ADB ACCOUNTABILITY MECHANISM
COMPLIANCE REVIEW PANEL

CRP REQUEST NO. 2004/1
REPORT ON ELIGIBILITY

TO THE BOARD OF DIRECTORS
ON THE REQUEST FOR COMPLIANCE REVIEW

ON THE SOUTHERN TRANSPORT DEVELOPMENT PROJECT
(ADB Loan No. 1711-SRI)
IN THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

16 December 2004
## CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>II. DESCRIPTION OF THE PROJECT</td>
<td>1</td>
</tr>
<tr>
<td>A. Scope</td>
<td>1</td>
</tr>
<tr>
<td>B. Agencies and Financing</td>
<td>1</td>
</tr>
<tr>
<td>C. Status of Project</td>
<td>1</td>
</tr>
<tr>
<td>D. Requests under the previous Inspection Policy</td>
<td>2</td>
</tr>
<tr>
<td>III. REQUEST FOR COMPLIANCE REVIEW</td>
<td>2</td>
</tr>
<tr>
<td>A. Requesters</td>
<td>2</td>
</tr>
<tr>
<td>B. Request</td>
<td>2</td>
</tr>
<tr>
<td>IV. ASSESSMENT AND FINDINGS</td>
<td>3</td>
</tr>
<tr>
<td>A. Conduct of Eligibility Assessment</td>
<td>3</td>
</tr>
<tr>
<td>B. Findings</td>
<td>4</td>
</tr>
<tr>
<td>C. Conclusion</td>
<td>5</td>
</tr>
<tr>
<td>V. RECOMMENDATION</td>
<td>5</td>
</tr>
</tbody>
</table>

### APPENDIXES

1. Request with 3 attachments
2. Map
I. INTRODUCTION

1. This is the Compliance Review Panel's (CRP) Report on the eligibility of a request for compliance review filed by the Joint Organization of the Affected Communities (JO), on the Colombo-Matara Highway under the Southern Transport Development Project (Project).

2. CRP registered the request on 6 December 2004. The request is enclosed as Appendix 1. This report is provided to the ADB Board of Directors, in accordance with paragraph 34 of the CRP Operating Procedures.

II. DESCRIPTION OF THE PROJECT

A. Scope

3. The Project (Loan No. 1711-SRI) consists of (i) a highway component, linking Colombo with Matara, the district capital of the south and (ii) a road safety component. The Project also supports policy and institutional reform. The primary objectives are to further the economic development of the southern region and to help reduce the high rate of road accidents. The Project’s secondary objective is to reduce poverty.

4. The Project was envisaged in the late 1980s and different traces of the 128 km long road were discussed and studied. The highway will ultimately have four and possibly six lanes, although it is intended that the initial configuration to be constructed under this Project will be two lanes. However, land will be acquired now for the ultimate four/six lane facility. The Project has also about 15 km of access roads to existing network. A map showing the highway is in Appendix 2.

B. Agencies and Financing

5. The total cost of the Project was estimated at $296 million, with main project financing from the Japan Bank for International Cooperation (JBIC) (40%), ADB (30%) and the Government of Sri Lanka (GoSL) (25%) as the borrower. The Nordic Development Fund and the Swedish International Development Cooperation Agency are contributing to the road safety component. JBIC and ADB finance the northern part of 67 km and southern part of 62 km respectively. The Project is currently under construction with the Road Development Authority (RDA) as the executing agency for the highway component.

C. Status of Project

6. The loan was approved by the Board in November 1999 with a scheduled completion date of 31 December 2005. However, the loan was not declared effective until 30 October 2002, due to delays in compliance with the conditions of loan effectiveness, in particular the submission of a satisfactory resettlement plan. As of 15 December 2004, about $27.4 million or 27.4% of the ADB loan has been disbursed and project completion is close to 20%. About 80% of the contract awards under the ADB loan have been made. The loan closing date is scheduled on 31 December 2006.

7. The JBIC-financed northern part of the highway is also subject to ADB policy requirements, in particular land acquisition and resettlement and environmental impact mitigation.
8. Under the ADB component, a stretch of 8 km in the area where one group of the requesters reside, is not yet under construction. Under the JBIC section, no construction award has been awarded, but is expected early in 2005.

9. RDA studied a trace called the “Original Trace” (OT) prior to ADB’s involvement. Under an ADB-financed feasibility study the so called “Combined Trace” (CT) was suggested. At the time of Board approval the CT was to be considered for preliminary and final design based on more detailed mapping. Since loan approval, the trace was changed to what is now called the “Final Trace” (FT), inter alia, to accommodate comments of the Central Environmental Agency of Sri Lanka. This change is the cause of the previous and current complaints.

D. Requests under the previous Inspection Policy

10. An organization of residents along the northern JBIC-financed part of the highway, called Gama Surakeema Sanvidhanaya (GSS) claimed that they were negatively affected by the Project as a result of ADB’s violations of a number of its policies. On this basis the GSS requested on 6 December 2001 an inspection of the Project. A second similar request was filed by another local organization in the southern ADB-financed part of the highway, called United Society for Protection of Akmeemana (USPA).

11. After considering the requests and the response of Management, the Board Inspection Committee (BIC) concluded that there was insufficient basis to recommend an inspection to the Board and the Board did not authorize an inspection. The BIC recommended to the Board that Management make strenuous efforts to use its good offices to bring about effective mediation and a satisfactory resolution to the outstanding resettlement issues.

III. REQUEST FOR COMPLIANCE REVIEW

A. Requesters

12. This Request was filed by the Joint Organization of the Affected Communities (JO) as an umbrella organization for USPA and GSS. The requesters 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. Evidence of authority representation of the 25 people by JO has been checked and found satisfactory.

B. Request

13. The Request was filed after the complaint submitted by JO entered step 7 of the consultation process in the consultation phase of the ADB Accountability Mechanism referred to in the paragraph 14 of the CRP Operating Procedures. Parallel process of both consultation and compliance review is allowed at this stage.

14. The request was first filed with the CRP on 14 November 2004, but lacked the "requisite basic information" referred to in paragraph 30 of the CRP Operating Procedures. Subsequent email correspondence between the CRP and JO followed on 18 November 2004, 1 December 2004, and 2 December 2004 before the request was registered.

15. The Requesters claim that the Report and Recommendation to the President and its attached documentation were for a trace known as the CT. At least, 40% of this trace has since
been altered by the RDA to a trace referred to as the FT, for which the required studies and consultations may not have been done according to ADB policies.

16. The Requesters claim to be suffering from, or will be suffering from, harm as a result of alleged 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.

17. The Requesters have 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.

18. The Requesters seek 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 environmental impact assessment 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.

IV. ASSESSMENT AND FINDINGS

A. Conduct of Eligibility Assessment

19. The CRP obtained from the Special Project Facilitator (SPF) material related to the complaint in the consultation phase. The CRP has, however, not received any information on SPF’s assessment of the eligibility other than the complaint is deemed eligible.

20. The CRP recognizes that, as allowed under the accountability policy, the SPF will continue its process of facilitation with the Requesters even as this compliance review goes forward.
21. The CRP conducted a desk-based review of relevant material from ADB management and public sources and met with ADB Board of Directors representing the borrower and ADB staff. The CRP also carried out an eligibility review mission in Sri Lanka from 6 to 10 December 2004 where the mission met with Requesters and other project-affected people, GoSL and executing agency officials as well as ADB and JBIC resident missions. The CRP reviewed the situation at various Project sites and discussed with stakeholders including the requesters.

22. The CRP held a plenary meeting from 14 to 16 December 2004 to consider the eligibility of the request.

B. Findings

23. The CRP views that the satisfactory conduct of its compliance review would necessitate the termination of the so called “compliance review” initiated in April 2004 by the South Asia Department (SARD). SARD’s review 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 OCRP was requested to convey that view to Management in the interest of avoiding confusion for the Requesters and a successful completion of the work of the Accountability Mechanism.

24. The CRP found that the request was not subject to any exclusions under paragraph 26 of the operating procedures, specifically:

(i) under paragraph 26(v) while the same project had been subject to a prior inspection request, in this case new evidence has been provided to the CRP, inter alia:

(a) new information on issues of adequacy of environmental and social assessments for the FT;
(b) Management response during the previous inspection requests built partly on a court case irrelevant to the FT; and
(c) clarifications on what constitutes a corridor and its width.

(ii) under paragraph 26(iii) the allegations of corruption in the Project will be referred to the Office of the Auditor General; and

(iii) under paragraph 26(ii) the allegations of procurement irregularities under the Project will be referred to the Central Operations Services Office.

25. The CRP found that the requesters had claimed likely direct and material harm owing to the actions and omissions of the ADB, including:

(i) loss of homes;
(ii) loss of livelihoods;
(iii) damage to the environment;
(iv) dispersion of integrated communities;
(v) damage to religious centers (temples); and
(vi) other negative effects of resettlement.
26. The CRP, in the course of its desk-based review and site visit, found that the claimed harm was linked to those requesting the compliance review.

27. The CRP found 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.

28. The CRP identified a number of specific operational policies and procedures, cited by the Requesters during the site visit, that may have been violated, which, inter alia, will be taken up in full during a compliance review:

(i) environment;
(ii) involuntary resettlement;
(iii) governance;
(iv) economic analysis;
(v) incorporation of social dimensions in ADB operations;
(vi) processing of loan proposals; and
(vii) formulation and implementation of loan covenants.

C. Conclusion

29. Based on the above, the CRP determines that the Request is eligible.

V. RECOMMENDATION

30. As the CRP finds that the request is eligible, the CRP recommends that the Board authorize a compliance review.

/S/ Augustinus Rumansara
Chair, Compliance Review Panel
The Secretary,  
Compliance Review Panel,  
Asian Development Bank,  
Manila, Philippines  

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.
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:-


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

CRP Request
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

P. A. N. S. Ranjith Dayaratne
Secretary,
Gama Surakeema Sanvidhaniya
Appendix 1

**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
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.
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
Appendix 1

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.
Appendix 1

(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.
Appendix 1

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 Akmeemana 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).
Appendix 1

**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.
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 though 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 area 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.

CRP Request Policy Breaches
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.

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.
Appendix 1

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 Arthacharya 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
Divisonal 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.**