



28 July 2009

Mr. Philip Daltrop
Auditor General
Asian Development Bank

Subject: *Comment on the ADB Draft Whistleblower and Witness Protection Provisions*

Dear Mr. Daltrop:

Thank you for your request, dated 30 April 2009, for the Global Transparency Initiative (GTI) to comment on the proposed ADB Whistleblower and Witness Protection Provisions.

At the outset, we wish to state that we welcome the effort by the ADB to consolidate its whistleblower protection policies. Beyond just an internal mechanism for institutional integrity and anti-corruption, we view whistleblower protection as an integral component of transparency and accountability in public institutions, both at the national and international levels. Thus, the GTI specifically includes whistleblower protection as one of the nine principles of its Transparency Charter for International Financial Institutions (downloadable at www.ifitransparency.org). The Charter is the GTI's flagship statement of the standards to which we believe IFI access to information policies should conform. It encapsulates standards drawn from international law and best practices adopted by democratic States.

We emphasize the following elements of this principle under the Charter:

1. In terms of accountability, whistleblowers, if adequately protected, provide an important early-warning system for the discovery of wrongdoing that is within the public interest to prevent or address. Such wrongdoing includes corruption both within the organization and in relation to private and public partners, and breaches of policies promoting public rights such as access to information and to participation.

2. In terms of transparency, whistleblowers serve to bring to public knowledge and attention matters of grave public concern, such as corruption involving their country projects or programs, or serious threats to public health, safety or the environment arising from, or discovered in the course of the organization's operations.
3. Persons disclosing wrongdoing and matters of grave public concern should be protected against any legal, administrative or employment-related sanction for releasing such information, as long as they acted in good faith.
4. The protection should extend to employees, former employees and sub-contractors, and apply even where disclosure would otherwise be in breach of a legal or employment rule. The same protection should be provided to anyone disclosing information pursuant to the access to information policy of the organization.
5. A senior officer of the IFI should be identified to whom whistleblowing disclosures may be made. Individuals should always be able to make such a disclosure to someone who is not part of their line management and, where they request confidentiality of their person, it should be respected.
6. The protection against sanctions apply even when the disclosure is made outside of the organization, whenever they have a reasonable belief that: (a) their concerns will not be taken seriously or acted upon; (b) their disclosure will lead to a reprisal or other direct professional or personal detriment despite existing protection policies; or (c) there is an imminent risk of danger to the health or safety of others, or of serious harm to the environment.

Evaluating ADB's draft whistleblower policies against the above elements, we respectfully put forward the following observations, with the call that they be addressed in the finalization of the policies:

1. Under the "General Principles" of the draft policy, protected whistleblowing is confined to integrity violation and misconduct, as defined in the "Definitions" section. The coverage should be expanded to include threats to public health, safety and the environment, even if these are not linked to individual wrongdoing.
2. Reporting is mandatory only for suspected integrity violation, and merely encouraged for misconduct under 4.1 of the draft policy. The information covered by mandatory reporting should be expanded, to include: serious threat to public health, safety and the environment; misconduct involving breaches of policies promoting public rights such as access to information and to participation; and those constituting violations of national or international law.

3. Good faith, as a requirement to protected whistleblowing, does not necessarily equate to true or accurate. Allegations of integrity violation, misconduct, or threats to public health, safety and the environment, even if inaccurate, should remain protected under the policy when done in good faith. Thus, only knowingly false and malicious allegations shall receive no protection.
4. The ADB should be able to show that the reporting channels for both the whistleblowing information and retaliation includes one that is not the whistleblower's line manager, and that the appeals mechanism on retaliation matter is adequately independent. The policy should provide further reporting channels, such as directly to the President, General Counsel, or Vice President for Human Resources, to provide adequate alternatives should a whistleblower have reason to believe that the specified channels might lead to retaliation or destruction of evidence.
5. The Policy should specify further rights and support for potential whistleblowers. First, the policy should specify that whistleblowers may seek confidential advice from appropriate ADB offices (i.e., staff association, etc.) if the staff member is uncertain how to proceed with a potential complaint or retaliation claim. Second, whistleblowers should receive periodic updates on the progress of investigations, not just information upon conclusion (as specified in 6.7). Third, whistleblowers should be provided access to alternative dispute resolution (such as mediation or conciliation) in addressing retaliation claims; external mediation should be provided at a staff member's discretion, with the mediator jointly selected by the staff member and management.
6. The policy does not specify standards by which investigations will be conducted, aside from a reference to ADB's Integrity Principles and Guidelines (4.4). We note that the World Bank's whistleblower policy, for example, states that reports of misconduct and retaliation shall receive a "fair, prompt, and thorough" review.
7. The grounds for external reporting are too narrow. The draft policy limits the coverage for external reporting only to "suspected integrity violation" where the staff member can show that reporting is necessary to avoid a significant threat to public health and safety, or substantive damage to ADB's operations, or violations of national or international law. In contrast, under the GTI Charter we envision the possibility of external reporting not only of wrongdoing but also of matters of grave public concern even if they do not arise from wrongdoing. Thus, the coverage for external reporting under 9.1 should be expanded to include not only integrity violations, but also misconduct involving breaches of policies promoting public rights as well as matters of grave public concern whether or not arising from integrity violation or misconduct. External reporting of such covered information should be

qualified only by the circumstances under 9.1 (b) and 9.1 (c) under the draft policy.

Finally, we wish to comment on the confidentiality of information provided by whistleblowers and witnesses. Rather than providing a specific confidentiality rule for this, we suggest that there should instead be a general reference to the policy's consistency with the exceptions under the ADB Public Communications Policy. We believe that this approach will be prudent, particularly because the PCP will be up for comprehensive review in the coming year. We submit that the exceptions therein should be a major area for review, taking into consideration and balancing the rights of the public and the interests of the institution, immediate parties, and other stakeholders.

Very truly yours,

Members of the Executive Committee of the Global Transparency Initiative

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The Global Transparency Initiative (GTI) is a network of civil society organizations promoting openness in International Financial Institutions (IFIs). The GTI believes that people have a right to information from public institutions and a right to participate in the development policies and projects that affect their lives.

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