

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.

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."

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 affect 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.

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

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.

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.