

Supplement to the Chashma Inspection Claim

I: INTRODUCTION

After receiving the response from the ADB Management to the request for inspection on the Chashma Right Bank Irrigation Project (CRBIP), the Bank Inspection Committee (BIC) asked the Requestor of the inspection if they would like to provide additional information pertaining to the request. We (the Requestor) feel that we already submitted the required and relevant information as part of the Request for Inspection that the BIC would require to authorise inspection of the project. However, in light of the Management's assertions about the GRSC and its views on how project inspection would affect the redressal of grievances among Project Affectees, we would like to submit the following information and attached materials in response to the BIC's request.

11. THE GRSC IS INADEQUATE AND UNREALISTIC

The ADB Management Response of February 7, 2003 says that the Requesters assessment that the GRSC is inadequate and unrealistic response to their demand (Requester demand as articulated in the Complaint) is erroneous and premature judgement. Management Response further says that this evaluation of GRSC and its potential effectiveness is based on the Requesters incomplete understanding of the negotiation process and its outcomes.

We wish to state that the Requester assessment of the GRSC is well informed, well reflected and based on our engagement experiences with Management and executing agencies (EAs) for the last two years. The Management's assertion that the Requesters assessment of GRSC is premature and uninformed about the negotiation process and its potential effectiveness is not correct. We would suggest that the ADB Management should rather inform the Board Inspection Committee (BIC) of the details of the Chashma Multi-stakeholders Dialogue process and the reasons of its dissolution. This process of Chashma Multi-stakeholders Dialogue continued rigorously for about five months and primarily failed because of the irresponsible and inflexible conduct of Management and EAs during the negotiation process. We will provide the details and evidence about this process later on.

The views of the Requesters and Project affectees are articulated in below.

A. General Comments: The GRSC does not represent emerging multi-stakeholders' dialogue and decision-making approaches

The GRSC is a conventional, power-ridden and bureaucratic approach to the resolution of conflicts in the current context of emerging democratic multi-stakeholders dialogue approaches and negotiated decision-making models and processes. The GRSC approach does not recognize that stakeholders have unequal power and this can seriously hamper their ability to participate in and influence decision-making. The new approach and model of multi-stakeholder dialogue and negotiated decision-making as adopted and advocated by the World Commission on Dams (WCD) emphasizes that those groups whose livelihoods, human rights, and property and resource rights may be affected by an intervention are major rights holders and thus core stakeholders in a stakeholder forum within which negotiated outcomes should be achieved. The WCD Final Report further emphasizes the need for identifying those at risk through vulnerability or risk analysis and considers them as core stakeholders, including those who face risks to their livelihoods, human rights and property and resource rights. The WCD Final Report further recommends that special attentions should be given to indigenous peoples, women and other vulnerable groups as they may face greater risks from development interventions.

Major attributes of a fair negotiation process include a free process of stakeholders' selection and ensuring the effective and legitimate representation of all interests. Another cornerstone is a firm commitment and assurance that community representatives will not be divided or coerced in the negotiation process, adequate time will be allowed for consultation and, most importantly, the multi-stakeholder forum will assess and address built-in power imbalances in the negotiation processes.

Since the ADB has accepted the WCD's findings and report, it is to be expected that the ADB would demonstrate in practice its commitment to following the guidelines recommended by the WCD.

The GRSC is an inadequate and unrealistic model of multi-stakeholders dialogue and processes in emerging democratic perspectives. The GRSC does not recognize that the Project affectees facing the violations of their basic human and livelihoods rights, as well as increased risks to their security of life, livelihoods and local ecology are core stakeholders and should have fair and adequate representation through a free and direct process of selection. This is evident by the fact that only two representatives of the affected groups will be members of the GRSC. Furthermore, they will not be nominated through direct and free process conducted among the affectees; instead they will be picked by

elected local representatives of the area. There is no assurance that the Project affectees would not be divided and coerced by the state apparatus and would be able to exercise their free will in the negotiation process. The decision-making in the GRSC will be done through majority principle based on one member having one vote. Instead of addressing power imbalances in decision-making, the GRSC will more likely be a tool to further entrench the existing power imbalances.

B. Specific Comments on the GRSC

(i) The GRSC does not address our specific and concrete demands made in the Request: We have made seven specific and concrete demands in the Request, which we consider pre-requisites for bringing the Project in compliance with the relevant Bank policies and procedures. The ADB Management Response does not address our demands and instead makes passing remarks that these demands would delay the process of grievance redress and settlement. We believe that meaningful grievance redress process is not possible unless full technical, social, environmental and cultural impact assessments of the Project are made through an independent participatory and consultative process. Without such a knowledge base and impact assessment, the process of grievance redress cannot be realistic and will be mere window-dressing. Any democratic and participatory negotiation process to resolve project related conflicts should follow only after an independent, participatory and full impact assessment is conducted of all quantitative and qualitative information of adverse impacts of the Project.

(ii) Policy and legal framework for the GRSC is arbitrary and inadequate with regard to the compliance conditions: The Terms of Reference (TOR) for the GRSC says that 'Pakistan's policies and legal framework including but not limited to the Land Acquisition Act, 1894, will provide the fundamental legal basis for the Committee's recommendations, which will be supplemented by ADB's relevant policies including ADB's Policy on Involuntary Resettlement (IR) (1995) and ADB's Policy on Indigenous Peoples (1998), together with relevant guidelines on the incorporation of Social Dimensions into Bank Operations, where legally possible'. (Emphasis added). The TOR of the GRSC further specifies that 'in regard to land acquisition, the Committee's role would be to see all matters relating to assessment and payment of land compensation are handled fairly, transparently, and in accordance with the Land Acquisition Act 1894'.

We consider the policy and legal framework of the GRSC inadequate and in fact a mockery of justice and fundamental rights. First, this policy and legal framework is totally arbitrary in its nature and design. It provides vast

opportunities to the Committee to make a series of interpretations based on differing and fundamentally contradictory policies and laws with regard to resettlement, land compensation and rehabilitation. Pakistani national policy and legal policy framework is totally inconsistent with ADB's Policy on Involuntary Resettlement and Indigenous Peoples and is thus incapable of fulfilling the conditions of compliance with the Bank's policies including the Policy on Involuntary Resettlement and Indigenous Peoples.

Land Acquisition Act, 1894 is a colonial law enacted to achieve specific objectives of the then British Empire with regard to land and other natural resources. Objectives and procedures of the Land Acquisition Act 1894 are totally repressive and violate basic human rights. Worst is the exercise of this law under the Project. According to the official figures, about 19,503 acres of land affecting 185 villages have been acquired under the provision for emergency acquisition, namely Section 17 of the Land Acquisition Act, 1894. We believe the Project affectees would be deprived of using normal legal redress mechanisms even after the establishment of the GRSC. The inadequacy and contradictory nature of the Land Acquisition Act, 1894 is evident by the fact that many Bank funded projects have their own separate policy and legal framework and guidelines for resettlement and land acquisition under the project. One example is the National Drainage Program (NDP), the project from where the funds were re-allocated to the CRBIP at the time of supplementary financing.

(iii) Institutional and decision-making framework for the Committee is inadequate and against the interests of the Project affectees:

Institutional framework for the Committee is inadequate in a number of ways. First, its identification of the categories and classification of stakeholders is erroneous. Local communities and especially the Project affectees are primary stakeholders and thus must have a prominent role and direct voice in any negotiation and decision-making process with regard to the grievance redress. All other members of the GRSC are secondary stakeholders and in fact beneficiaries of the development process. Contrary to this, even though they are primary stakeholders, the project-affected persons will only have two representatives of project-affected persons in the Committee.

The Project created numerous categories and constituencies of the Project affected groups including

- the people facing the threat of involuntary displacement in the non-command western region,
- the vast majority of affected persons facing the threat of project induced flooding in the non-command eastern riverine belt,

- the groups who are severely affected by land acquisition,
- women,
- tenants and small farmers,
- rowed-kohi users in the western side,
- ethnic minorities and indigenous groups.

It is not possible for two representatives of the affected groups to legitimately represent the interests and rights of these vast categories and constituencies of the Project affectees.

Furthermore, it is state here that the district assemblies of the D.I.Khan and D.G.Khan districts will indirectly nominate these two representatives of the affected groups. This method of nomination for the representatives of affected groups deprives them from the right of direct nomination of their representatives for the GRSC. Furthermore, there is no criteria for the selection of the representatives of the affected persons and thus leaves a vast room for arbitrary choices and manipulation of the selection process.

If managing the size of the GRSC is a consideration, then we recommend that the various EAs be considered a single stakeholder representing the Project Organization. Their separate and multiple representations will only serve to provide them leverage to influence and dominate the decision-making process. If the differentiation of the executing agencies is functionally required, it could be done through a separate inter-governmental agencies coordination committee, which in turn could have a single representation in the GRSC.

Most importantly, the decision-making framework of the GRSC is very much against the interests and rights of the affected groups. The GRSC will have to observe a system of majority decision-making based on the principle of one member having one vote. The representatives of affected persons are in minority and will be unable to participate in and influence decisions. Given the vast power imbalances built in the composition of the GRSC, the EAs and consultants will in fact have *de facto* veto power and will dominate the decision-making process.

C. Effectiveness of the Inspection Function and the GRSC

Management Response under paragraph 154 asserts that 'any decision to proceed for inspection of the Project could completely erode the efforts of Management in bringing to a closure the establishment and functioning of the GRSC. In the event of an inspection, the consensus reached on the GRSC may be seriously weakened. This would be counterproductive to the very objectives of inspection, i.e., to address the grievances of the Requester in compliance with

ADB's operational policies and procedures'. (Emphasis added). The Management's views represent extremely narrow and negative interpretation of the Bank's inspection functions and are a challenge to the effectiveness of the Bank's inspection function itself.

These Management views are narrow because they exclude from the inspection functions anything other than the grievance redress of affected parties. One of the important elements of the rationale for establishing an inspection function independent of Management is an independent investigation of the facts underlying the grievances caused by the Bank's failure to follow its operational policies and procedures and thereby permitting a fair hearing of the views of the affected group. Another important element of the rationale for establishment of an inspection functions and related inspection procedures is to encourage transparency and accountability in the Bank's operations. There are five separately written elements of the rationale for the establishment of an inspection function and related inspection procedures as given in the Bank Inspection Policy. Management Response implies that these separate elements are inconsistent and could be counter-productive to each other.

Management views on the impact of an inspection of the Project are also negative and contradictory in that they undermine the value and credibility of the Bank's inspection function. These views show that Management has little trust and confidence in the effectiveness of the Bank's inspection functions, which should in fact be an important element of institutional governance, accountability and transparency.

Without making any value judgment on the on-going inspection review process, we wish to state that the ADB Management's views about the relationship between the GRSC and inspection process are against the emerging direction of the inspection review process, which emphasizes the separation of two inspection functions, namely, consultation and problem solving and compliance review. If Management's views on the relationship between the grievance redress and an inspection function prevail, they would undermine the credibility of this emerging direction from the very outset. Management will also use this as a precedent in the future to block compliance review and accountability processes under the new inspection functions. We believe that the questions of accountability and transparency and internal learning should remain central in the Bank's inspection functions.

III. WHY THE REQUESTER OPTED TO STAY AWAY FROM THE NEGOTIATION PROCESS?

The Requesters refused to become formal part of the negotiation process between the ADB and the Government of Pakistan. This decision was taken in part because of the concerns about the inadequacy and unrealistic nature of the GRSC as articulated in earlier. Another reason, which did not encourage Requesters participation, was the irresponsible and inflexible conduct of Management and EAs was another reason behind this decision of the Requester. This assessment of the Requesters is based on their past engagements and interactions with Management and EAs. Elaboration of this assessment is essential in the context of the Inspection Request as well as the on-going thrust of inspection review process on consultation and problem solving.

The Requesters and the Project affectees entered into dialogue and consultation with Management and EAs in good faith and a constructive spirit. We have undertaken considerable efforts to bring concerns and grievances of project affectees in the notice of Management and EAs. These efforts started in November 2000. We have made a number of requests for information sharing and establishment of grievance redress mechanisms. Rigorous dialogue efforts were undertaken for a period of five months, which yielded in the Chashma Multi-stakeholders' Workshop, held in March 2002, after a 15 month period of continuous requests for information sharing and grievance redressal.

Despite the concerns of the Requester and Project affectees about their lack of access to important project information and relevant documents as well as the design of the dialogue, they decided to attend the Chashma Multi-stakeholders Workshop with the hope that both Management and EAs would be interested in responsible problem solving approaches towards their concerns and grievances. The Chashma Stakeholders' Dialogue process was however dissolved during the workshop due to three reasons.

First, the Requesters and Project affectees came to know that they were neither informed nor consulted during the key decision-making on the issue of involuntary resettlement. The decision about the involuntary resettlement was made during February 2001 to May 2001. This was the period when the Requester and the Project affectees were not only engaged with Management and EAs but also asking for greater access to information and participation in decision-making process. They came to know during the Chashma Multi-stakeholders Dialogue that they were deliberately excluded in the 2001 process.

Secondly, the Requester and the Project Affectees made the request to Management and EAs before and during the Chashma Multi-stakeholders Dialogue Workshop that the provision for emergency land acquisition (Section 17 of LAA-1894) should not be applied in the Project. But this request was not entertained and emergency provision was retrospectively imposed before the Chashma Multi-stakeholders Dialogue Workshop.

Thirdly, the last blow to the confidence and trust of the Requesters and the Project affectees on the consultation and negotiation process was the refusal of the ADB's consultants with regard to their request that the report on the Chashma Multi-stakeholders Workshop covering the details of field visits and proceeding of the workshop should be provided to them. This event proved the breaking point of consultation and negotiation process.

The BIC should note that Management has made extensive references to the Chashma Multi-stakeholders Dialogue without referring to the controversy and conflict. Rather, Management continues to refer to the action plan as consensual and agreed between all stakeholders. This is not only inaccurate and untrue but also shows that the Management's conduct is imposing, dominating and irresponsible with respect to the spirit of multi-stakeholder negotiations.

Management tried to re-initiate and re-establish the dialogue and consultation process after receiving the indication from the Requesters that they would be moving towards the inspection function. These efforts were however very much directed and specific to thwart the move for invoking inspection function. Despite this fact, the Requesters have given sufficient time to Management to comply with the Bank's policies and procedures. However, Management delayed the process and just insisted on our participation in the GRSC without answering our specific demands made in the Complaint and further elaborated and specified in the Request. It should be noted that the GRSC was finalized in the end of January 2003, almost after 10 months of the multi-stakeholders dialogue of March 2002.

Last but not least, the Requester and the Project affectees feel that BIC should make critical and objective assessments as to whether Management has taken timely and sufficient measures to prevent such a situation to becoming a serious problem of organizational accountability. The Requester and the Project affectees have undertaken considerable efforts and spent significant amount of time and energy to make Management realized that timely, adequate and realistic actions are required to comply with the relevant policies and procedures.

IV. Conclusion

The Requesters would like to present the following demands in the context of any insistence for negotiation and dialogue in the future.

1. The BIC should authorize the inspection of the Project in order to make an independent assessment of policy compliance and extent of material harm caused by the violation of the Bank's policies and procedures.
2. The GRSC should be redesigned in the light of the principles and guidelines provided by the WCD Final Report. Most importantly, the project affectees should have fifty percent of the membership in the GRSC through direct nomination of their legitimate representative forums.
3. Management should make a firm commitment that independent, participatory and comprehensive social, environmental, economic and cultural impact assessments would be undertaken with a clear timetable agreeable to the Project Affectees and the Requestor.

The Requesters and the Project affectees also wish to state here that they are planning to establish the Chashma Peoples Tribunal. The Chashma Peoples Tribunal will be comprised of judges from the local affected communities and prominent voices of national and international civil society. Besides other responsibilities, judgement on the scope, mandate, effectiveness and legitimacy of the GRSC would be included in its responsibilities.

Attachments:

1. Video documentary on the Chashma Right Bank Irrigation Project
2. Photographs of the scenes of flooding of Sokkar village and breaching of the main canal which occurred in August 2001.
3. Comments of civil society organizations and the project affectees on the Social Impact Assessment and the proposed Chashma Multi-stakeholders Dialogue.
4. Statement of the representatives of NGOs and the Project affectees after the Chashma Multi-stakeholders Dialogue Workshop of March 2002.
5. Copies of the correspondence between the Requester and Management

