the preliminary engineering and detailed design for the JBIC section.
14-20 May 2001	ADB Loan Review Mission	Reviewed resettlement issues
2-13 July 2001	ADB Special Administration Mission	Reviewed resettlement issues
11-14 September 2001	ADB Special Project Administration Mission	Discussed ADB requirements for finalization and implementation of RIP
21-22 November 2001	ADB consultation mission on STDP	Reviewed resettlement issues
10-12 December 2001	ADB consultation mission on STDP	Reviewed resettlement issues
18 December 2001	ADB Board Inspection Committee (BIC) acknowledged the request for inspection filed by Gama Surakeema Sanvidhanaya (GSS)	BIC concluded that there was insufficient basis to recommend an inspection to the Board.
15 January 2002	BIC acknowledged the request for inspection filed by the Unified Society for Protection of Akmeemana (USPA)	BIC concluded that there was insufficient basis to recommend an inspection to the Board.
22 January 2002	Secretary MOH letter to CEA requesting confirmation that the final RoW determined after the detailed engineering design had been approved by CEA	
21 February 2002	BIC acknowledged the request for inspection filed by the Organization of Victims of Colombo Matara Highway and Entrance Ways – Kahatuduwa	BIC deemed the request ineligible.
15 March 2002	BIC acknowledged the request for inspection filed by the Affected Communities of Dodangoda; Gamagoda; Nugethota, Akuratiya; Athkadura Parana Janapadaya; Kurundugaha Haethakma; Kokmaduwa; and Sultanagoda, Akurugoda	BIC deemed the request ineligible.
17-21 June 2002	ADB Consultation Mission	Reviewed the progress of the RIP
May to August 2002	WSA updated SIA for ADB section of the FT	
October 2002	Engagement of Arthacharya Foundation	

Date	Event	Remarks
	by ADB and GOSL to identify mutually agreeable means of resolution with respect to the remaining 32 objectors to the STDP	
10-14 October 2002	ADB Consultation Mission	Discussed the third party confirmation exercise and the finalization of the RIP
29 October 2002	RIP approved by ADB's Chief Compliance Officer	
30 October 2002	ADB loan declared effective	Delayed by about 30 months
19-27 February 2003	ADB Review Mission	
29 April 2003	ADB gave notice to RDA to proceed with civil works contract on ADB section of highway	
30 June-3 July 2003	ADB's First Joint Review Mission with NDF and Sida, in consultation with JBIC	Focused on STDP's road safety component
17-18 September 2003	ADB Review Mission	
14-30 November 2003	ADB Review Mission	Reviewed the progress of resettlement programs of 2 ADB-assisted projects in India and Sri Lanka, including STDP
19-21 January 2004	ADB's Second Joint Review Mission with NDF and Sida, in consultation with JBIC	Focused on STDP's road safety component
25 March 2004	Letter from RDA to CEA requesting CEA to formally confirm final RoW for highway is approved by CEA	
5 April 2004	STDP "Compliance Review" initiated by ADB's South Asia Department (later called "Safeguard Compliance Review")	
19 April 2004	CEA's letter to RDA asking RDA to confirm that FT is within the 3-km corridor covered in the 1999 EIA	
21 April 2004	Management Consultant (Finnroad) prepared draft environment management plan (EMP) and submitted to RDA	
26 April 2004	RDA's letter to CEA confirmed that the final RoW is within the 1999 EIA study area	
10-25 May 2004	ADB Safeguard Compliance Review Mission	Site visits made including meetings with affected people.
31 May 2004	CEA letter to RDA confirmed the validity of CEA's original approval and that no further approvals are required for RDA to proceed with project activities	
9 June 2004	Complaint filed with the Office of the Special Project Facilitator (OSPF) by the Joint Organization of the Affected Communities of the Colombo Matara Highway (JO)	
5 July 2004	Special Project Facilitator (SPF) determined complaint eligible	

Date	Event	Remarks
10-11 August 2004	ADB Review Mission	
October 2004	Preparatory work on supplementary environmental and social assessments undertaken by University of Moratuwa and University of Colombo, respectively	
4-18 October 2004	ADB Special Review Mission by South Asia Department Transport and Communications Division (SATC)	Reviewed environmental impacts
8-16 October 2004	Review Mission by ADB's Regional Sustainable Development Department	Focused on concerns in updating the SIA and the RIP
2 December 2004	Request filed with the Compliance Review Panel (CRP) by the Joint Organization of the Affected Communities of the Colombo Matara Highway	
6 December 2004	CRP registered Request	
17 December 2004	CRP determined Request is eligible and recommended that the Board authorize a compliance review	
11 January 2005	With Board's authorization of compliance review, CRP Draft TOR was provided to the Board Compliance Review Committee (BCRC) for its clearance	
21 January 2005	CRP TOR, as cleared by BCRC on 21 January 2005, posted on CRP website	
January to May 2005	Conduct of compliance review by CRP	
1 February 2005	SPF concluded consultation process	
14 February 2005	Report of the Conflict Management consultant under the consultation process of the SPF	
30 March 2005	Final Report of the SPF	
6 May 2005	CRP Draft Report provided to ADB Management and Requesters for comments	
22 June 2005	After considering comments received from ADB Management and Requesters, CRP Final Report issued to the Board for its final decision	



"Affected Communities Col
Matara Highway"
<joacmh@sltnet.lk>

08/06/2005 03:17 AM

To <arumansara@adb.org>

cc <rbissell@adb.org>, <rzeliuss@adb.org>,
<snanwani@adb.org>, <mavirtucio@adb.org>,
<crp@adb.org>, <ggama@mail.ewisl.net>

bcc

Subject CRP Request No.2004/01 - STDP, Sri Lanka; CRP Draft
Report Comments

Dear Mr Rumansara,

We thank you for the work of CRP in preparing the Draft Report and enclose our comments on it.

Kind Regards,

Sarath Athukorale, L.D.L. Pathmasiri and W.H.Lalani Chandrika



Joint Organization of the Affected Communities on Colombo Matara Highway CRP Akmeemana OT map.jpg



ADB CRP NBRO article.jpg ADB CRP Flooding article.jpg ADB CRP Dr Rep Comments.DOC

Comments on Compliance Review Panel Draft Report by the Requesters

Introduction

We are grateful to the Compliance Review Panel and the staff of CRP for the enormous efforts they have put in to gather together a detailed analysis of the Southern Transport Development Project Compliance problems.

It is clear that the Panel have reviewed an enormous volume of data from many sources and have managed to understand much of what has happened since the early 1990s.

It is clear from the Report that there were many diverse opinions and even different versions of the facts. The report lucidly takes us through the story and enables all to understand where the errors have occurred.

With the enormous amount of information it is not surprising that the report has quite a few factual errors and we apologise that our comments are therefore rather long. We must apologise if we seem rather passionate and insistent. This is a result of four years of insisting that ADB is not complying with its policies. In July 2001 some of our members on behalf of thousands of affected people wrote to Mr John Cooney Chief Resident Representative of ADB complaining about the breaches. This was ignored and only after a letter to President Chino did we receive a reply. From then on it has been lies and deceit from ADB Management. We were very pleased to see this being confirmed in the Draft Report. The Special Project Facilitator (SPF) similarly confirmed the lies in its Report and Recommendations. That however produced nothing, for the very people who SPF was supposed to help.

We are concerned that a similar result seems to be coming from CRP.

Almost all the Requesters and the many who they represent are still in their homes. The alternative traces are still possible where very few would lose their homes. No real work has been done on the Akmeemana area in the South, nothing at all in the North, not even a contract signed. **Only the misleading statements of ADB Management and the lies of the RDA are stopping CRP from recommending full compliance with Policies.**

Comment Structure

First we have laid out our understanding of the contents of the Draft Report and some general points that need to be made. It encompasses our understanding of what Accountability entails and what we believe compliance requires.

This is followed by a detailed set of points in the order of the Draft Report. We have copied in the relevant sections of the report to make it easier to understand.

Summary

1. We note that almost all the points that we the Requesters, the petitioners to the Court of Appeal, the Supreme Court and the UNHRC and many other members of the Joint Organization have been stating for 4 years have been confirmed by the CRP.
2. The Recommendations however are extremely disappointing. They only list the consistent compliance breaches, but rather than making strong recommendations that would bring the Project into Compliance, CRP suggests fringe remedies. The failure to recommend a full EIA process and an SIA as required by ADB policy is a major omission. There is nothing to safeguard the people of Sri Lanka from the unassessed and unplanned environmental and social consequences of this project.
3. We believe that the STDP can be said to be in compliance only if the steps required by the ADB Policies and Procedures are followed. These are necessary to ensure successful development.
4. We note that the statements made by ADB Management to the Board Inspection Committee in 2002 which caused the Request to be rejected CRP have found them to be incorrect. They were found to be lies.
5. It is now clear an inspection should have been ordered in 2002. But no one in ADB is being held Accountable.
6. The CRP has not recommended a proper independent way of ensuring that the Resettlement Process is handled correctly. An Independent Committee would be the only way to ensure that those evicted would be equal or better off. CRP should strongly recommend this.
7. There is no recommendation that the Individuals within ADB Management in Manila and in Sri Lanka who have lied and caused the suffering not only to the Affected Persons but to all Sri Lankans be held Accountable.
8. CRP has not made any effort to ensure that JBIC complies with ADB policies as it promised to do when the project was initiated. This is a dangerous precedent and CRP have not suggested any remedy.

CRP Confirms Requesters have been right from 2001.

We were pleased to see from the Draft Report that it is now patently clear and confirmed that almost three quarters (72%) of the Final Trace was not evaluated, nor balanced against alternatives. This included the areas in which the Requesters live. It has been acknowledged that Resettlement is being handled very badly, creating poverty.

This disaster is only now being recognised by ADB. Oxfam Community Aid Abroad produced a Report about this in April 2001. The Affected Persons first raised the problems of STDP with ADB in July 2001, and took the matter to the ADB Board Inspection Committee in October 2001 for GSS and USPA in December 2001. The issues raised then are very much the same as those in the Request to CRP made in December 2004. Both Inspection Requests were denied as a result of incorrect information supplied by ADB Management to the Board. These inaccuracies were raised time and time again face to face and in writing at all levels of ADB including President Chino, Mr Iwasaki, the Director General for South Asia, Sri Lanka Mission Head and many many other staff.

The Inaccuracies have been confirmed by various members of ADB over the last fifteen months. CRP has confirmed them in the Draft Report. The remedy should be the same as it would have been in December 2001, that is an investigation of the project, a new EIA and Social Impact Assessment and then to put the project on its correct path.

The CRP position that the project is too far advanced to make any changes now, is unacceptable. This position is contrary to the ground reality where the work on the 66 Km. of the JBIC trace has not commenced, nor in the Akmeemana area where over 5 Km remain untouched. The contract in the North (JBIC) has not even been awarded. In the 5 km. of Akmeemana a change to the OT saving over 200 houses can still be made. In the 18km. Bandaragama deviation the concerns of the CEA can be met and the CT used, here as well over 200 house would be saved. In both areas relatively few people have been evicted from their homes. They are still living there. A full EIA process and an SIA would ensure that the right balance was found.

Project altered massively. (72% is changed)

The startling confirmation of the changes to the project given in the Draft Report Para 47 **“The FT in the ADB section follows only 12 km of the route subjected to the 1999 EIA. In the JBIC section, 24 km of the road alignment still follows the CT.”** This means 72% of the Trace has been changed from that approved. An enormous percentage without an EIA and any of the mandatory studies

CRP will let the errors continue. “What is done is done.”

The CRP is simply noting the errors made by ADB Management and allowing the project to continue. We are still to be thrown out of our homes, without the required process for the Project having been followed.

Without proper evaluation of alternatives Sri Lanka is burdened with unquantified financial and social costs, possibly unnecessary environmental damage, all because CRP is not willing to recommend enforcement of policies

We find it impossible to believe that the Project will be brought into Compliance without the full process as laid down in ADB Policy for a Project of this nature being followed.

It seems that CRP agrees with ADB Management that “What is done is done.” And there is no responsibility to go through the required process to make sure Sri Lanka is delivered a Project that is worthwhile. One that brings benefits to Sri Lanka and does not harm people who should never have been affected.

A project done without the required policies being followed cannot be brought into compliance by simply doing some studies. **ADB policies should be followed not ignored.**

CRP supposed to find the policy breaches

The draft report is full of “Requesters' issues”. Those defined by the Requesters in their request to CRP. There is only one from the CRP and that on Project Implementation not within the Operations manual. The Policy for the Accountability Mechanism was structured so that CRP was the one who found breaches of policy. It seems surprising that the Requesters have found all but one of the breaches, surely there must be others that the CRP can find.

CRP accepts a study that the RDA has no confidence in

There are many references to an updated SIA. The requesters have been asking for a copy or even a sighting of this. Suspiciously this has not been permitted by SARD, Sri Lanka Resident Mission or anybody else. The Requesters are doubtful of the quality of this report. The RDA when challenged in the Court of Appeal in 2003 and Supreme Court in 2004, to prove that studies had been done, failed to produce this document. We are certain it would not have withstood investigation by court. Therefore the CRP should ignore the report.

Economic analysis – SUSTAINABILITY.

The CRP employed a consultant who has done some economic calculations and these suggest the project is sustainable. We disagree with two points on this.

The first, CRP is not there to do the calculation of economic results. CRP is there to see if the calculations have been done as required by Policy. It would have been acceptable for the consultant to look at the calculations done by ADB Management and see if they met standards required by Policy. CRP's role is not to produce a let-out for negligent managers.

The numbers and results of work done by the CRP consultant should not form any part of the report.

The second point is that the results seem wrong. We believe there are some fundamental errors in the calculations or in the assumptions underlying them. An example is that there has been considerable growth in registered vehicles in the last few years. However, a large proportion of these are three wheelers or small capacity motorcycles which will not be expected to use the Expressway. Cars have been imported, but in numbers which would possibly not keep pace with the accident and age losses of the fleet. The consequent reduction in traffic along the Galle Road will therefore not be seen. The volume on the Expressway will not be as large as expected.

Without sight of the calculations and the assumptions it will not be possible to believe in the Results. CRP has refused to release these.

JBIC and Co-Financing

The management of the project has been led by ADB with the EIA, RRP and RIP being produced for the whole trace. If there is anything unclear in the management and supervision of the project under ADB Policies it is because ADB has failed to manage the Co-financing arrangements in line with the requirements of ADB policy. It would be impossible to have two leaders and two sets of policies for a single project.

Accountability

ADB Accountability is what CRP is supposed to be investigating, however it has not been considered in the sense that ADB defines Accountability in its Policies. That is “to make ...officials responsible for [corporate] behaviour, responsiveness and meeting standards”.

CRP acknowledges that there have been numerous and serious breaches of policy by ADB personnel. Staff and Senior Managers have lied to cover their mistakes. The lack of an attempt to obtain the best project for Sri Lanka, the denial of reality with only a wish to disburse funds, this is what drives the individuals. Despite this there is no comment on a penalty, notes to be made on staff files or even a training course to avoid such dereliction of duty in the future. **This is not Accountability, all CRP have done is become part of the ongoing coverup.**

We find it irresponsible of the CRP to protect the transgressors whilst leaving the affected people to the revenge and mercies of the RDA. The Affected Persons are suffering not from their faults but because ADB Management lied from 2001. There is not even a recommendation that an Independent Monitoring Committee be set up

to ensure justice for those who, for 4 years, have fought for a good project for their country and justice for themselves.

A recommendation that will make the lying and refusal of assistance cost the individual transgressors is important. Bringing Projects into Compliance can only be done if there is a want by the individuals within ADB to deliver honest projects.

The ADB structural problems of incentives and staff management are well explained in the Testimony to the US Senate by Attorney Bruce Rich on September 28th 2004.

Independent Monitoring Committee

Monitoring by various means has failed. This does not mean it should not be done. CRP could solve the problem by recommending a by an independent panel consisting of senior judges or similar to carry out a proper Monitoring Process. Nominating Mr. Bruce Rich would indicate courageous commitment to Transparency and Accountability!

No Check on Management Input

We are concerned that Management will provide in their comments more inaccurate information. History has repeatedly shown that Management sends inaccurate statements to its seniors. It has also deliberately lied to members of the Board and the Board Inspection Committee. This is evidenced in the CRP Draft Report itself.

Under the current process the Requesters will have no opportunity to review the Management's input. We would very much wish to believe that the CRP will be knowledgeable enough to determine what is a lie and what is the truth.

We would recommend that CRP consider how it can validate the information it is receiving. The failure of the Inspection Process and the disaster for Sri Lanka and particularly the Affected Persons as a result of the lies of Management cannot be quantified.

Errors in the report or inaccuracies in order of Draft Report

Para 5. The 9-km Panadura access road is in the JBIC section, and the CRP understands that this access road was dropped in 2000 and de-linked from the Project as the environmental impact assessment (EIA) approval required for this link had to be obtained.

The link to the Galle Road provided for in the project was an Expressway standard road linking the Southern Expressway to the Galle Road encouraging traffic to transfer onto the Southern Expressway and joining on to the Outer Colombo Highway. The EIA was rejected in 2000 as the Project envisaged the use of the Combined Trace. The road improvement project will simply widen a road that travels through many villages and towns and have all the problems associated with the traffic and people mix that was to be avoided.

Para 7. There are 2 contract packages under the JBIC section. Package 1 for a 4-lane highway was awarded in April 2005, and package 2 for a 2-lane highway is expected to be awarded later in 2005.

The Road Development Authority swore an affidavit to the Court of Appeal on 18th April 2005 that no contract has been signed. RDA Officers confirm this is still true. The information that the contracts had been signed at the date of the Draft Report is inaccurate.

Para 10. The CRP also notes that after considering these 2 requests and the response of Management, BIC concluded that there was insufficient basis to recommend an inspection to the Board.

There should be a comment on the inaccuracies in Management Response. These inaccuracies are confirmed in the report later.

Para 10. From March to September 2002, RDA and the Ministry of Highways (MOH) conducted intensive consultation and mediation with community representatives and affected people to understand and address their concerns. Consequently, the number of affected people was claimed to be reduced from 240 to 32 households.

We are very surprised to see the reference to the inaccurate and grossly misleading statement given in a report by Management to the Board without any reference to the inaccuracy in the numbers. CRP was advised that at the time of this report that ADB had received and acknowledged over 150 letters of protest and there were over 50 people in Court.

Para 10 . Further, GOSL and ADB resorted to an ADB-funded third party, independent of GOSL and the affected households, done by a local NGO supplemented by the advice of a reputable independent international resettlement specialist.¹⁰ The third party mediation report was prepared by Arthacharya Foundation in March 2003

The methods used by Arthacharya and the selection of them by ADB would imply there were some corrupt arrangements in place. Acceptance and continued mention of this false report does no good to ADB. According to the Arthacharya Report, there were only 2 objectors in Bandaragama. CRP can confirm the inaccuracy, they met many people who were against the way the Project was being managed. We find it impossible to believe that CRP would not point out this inaccuracy, only using the word “claimed” to indicate a possible question

Unfortunately as we do not have evidence of money actually changing hands we cannot raise this with ADB’s corruption unit. Evidence of the inaccuracy of the Arthacharya report should have been enough for it to have been discarded, and Arthacharya to be removed from ADB’s list of preferred Consultant’s.

Para 21. JBIC believes that the CRP has no jurisdiction over policy compliance in the JBIC section. The CRP is of another view as the STDP was prepared and presented to the Board in the RRP as one single project, that is, the entire road project and not just the ADB-financed section.

We note that JBIC does not believe that the project is managed under ADB’s policies. We are concerned that CRP despite its comment above nevertheless accepts this situation as can be seen in its recommendation 257 (i) and (ii). Where the JBIC section is not to be assessed. The reports that the CRP may be relying on do not constitute an EIA or SIA.

Para 28. In October 1997, ADB approved a project preparatory technical assistance (PPTA) for the Southern Transport Corridor Project (TA 2892 SRI), with ADB financing \$1,000,000, to undertake a feasibility study to determine the viability of the STDP including a study of alternatives. The consultants engaged under this TA were Wilbur Smith Associates (WSA). WSA submitted an inception report in May 1998. In November 1998, ADB, GOSL, and the consultants identified the CT as the preferred trace. WSA submitted its final report in March 1999. WSA noted in the feasibility study that GOSL continued to prefer alignments well inland and believed that a more inland route would have the greatest effect while recognizing that this may hinder the attraction of local traffic and would require lengthier connections to A2.

We have repeatedly requested copies of the feasibility report which should now be available under the new disclosure policy. The lack of this report limits our capacity to understand the thinking behind the project.

Para 33. RDA requested the University of Moratuwa to conduct a new and updated "Category A" EIA for the CT as well as the OT. Since 60% of the CT was the same as the OT, the RDA chose to update the 1999 EIA where much of the text from the 1996 EIA was copied.

The report was only updated for the new sections. The remainder including all the data on houses, agriculture, etc. remained from the earlier version the data for which was obtained in 1994. The data was thus well out of date.

Para 38. In May 1999, RDA submitted the EIA Report to the CEA for environmental clearance and approval, as well as to ADB for review and comments. On the basis of this EIA Report, CEA issued to RDA on 23 July 1999 a conditional letter of approval with 58 conditions for RDA to begin implementation of the highway along a modified CT as redirected by the CEA's conditions. CEA also published in August 1999 a notice of its approval of the EIA "subject to specified terms and conditions" in 3 Sri Lankan newspapers (Sinhala, Tamil, and English)

The CEA did not issue a "conditional letter" which it is not permitted to do under the National Environmental Act. It was a letter with conditions. The Conditions were not made public. Approval was announced but the conditions were not.

Para 38. The conditions included (i) avoiding the Weras Ganga/Bolgoda lake wetland by moving the trace to the Original RDA Trace and avoiding the Koggala and Madu Ganga wetlands; and (ii) selecting the final trace which should minimize the relocation of people.

Whilst the comment that the trace was to be moved to avoid the Weras Ganga/Bolgoda lake wetland is accurate it misses the point that what in fact the letter stated was that the area to be avoided was only the recreational areas which are a long way from the CT.

Selection of the FT which minimized relocation of people was not done, this should be noted.

Para 54. Between November 2001 and March 2002, there were 4 requests from project-affected people filed under the previous inspection policy. The first 2 requests were filed by GSS and USPA. The BIC concluded that there was insufficient basis to recommend an inspection to the Board.

Whilst stating that the Inspection Request was refused, CRP has chosen not to comment that the decision was based on information from ADB Management that contained many lies. CRP has in their report confirmed that the ADB Management response was inaccurate. There were lies about the distance between the traces, the PILF case (Per CRP Para 57: PILF did not represent the interests of the affected people under the Project.) and many other issues. These lies were the basis for the rejection, at least now ADB should admit culpability.

Para 56. From March to September 2002, RDA and the Ministry of Highways (MOH) conducted intensive consultation and mediation with community representatives and affected people to understand and address their concerns. Consequently, the number of affected people was claimed to be reduced from 240 to 32 households. Further, GOSL and ADB resorted to an ADB-funded third party, independent of GOSL and the affected households, done by a local NGO supplemented by the advice of a reputable independent international resettlement specialist.²⁶

Again here there is no reference to the inaccuracy of the Arthacharya report. The statement without any comment suggests that CRP is happy with the quality of the report.

Further the use of the term “reputable” suggests that CRP considers the specialist to be competent. This should be amended now given the fact the specialist managed to ignore all the problems like the non preparation of resettlement sites, non payment of compensation etc., etc., . **Inspite of numerous requests the requesters have never been supplied a copy of this report of which they are supposedly a part.** Is this another question of corruption coming in?

Para 57. The CRP notes that there have been references to the Sri Lankan judicial authorities by various persons interested or involved in the Project. ... In 2002, objections were made by at least 50 affected people, including those covered by the current Request filed with the CRP, to Sri Lanka's Court of Appeal

The people who went to the Court of Appeal and Supreme Court are **not** the same as the Requesters. **Not one of the CRP Requesters filed legal action.** This should give CRP a clear idea of the depth of the complaints against the Project. None of the Requesters that CRP met had been to Court yet their strength and anger was well seen by both SPF and CRP.

Para 58. In 2003, 43 affected people including affected people covered by the current Request filed applications in Sri Lanka's Court of Appeal, which dismissed their claims in May 2003. This led to an appeal to Sri Lanka's Supreme Court of Appeal which on 20 January 2004 upheld the Court of Appeal's discretion to deny the appellants the reliefs sought.

The applications were filed in **2002 by 51 individuals representing over 400 households.** The Supreme Court found that the RDA and CEA had breached the National Environmental Act and its Regulations, that the petitioners Human Rights had been infringed but because of costs incurred the Project should go ahead.

Para 59. In November 2004, some affected people, including those covered by the current Request, filed with the United Nations Commission on Human Rights (UNHCR) in Geneva. The CRP has informed the UNHCR in March 2005 that the CRP is investigating the matter filed by the Requesters in this current Request.

None of the Requesters is involved in the UNHRC (note initials) petition.

In April 2005, during its visit to Sri Lanka, the CRP noted 8 applications have been made in February 2005 by the Project affectees (2 from the Bandaragama area and 6 from the Akmeemana area) to the Court of Appeal, including an interim relief order preventing the divisional district secretariat concerned and other respondents including RDA from taking over their lands.

The Divisional Secretaries had not followed the Supreme Court Judgement and attempted to take possession of properties without paying compensation and providing alternative land.

Para 61. The CRP notes that JBIC's construction loan for the JBIC section was approved in 2001 after its engineering services (E/S) loan for preliminary and

detailed engineering design, which included additional environmental studies. The CRP also notes that this JBIC loan approval was based on the FT and not the CT, and that the FT was determined to conform to CEA's conditions.

As there was no fresh approval for the deviations from the CT as required under Condition III of the CEA approval, and the Trace did not follow the OT in the Bandaragama area as required under Condition IX, how could the FT be said to conform to CEA's conditions.

Para 63. At the time of WSA's proposed engagement by direct selection instead of competitive selection, using funds under Loan 1649-SRI(SF): Road Network Improvement Project, ... In ADB's business practices on its lending operations, one would expect a longer time frame for processing projects from project fact-finding stage to loan approval,²⁸ but in this case, this was done hurriedly.

The connection between ADB staff who may have been employed by WSA prior to joining ADB, should be checked to see if there was any corruption in the appointment,

There are several comments on the Project processing being hurried. This seems to be the ultra enthusiasm of the Sri Lanka Resident Representative who advised and pushed for many items to do with the trace location. It has been advised that ADB had requested the move of the trace in the Bandaragama area. Also RDA staff have advised that many of the individual decisions on location of the trace were taken by ADB local Representative.

Para 66. At the time of the Board consideration, the discussions focused on a 3/4-km corridor along the OT and the CT where the highway was to be located and that a final alignment needed to be determined through detailed design.

This is not accurate the Corridor was centred on the CT, it was not related to the OT.

Para 67. One significant issue during Board discussion of the Project was the issue of change in alignment. The RRP states in para. 81 as follows: "Because one of the primary criteria for final alignment selection will be minimizing social impacts, including resettlement and severance of communities, etc., it is anticipated that the final number of families to be affected by the Project could be substantially less than previously estimated." This issue was brought up at Board discussion and comfort was expressed with this assurance in the RRP. At no point in the RRP was the possibility raised that the CT could be significantly modified, in contrast to minor changes allowed for final alignment.

The misleading of the Board is the first of many steps that has hurt the Affected Persons and Sri Lanka and should be listed for investigation by Personnel and probably those who want to eradicate Corruption.

Para 68. The ADB loan was made effective after about 30 months. The CRP notes that loan effectiveness conditions should be minimized under ADB's procedures (PAI No. 2.01 issued December 1998). ... It should also be noted that there was no reference to

the delay in the submission of a satisfactory RIP though this was still an outstanding matter and was the stumbling block before the ADB loan could be declared effective.

A lack of Accountability in managing the Project.

Para 70. The RRP states that ADB had assisted RDA in developing a resettlement plan complying with GOSL's procedures and ADB's policy on involuntary resettlement but this assistance did not appear to be enough. The RRP stated that up to 800 families "may"³⁰ need to be relocated, and that the cost for land acquisition for the entire Project was US\$19 million. However, the RRP also stated that the financial cost and the number of families "could be substantially less than presently estimated".³¹ This was not the case, as the number of families to be resettled under the Project (excluding commercial enterprises, etc.) grew to about 1,294 as of May 2004. The cost of resettlement has already reached about \$50 million. The CRP understands that as of 31 March 2005, about 222 affected persons under the Project have yet to be resettled.

The statement that only 1,294 families to be relocated is incorrect. This number excludes those who will be relocated as a result of under/overpasses to be constructed. The number of under/overpasses to be constructed has increased from 67 to 186 as a result of the change of trace from abandoned paddy fields to going through villages. This has created the need for many more bridges and tunnels to be built to link communities.

The estimate of 222 Affected Persons yet to be relocated is also incorrect. The Akmeemana section alone has more than 1,000 affected persons to be moved. The Numbers in the JBIC section are at a similar level.

Para 80. ADB's detailed design consultants, WSA, made a comment on the changes to the OT in their Inception Report of March 2000. On the environmental issues it says: "Only 12 km of the [CEA] approved route are on the same alignment as the previous 1999 EIA survey work. The remaining approximately 50 km of the approved route from Kurundugahahetekma to Matara lie between a few hundred meters and 2.5 km from the CT. Similarly, on the JBIC-funded section, only 24 km of this route are on the same alignment as the previous EIA/SIA work. The remaining 44 km from Kottawa to Kurundugahahetekma are anywhere between a few hundred meters and 3 km from the CT."

The Inspection Request made in Dec 2001 was denied on the basis that it was inside the 3/4km corridor. ADB Management had a report from engineers showing that the ADB Management Response stating this was a lie. The Response was signed by President Chino so somebody at a senior level must have reviewed this and chosen to lie. There should be a recommendation that ADB must find those involved and make them accountable for covering up thereby removing the chance of correction before even one meter of the Expressway had been cut. This has directly caused harm to the Affected Persons and the people of Sri Lanka..

Para 81. The distance between the traces has been an issue of disagreement. The "Safeguard Mission" conducted its own comparison³⁴ and came up with the conclusion that at least 26 km of the FT alignment extended beyond a 2 km

corridor centered on the CT, 15 km extended beyond a 3 km corridor, and 5 km extended beyond a 4-km corridor of the ADB section. For the JBIC section, the figures were that at least 14 km of the FT alignment extended beyond a 2-km corridor centered on the CT, 12 km extended beyond a 3-km corridor, 9 km extended beyond a 4-km corridor, 8 km extended beyond a 5-km corridor, and 3 km extended beyond a 6-km corridor.³⁵ The distances between the FT and the OT, however, are less than the figures above.

The Sri Lanka Resident Mission at all levels has denied this statement consistently, the Resident Representative even showing maps and giving co-ordinates to deny the truth. These lies were continued right up the chain of management in Manila.

Someone in ADB must be accountable for these lies and throwing out our inspection request. CRP should recommend that the continuing lies by Management to coverup the errors is investigated.

Para 82 The CRP has considered the various decisions reached by the Sri Lankan judicial authorities on referrals from this Project in investigating the matter but notes that these decisions do not bind ADB as it is not a party to the cases. The CRP defers to the jurisdiction of, and decisions reached by, the various Sri Lankan judicial authorities, whether a Judicial Committee of retired Supreme Court judges, Court of Appeal or the ultimate Supreme Court, and the decisions delivered. The CRP views that its investigation is only based on ADB's acts or omissions in following with its applicable operational policies and procedures.

CRP seems to have ignored the requirement to ensure that legal requirements laid down by the DMC are followed. This is in OM Section 20 Para 14 (i). The Supreme Court of Sri Lanka has specified in its judgement in the cases filed by the Affected Persons that the requirements of the National Environmental Act (NEA) have not been met. That Regulation¹⁷ laid down under the NEA requires approval afresh for alterations. The changes made the Supreme Court has confirmed as alterations under the definitions of the NEA. The Supreme Court used its discretion to ignore the requirements. **ADB Policy does not permit such discretion.** The requirements of the Government, those laid down by law, must be met. Failure to do so must be considered by CRP as non-compliance with policy

Para 83. In the CRP's Eligibility Report, the CRP viewed that the satisfactory conduct of its compliance review necessitated the termination of SARD's so-called "compliance review" initiated in April 2004. SARD initiated this review in response to a Board member's query by a memo of 22 March 2004 requesting an update on the highway construction and clarifications on changes in the route approved by the Board in the RRP, including the cost implications of any alterations and the implications for the continued validity of the EIA and the RIP. SARD's response to the Board member of 5 April 2004 stated that the ADB section civil works contract had been awarded with work carried out about 10% and that "reviews of progress on land acquisition, compensation and resettlement have found a high level of satisfaction among affected persons". SARD also stated that the RRP approved by the Board in 1999 "considered a 3-4 km wide corridor in which the final alignment of the expressway was expected to be located. The Environmental Impact Assessment studied the 3/4-km wide corridor. The final

alignment that was subsequently chosen for the expressway is contained within this corridor and so was contemplated by the Board Approval. The Board Inspection Committee considered this issue and determined that allegations of non-compliance with ADB's policies and procedures, including in relation to selection of the final alignment, were unfounded." This statement by SARD is not correct as the EIA studied a belt of 1-km, that is, 500 m on either side of the middle alignment of the OT and CT.³⁶ WSA's Inception Report of March 2000 stated that for the ADB section, about 50 km is between a few hundred meters and 2.5 km from the CT and for the JBICs section, 44 km is between a few hundred meters and 3 km from the CT.

The statement made by SARD of 5th April 2004 was incorrect not only as mentioned by CRP, but as follows.

- a) "...reviews of progress on land acquisition, compensation and resettlement have found a high level of satisfaction among affected persons."

There were several reports that showed satisfaction was very low and that problems existed. These have been confirmed by the safeguards review itself as well as SPF and CRP.

- b) "The Environmental Impact Assessment studied the 3/4-km wide corridor."

A corridor of 122 metres was studied for the OT and 200metres for the CT. This is confirmed in Para 33 of the Draft Report. The EIA also says 122 m. Additionally some specific items that would be affected outside that corridor, like wild animals, were studied. However the studies assumed the road would be built inside the 122 mtr trace

Para 85. The CRP raises this issue to illustrate how divided opinion was within ADB over the degree of compliance and the response necessary to bring the project back into compliance. The only explanation for such confusion at this advanced stage of a project is that the project managers did not take a rigorous approach to ensuring step-by-step compliance during the course of project formulation and detailed design. Each small failure to take compliance issues into account along the way can be explained, in most cases, by circumstances on the ground; but the price to be paid for the accumulation of failures becomes clear in aggregate, as will be explained below, and therefore cannot be excused.

The requesters disagree STRONGLY with the statement that the failures in Compliance were small. This is totally wrong. Many of the failures were large. **No studies on 72% of the trace is not a small compliance issue. It cannot be excused as it is hurting many Affected Persons and all the people of Sri Lanka.**

Para 93. **Finding:** The issue of compliance with GOSL's environmental requirements has been dealt with by the Sri Lankan judicial authorities and is not an issue for CRP. No EIA was produced explicitly for the FT. The 1999 EIA, done for the CT and OT, did not have the benefit of knowing the exact trace for the highway and the CEA's approval was therefore conditional.

The issue of compliance with GOSL's environmental requirements is a matter for the CRP as compliance is a requirement under OM Section 20 Para 14 (i). Therefore compliance with the NEA and its regulations is a requirement under the Operations Manual. Failure to have an EIA for the Project that is being carried out is a breach as is the lack of following the EIA approval process requiring approval afresh.

The suggestion that the trace was not known exactly is not true. The trace was known in great detail with a corridor of 122 metres for the OT, and 200 metres for the CT deviations having been studied. These were marked on the ground and had detailed studies along their full length. See CRP report para 33.

The CEA did not give a conditional approval. It gave approval with conditions. CRP should recognize the difference between the two statements. instead of repeating the ADB/RDA misinterpretation. The CEA recognized that the trace might have to be changed and Condition III.required "approval afresh" if alterations were made.

Para 95. CRP's view is that for the areas where the 2 main deviations were made, an EIA addendum should be made. This was also suggested by WSA in 2000, and seems to be the current view of ADB as it sent, in early 2005 a renewed request to the University of Moratuwa to do a rapid Supplementary Environmental Assessment study for the FT.

The Requesters disagree with the CRP's view that an EIA addendum is sufficient. The CEA and the National Environmental Act require fresh approval through an EIA process. A rapid supplementary EIA that did not follow the full EIA process would not suffice.

Para 96. The CRP is of the opinion that there are substantial grounds for arguing that the project lost its compliance at the time of the adoption of the FT, when new areas not included in the 1999 EIA were included in the Project and also when it failed to meet the broader goals of an EIA process, such as public consultation. The review of an EIA is intended to involve a broad range of stakeholders, especially those who will be most affected by the project, and some of them may have been denied that opportunity in this case. The review of an EIA is also an explicit opportunity to balance the various dimensions. In this project, for instance, there are trade offs between environmental protection and the impact of resettlement. Such issues should be aired deliberately and publicly in order to maximize stakeholder understanding and acceptance.

Paras 95 and 96 seem to contradict each other. 95 in our understanding states that an EIA Addendum is sufficient, whereas 96, suggests an EIA Review which would require public consultation involving a broad range of stakeholders, especially those who will be most affected by the project, as well as reviewing the trade offs between environmental protection and the impact of resettlement.

The statement in para 96 should have gone on to say that dissemination of information and a period for public comment would also be required

Para 99. The acronym "EMP" has several applications. The most common interpretation is that it means Environmental Management Plan (EMP), and this is also the interpretation given by ADB and the CRP. However, in the context of the 1999 EIA, the SEIA Report, and the CEA's approval conditions, the acronym "EMP" was used to describe an Environmental Monitoring Plan, and in other cases it means an environmental mitigation plan. The 3 interpretations are not the same in that an EMP contains a broader set of issues including mitigation requirements, monitoring requirements, institutional requirements, staff training requirements, and budget requirements.

There is no mention that the EMP should include monitoring of resettlement, loss of income earning land and environmental effects.

Para 100. The Loan Agreement³⁸ requires that the GOSL shall ensure that all environmental mitigation measures identified in the SEIA Report and the approval of the CEA are incorporated in the project design and follow up during the construction, operation and maintenance of the Project. While the Project proceeded without producing any environmental monitoring plan, ADB had a new environment policy in November 2002³⁹ with a clear requirement for developing environmental management plans as part of the environmental assessment process for Category A projects. Thus, the above-mentioned requirements would now be done through the EMP developed and approved prior to the commencement of the highway construction. This EMP for both sections of the Project was completed by Finnroad in April 2004, reviewed by ADB and forwarded to RDA in December 2004, and is currently being considered by CEA. The EMP will be updated if necessary after **environmental updates** on the FT have been conducted. The finalization of the EMP is urgent as the ADB section has already been under construction for more than 21 months.

The EMP should be awaiting the results of a proper EIA with all its process, not just a report with environmental updates. We noted from the JBIC section that the "environmental updates" to be found in the Environmental Findings Report missed important environmental and drainage impacts. These will only coming to light when the public are allowed to review and comment on an EIA. Similarly the Resettlement impacts will only become apparent when a proper SIA is done.

Para 101. Because of some uncertainties about how well the EIA covered the possible impacts along the FT, effective monitoring of the environmental impacts and social issues becomes important. RDA has limited institutional capacity for environmental monitoring activities, something that concerned WSA which therefore recommended an environmental monitoring function in the Project Management Unit. The RDA has used the Management Consultant for this purpose and has yet to establish its own environmental unit. Considering the amount of supervision and control needed as indicated in the "Environmental Assessment Requirements of the ADB" and in the assurances in the RRP, it

seems difficult to satisfy the project-related monitoring requirements and long-term needs without additional staffing at RDA.

The capacity of RDA to monitor itself, and for the consultants to monitor the project has proved to be a failure. This has been recognized by SPF, CRP and BTORs of SARD. The conflict of interest has proved too much for the RDA and Finnroad. To suggest RDA increases staffing is totally wrong. **Independent external monitoring is required. CRP should say so.**

Para 103. **Finding:** Data in the 1999 EIA was built partly on information and surveys from the 1996 EIA and partly as data generated during the 1999 assessment. Revisions to the CT required by the CEA were the results of the findings of the EIA of the need to reduce environmental disruption and enhance the protection of wetland values. The Design Consultants have noted the deviations from the CT and recognized the need for additional studies on environmental and social impacts for design considerations. Some of this information has been added from the Environmental Findings Reports, but further studies will be added as mentioned above. The CRP has not seen any assessments stating a need for specific studies on the risk of landslides. The CRP believes that this technical risk factor should already have been carefully studied.

The revisions to the CT required by the CEA were the result of a letter from the Urban Development Authority regarding the recreational area situated in the Northern end of the Bolgoda Lake and Weras Ganga. These are many kilometers from the CT. We have been advised that the ADB itself had requested UDA to write this letter.

The government body in charge of monitoring landslides and ensuring conditions in which these could occur is the National Building Research Organization (NBRO). The NBRO wrote to the CEA expressing its concern and asking that a special survey be done. Recent rains caused landslides along the ADB section and consequent flooding. See articles attached. Like CRP we believe this should be done. Evidence from NBRO and reality shows they have not been done.

Para 105. **Finding:** The EIA process did consider improving and widening of the existing road as well as other road alternatives and improvement of the existing Colombo-Matara railway. This is considered in chapter 4 of both the 1996 and the 1999 EIA. The final PPTA Report identified impacts of four alternative alignments within a 10-15 km wide corridor before choosing the CT as the preferred alignment. However the CRP has not found evidence about any reconsideration of alternatives by RDA before shifting the CT, especially to minimize the need for resettlement. The negotiation of the RDA with the CEA over the final conditions of the EIA approval process appears to have focused on environmental concerns.

We have been highlighting this issue to ADB from 2001. Prior to that Oxfam in its report gave a clear indication of the problem to ADB. This is an area in which the CRP should have focused on the Accountability of the individuals in ADB indicating where the responsibility lies. A policy requirement of ADB OM23 is interaction with Civil Society this did not happen which is possibly another breach.

Para 106. Thus, in the sense that alternatives need to be examined for basic project choices, the policy has been met; on the other hand, the several realignments of the trace in this project has created opportunities to re-examine alternatives for social as well as environmental purposes and it is not clear that all the parties involved wanted to re-open the alternatives for a balanced consideration of all issues.

As policies and the law of GoSL require that the FT go through an EIA process, the lack of reviewing alternatives is a breach of policy. It is not correct to say that “the policy has been met”. Policy was met in the 1999 EIA, but that is not relevant as there is no EIA for the FT which is 72% different, and has no data at all.

Para 113. The CRP could not find any record that ADB had reviewed RDA's activities in carrying out the public consultations undertaken during the preparation of the EIA, given the level of detail required for public participation in the ADB's EIA requirements.

We anticipate that ADB Management will produce evidence of this having been done. RDA's creativity of evidence stretched to their copying petitions from those against and attaching it to a letter in favour. However the clear point to recall is that none of the Affected Persons in 72% of the FT were given an opportunity to be consulted and their views taken into account during the EIA process or at any time since.

Para 115. **Finding:** Under ADB's new environment policy, an EIA is described as a project life cycle assessment process and should not cease after its approval but should continue through detailed design and construction implementation. This is especially true in the case of a road such as the STDP, which was revised several times following CEA approval. **The CRP understands that some of the changes to the CT are natural consequences of final engineering design and environmental considerations.**

As natural as they may be to CRP they are only permissible if they fall within the corridor studied. Outside this they are defined according to the laws of Sri Lanka as ‘Alterations’ and require approval through the EIA process. Similarly permission by ADB is for a trace within the corridor defined in the RRP and associated documents.

Para 119. An issue of concern is that the ADB staff undoubtedly knew about the substantial changes being contemplated by the RDA through discussions with the CEA in the EIA approval process from June to September 1999. The discussions were clearly leading to a recommendation with an agreed-upon shift of substantial proportions in the trace. The most logical reason to issue such an inaccurate SEIA 3 days before the formal receipt of the CEA's approval, would be an imperative to get the loan approved before the end of 1999. Despite the best efforts of the CRP, it has been unable to obtain an explanation as to why there was such time pressure. The CRP has received feedback from senior GOSL officials that the Project would have avoided some of the problems feeding this compliance review if more time had been taken.

As stated by CRP there was an unseemly hurry to get this approved with an EIA and an SEIA that was incorrect. Is it possible that the individuals pushing for the loan approval were aware that approval would be denied if the truth were known that the Expressway was to be moved into villages, damaged considerable agricultural areas, increased costs substantially and necessitated a new EIA and SIA ?

The Resident Mission was well aware of the changes as according to government sources they had both initiated and encouraged them. The question is whether this was induced by direct financial incentives or simply growth in the portfolio and achievement of ADB Business Goals. **Through its recommendations CRP should recognize that the individuals concerned should be held accountable.** An audit of salary, promotion, bonuses would perhaps reveal something.

CRP should recommend an investigation of changes and promotions that occurred in the Resident Mission in Sri Lanka from 1999 to 2001. This would provide an explanation of the time pressure. The underlying problem of ADB is discussed at length in testimony to the US Senate by Attorney Bruce Rich on 28th September 2004.

Para 126. **Summary:** A number of environmental policy issues are of concern to the CRP. To begin with, the Project was not designated a Category A project for purposes of environmental review until early 1999, unusual for a greenfield highway project. At that point, it became clear that the Project would require more in-depth analysis for appraisal and Board approval, with ADB committed to conclusion before the end of 1999. Nevertheless, the CRP does believe that no EIA should be accepted nor an SEIA be submitted to the Board when it was known to Management that the trace being described could vary much in the light of CEA's conditional approval. **Whatever legal or technical argument may be offered, the approach taken by Management in clearing these key environmental documents clearly violated the spirit of the OM Section 20.** As a result, the time since Board approval in late 1999 has been unduly occupied with filling the gaps in the environmental and social provisions of the EIA as affected by the new trace, the final alignment, and the inclusion of the Galle access road. The EMP is only now being considered for approval, much later than allowed under the policy, with earthmoving equipment having engaged in major construction for the last year. Finally, the consultation requirements of OM Section 20 have been out of compliance since the second half of 1999, causing undue public alienation from a project that intended and could still have enormous benefits for the population of the entire region.

If previous actions are repeated there is no doubt that arguments will be offered by ADB Management to show that they were not at fault, and if they are found to be, they will have now done enough to eradicate the compliance breaches. The reality is that the gaps are still there, a gaping one where the required Environmental Review process has broken down. People are being evicted from their homes without any of the processes required to ensure that a correct decision has been made.

These compliances failures have been known about from 2001 and were made clear directly to President Chino at the AGM in 2002. Nothing but a cover-up has been attempted.

The ADB and the individuals concerned should be made accountable. The individuals who are suffering and whose Human Rights have been breached should not continue to suffer which is what the CRP recommendations would achieve. The Accountability Mechanism is there to recommend ways to correct the breaches and bring the project back into compliance, not to cover-up.

Para 127. **Policy and Operational Procedures:** The relevant policy standard for resettlement at the time of appraisal and approval can be identified in OM Section 50 (BP and OP) issued on 7 January 1997, and the policy standard for social dimensions is OM Section 47 (BP and OP) issued on 7 January 1997. We treat them together in this chapter because the issues are so intertwined. In the design of the Project, ADB utilized OM Section 50 for further guidance in negotiating the loan agreement.

The policies used are all from 1997, these would apply up to 2003 and include the approval of the loan and the RIP. The actions being taken today would surely come under the new policies of 2003.

Para 136. The project has experienced several, substantial changes to the CT as outlined earlier in this report. The guidance from the resettlement policy and from the Loan Agreement was clear – to minimize resettlement in the course of choosing the FT and FA. With each change of the trace, however, the number of families to be resettled increased. The RRP, based on the CT, estimated that 800 families (or about 3,800 people) "may"⁵¹ be displaced. By the time the FT was established, nearly 1,300 families would have to be relocated, along with another 6,000 families "affected" and needing some kind of compensation.⁵² The explanation provided for the increase in displacement between the CT and the FT was **the demand by the CEA that the CT would have to avoid the Bolgoda Lake and the wetlands related to Koggala Lake.** It is not clear from the record that ADB ever insisted on an explicit discussion of tradeoffs between meeting the CEA's environmental demands and the policy requirements to minimize displacement. The CRP has been unable to find any discussion of tradeoffs recorded by any ADB review missions on this matter. The CRP also notes that ADB has not provided a clear rationale to the public in the Akmeemana section for the move of the CT back to the general location of the OT in that area.

The CRP report has not stated clearly that there had been no attempt to minimize involuntary resettlement. It has been shown to the CRP that the "demand" was not for the Final Trace at all. In the South the concern was the Koggala wetlands. The increase in relocations from 52 households to 476 households to be evicted could have been minimized to an increase of only a few, by simple and minimal changes which would have met the CEA's requirements. The decision by the RDA assisted by the Resident

Mission Head personally to move the trace was without consideration of the policy requirements of ADB's Involuntary Resettlement Policy.

Similarly in the North the increase from 40 houses to be destroyed to 267 houses was done without following the instructions of the CEA.. But with personal decisions of the RDA without any attempt by ADB to ensure its policies were met and CEA requirements followed of protecting the recreational areas of the Bolgoda Lake and Weras Ganga many kilometers away from the CT.

The lack of evaluation of any alternatives in public or in private that could be demonstrated during the last four years of request for an answer, indicates that no attempt in any form was made by ADB to follow its policies.

CRP should be much more specific on this and not leave the matter clouded by its words.

The last sentence of the paragraph also is inaccurate as the move in the Akmeemana area is **not** to the OT area. If it were, there would not have been many requesters or complainants as very few people live along the OT.

The RDA supplied map which was discussed with the CRP showed well over 200 houses along the OT. A list of the 27 families who do live along the OT was supplied to the CRP. The FT in comparison has 227 families. Since the CRP visit, the houses actually along the OT have been identified by travelling along the trace. There are 32 in total. A tracing of the map supplied by the RDA has been marked with the positions of the actual houses and is attached for your perusal. The lies of the RDA in suggesting there were well over 200 houses compared to the reality of just 32 is astonishing.

CRP should recommend suitable action being taken in the ADB Accountability Mechanism which used these lies to stop the SPF process.

Looking at the overall position the numbers of homes that will be destroyed is not accurate. RDA has carefully excluded all the homes that will be destroyed because of over and under passes. Whilst this has been openly admitted by RDA seniors including the Project Director no actual number has been given. The threefold increase in Overpasses to 186 is a direct result of the move into villages of a trace chosen by the RDA without any proper review by ADB. It proves the lack of a review of the decision by anybody as well as the alternatives that would have met the CEA concerns and minimized destruction of houses as required by Policy.

The lack of knowledge of the impact of the RDA plans has been clearly illustrated in the area of Bandaragama where the plans of the Overpasses have been kept secret. Only on specific request has a plan been obtained. This clearly shows that one house will be added to those to be destroyed. Until last Friday the 3rd of June the family were not aware that they would be resettled. Others will lose large tracts of land and be left with inaccessible portions. Up to now the relevant legal notices have not been served on any of these affected people.

There were no discussions of the multiplication of the Compensation cost to the Government. This has caused considerable problems for the Affected Persons, as confirmed by ADB, with payments being delayed consistently as the Treasury did not have the necessary funds. This has been a matter of frequent discussion between ADB and the GoSL see Para 142 of CRP report. The fact that this was necessary is because no proper review was done, and subsequent monitoring has failed.

Para 139. According to the Social Impact Assessment,⁵⁴ agriculture is the predominant activity in the project area.

Agriculture is the predominant activity of the CT as it was mostly through abandoned or poor yielding fields. The FT is through a commercial, business, professional dormitory area. The old SIA was for the CT, the updated SIA has not been seen and we believe does not exist. The lack of an SIA is clearly shown by the CRP comment, as agriculture is not the predominant activity on the FT deviations which contain 57% of the families to be evicted.

Para 140. ADB heads of departments appear to have been misinformed by their own staff, in some cases, about problems in the compensation area. The Back-to-Office Report (BTOR) of a multi-project review in November 2003 included the statement that "the EA has established an excellent rapport with APs and the progress in paying compensation and Land Acquisition and Resettlement Committee (LARC) payments to APs is satisfactory."⁵⁵ A contrary, warning signal had been hoisted just months earlier, when a review mission in September 2003 noted that "The Mission found that there were conflicting views between the supervision consultants and the management consultants regarding the progress of land acquisition and resettlement."

ADB's Management search to cover the failings in this project are clear in their statements that Resettlement was being properly handled. SPF found it difficult to find anybody who was satisfied even in interviews organized and arranged by the RDA of their "satisfied customers". The senior officer of ADB who was reviewing the BTOR and failing to have the differing views investigated is accountable. The fact that the same individual knew that the Affected Persons had problems but did nothing shows that he was attempting to cover-up. This should be disclosed in the CRP report and a recommendation to suitably sanction the individual concerned.

Para 141. This project ushered in a new approach for resettlement in Sri Lanka, with more generous compensation, described as "replacement cost for assets" instead of the depreciated market value as prevailed before, and was then combined with the frequent generosity of the LARCs when valuations were appealed. This has resulted in much larger awards than might have ever been seen before.

CRP has been advised presumably by the RDA or ADB Management of generous compensation awards by LARC and in Appeal. These may possibly exist, but the overwhelming evidence is of the contrary with almost all being worse off than before,

some significantly. SPF Research found the CRP comment not to be true and therefore should be corrected or justified.

It is well known that there have been instances of generosity. This generosity has been evidenced where there has been some political influence, such as in the Kurundugahahetekma area where the leader of the villagers was a loyalist of the then government, other locations Local Government politicians and close associates and employees of Politicians.

In other areas such as some divisions in Bandaragama where there was a shortage of land, no forward planning was done. Suitable replacement land was not acquired by the RDA, land values have escalated and the few owners of large extents of land sold to developers. This left the resettled people with the option of going to resettlement sites of 20 perches of poor land much smaller than they owned or self relocation at the now inflated prices.

CRP may have been misled by schedules of land values comparing previous prices and current compensation, which suggest generous LARC awards but do not show the truth that the current land values in the immediate vicinity are even higher.

Para 142. The more routine grievances, generally associated with construction damage, were supposed to be handled by the GRCs, but following a decision to establish them, virtually nothing happened, according to the Management Consultant reports. Even in 2005, ADB oversight was still ineffective in stimulating the operation of the GRCs, and with construction gearing up, the inventory of complaints was sure to grow. A second problem is that compensation has sometimes been delayed. Despite the emphasis in the Loan Agreement that adequate funds be allocated by GOSL to RDA in GOSL's budget to implement the RIP, ADB did not adequately press GOSL to make available adequate funds for compensation on a timely basis. As recently as 2004, ADB reminded the Ministry of Finance that adequate funds were not made available. In May 2004, it was estimated that while the Treasury had paid up SLR1,838.90 million (about \$19 million) for such purposes, in fact another SLR2,055 million (about \$21.4 million) was required for that year.⁵⁸ **It is unlikely that the project was ever brought into compliance on the timely compensation issue.**

Timely compensation has been breached consistently, but CRP in recognizing this has not identified the cause. The problem with funding the resettlement is that movement of the trace into villages means compensating for residential land and houses instead of abandoned paddy fields. Neither the RDA or ADB had thought about the effect of their changes and calculated the impact in monetary terms. The failure of the compensation process is a direct result of ADB failing to have an EIA and a proper Economic analysis. These would have enabled the Treasury to plan properly

Whilst the CRP have correctly recommended that payments should be made so that there is no breach of Policy it has not recommended any real way of monitoring or policing it. CRP made a verbal promise to revisit to see that recommendations were being followed, but we think it will be another case of 'Too Little too Late'

What is happening without this independent monitor is a rapid increase in Poverty without any control and the CRP is not recommending a process to stop it.

144. **Finding:** The ADB's *Handbook on Resettlement: A Guide to Good Practice* dated 1998 cites the need to "ensure that relocation sites are completed with all amenities before any relocation takes place."⁵⁹ This Handbook goes on to say that "all relocation must be completed one month before construction commences."⁶⁰ It is evident that this requirement was not met. Some affected families, especially the landless, apparently moved precipitously to their resettlement parcel of land before the sites were considered ready, in part to use the additional compensation offered by RDA so as to avoid renting a house. The CRP understands that other affected families who chose the RDA resettlement sites had no choice but to move in prematurely, given the start of construction, the scarcity of rental space in the area, and their desire to live as closely as possible to their home villages.

Para 145. A literal reading of the policy would suggest that the onset of road construction could not have occurred without completion of the resettlement sites. That was made more difficult here owing to the decision of the RDA to undertake the construction of the resettlement villages themselves, or to let the affected people construct their own houses, instead of contracting out the whole process. One also has to keep in mind the arduous permitting process required for installation of any central services, such as electricity. Closer supervision of RDA's resettlement sites might have prevented this element of the process from falling out of compliance. Nevertheless, the CRP is persuaded that RDA is making an effort at the current time to close the gap between promise and reality in the resettlement sites.

The failure to do a proper EIA which would have shown the large number of houses to be destroyed has caused much of this. ADB has established policies on EIAs knowing the harm that their absence will cause. ADB is also aware that monitoring is necessary. It is the failure of ADB to enforce its policies that is the direct cause of the suffering and the lack of compliance. For CRP to talk about difficulties is irrelevant. It is to know and manage those difficulties that the EIA and Monitoring Plan need to be in existence..

Another important cause of this failure to have resettlement sites ready was further worsened by ADB pushing for the Construction Contracts to be signed in January 2003.

There is no real evidence of success in improving these sites. It may be an intention well stated, but there is little evidence on the ground. CRP were offered the opportunity to see more sites so that they could see clearly their disgraceful state, but CRP refused to check any further sites. No sites have even been started in the Bandaragama area and yet the RDA is seeking to evict people.

Picture beneath Para149. This would be better described as the incomplete home of an Affected Person who has been evicted from his old home.

Para 153. RDA realized they needed a revised SIA, and turned to WSA in 2000 to update the 1999 survey along the ADB section as well as for the Galle access

road. The survey was carried out in May-August and delivered in November 2000.⁶¹ The resulting report was a combination of sections from the 1999 report combined with new survey results from WSA for selected portions of the new alignment. Also in the JBIC section, a socio-economic study was made as part of the E/S loan. The process was thus brought into compliance.

As stated above claims by CRP of these reports are refuted. No proper surveys have been done. Much of the CRP report relies on these reports, but it should be evident that they are not up to the quality required for review in Court. Because of this these reports should be ignored. The largest concentration of houses and a large proportion of the houses are in the Akmeemana area. The ADB has confirmed that this very large element of the population was excluded. **To pretend this survey was an SIA is not up to the standards of independence expected of CRP. Similarly the survey done in the North is totally questionable and given the secrecy by which it is protected one can only assume that it too would not pass the minimum standards expected of an SIA. The belief by the CRP that this brings this aspect into Compliance is totally wrong.**

Para 156. It is difficult to be precise about the degree of information shared and understood on both sides. When CEA was involved, especially in reviewing the EIA in 1999, some public meetings were organized. By July 1999, with that approval in hand, the GOSL completed its consultative process, and then only implementation remained. Likewise, on the ADB side, the issuance of the SEIA in July 1999 and the completion of the Board preparation documents marked the end of its public consultations. Formal consultation with the communities clearly declined. At the same time, the hostility of some of the additional families affected by the FT did not facilitate the process of consultation, and growing mutual distrust eroded the goodwill generated by the participatory approach taken before July 1999.

The lack of a clear statement that there was no compliance is inexplicable. What CRP has confirmed from many people is that they were not on the trace reviewed by the EIA and SIA, in fact 72% of the trace has been changed. It has been established from evidence supplied and collected by the CRP that people were not informed until after the decision by the RDA. It is an undisputed fact that the Requesters and many others on the FT did not find out that they were on the trace. This is sufficient to confirm a lack of compliance by ADB.

Para 160 The issue of gender analysis as a stand-alone issue is addressed below. More generally, after the determination of the FT, the project consultants were asked to "update" the SIA for the ADB section. Additionally, in the ADB section the householders along the 5-km Akmeemana section refused to cooperate and so the updated SIA lacked essential household data. Their refusal to respond to the SIA survey resulted in part from a collapse of consultation over the final shift of the trace, which was known to some landowners as early as July 1999 and to others at a later date. The relationship between those landowners and the project precipitously declined thereafter.

The refusal is hardly surprising as the Expressway was not due to go there. The lack of this group meant the absence of nearly 50% of the houses. The quality of the analysis

would be extremely poor. Should an EIA find the FT to be the best route there would be no problems with doing an SIA.

We are surprised by the comment that some Land Owners were aware of the shift of the trace as early as July 1999. As this was not planned until much later we are not aware of any Land Owner who was able to predict the shift to run through villages.

Para 172. One central aspect of successful management of the RIP, for instance, was the appointment of an independent monitoring agency to report on the completion of tasks as noted above. Initially, RDA did achieve compliance with the Loan Agreement on this issue by naming a local firm as such a monitor. By 2002, however, the RDA cited inadequate performance, and with ADB's agreement, did not appoint a new independent monitoring agency – instead, appointing with ADB's agreement, Finnroad, the Management Consultant for the project to simultaneously serve as "monitor".

For a monitor to be independent it would not be possible to have him employed by the road construction consultants. This is not an academic comment but clearly seen in the reality of the disastrous Resettlement process and the “successful” comments of the monitor. In addition was it not significant to the CRP that none of the people on the resettlement sites mentioned Finnroad the independent monitor!

The breach of the Loan Covenants was known to ADB Management from 2002, but the failure by the monitor to draw attention of the breaches showed that he completely lacked independence.

Will CRP recommend some action be taken against the ADB Officer who endangered the Bank by ignoring the appointment of an independent monitor as required by the covenants which we were informed were there solely to protect the Bank?

174. **Finding:** OM 40/BP titled "Formulation and Implementation of Loan Covenants" states that "the general approach to noncompliance will be to seek corrective measures in order to attain the objectives of the project."⁶⁸ The substantive violations of the covenants cited in connection with this policy are the same issues already treated above. The additional relevance of this policy lies only with regard to remedies, and whether ADB is carrying out its responsibility to enforce the covenants in its loan agreement. While OM Section 40 provides the option of suspending or terminating a loan operation for violation of covenants, the provision cited above illustrates the general approach taken by ADB to violations – i.e., to bring the project back into compliance. There is no automatic invocation of particular remedies under this policy, leaving ADB with the discretionary judgment to apply the provisions as it sees fit. **At the same time, the policy makes clear the requirement that ADB staff do everything in their power to maintain compliance with all policies through the use of specific covenants, and there is no doubt that the substantial lapses on resettlement policies in certain time periods suggest staff did not pay adequate heed to the norms established in OM 40.**

To bring the Project into Compliance on OM 40 legal action should be taken against the borrower. CRP should recommend that Loan Disbursement should be suspended in line with the policy given of managing breaches of Loan Covenants.

Para 175. **Summary:** Compliance on issues of resettlement and social impacts needs to be differentiated by each stage of the Project. At the time of loan approval by the Board in 1999, the Project appears to have been in compliance, if one allows for a gross underestimate of the number of families to be relocated and affected by the Project. The estimate may have been the best that could be provided from aerial mapping of the CT, but the resulting dramatic rise in the number of APs reinforces the conclusion that the Project suffered from being rushed to approval before the FT was set and preliminary and detailed engineering work done. Following loan approval, the lack of compliance becomes quite stark. With the designation of the FT and the FA determined in response to various forces including the CEA's conditions, Management and staff lost their focus on maintaining compliance with resettlement policies. The arduous work of negotiating the FT included too little attention to minimizing resettlement, and almost no attention to public consultation, a core aspect of OM Section 40. Only when the APs began to complain did ADB Management and staff make serious efforts to bring it back into compliance, with some progress in the 2003-2004 period. It would be difficult to portray the Project as in compliance at this point, given the lapses that occurred earlier that are difficult to redress, e.g., removal of families before resettlement were prepared with utilities or full compensation had been paid.

The project could only be considered to be in compliance in 1999 if one was to assume the change to the FT was not envisioned. The CT was chosen to limit the destruction of houses and hence at least that part of Policy would have been in compliance. ADB at many levels was aware of the intention to change the trace when the RRP was presented and reviewed by the Board. It would not be possible to allow for a vast underestimate as that would breach the very essence of minimization of home destruction. The CT as recorded by the SIA who had walked the entire length was 810 homes across the area that was being studied, which is wider than the actual acquisition area. As such aerial photography was not necessary. A better estimate of the actual acquisition requirement was 622 homes per the EIA which is line with the SEIA and Board expectation of a reduction from the 810.

It is very sad and shocking that CRP believes that that Management took action when complaints were received. ADB Management took no action when complaints were received. The detailed and well exemplified evidence produced in 2001 only succeeded in persuading ADB Management that it should lie. This continued even to April 2004 when Management continued to lie to the Board (See para 83). A more correct comment would be. "Despite many complaints being received ADB Management made no efforts to comply."

Para 203. OM Section 36 says that "Economic analysis of projects are carried out prior to their financing and when necessary throughout the project cycle." As no updated analysis was made prior to or since Board approval, regardless of knowledge of a change in alignment, the CRP must conclude that such an update or new analysis was not regarded necessary.

CRP has decided that the ADB Management considered the recomputation of EIRR unnecessary and thus found in Compliance. CRP should rather consider whether in all the circumstances ADB Management should have considered it necessary. The change of alignment, the 47% increases in costs by 2002 which is well over the 25% for which the model said the Project would become unviable. This increase in itself should have made the recomputation necessary.

Para 205. Using this information, together with the economic analysis undertaken at the RRP, a recomputation of the Project EIRR and NPV has been undertaken.

We do not believe it is part of the duties of CRP to do ADB Management's task of recomputing the Economic Analysis. CRP should assess whether the required analyses have been done and whether they are in compliance with ADB Policy. The figures quoted should be removed from the Report. Only comments about the accuracy of those calculations done by ADB Management should be given.

Para 208. **Finding:** The Requesters cite "forecasting effective demand for project outputs" as one of 3 provisions of economic analysis that have allegedly been breached. Insofar as economic analysis done prior to Board approval is concerned, this is not deemed to be the case.

As no detailed information has been made available of the details behind the model one can only assume that no account has been taken of certain factors. The growth of traffic has not taken account of the type of vehicle that is being added to the fleet. There are mostly three wheelers from India and small motorcycles. The numbers of cars has not been very high. The volume of traffic shown in the RRP for the Southern section of the Expressway is not borne out by the reality of the volumes in those areas.

Para 209. The link of the project highway to A2 has not been cancelled, but the link between Panadura and A2 will be considered as part of another project. There is no change in the point of origin on the northern end of the highway at Kottawa, and no anticipated difference in traffic volume forecasts. On the issue of the Galle access road, a new link on the south side of Galle will permit a fast connection to the project highway.

The link between the A2 and the Expressway has been cancelled. The link to the Galle Road provided for in the project was an Expressway standard road linking the Southern Expressway to the Galle Road encouraging traffic to transfer onto the Southern Expressway and joining on to the Outer Colombo Highway (OCH). The link is actually part of the OCH, and its loss does not only affect the Southern Expressway, but the contiguity of the OCH. The road improvement project will simply widen a road that travels through many villages and towns and have all the problems associated with traffic

and people mix that was to be avoided. The likely loss of traffic is significant and should be accounted for.

Para 209. The access to Galle will be significantly reduced. There were several access points to Galle from the CT. One was close to the residential and commercial areas. It was also very close to Karapitiya Hospital the main hospital for the South of Sri Lanka. These changes will reduce the accessibility of traffic to Galle with its consequent reduction in benefits.

Para 212. The Requesters claim that the FT is costing more than double in SLR terms and almost 50% more expensive in \$ terms. The increase in the cost of the Project has two major explanations – the largely increased land acquisition and resettlement costs and the largely increased construction costs due mainly to the delays in the Project. Some of these increased costs would have also incurred to the choice of CT as the trace for the highway.

The increased Resettlement Costs are very much a result of use of the FT where the number of families to be relocated is a multiple of the CT. See table in the Report. Also see the EIA where the number of houses to be destroyed was estimated as 622 and according to the SEIA and other reports likely to be reduced below that. The Current estimate is 1,315 houses for those on the trace and a considerable number for the 186 under and overpasses not included.

The increased costs are also due to the considerably more expensive construction cost due to the location of the trace through hills rather than flat areas. The EIA made reference to the hills near Galle which should be avoided as they would be too expensive to cut. The FT was forced through these without consideration of the cost. The increases in costs of the CT would certainly have occurred but they would likely have been within the 25% acceptable. The FT is considerably more expensive. Significantly more than the OT would have been.

There are delay charges being made by the contractor Kumagai Gumi. The CRP needs to take into account the fact that the increased construction costs due to delays in the Project are a direct consequence of the ADB pressurizing the GoSL to sign the contract with Kumagai Gumi in January 2003 when the Court of Appeal had not delivered judgement for over 50 petitioners, representing many others in the Akmeemana and Bandaragama areas. The majority of these petitioners appealed to the Supreme Court and thereafter to the UN Human Rights Committee where they are awaiting a ruling. Other Affected Persons have appealed to the Special Projects facilitator and to the Compliance Review Panel of the ADB. During these appeals the GoSL was not able to proceed with acquisition. Because of the lack of a proper EIA process having been followed the process in the disputed areas is proceeding very slowly. Delay charges are a direct consequence of the ADB not attempting to bring or keep the project within compliance. Therefore we feel that the CRP should recommend that the people of Sri Lanka are entitled to reimbursement by the ADB of the delay charges that are a consequence of non- compliance.

Para 215. **Summary:** The CRP has looked carefully at the complaints of the Requesters and the original analysis submitted to the Board. The CRP has also asked for an independent review of the economic analysis from an expert with a fresh view of the assumption, costs, and benefits. Allowing for the fact that a number of variables have changed since the 1999 analysis, with increases and decreases in various elements of the cost-benefit calculation, the CRP is impressed by the robustness of the original analysis performed in 1999. Because the numbers allow for substantial changes in costs and benefits, with the result still falling within the permissible range for Board approval of the project, the CRP does not conclude that OM Section 36 fell out of compliance.

The belief by CRP that the project is in compliance is based upon the computations done by CRP's expert. **These computations are not relevant to compliance. The question is whether there should have been recomputations and were they done.** The changes in cost outside the model parameters if nothing else should have driven a recomputation. This was not done. The fact that if it had been done CRP believes it would have shown an acceptable position is not relevant in compliance.

Para 221. After changes to the CT were made, and the FT was identified, a socio-economic survey was carried out by WSA on portions of the FT that were different from the CT. An updated SIA Report was prepared for the ADB section which covered a 100-m RoW. In the JBIC section, a similar survey was prepared for the FT as part of the E/S loan. The CRP finds that the updated SIA prepared by WSA in November 2000 is limited and that additional assessments are needed to establish baseline information on project beneficiaries along the FT.

Despite the claim by ADB that an updated SIA has been done there is insufficient information to understand peoples' lifestyles and to act as a baseline for benefit monitoring.

The unseen SIA update for the JBIC section is not suggested to be a problem for baseline information despite the fact that it was a very limited exercise. CRP accepts that JBIC is under ADB guidelines, therefore the compliance should be measured by the same yardstick.

Para 256 (i). . In the first category, the CRP recommends that ADB:

- (i) reviews the processing of road or highway loans over the past 5-10 years to see if there is a regular pattern of sufficiently significant changes of scope as to make the application of safeguard policies difficult. If there is, request suggestions for modifications in the application of environment and resettlement policies so the projects can remain compliant and the appropriate populations can be fully consulted.

The recommendation seems to focus on finding ways to avoid implementing the safeguard policies rather than finding ways to ensure that procedures are put in place to handle alterations that involve affected persons in the decision on the alterations.

- Para 256 (ii). .reviews the cofinancing arrangements in the STDP, along with other projects, to determine if such arrangements have a damaging effect on

policy compliance for the whole project. The report should also recommend institutional remedies for strengthening compliance in the future.

The recommendation should be for one lead lender under whose policies all the processes are dealt with. It should not be necessary for affected persons to be pushed from one to the other. The Project is one, the EIA is one. The project rationale is one. One lender must be the authority.

Para 257. On the second category, the CRP recommends that ADB:

- (i) assesses the environmental impacts of the Galle access road and any stretch of the ADB section on the Final Trace (FT) different from the Combined Trace (CT) including consulting project-affected people on environmental impacts.
- (ii) incorporates the environmental impact assessments and the recommended mitigation measures of any stretch of the ADB section on the FT different from the CT and of the Galle access road in the Environment Management Plan (EMP) for the Project.

These are clearly not enough, **this is a cover-up in action**. No search to solve the errors of the ADB who are forcing this forward no matter how bad it is for the Affected Persons and Sri Lanka. CRP should recommend that there is a proper review of the project, an EIA is done and the full approval process followed. The CRP should not be bending the rules, it should seek compliance.

The statement that the work has gone too far to change is untrue. In the northern section the Contract has not been awarded, not an inch of the road has any construction process started. The suggestion that all the land has been acquired and therefore must be now used for the Expressway is untrue. Many of the 267 houses in the deviation are still the homes of the Affected People. If the CT was used only some 30 houses would need to be destroyed. There are considerably larger number of homes on the FT that are still not destroyed. In many cases compensation has still not been computed let alone paid.

In the Southern section the 5km Akmeemana section still is mostly occupied, only a few people have left their homes. The Expressway has proceeded very little. If the OT was used only 32 houses would need to be destroyed, there are a multiple of that still being lived in on the FT compensation not even started to be considered.

Delay charges will be far less than the high financial and social cost of evicting over 1,000 people unnecessarily.

In any case the reviews should cover the entire trace, both JBIC and ADB sections. The reports that have been made available to us have shown that there were significant areas that had not been covered, investigated, or had mitigation measures planned. The Chief Representative of JBIC has also seen areas that were missed. JBIC section also needs to have a proper open review done.

titled "Prawurthi Saha Warthakaranaya" written by Nihal Jagathchandra of Lakbima newspaper was launched. The first copy of the book being presented to Speaker Joseph Michael Perera at the Parliamentary complex. Central Minister Tissa Attanayake is also present.

DAILY MIRROR 24/7/05

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Expressway trace may run through landslide-prone areas: NBRO

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By Pujitha Wijetunge

The authorities in charge of the Southern Expressway project have failed to understand the possible danger of landslides in a section of the expressway pointed out by the National Building and Research Organisation (NBRO), sources said.

The Daily Mirror learns that after a field visit to the expressway trace from Godagama to Kurudugahahetekma, Landslide Studies and Services Division of the NBRO has recommended that the Central Environmental Authority (CEA) should

carry out a reconnaissance survey and prepare a hazard zonation map, prior to carrying out further construction work.

A letter dated June 24 2003, addressed to Director (EIA), Environmental Management and Assessment Division of the CEA, W. A. D. D. Wijesooriya called for the necessity of both a survey and a map.

The observations made by the NBRO in respect of the slope stability in a section of the expressway states that in places like Maharambe, Sandarawala, Kosgahakanda, Akuratiyakanda and Kuruduga-

hahetekma the proposed road will pass through steep slopy ground.

"It was observed that no reconnaissance survey of the site has been conducted to identify location of landslide prone areas along the proposed highway trace. If such locations are identified additional mitigatory measures should be introduced. Preparation of hazard zonation maps is the best tool to identify a risk category" the letter said.

However, Mr. Wijesooriya, when contacted, denied he has seen such a letter addressed to him by the NBRO.

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FAX

English Translation by the Compliance Review Panel of the newspaper article attached to the Response of the Requesters

"Lankadeepa" dated 31 May 2005

Ginganga overflows causing severe damages in several areas of Baddegama

Subway of the highway also under eight feet of water

Due to the heavy rainfall experiencing these days, number of lowlands in Baddegama and Divithura divisional secretariats were under water by overflowing Ginganga, yesterday.

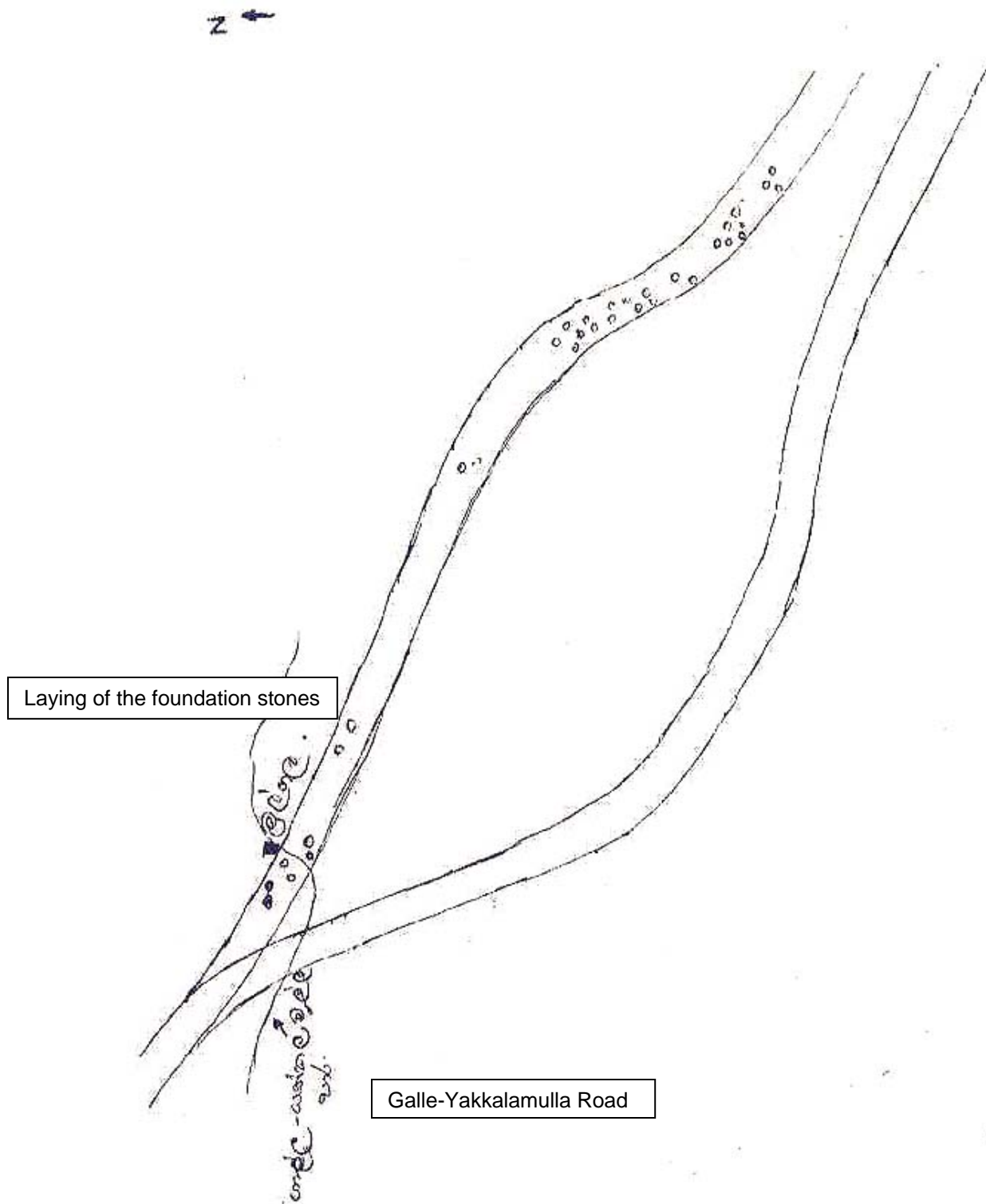
The lowlands of Athkandura, Yakkatuwa, Kurundugaha, Kahaduwa, Pathwelipitiya, Akuratoya, Nambaratta, Agaloya, Hammaloya, and Badpanagama were in flood.

It is reported that number of places in Baddegama, Udugama road have been washed away and damaged by the strong currents of flood.

The Southern Highway has been damaged by the earthslip of Divithura Pathiraja hill.

The proposed subway to be constructed by the Nugethota Sawanna dam, which is a part of the highway was 8 feet in water.

Having inquired from Mrs. Padma Karlyavasam, the administrative officer of the Wellwotiya Dithura divisional secretariat, we were informed that the extent of the damage caused by the flooding had not been officially reported so far.



English Translation by the Compliance Review Panel of the captions in the map attached to the Response of the Requesters



Asian Development Bank

Memorandum

Office of the Vice President
(Operations 1)

9 June 2005

To: Chair, Compliance Review Panel

From: Vice-President (Operations 1) *[Signature]*

Subject: Loan 1711-SR(SF): The Southern Transport Development Project
Management's Response to Compliance Review Panel's Draft Report *[Signature]*

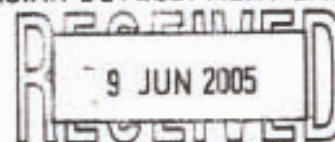
As requested in your memo dated 6 May 2005, submitted herewith as Attachment 1 is Management's Response to the Compliance Review Panel's Draft Report on The Southern Transport Development Project in Sri Lanka.

As you are aware, this is the first case of full application of the Accountability Mechanism, from Special Project Facilitation (SPF) to the Compliance Review Panel (CRP) Review. The CRP Report also raises some important broader institutional issues. These are fully set out separately in Attachment 2.

We believe that these are relevant to the ongoing functioning of the Accountability Mechanism and to the interpretation of the ADB's operational policies and procedures. Management's purpose in raising these important matters is to draw the attention of the CRP, Board's Compliance Review Committee, and the Board to some fundamental issues relating to the functioning of the CRP and the appropriate interpretation of ADB's operational policies and procedures for their consideration.

cc: Compliance Review Panel
General Counsel
Directors General, SARD/RSDD
Deputy Director General, SARD
Assistant General Counsel (South Asia)
Directors, SATC/RSES
Advisor (Safeguards and Compliance), SAOD
Country Director, SLRM
Chief Advisor to the President

ASIAN DEVELOPMENT BANK



OFFICE OF THE
COMPLIANCE REVIEW PANEL

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MANAGEMENT'S RESPONSE

**ADB ACCOUNTABILITY MECHANISM
COMPLIANCE REVIEW PANEL**

CRP REQUEST NO. 2004/1

**THE SOUTHERN TRANSPORT DEVELOPMENT PROJECT IN SRI LANKA:
CRP DRAFT REPORT**

9 JUNE 2005

I. INTRODUCTION

1. The Compliance Review Panel (CRP) has requested comments on its Draft Report dated 6 May 2005 on the Southern Transport Development Project (Loan No. 1711-SRI [SF]) (the Report). Pursuant to paragraph 125 of the Accountability Mechanism Policy, Management hereby provides comments on the Report (the Response).

2. The Response is structured as follows. Section II presents Management's Response on CRP's findings and assessments. Section III sets out the Management's Response on the Recommendations of the Report. Section IV presents Lessons Learned. Section V is Conclusion. The Appendix contains some clarifications to the Report on consultation, participation, and resettlement.

II. MANAGEMENT'S RESPONSE ON FINDINGS AND ASSESSMENTS OF THE REPORT

A. Environment Consideration in ADB's Operations

1. Environmental Assessment

3. Management acknowledges that the environmental assessment process should have been more rigorously followed. In particular, there should have been greater clarity in the process to be followed for successive iterations of the final trace. The 1999 Environmental Impact Assessment (EIA) was prepared before detailed design had commenced, and before a final alignment was defined. The EIA covered a project area "from Makumbura to Godagama, about 1 km inland of the Original Trace (OT) and 1 km seaward of the Combined Trace (CT)." Within the project area, narrow corridors on the OT and the CT of varying widths were defined for different parameters¹. While the EIA recommended the CT, it presents an overall description of the main environmental features in the project area as a whole and along the two traces. The EIA's findings on environmental impacts and mitigation measures provide overall guidance for more detailed design of the project. These findings are presented for the OT and the CT, and are also relevant to the Final Trace (FT). However, as an EIA of feasibility stage design, the EIA is clear that more site specific studies during detailed design were expected for any final alignment.

4. The detailed design phase identified the FT avoiding, as advised by the Central Environmental Authority in its approval, the sensitive areas in or in close proximity to wetlands² and the more populated areas near Galle. Additional studies for the final alignment, conducted during detailed design, included an updated social assessment and the environmental findings report for the FT; and additional studies on hydrology, drainage and air, noise, and water

¹ Detailed studies were carried out in 1996 for the corridor of 400 ft (122 m) width marked on the ground by the RDA as the proposed acquisition limits for the Original Trace (OT). For the CT, the sections of the trace which deviated from the Original RDA trace near the Colombo end and Galle were studied in 1999, as the balance part of the trace was common with the OT. For agricultural aspects, a corridor of 500 m and 1 km on either side of the centerline of the 400 ft corridor were taken as the study area. For ecological studies, a corridor 200 m on either side of the centerline was taken for vegetation, while for wild life, a corridor of 500 m on either side of the centerline was taken due to the mobility of the animals (para 2.2. of the 1999 EIA).

² The CEA recommended avoiding the Weras Ganga/Bolgoda Lake wetland region (in the Bandaragama area) and the Koggala and Madu Ganga wetlands (in the Akmeemana area).

quality. The need for additional studies should have been clearly stated in the RRP and loan agreement.

2. Public Consultation and Participation

5. Management agrees that public consultation and disclosure of project information on the FT was inadequate.

6. As the EIA focused on the OT and the CT, during public review of the EIA, residents in the project area were not aware that further adjustments leading to other traces within the project area could be considered. During the project design phase following Board approval, until the identification of the FT, the consultation process was inadequate, and the affected people did not have sufficient opportunity to influence the determination of the FT. The CT was shifted to the FT, among other reasons, to accommodate the conditional approval given by the Central Environmental Authority (CEA) to avoid wetland areas and the more densely populated areas near Galle.

7. However, during detailed design of the final alignment, a number of discussions between the design team and project-affected people took place. The Report does not fully reflect the extent of participation and consultation that did take place during definition of the final alignment. Management requests that the CRP consider information provided in the Appendix as appropriate in finalizing its Report.

8. The design team and RDA consulted the potentially affected people during the process of identification and analysis of the final alignment from the FT. Following determination of the FT, an information and consultation campaign was conducted on the selected FT and the establishment of the final alignment from the FT. As mentioned in the Engineering Final Design Report, in a number of cases as a result of representations by other affected people, adjustments were made to the FT resulting in the final alignment.

9. Consultation continued during project implementation, with emphasis on land acquisition and resettlement. In 2001, the RDA hired 40 graduates in Sociology or Anthropology as Resettlement Assistants (RAs) with 4 supervisory Resettlement Officers (ROs) to work with the affected communities and households, and to act as facilitators in the interactions between RDA and the households. Four field offices were established along the final alignment of the highway. RAs visited affected households to discuss their property losses and entitlements including restoration and improvement of their income and livelihood. They organized affected persons' meetings to meet government officials, negotiate their compensation packages, and facilitate their relocation. At present, with land acquisition and compensation activities reaching completion, 11 RAs are employed, 5 of which are women.

3. Environmental Monitoring and Mitigation

10. The environmental monitoring has been based on evolving plans. The SEIA provides an overview of a suggested monitoring program. A monitoring plan was approved by the Central Environmental Authority (CEA) and an Environmental Manual submitted by the Contractor in 2003. Subsequently, an environmental management plan was approved by CEA on 29 October 2004. A second Environmental Management Plan (EMP) incorporating additional ADB comments was adopted by CEA on 26 May 2005. Baseline studies on noise, air quality, water quality, hydrology and ground water levels were conducted prior to the start of construction. To ensure that monitoring of noise, air and water quality is carried out on a regular basis, Road

Development Authority (RDA) has recently signed a contract with a local institution. Review of the monitoring activities and data is carried out by the CEA's Environment Monitoring Committee (EMC) on an "as needed" basis, and copies of the minutes of these meetings are being forwarded directly to ADB by the EMC.³

11. Environmental mitigation measures have been carried out during construction by the contractor, supervised by the Engineer, reviewed by the Management Consultant (MC), and monitored by the CEA environmental monitoring committee (EMC). Complaints concerning environmental impacts during construction are registered and addressed individually. Almost 1,600 such complaints had been registered by end April 2005. Of these, over 1,100 are reported as having been resolved or attended to.⁴

B. Involuntary Resettlement

12. The Report highlights several concerns related to involuntary resettlement.

1. Payment of Cash Compensation

13. Management recognizes that especially in the early part of resettlement implementation, there were delays in the payment of full compensation, but normally at least statutory compensation (which on average accounts for 50% of all payments) was paid on time. Delays were more common for liquidation of interest and ex-gratia payments, which are not part of the Resettlement Implementation Plan (RIP) entitlements.

14. The situation has now been largely remedied, as a result of significant fund allocations made by the Treasury of the Government of Sri Lanka (GOSL)⁵ because of intensive follow-up by the Ministry of Highways and ADB, and as of end April 2005 in the ADB-assisted section, 7.5% of total compensation remained to be paid. At that time, resettlement has been completed for 406 families that received cash compensation, and 258 that moved to assigned sites. Among the remaining 47, 37 are households that resisted survey of their sites until January 2005. It is expected that all land acquisition and resettlement activities will be completed by the end of 2005 and a detailed review of this activity will be conducted during the Midterm Review Mission in September-October 2005.

2. Situation at Resettlement Sites

15. Management acknowledges that there are infrastructural deficiencies at the resettlement sites where approximately a third of the affected people relocated. These deficiencies have been identified and quantified by the MC in their monthly reports to the PCC and verified with the assistance of an international resettlement specialist. To remedy these defects, 17 contracts have been awarded in early 2005, with the intention to complete the work by the end of June

³ Between October 2000 and June 2004, 22 EMC meetings were held.

⁴ Such complaints may include damage to houses from vibration of compaction equipment or rock blasting, cutting of access to properties and severance of access to public roads by construction work, leaching of construction materials into agricultural land, nuisance related complaints related to noise and dust. The Engineer has appointed a fulltime environmental specialist to investigate and resolve issues; similarly, the contractor has nominated a permanent environmental manager. The Joint Investigation Committees of Public Complaints are in operation and comprise representatives of RDA, the contractor, and the Engineer. These groups jointly investigate the complaints in the field and present their findings at the Public Complaints Resolution Monitoring Meeting, which are held weekly and comprise senior staff of RDA, the Engineer, the Contractor's Agent, and other officials concerned.

⁵ Rs499 million were released between September and December 2004, and Rs510 million from January to May 2005, in spite of significant demands for public funds resulting from the response to the tsunami emergency.

2005. Delays in mobilizing by most of the contractors are likely to result in a later completion date. One of the resettlement sites was considered to be unsafe (erosion and potential landslides). This site is being abandoned and the six resident households are being moved at GOSL expense to another site. Furthermore, arrangements have been made for residents at another site, which was seriously damaged by the tsunami, to be relocated under the Tsunami Relief Fund. The MC monitors progress at the resettlement sites and reports directly to ADB and to the monthly PCC meetings.

3. Income Restoration Program

16. Management acknowledges the delay in starting the income restoration program (IRP), and action was taken in 2004 to establish the IRP. Requests for proposals were issued in March 2005. Four NGOs have submitted proposals and evaluation is about to be completed. Until early 2005, only the first two activities under the IRP had been implemented: payment of special assistance to vulnerable affected people, and vocational training for members of affected households. Recognizing that these activities were insufficient, a new scope and terms of reference for the IRP were developed in late 2004 and early 2005.

4. Monitoring of Resettlement Activities

17. Management acknowledges initial current weaknesses in the resettlement Management Information System (MIS), and has already taken action to rectify them. An information technology consultant has been hired by the MC to reconfigure the MIS, and RDA has supplied operators to correct errors in the input data. The MC is also undertaking an independent audit of a 5% random sample of the first stage of payments made for land acquisition and resettlement in the ADB-assisted section. An interim report was produced in November 2004 and the audit is scheduled to be completed in June 2005. The audit's second stage (on the JBIC-assisted section) will commence thereafter.

18. Management notes that pursuant to the loan agreement an independent monitoring agency for resettlement, acceptable to ADB had been appointed, but thereafter its contract was not renewed, and its duties were assigned to the MC. Management acknowledges that while the MC has effectively performed monitoring, the absence of an independent external resettlement monitor for the Project poses some difficulties. ADB is in the process of taking action to remedy the lack of third-party monitoring of resettlement implementation in the Project either through considering another external monitor, or alternatively, conducting independent audits of the resettlement monitoring, funded under a separate ADTA, so that reporting would be made directly to ADB.

C. Benefit Monitoring and Evaluation

19. This section of the CRP Report covers both the monitoring of resettlement and environmental aspects during project implementation and the monitoring and evaluation of project benefits and impact. With regard to the former, Management acknowledges initial problems, and has undertaken substantial remedial actions to address them, as discussed in paras 10-11 of the Response.

20. With regard to benefit monitoring and evaluation (BME), Management submits that the Report does not fully reflect the extent of baseline information and should be updated accordingly. Baseline data collected for BME of the Project comprises traffic volumes and mix, vehicle operating costs, axle loads, road maintenance costs, traffic accidents, environmental

impacts including noise and air and water quality, and socio-economic status of targeted beneficiaries. Transport-related BME indicators are not dependent on the specific trace, since no highway existed in the project area prior to the beginning of the project. Baseline environmental information on the FT was collected through the EIA, EFR, and additional studies. Social data on affected people along the right-of-way will be available from previous social assessments, as updated through the detailed inventory of losses generated through the land acquisition and compensation process, which is nearly completed. Monitoring and evaluation of project benefits and beneficiaries will be carried out at the appropriate time, using the above baseline data and other comparable data that will be collected for that purpose.

D. Gender and Development in Bank Operations

21. Management agrees that gender analysis during project design was limited, but considers that it was partially remedied during implementation. For example (i) the analysis of employment patterns during project design pointed out that project benefits might be especially favorable for women and youth, who suffered from higher unemployment in the project area; (ii) female-headed households represent 10% of project affected people, and the Resettlement Implementation Plan (RIP) provides them special assistance during relocation, which was fully implemented;⁶ and (iii) RDA proactively hired female personnel⁷ to implement gender-sensitive areas of the Project.

22. Management acknowledges that gender dimensions were not specifically incorporated in the original income restoration program (IRP). Delays in finalization of the IRP provide an opportunity for proactive action to ensure further consideration of gender dimensions. Availability of some gender-disaggregated data in the SIA will make monitoring of gender impacts on the resettled population possible. Gender-sensitive monitoring and reviews will also be used to ensure that gender issues that emerge in the course of project implementation are addressed.

E. Change in Scope or Implementation Arrangements

23. Management notes the CRP's findings in relation to the need for Management to determine a change in scope at earlier stages in project implementation. ADB has agreed that RDA conduct certain social and environmental studies needed in advance of the processing of any change in scope. Once these studies and the assessments that are currently being conducted have been finalized, Management will process a change in scope.

III. MANAGEMENT'S RESPONSE ON RECOMMENDATIONS OF THE REPORT

24. There is significant convergence between the recommendations of the CRP and the actions already implemented or under consideration by Management.

A. General Recommendations

⁶ Compensation data confirm that out of 1,300 residents in the right-of-way, approximately 300 female-headed households received special assistance.

⁷ Five out of the 11 RAs currently employed by RDA as facilitators for resettlement activities are women; 7 female Community Resettlement Workers (CRWs) were appointed in February 2004 to assist affected communities and households; and two graduate women were appointed for gender planning, income restoration programs for women and associated services as required under the RIP.

25. Management generally agrees with the intent of the recommendation under para 256(i) that ADB review the processing of roads and highways loans and the application of safeguard policies. However, given that such reviews and recommendations may involve choices about or knowledge of, policy, financial resources, human resources or work already ongoing, the need for the review would be defined more precisely by the Management. As such, Management requests that the language of the recommendation not to be mandatory and to allow Management discretion to take account of these issues.

26. Recommendation (ii) in para 256 suggests a review of the co-financing arrangements in the Project. Management advises that ADB and the Japan Bank for International Cooperation (JBIC) have a strong relationship and supportive arrangements for the Project. This is evidenced by the fact that there is one EMP and one RIP for the whole Project, and the same MC monitors and reports on progress for the whole Project to the monthly PCC meetings attended by, among others, JBIC and ADB. Missions are carried out jointly where possible and thorough debriefings are organized in the case of separate missions, with open sharing of relevant documents. However, it must be recognized that JBIC approved its Project after the detailed design was completed, and its Board's approval was based on the FT. JBIC concluded that the environmental and social aspects studied under the 1999 EIA are also applicable to the FT. Joint monitoring will continue, and ADB will continue to coordinate with JBIC in relation to the CRP's findings.

27. Again in relation to the proposed broader review of co-financing arrangements and policy compliance in other projects, Management accepts generally the appropriateness of such a review, but suggests Management needs to consider further the nature of the review and the resource implications. As such, Management requests that the language of the recommendation not to be mandatory and to allow Management discretion to take account of these issues.

28. Recommendation (iii) has already been addressed. The revision of the *ADB's Handbook for Resettlement: A Guide to Good Practice (1998)* was initiated in 2004, and the first draft has been made available for inter-departmental review. A *Handbook on Monitoring and Evaluation of Resettlement and Rehabilitation* has also been circulated for interdepartmental review and is intended for publication in late 2005. A series of initial categorization forms in case of environment, resettlement and indigenous peoples' compliance issues are available, and detailed revised advice on resettlement frameworks and plans has already been distributed among the professional staff both in Headquarters and Resident Missions. Management recognizes that changes to such written guidance are only a first step and that sound implementation of safeguard policies requires resources for safeguard implementation.

B. Project-specific Recommendations and Way Forward

29. Agreement with GOSL has already been made to conduct additional environmental assessment of the FT sections that differ from the CT and of the Galle Access Road. Consultation will focus on the environmental impacts and, in light of the Supreme Court's decision and progress in construction, will be confined to the final alignment. The results and recommended mitigation measures will be incorporated, if necessary, into a further revision of the EMP, to be again submitted to CEA and used to monitor project implementation. It should be noted that such an assessment and a parallel social assessment had been launched in September 2004, and would have been completed by now. However, the assessment was suspended to accommodate a demand by the Requesters, and an OSPF's directive to suspend fieldwork in order to avoiding potential conflicts during the facilitation process.

30. As discussed above, gender analysis was to some extent performed, leading to recommendations for special assistance to be provided to female-headed households that have to relocate. ADB will work with RDA to carry out further assessment of gender and development issues during project implementation. Gender-sensitive monitoring and reviews will be used to ensure that gender issues that emerge in the course of project implementation are addressed.

31. Most of the compensation has been paid to affected people in the ADB section of the highway with the notable exception of the Requesters, whose land was only recently surveyed and is still in their possession. Management will ensure through close monitoring by SLRM that the remaining households that must be relocated are treated fairly and receive full and timely compensation by the time of relocation, and will discuss with JBIC so that a similar standard is applied to the JBIC section.

32. Management proposes that the change in scope of the project will be processed following completion of the studies and assessment.

33. As already discussed, Management has worked through SARD with the GOSL to ensure that the income restoration program is properly designed and implemented; the MIS updated; and information disseminated to affected households. The TOR for the IRP include special considerations for women and other vulnerable groups. Such efforts will continue.

34. As discussed above, Management will either engage a third party external monitor as an entity other than the MC, or consider the possible solution of conducting independent audits of the resettlement monitoring, funded under a separate ADTA, so that the reporting would be directly to ADB.

35. Management agrees to review the framework for benefit monitoring and evaluation, to ensure that it includes adequate outputs, indicators of achievement, and means of verification on social issues as requested. The subject will be studied in advance and confirmed during the project midterm review. Management considers that adequate assessment of project-affected people should be available through the SIA Updated Report, RIP, and inventory of losses. The baseline information for benefit monitoring will be further verified.

36. The project profile and other documentation on the ADB website will be updated as soon as reasonably possible.

IV. LESSONS LEARNED

37. Management has identified the following as lessons learned for this project, and will reflect further upon receipt of the CRP's final report.

- RRP should clearly describe the project scope, indicate the possibilities of any anticipated changes in project design, and ensure consistency of the project description in all documentation disclosed to stakeholders regarding a project.
- ADB's operational policies and procedures currently require public participation and consultation that facilitate affected people's participation in the decision-making process. This must be systematically applied and recorded;

- ADB should ensure that sufficient funds are available to pay compensation and there will be a mechanism to ensure timely payment of compensation and the provision of other resettlement entitlements.
- ADB should ensure that an EMP is part of the environmental assessment incorporating the process for additional consultation, and additional environmental assessment for any changes to a feasibility design to reflect the final project design. This requirement did not form part of OM 20 OP that govern the Project when it was approved. This requirement is now part of ADB's Environment Policy and OM Section F1. Para 28 of F1 OM requires that the EMP presents full details on the agreed process to be followed for environmental assessment, including any special studies of environmental issues and specification of environmental mitigation measures during project implementation, where uncertainty exists at the time of Board approval about specific locations or alignments of major infrastructure or project facilities.
- There needs to be greater supervision and oversight regarding compliance with safeguard policies during project implementation, which will require dedicated resources. In this regard, subsequent to the 2002 Reorganization, a safeguard compliance oversight function has been established within RSDD to assist operations departments to comply with safeguard policies. In addition, SARD has strengthened its oversight function by appointing two staff members dedicated to compliance issues in the Director General's Office. Implementation and field supervision resources need to be available in the resident missions for assisting executing agencies, particularly with resettlement, consultation and environmental issues.
- ADB needs to ensure that the Summary EIA required pursuant to ADB's environmental policies and procedures, highlights the main findings of the project's EIA, and identifies any additional studies that were carried out or need to be carried out as part of the environment assessment process.

V. CONCLUSION

38. Management acknowledges that the issues addressed by the CRP and raised in the Project are complex, and there have been some shortfalls during project processing and implementation. Management has already taken concrete steps to rectify these shortfalls, and plans to introduce additional measures to effect efficient and timely Project implementation.

CLARIFICATIONS ON CONSULTATION, PARTICIPATION, AND RESETTLEMENT

1. The CRP Report concludes among others that (i) public participation and information and (ii) implementation of land acquisition and resettlement were inadequate. Management concurs, and provides clarification on the extent of consultation, information dissemination, and resettlement implementation activities that took place during definition of the FT and alignment and during project implementation.

A. Consultation and Disclosure of Information to Project-Affected-Persons

1. Consultation During Final Trace and Alignment Selection

2. In December 1999 and January 2000, during the preparation of Project's Detailed Engineering Design, design engineers and resettlement specialists walked the entire length of the alignment to provide inputs to the design and to ensure that the access of the affected communities and households to their property, common property and community facilities had not been curtailed. During such walks, resettlement specialists discussed the Project, changes that were necessary, and the location of the final alignment with affected households.

3. In the first Project Coordination Committee (PCC) Meeting Minutes of 9 December 1999 it is recorded that Country Director, SLRM requested the design consultant to consult with local communities before recommending a final trace. In addition, it is recorded that RDA had undertaken an intensive information campaign, and that meetings had been held in 19 Divisional Secretariats with participation by 300 Grama Niladharis, and that public meetings and meetings with priests were to be held in the latter part of December.

4. From 1999, a number of letters and petitions to Ministers, Secretaries of Ministries and Heads of Department arrived in Colombo Offices. Such documents clearly indicate that the letter writers/petitioners were well aware of STDP and various traces - OT, CT and FT. Some petitions often suggested alternative alignments with good justifications, which have been taken into consideration in determining the final alignment.

5. From January 2000, a series of consultative meetings were held with local people at various locations regarding FT. The Project Field Office in Pinnaduwa was also visited by many residents, who inquired about details of the alignment, timing and modalities of land acquisition. Such local consultation in some cases led to changes in the final alignment of the highway. In other words, local communities participated through consultations with RDA, CEA and ADB in finalizing the final alignment. In such consultations, design engineers listened to local communities and considered their advice and opinions and did their best to minimize property damage and land acquisition.

6. The RDA stepped up the process by allowing Design Consultants use RDA offices for consultation programs (Minutes of the Project Coordinating Committee (PCC) of 6 January 2000). On 21 January 2000 the Organization of Affected People (APs) in the Kurundugahetekma wrote to the Chairman, RDA thanking RDA for the information it shared regarding the FT. Consultation did not cease even after the FT was established as RDA and the design consultant investigated requests for the Final Alignment to be moved within the 200 meter wide FT to avoid certain buildings, and this was done wherever possible. In 2001, a detailed 'Entitlement Matrix' of all affected people of STDP was published in English and

Sinhala newspapers. A detailed Q&A booklet was prepared in English and Sinhala to inform the public regarding the final alignment and entitlements of various categories of APs. These documents were widely circulated.

7. Information was disseminated among APs in addition to the statutory information and notices given to all APs.¹ Maps of the alignment were made available at the Resettlement Officers' offices and at the Grama Niladhari offices located in areas that had allowed access to the surveyors. Each AP has been given a descriptive map introducing the highway in simple language.

8. The design team and RDA interacted in a number of ways with potentially affected people during the process of identification and analysis of the FT, even if no large public hearings were held. To a good extent, the Requesters excluded themselves from the consultation process by refusing access and dialogue during the detailed design of the Final Alignment that took place between Board approval in November 1999 and completion of the final design and additional studies in November 2000. As mentioned in the Engineering Final Design Report, in a number of cases, as a result of representations by other affected people during the surveys, adjustments were made to the Final Trace, resulting in the Final Alignment.

2. Dissemination of Information

9. Management concurs that in the early stages of project implementation information dissemination was incomplete. However, as of December 2004, the following Project documents were available in the Government's regional offices of the Project: design drawings and maps of the right-of-way; EIA report in Sinhala and English languages; bills of quantities for the Project; ADB's Loan Agreement; Memorandum of Understanding and Project Administration Manual; JBIC's Loan Agreement and Memorandum of Understanding; Environmental Monitoring Plan as initially approved by CEA in the English language; RIP in Sinhala and English; preliminary plans for land acquisition; civil works contract documents; Sinhala version of guidelines for affected people on resettlement sites; Sinhala version of a poster for environmentally friendly design of housing; a document on avoiding landslide risks (English); Entitlement matrix (Sinhala). The following documents are available at the offices of the Divisional Secretaries, Provincial Councils, and public libraries: RIP in Sinhala and English; and EIA in Sinhala and English.

10. CRP found that the RIP was not distributed among all affected persons in Sinhala until late 2004, thereby not informing APs of their entitlements. Although the RIP was not fully translated and distributed until 2004, the Entitlement Matrix of RP (1999) and of RIP (2002) were communicated in Sinhala through newspapers, displays at local public places such as Buddhist temples and Grama Niladhari Offices in the affected administrative divisions. A large number of copies of these documents were distributed in the project area.

¹ Among them were Section 2 of gazette notification indicating the intention of the Government to acquire a particular plot of land, Section 5 to give notice of surveys and preparing final acquisition plan, Section 10 indication of the title verification, and Section 17 indication of the amount of compensation entitled.

B. LAND ACQUISITION AND RESETTLEMENT

1. Dimensions of the Land Acquisition and Resettlement Issues

11. There are 711 households to be relocated from within the right-of-way of the ADB-assisted section. Of these, 447 opted to receive cash compensation and settle at sites of their choice, and 264 requested to be settled at GOSL-provided sites. As of end April 2005, relocation had been completed for 406 families that received cash compensation and 258 that moved to assigned sites. Of the 44 households still to be relocated, 37 were those who oppose the Project. There are 585 households to be relocated from within the right-of-way on the JBIC-assisted section: 318 requested cash compensation, and 267 requested to be settled at GOSL-provided resettlement sites. Of these, 279 and 182 respectively have been resettled (construction is expected to start on the JBIC-assisted section only by July 2005). It is noted that the approximately 50 Requesters represent less than 5 percent of the families that had to be relocated, and slightly more than 1 percent of the affected households.

12. On the ADB-assisted section there are also 5,289 lots gazetted for acquisition. As of 30 April 2005, payment had been made in full for 4,905 lots, partial payment made for 311 lots, and payment was yet to be made for 73 lots. On the JBIC-assisted section, there are 5,007 lots gazetted for acquisition. As of 30 April 2005, payment has been made in full for 4,402 lots, partial payment made for 351 lots, and payment yet to be made for 255 lots.

2. Cash Compensation

13. Statutory compensation paid as of 30 April 2005 for land acquisition in the ADB-assisted section amounts to Rs 794.85 million, interest to Rs 58.74 million, LARC to Rs 642.72 million, and other payments to Rs 76.36 million. The balance of payments to be made for the ADB-assisted section is Rs 127.33 million (7.50 percent). Some affected people in the Akmeemana area are still resisting the GOSL's efforts to take over their lots by refusing to draw on the compensation determined, and by filing court cases to prevent eviction orders.² These cases are being addressed through the legal system. The affected people, therefore, have and still are, preventing completion of the compensation process. Thus the delays in paying compensation are not only due to the delays in releasing funds from the Treasury. Land acquisition and payment of compensation have been and continue to be monitored through the monthly Project Coordination Committee Meetings, held since December 1999.

14. Statutory compensation paid as of 30 April 2005 in the JBIC-assisted section amounts to Rs 944.96 million, interest to Rs 13.32 million, and LARC to Rs 431.03 million. The balance of payments yet to be made on the JBIC-assisted section amounts to Rs 940.69 million (40.%).

15. The Report may not reflect the comprehensiveness of the total entitlement package. Several payments constitute the compensation package that each affected household receives, namely: statutory payments under the Land Acquisition Act, payment of interest on computed valuations from the time of the gazetting of acquisition, LARC payments that bring compensation in line with replacement value, and "Super LARC" payments to address grievances in cases where claims of under-valuation are substantiated. In addition, RDA has made ex-gratia payments for early relocation and has provided transport to assist in relocation,

² ADB requested written documentation on the manner in which the properties of the complainants were surveyed, to ensure that due process was followed.

as well as 12-months housing rental for those relocated, until they build new houses. These ex-gratia payments do not form part of the compensation matrix and for obvious reasons are only paid after the affected households have relocated.

16. ADB has received and investigated some complaints from affected households that have allegedly been removed without compensation and/or have been forced into undeveloped resettlement sites, but inquiries have revealed that the affected household had been compensated at least partly before vacating their house.

3. Resettlement Sites

17. Out of the 264 households that asked to be allocated land instead of cash compensation, 258 have been resettled as of April 2005. It should be noted that many affected families were paid rental allowances by RDA so that they could find temporary accommodation until houses were built at the resettlement sites and infrastructure and services were completed. A number of affected people have chosen to build temporary shelters at the resettlement sites, before the sites had been completed so that they could save on rental allowances. As discussed in the main text, contracts have been awarded for completion of the required community infrastructure at resettlement sites.

4. Income Restoration

18. The RIP identified 241 vulnerable households among the 5,651 affected by the project. The Income Restoration Program (IRP) set the ambitious target of improving the income of the 23% of affected households living below the subsistence level through special assistance to vulnerable affected people, training, extension, and credit, but its implementation by RDA encountered numerous delays. Until early 2005, only the first two activities had been implemented: payment of special assistance to vulnerable affected, and vocational training for members of affected households. Applications were received from 177 affected people for courses in driving, computers, food and bakery, electrical, woodwork, welding, water-pump and motor mechanics, aluminum-working, and dressmaking. Of these, 77 are women. So far, only 39 affected people out of the 177 have reported for training, mainly because of the effects of the tsunami. Recognizing that these activities were insufficient, a new scope and TOR for the IRP were developed in late 2004 and early 2005. Requests for proposals were issued in March 2005. Four NGOs have submitted proposals and evaluation is about to be completed.

19. The IRP as presently re-defined comprises two stages: the first to prepare a detailed action plan with targets and budgets; and the second to implement the IRP for those affected households in resettlement sites and self-relocatees, with particular emphasis on vulnerable families and female-headed households. Initially, public information campaigns will be launched to create awareness of the IRP and its activities, followed by a screening of affected people to identify those to be included in the program. Support and guidance will be provided to community-based organizations to initiate income-generating activities, together with facilitation on decision-making processes, and assistance given in formulating individual and comprehensive income-generating programs. Furthermore, assistance will be given to develop sustainable rural credit and savings schemes among the targeted communities, and establishment of community and housing funds, accounting and investment of savings schemes. The on-going skills training program will be completed.

5. Independent Resettlement Monitoring

20. The monitoring of resettlement activities by an independent institution was initially carried out, but the contract was not renewed and the responsibility was subsequently transferred to the Management Consultant (MC). The Report questions the MC's independence by remarking that in March 2004 the MC had submitted a report describing the resettlement process as "a success thus far" (para. 172). A more thorough reading of the same report, however, shows that the MC went on to state that "The success so far does not guarantee that the long-term objectives of the land acquisition and resettlement will be achieved" The MC then listed critical issues that needed to be tackled: layout planning of resettlement sites and design and implementation of infrastructure for the resettlement sites; delays in critical activities including decentralization and implementation of a revised organizational structure for LAR, implementation of the income restoration program, development of housing committees at the resettlement sites; delays in release of funds from Treasury; need for revisions to MIS; special assistance needs for vulnerable groups, etc. This is a rather balanced, and certainly not acquiescing, report on the situation, contrary to what is alleged in the CRP Report. In addition, the interim audit report prepared by the Management Consultant concerning the system of land acquisition and payments for land and properties, and reports prepared for the purposes of remedying conditions at the resettlement sites, show that the MC have been abundantly critical when necessary, and have well documented their findings.

INSTITUTIONAL ISSUES

1. The Accountability Policy¹ was intensely discussed and negotiated after full stakeholder participation. The Compliance Review Panel (CRP) is established to promote integrity and accountability in ADB by investigating ADB's compliance with its operational policies and procedures, and reporting directly to ADB's Board. Therefore it is important that the Board ensures and has full confidence in the CRP's interpretation of the Accountability Policy, and in areas of silence or ambiguity in the Accountability Policy, the CRP should seek, where appropriate, recourse to the Board for guidance.

2. The Southern Transport Development Project (STDP or the Project) is the first case of full application of the Accountability Mechanism, from the initial consultation phase from the Special Projects Facilitator's involvement to CRP review. Conduct of the compliance review and the CRP's Draft Report on the Project (the Report) has highlighted issues of broader institutional applicability that are relevant to the ongoing functioning of the Accountability Mechanism, and to interpretation of ADB's operational policies and procedures. These include (i) composition and the minimum number of CRP members required under the Accountability Policy; (ii) the function, power and authority of the CRP; (iii) the methodology of the review; and (v) interpretation of ADB operational policies and procedures.

(i) Composition

3. The Board approved the eligibility of the compliance review of the Project on 14 January 2005, on the basis of a determination by the CRP – then constituted as a three member panel. Under paragraph 18 of the Report, the CRP states that following an April 2005 request by the requesters, Mr. Fernando, one of the panel members resigned, on allegations that he had a conflict of interest.

4. The Accountability Policy states the basic features of the CRP, and requires that ADB establish the CRP consisting of three members.² Two of the panel members are intended to be from regional countries, with at least one of these a DMC member. The third panel member can be from a non-regional country.³ The Board is the CRP's reporting authority, other than for those activities for which it reports to the Board Compliance Review Committee (BCRC).⁴ The Accountability Policy further provides that the panel members may be removed for cause if a majority of the Board decide, and "will be disqualified from participation in a compliance review where he/she has a *personal interest* or has had *significant* prior involvement."⁵ Thus, the Accountability Policy provides that a panel member will be automatically disqualified, without more action, in such a case. The Accountability Policy provides for diversity and expertise through the integrity provided by a three member fact-finding body. In the course of discussions and consultations on the Accountability Policy, the composition, number, and breadth of the Panel were considered important. One Board member suggested that there should be five CRP members.

5. To implement the Accountability Policy's operational provisions and the CRP's powers and obligations, the Accountability Policy provides for the CRP to adopt operational procedures

¹The Review of the Inspection Function: Establishment of a New ADB Accountability Mechanism, 8 May 2003, R79-03.

² Paragraph 95 of the Accountability Policy.

³ Paragraph 96 of the Accountability Policy.

⁴ Paragraph 98 of the Accountability Policy.

⁵ Paragraph 97 of the Accountability Policy.

and administrative procedures to implement its powers and obligations. These administrative procedures are to be “complementary” to the Policy and the operational procedures.⁶

6. The Administrative Procedures for the CRP, were adopted by the CRP on 26 March 2004. The Accountability Policy does not require the Administrative Procedures for the CRP to be considered by the Board before they were adopted by the CRP, and they were not so considered prior to the CRP adopting them. The Administrative Procedures repeat the policy statement that “a CRP member may be removed from office for cause only by a majority decision of the Board.”⁷ They further provide that “[i]f a CRP member resigns from, is removed from, or is otherwise unable to serve on CRP, the remaining CRP members will constitute the CRP until the Board appoints a new member.”

7. This last provision in the Administrative Procedures is clearly relevant to the situation of Mr. Fernando’s resignation. A question arises however, whether adoption of this provision in the Administrative Procedures inadvertently effects a fundamental change in the composition of the CRP as approved in the Accountability Policy approved by the Board.

8. In addition, paragraph 126 of the Accountability Policy states that:

“CRP’s findings and recommendations will be reached by consensus and, in the absence of a consensus, the majority and minority views will be stated.”

9. It is difficult to see how para. 126 of the Accountability Policy would operate when there is only a two member panel. It would appear that the only way this aspect of the Accountability Policy could operate is if the CRP were constituted with an odd number of panelists, greater than one.

10. The Accountability Policy is silent on the effect of the CRP functioning with less than 3 members, and there is no express provision that permits the CRP to continue with less than 3 members. Also the Accountability Policy doesn’t provide for the filling of a temporary vacancy. In the absence of a clear provision in the Accountability Policy dealing with the CRP’s composition and continuance as a two-member panel, is it appropriate that the Administrative Procedures of CRP should deal with such a fundamental matter, without consultation with, or reference to, the Board?

(ii) Function, Power and Authority of the CRP

(A) Eligibility Stage

11. In paragraph 86 of the Report, CRP sets out its determination at the eligibility stage that all staff reviews should cease on the basis that “as a procedural matter... these [internal management initiated problem-solving and compliance audit functions] stop when the Accountability Mechanism is invoked by claimants, as their continuation would undermine the process of carrying out problem-solving and/or compliance review investigation effectively and efficiently.”

12. The issue here relates to the function, powers, and authority of the CRP and at what stage its authority to make determinations starts. At the eligibility stage, the CRP has two

⁶ Paragraph 98 of the Accountability Policy.

⁷ Paragraph 14 of the CRP Administrative Procedures.

powers: either to determine that the request is ineligible and to inform the Board, or to determine the request is eligible and recommend to the Board that a compliance review should be authorized.⁸ The receipt and determination of the eligibility of requests for compliance review is identified as a specific activity of the CRP. The Accountability Policy assumes that the Board will authorize the compliance review on a no objection basis without making a judgment on the merits.⁹

13. It is important to note that at this stage, although the CRP could choose to consult with Management, Management has no right of notice and a hearing before the panel. Management's right to respond only arises after issuance of a draft report of its findings by the CRP. As such, the questions to be determined at the eligibility stage should be preliminary questions only, and the CRP's only power and authority is to determine eligibility, not to make broader determinations. Expressly in support of this, paragraph 105 of the Accountability Policy states that:

"the filing of a request for compliance review will not suspend or otherwise affect the processing of formulation, processing, or implementation of the project unless agreed to by the DMC or PPS concerned and ADB."

14. The CRP's determination of eligibility under the Accountability Mechanism involves marked differences from the Board Inspection Committee's (BIC) determination of eligibility under the former Inspection Function (i.e. one of these differences is that Management is no longer entitled to provide a response at the eligibility stage). However, similar issues arose under the prior Inspection Policy (1995). The BIC had been required to decide whether to recommend a request for inspection and thereafter "submit a written recommendation to the Board of Directors..." within 14 days of receiving management's response.¹⁰ In relation to a request from a Board member for advice on the appropriate scope of the BIC's recommendation in the preliminary review of inspection requests, the then OIC/Office of the General Counsel/Deputy General Counsel advised the BIC¹¹ that:

"The BIC, as a Board standing committee, has an inherent discretionary power to adopt its rules of procedure for the conduct of its work....BIC has the power to formulate the procedural rules applicable to the inspection process including the dissemination of information relating to milestones in the course of the inspection process.... The BIC's inherent power to determine its own procedural jurisdiction cannot be absolute subject to no limitation; the exercise of such discretionary power must necessarily be consistent with the provisions of the Charter, the By-Laws, and the terms of reference given to the BIC in conformity with the purpose and scope of power provided in the Inspection Policy.

...

The BIC's binding recommendation at the time of the preliminary review of a request for inspection is only whether an inspection should be authorized or not. Any other recommendations, however non-mandatory and exhortative they may be, are beyond the scope of the BIC's terms of reference and outside the BIC's competence."

⁸ Paragraph 120 of the Accountability Policy.

⁹ Paragraph 121 of the Accountability Policy.

¹⁰ Under paragraph 35 and 36 of the Inspection Policy (1995).

¹¹ Deputy General Counsel/Officer-in-Charge, Opinion on Question on the Scope of the BIC's Recommendation in the Preliminary Review of Inspection Requests, 2 May 2002.

15. This would seem to enhance the point that the threshold determination of eligibility is not meant to be a substantive determination on the merits and is instead limited to the threshold question of whether there is satisfaction of the eligibility criteria.

16. At this threshold stage, the powers afforded to the CRP under the Accountability Policy do not entitle the CRP to make determinations or recommendations other than eligibility. It is submitted that any wider determination was not contemplated at the time the Accountability Policy was approved, and is not provided for.

17. Per paragraph 105 of the Accountability Policy, Management understands the general rule to be that the formulation, processing, or implementation of a project is not affected in any way by the filing of a request for compliance review. To the extent that the CRP requests Management to refrain from certain actions to facilitate an efficient and effective investigation, such request would be respected, and complied with, to the extent possible and appropriate. However, it concerns Management that at the eligibility stage, the Accountability Policy provides no right of initial response prior to the CRP's recommendation on eligibility that is circulated to the Board, and yet the CRP has at this preliminary stage, in the STDP compliance review, made a determination and recommendation regarding Management's pursuance of its internal safeguard review. Management is concerned that in future compliance reviews, CRP may, at the eligibility stage, similarly make determinations in addition to a determination of eligibility, that affect the formulation, processing, or implementation of a project, as well as Management's ability to pursue remedial action in a Project.

(B) Broad Recommendations vs. Project Compliance.

18. The Accountability Policy is specific as to the purpose of the CRP. CRP's primary role is to determine ADB's compliance with its operational policies and procedures *in specific* projects following the making of a request. More specifically, under Paragraph 99 of the Accountability Policy the purpose of the CRP is

"to investigate alleged violations by ADB of its operational policies and procedures in any ADB-assisted project that directly, materially, and adversely affects local people in the course of the formulation, processing, or implementation of the ADB-assisted project. "

19. Similarly, paragraph 99 identifies the purpose of the compliance review as focusing on

"ADB's accountability in determining whether ADB has or has not complied with its operational policies and procedures *in connection with the particular project under compliance review....* "

20. Finally, paragraph 99 then authorizes the CRP to

"after carrying out a compliance review... issue to the Board its findings and recommendations, including recommendations, if appropriate, for any remedial changes in the scope or implementation of the project."

21. What is clear from these paragraphs is that the CRP's primary role is to determine ADB's compliance with its operational policies and procedures *in specific projects* following the making of a request. There are number of instances in the Report, where the CRP enters into general discussions on ADB's institutional approaches to operationalizing policies, in particular, the CRP's recommendations in Para. 256. Management recognizes the usefulness of obtaining the CRP's view of lessons learned from the compliance and non-compliance issues in a

particular project, and the best way to generalize those lessons to other projects, a sector, or bank-wide operations. However, recommendations may involve choices about or knowledge of operational strategies, financial resources, human resources, or work already ongoing (as in recommendation para. 256(iii)).

22. Management suggests to the CRP and the Board that any CRP recommendations that extend beyond the CRP's function to investigate allegations of compliance with ADB's operational policies and procedures with respect to a specific project, should be made by the CRP as suggestions only, and not be submitted to the Board as binding recommendations.

(iii) Methodology of Review

23. In a number of places, the CRP does not make discrete findings of fact and compliance. The CRP does not clearly distinguish between compliance during loan processing and loan administration. Accordingly in the Report, findings of fact, compliance, and emotive commentary, are intertwined leading to statements of "surprise," and "opinion" in lieu of findings of fact and compliance. Management's view is that the Report should reflect the CRP's definitive conclusions based on its analysis of facts. It would be helpful for the CRP to clearly sets out its facts and conclusions distinguishing between the opinions expressed by various parties. Particular care should be taken to not conflate comments, opinions, general description of policies and assertions of non-compliance.

24. As described above, the Accountability Policy sets out the function and purpose of the CRP. Paragraph 99 states that:

The purpose of CRP is to investigate alleged violations by ADB of its operational policies and procedures in any ADB-assisted project that directly, materially, and adversely affect local people in the course of the formulation, processing, or implementation of the project.

25. Neither the Accountability Policy nor OM L1 sets out the methodology that CRP is to adopt in carrying out its functions.

26. The reasonable conduct of an investigative function involves a logical, analytical and orderly process, and it would be reasonable to assume that this would include:

- a detailed description of proceedings (e.g. when, where and what kind of meetings were held, what evidence was considered, list of documentation gathered);
- a summary of factual evidence and its evaluation; and
- a determination of its findings with respect to compliance with particular requirements in ADB's operational policies and procedures, in either a chronological order over the life of the project; or in terms of a check against the policy and procedural requirements. Such a methodology could result in the need to make compliance determinations at different times, i.e. during loan processing and loan implementation, and this may mean different policies are applied.

27. A record of such a process is not clearly reflected in the Report. In the section headed "Findings and Assessments" of the Report, the statements made in relation to findings and

assessments are based upon requesters allegations, as distinct from a reinterpretation of those allegations in terms of compliance requirements in ADB's operational policies and procedures. Management notes that the Accountability Policy does not require the requesters to allege violations of specific policies and procedures.¹² As such, it would be helpful for the CRP to be precise in identifying any particular violation of policy or procedure, rather than alleging general non-compliance with a particular OM. Management considers the language of OM sections to be important as it is these that provide guidance to staff, rather than a general in-principle obligation in various sectoral or cross-cutting fields.

28. In paragraph 61 of the Report, CRP states that “[these] issues will be considered in the CRP’s findings and assessments with the applicable operational policies and procedures according to when the alleged acts or omissions took place.” However, the text of the document does not consistently do this. In addition, the timing element means that different operational policies and procedures, including separate board policies, may be applicable at different stages of the loan processing and loan administration cycle. Compliance should be tested against the applicable board policy or operations manual section, or Project Administration Instruction (PAI), at the relevant time, i.e. pre-board approval and during implementation.

29. The CRP ends each section with a summary. However, the summaries appear to vary in the extent that they reflect the preceding commentary. For example, in para.126 the CRP says that:

“whatever legal or technical argument may be offered, the approach taken by Management in clearing these key environmental documents [the EIA and SEIA] clearly violated the spirit of the OM Section 20.”

30. To require compliance with a general indeterminate “spirit” of an ADB operational policy and procedure, rather than requiring compliance with the terms of the OM, would make it very difficult for staff to know whether or not they have complied with the OM. This is because the interpretation of the spirit of an OM would be open to individual subjective judgment. To provide ADB staff with certainty going forward, the Board and Management need to be able to confidently indicate to them the compliance requirements to which they are to adhere in processing and implementation.

(vi) Interpretation of ADB operational policies and procedures.

(a) Interpretation

31. ADB guidelines and handbooks have been developed to provide general guidance and do not form “operational policies and procedures” under the Accountability Mechanism. They are not compliance requirements that a project must strictly adhere to unless included in a loan agreement.

(c) Environmental Policy requirements.

32. Para. 100. The Environment Policy requirement for environmental management plans (EMPs) is to develop EMPs as part of the environmental assessment process: paragraph 65 of the Environment Policy. Management does not consider the Environmental Policy compliance

¹² Paragraph 10 of the Accountability Policy.

requirement for projects to have an EMP applicable to the processing of projects before the Policy was adopted.

33. Para. 115. The CRP appear to be referring to paragraph 22 of the Environmental Policy that describes the principle of environmental assessment as a process. This is a descriptive principle, and not part of the compliance reviewable Part V of the Environment Policy. For category A and environmentally sensitive category B projects, ADB implements this principle through an EMP for the implementation phase of a project.

(d) Initial Social Assessment

34. The Initial Social Assessment, which was required by paragraph 5 of ADB's OM 47/OP on Incorporation of Social Considerations into Bank operations, was intended as a scoping or flagging document to identify potential social issues and assist in determining resources that may be required to be addressed by conduct of a social analysis/social assessment during the PPTA stage. The main study through which social analysis and gender analysis are prepared is the "social analysis" or "social assessment." As the ISA is intended as an initial flagging document, revising or updating an ISA, which is required at the early stages of project preparation would not provide much value-added at later stages of project processing or during mid-stream when the focus has shifted to the social analysis/social assessment that should be updated. The ISA has now been replaced by the Initial Poverty and Social Assessment (IPSA) that performs an equivalent function.