



Securing the People's Right to Information Will the ADB Rise to the Challenge?

**Speaking Notes by the Global Transparency Initiative on the June
2010 Consultation Draft of the Public Communications Policy of the
Asian Development Bank**

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The Asian Development Bank's (ADB) *Public Communications Policy: Disclosure and Exchange of Information* (PCP) came into effect on 1 September 2005. In accordance with the PCP, the ADB initiated a review of the policy in mid-February 2010. The first stage was to solicit comments on the existing policy, and in April 2010 the Global Transparency Initiative (GTI) provided detailed comments (see [GTI Comments](#)). Early in June 2010, the ADB released the first draft of the new policy, titled Consultation Draft. We note below the key problems the GTI has identified with this first draft, with a particular focus on exceptions, oversight and access by affected people.

When it was first adopted in 2005, the PCP was among the most progressive of the disclosure policies of the international financial institutions (IFIs). It established a true presumption in favour of disclosure, set out a relatively narrow regime of exceptions and provided for an internal level of appeal. Five years later, however, other IFIs have put in place more open disclosure regimes and introduced important new innovations. It is thus somewhat surprising that the ADB's Consultation Draft contains almost no new measures to enhance openness. The provisions on exceptions and oversight are taken almost verbatim from the 2005 PCP. The Consultation Draft can thus only be described as profoundly disappointing from a transparency perspective.

One positive development is that the Consultation Draft does recognise that people have a right to seek and receive information about ADB-assisted activities (par. 35). While this falls short of full recognition of the right to receive information from the ADB, it is at least a stronger statement than in the earlier PCP. The names of those declared ineligible (blacklisted) to receive ADB loans and contracts has also been removed from the list of exceptions, in line with long-standing practice at other IFIs, such as the World Bank.

The main comment of the GTI on the Consultation Draft is that the ADB needs to take the review process seriously and to act in good faith. Given that five years have passed since the PCP was adopted, given the profound changes in the disclosure policies of other IFIs and given that a first round of consultation has already taken place, we do not consider the Consultation Draft to be a serious effort at reform.

The GTI would like to highlight the following key reform needs:

Exceptions

- The deliberative process exceptions found in paragraphs 136(1) and (2) need to be narrower. They should list specific interests to be protected – such as the free and frank provision of advice, the success of policies, and testing and audit procedures – instead of referring to the very vague notion of “the integrity of the ADB’s deliberative and decision-making process”.
- The commercial exception should apply only where disclosure of information would harm the legitimate commercial interests of those who provided it. To this end the policy: should not envisage confidentiality agreements with businesses (see definition of confidential business information and paragraph 140); should not allow co-financers to veto the disclosure of information (see paragraph 108); and should not contain a blanket exception in favour of private sector (nonsovereign) legal agreements (see paragraph 114).
- The exception in favour of privacy (see paragraph 136(4)), should incorporate a harm test (such as unreasonable disclosure of private information).
- The Board of Directors should not receive special protection over and above that accorded generally to other ADB-held information (see paragraph 136(7)). Board meetings should be open to the public and transcripts of these meetings should be made available on a proactive basis.
- The rules on release of information in the public interest should be mandatory and apply whenever the overall public interest in disclosure outweighs the harm (paragraph 139).

Oversight

- The ADB should maintain the PDAC as an internal level of appeal (see paragraphs 158-159) but it should also put in place an independent body to consider appeals from decisions of the PDAC (an external level of appeal).

Access by Affected People

A key issue raised in our consultations and original submission is the failure of the PCP to secure effective access to information by people directly affected by ADB programs and projects. ADB representatives have insisted, in consultations with us, that the problem is one of implementation rather than a substantive weakness of the PCP. We strongly disagree. We specifically call for the following:

- The development of joint communication plans for ADB assisted projects and programmes should be mandatory and not merely discretionary (see paragraph 85).
- Communication strategies should be developed which are appropriate for the project or programme, taking into account factors such as the nature and scope of the project and its location, the profile of the affected people, gender considerations, and the expected level of public interest in the project.
- The plan should indicate how and when an affected community will be notified about a relevant project and notice of this should be disseminated in appropriate ways, such as on local notice boards or announcements through the mass media. The notice indicate how more detailed information about the project may be accessed.
- For projects affecting communities, an information centre should be set up which is located within the community. These should contain copies of all publicly available information on the project, updated on a rolling basis. Key information should be produced or translated into an accessible form and language.
- The communication plan should set out who is responsible for monitoring and reporting on implementation, and the mechanisms for this.

Overall, we note that the June 2010 Consultation Draft fails to respond positively to our recommendations on the PCP provisions on exceptions, oversight and access by affected people. As such, the detailed comments and recommendations of the GTI, cited above, as well as the [GTI-NGO Forum on the ADB joint submission](#) and the [NGO Forum on the ADB report on the PCP](#), remain relevant to the June Consultation Draft. We urge the ADB to take them seriously into account as it moves forward in developing a revised PCP.