



Public Services International  
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Internationell Facklig Organisation för Offentliga Tjänster  
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**Core Labour Standards in  
ADB funded Power Sector Improvement and  
Urban Development Programme  
in Bihar, India**

**A Study**

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August 2011

## Abbreviations

ADB	Asian Development Bank
BPSIP	Bihar Power System Improvement project
BUDP	Bihar Urban Development Project
BSEB	Bihar State Electricity Board
BWI	Building and Wood Workers' International
CBO	Community Based Organisation
CLS	Core Labour Standards
CPA	Country Poverty Analysis
CSP	Country Strategy Programme
CTA	Component technical Assistance
DMC	Developing Member Country
DMF	Design and Monitoring Framework
EA	Executing Agency
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
FFA	Framework Financing Agreement
GAP	Gender Action Plan
GOB	Government of Bihar
GOI	Government of India
GUFs	Global Union Federations
ILO	International Labour Organisation
ILS	International Labour Standards
IPSA	Initial Poverty and Social Analysis
IRM	India Resident Mission
MDB	Multilateral Development Bank
MFF	Multi-Tranche Financing Facility
MoU	Memorandum of Understanding
NGOs	Non-government Organizations
O&M	Operation & Maintenance
PAM	project administration manual
PCP	Public Communication Policy
PFR	Periodic Financing Request
PID	Project Information Document
PIU	Project Implementation Unit
PMU	Project Management Unit
PPP	Public Private Partnership
PPTA	Project Preparatory Technical Assistance
PSI	Public Service International
R&M	Renovation and Maintenance
RP	Resettlement Plan
RRP	Report and Recommendation of the President to the Board

RSDD	Regional Sustainable development Department
SAPE	Sectoral Assistance Programme for Energy Sector
SARD	South Asia Regional Department
SPS	Social Protection Strategy
SPRSS	summary poverty reduction and social strategy
SPU	Safeguard Policy Unit
TA	Technical Assistance
T&D	Transmission & Distribution
ULB	Urban Local Body
UNI	Union Network International

# Contents

Core labour standards in ADB funded power and urban development sector projects in Bihar, India: Background to a study	5
ADB, development finance and social protection	10
<ul style="list-style-type: none"> <li>• Social Protection as key to inclusive and environmentally sustainable growth</li> <li>• ADB's Social Protection Strategy</li> </ul>	
Operationalising Social Protection Strategy	
Compliance with international labour standards and the ADB-ILO cooperation	16
<ul style="list-style-type: none"> <li>• Labour standards and core labour standards</li> <li>• International labour standards and ADB-ILO cooperation</li> </ul>	
Core Labour Standards in ADB Operations	
Implementation of core labour standards in ADB operations: A reality check	22
Compliance with core labour standards in ADB funded power and urban development sector projects in Bihar: Reflections from a study	26
<ul style="list-style-type: none"> <li>• Bihar Power System Improvement Project</li> </ul>	
Bihar Urban Infrastructure Development Sector Programme	
Findings and Recommendations	45
Appendix	50
References	53

## Chapter I

### **Core Labour Standards in ADB funded Power and Urban Development Sector projects in Bihar, India: Background to a study**

Since Asian Development Bank's<sup>1</sup> power sector operations in India began in 1986 there have been 24 public sector loans for 21 projects with a total value of \$4.6 billion (29% of the total public sector lending to India). This has been supported by an additional \$337 million of loans through ADB's private sector operations. There has been a consistent focus on transmission and distribution lending and more recently on power sector restructuring.<sup>2</sup>

These loans were supported by 50 technical assistance (TA) projects, valued at \$23.5 million. A further \$1.9 billion in public sector loans are in ADB's funding pipeline.

ADB program assistance started with three state electricity boards: Assam, Gujarat, and Madhya Pradesh. In all three state electricity boards evaluated, unbundling was achieved and new separate corporate entities with "clean" balance sheets have been established as a result of restructuring. The restructuring included partial state assumption of liabilities, more transparent subsidies, renegotiation of power purchase agreements, rationalization of state-owned generation to promote merit order dispatch, and changed organizational structures and cultures that were re-focused on service delivery. Each of the state electricity boards has maintained a shell organization to service liabilities that were not directly related to the assets of the unbundled corporations and serve as a single buyer for the distribution companies. The unbundled generation and transmission organizations are assessed as having a good probability for sustaining independent operations and becoming self-funding. All states indicated that ADB assistance was catalytic in providing the impetus to implementing the reform process.<sup>3</sup>

The evaluation further stated that, "The overall assessment rating on the performance of ADB assistance to the energy sector in India is "successful," which reflects satisfactory performance. This was based on both a top-down assessment of strategic positioning, contribution to development results, and ADB performance and bottom-up assessments of lending and non-lending projects."

The evaluation, however, did not cover implementation of safeguard policy issues and compliance with core labour standards (CLS), two important issues arising out of the Social Protection Strategy and Safeguard Policy of the ADB linked to its commitment to

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<sup>1</sup> For more on ADB, its inception, mission and vision see Chapter II

<sup>2</sup> Energy Sector in India – Building on Success for More Results, Sector Assistance Program Evaluation for India Energy Sector, Operations Evaluation Department, Asian Development Bank, August 2007

<sup>3</sup> *ibid*

protect the environment, indigenous people, the displaced, the poor and the vulnerable sections of the population from the adverse impact of ADB funded projects through effective mitigation measures.

The 1998 ILO Declaration on Core Labour Standards specifically asks international organizations, such as development banks, to promote an atmosphere conducive to the achievement of CLS.

The Core Labor Standards (CLS) consist of (a) freedom of association and the effective recognition of the right to collective bargaining, (b) the abolition of all forms of forced or compulsory labor, (c) the elimination of discrimination in respect of employment and occupation, and (d) the elimination of child labor. All Asian and Pacific DMCs, by virtue of being member of the International Labour Organization (ILO), are held to respect, promote, and realize the fundamental Core Labor Standards.<sup>4</sup>

Internationally recognized labor standards, when ratified, are also part of the legislative framework of a DMC including provisions on minimum age, maximum hours and overtime, labor contracts, industrial relations, special protection appropriate for new mothers, and anti-discrimination provisions to protect women and minorities.

ADB's Social Protection Strategy and its Action Plan commit ADB to comply with the CLS, and guide ADB operations to good labor and social protection practices. This commitment was further taken forward in 2002 when a strategic partnership was formalized through a Memorandum of Understanding (MoU) signed jointly by ADB and ILO.

ADB's specific social protection issues include the following:

(i) vulnerable groups that maybe negatively affected by an ADB intervention must be adequately compensated and mitigation measures put in place to avoid creating further poverty (e.g., in case of public or private sector restructuring, workers, particularly low-income workers, should not be unfairly disadvantaged, regardless of race, skills, gender, age, or religious and political beliefs) ; mitigation measures should always aim to adequately balance social objectives and economic sustainability;

(ii) (a) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards; (b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation and Core Labor Standards;

(iii) As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.<sup>5</sup>

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<sup>4</sup> See Chapter III

<sup>5</sup> See Chapter II

## **Complaints against non implementation of CLS in ADB supported projects**

Public Service International (PSI), which started its regular engagement with ADB on CLS issues since 2005, has cited many cases of violations and non compliance of CLS in ADB funded projects in Asia Pacific region related to forced labour, child labour, discrimination against women workers, collective bargaining and freedom of association and employment such as part-time job, dispatched workers, temporary or contractual workers, or outsourced workers.

Building and Wood Workers' International (BWI) in its May 2011 publication "Labour Desk Handbook", points out that "...sadly, violations of the rights of workers and trade unions in ADB sites persist. Workers directly employed by ADB contractors and sub-contractors continue to work and live under poor conditions and have very little means to bring their plight to the ADB for appropriate action.

In selected case studies of ADB funded projects both BWI and PSI found serious violations of CLS in Melamchi Drinking Water project (Nepal), Regional Railway Construction Network project (Cambodia), Uttarakhand Power Sector Investment Program (India) and Madhya Pradesh Power Sector Development Programme (India).

### **Recent ADB assistance in Bihar: case for a study on CLS compliance and implementation**

In 2010, ADB funded 17 energy sector loans amounting to US\$ 2385.2 million and the proposed assistance for 2011 is pegged at US\$ 715.1 million extended to 5 loans.

During this period, ADB has extended its assistance to Uttarkahand, Himachal, and Bihar State Power Sectors.

The most recent power sector loan project - Bihar Power System Improvement project – was approved by the ADB Board in October 2010 and signed between the Government of India and ADB on June 15, 2011.

Water supply and sanitation development and improvement are part of ADB assisted urban development projects in India. Urban development projects funded by ADB have been undertaken in Karnataka, Kerala, Rajasthan, North Eastern Region, and West Bengal.

In 2010, ADB approved loans amounting to US\$ 1620.6 million for 16 projects and US\$ 463 million assistance proposed for 6 loan projects in 2011. These loans are extended to the states of Jammu and Kashmir, Uttarakhand, Madhya Pradesh, Bihar and National Capital Region of Delhi.

Currently Technical Assistance (TA) projects under Urban Development Programme are in progress and a loan project is scheduled to be approved in November 2011. ADB's fact finding mission has already visited Bihar in April 2011.

Bihar is a relatively new state for ADB assistance and governance in Bihar is reported to be making some improvement.

It was therefore suggested by the power sector unions in India to undertake a study to look into the compliance and implementation of CLS in two ADB funded projects in Bihar covering power sector and water supply (under urban development programme). Both the projects are in their initial stages and could be good examples to look in to how CLS and decent work issues are included while designing the projects and implementing and monitoring mechanisms are put in place for CLS compliance.

The study has been facilitated by Public Services International (PSI) South Asia.

### **Objectives of the Study**

The primary objective of the study is to follow the CLS Handbook and the MoU between ADB and ILO to evaluate the two ADB supported projects as above in terms of

- i. How CLS is incorporated in the planning, design and implementation of the projects;
- ii. Examining the draft and/or final ADB project documents, including IPSA (Initial Poverty and Social Analysis), loan agreements and procurement/bidding documents, to determine the extent to which ADB's Social Protection Strategy, decent work and CLS have been incorporated and mainstreamed;
- iii. Looking into the process of implementation of CLS in the projects along with the involvement of the employers' associations and the trade unions;
- iv. Violations of the CLS in the projects and the grievances of the trade unions involved in the public utilities related to power and water sectors in Bihar;
- v. The general awareness of CLS and related labour laws amongst the implementing agencies of the projects in Bihar; and
- vi. Explore the role of the ILO India Office for a meaningful collaboration and partnership in promoting CLS and related labour laws in ADB funded development projects in India.

### **Outcome of the Study**

The study should be able to:

- i. Give a general direction into the state of implementation of ADB's Social Protection Strategy and Handbook on Core Labor Standards, including CLS and other labour laws in the country specific programmes and strategies and the ADB funded projects.
- ii. Prepare recommendations to improve ADB's policies and guidelines on CLS and best practices on consulting with unions as well as complying with CLS and labour laws in the considered projects.

- iii. Suggest the need for capacity building on CLS amongst the key personnel of the implementing agencies.
- iv. Draw up key points that need to be addressed and taken up by the trade unions to facilitate a fruitful and meaningful campaign on CLS.
- v. Facilitate both the ILO and the trade unions to jointly undertake a campaign on the implementation of CLS in ADB projects in India and open the door for a meaningful dialogue and negotiation with the ADB and the related agencies of the Indian Government.

## Chapter II

### **ADB, development finance and social protection**

The Asian Development Bank (ADB) aims for an Asia and Pacific free from poverty. It is a major source of development financing for the Asia and Pacific region. With more than \$17.5 billion in approved financing, and 2,800 employees from 59 countries, ADB - in partnership with member governments, independent specialists and other financial institutions - is focused on delivering projects that create economic and development impact.

Whether it is through investment in infrastructure, health care services, financial and public administration systems, or helping nations prepare for the impact of climate change or better manage their natural resources, ADB is committed to helping developing member countries evolve into thriving, modern economies that are well integrated with each other and the world. The main devices for assistance are loans, grants, policy dialogue, technical assistance and equity investments.<sup>6</sup>

According to ADB, the purpose of the Bank shall be to foster economic growth and co-operation in the region of Asia and the Far East and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually.<sup>7</sup>

In March 1963, the UN's Economic Commission for Asia and the Far East (ECAFE), later renamed Economic Social Commission for Asia and the Pacific (ESCAP), adopted a resolution endorsing the idea of a regional development bank to facilitate Asian economic cooperation. The result was 31 countries met in Manila and signed the Charter to form ADB.

Since its institutionalization in 1966, the membership of ADB has grown from 31 to 67, of which 48 are from within Asia and the Pacific (Regional) and 19 from outside (Non-Regional).

#### **Social Protection as key to inclusive and environmentally sustainable growth**

The Asian and Pacific region has half the world's population. 30% of them are poor and the children and youth constitute 40%. Thus, a main development challenge for the region is to achieve sufficient sustainable growth to secure the inclusion of the poor and

<sup>6</sup> <http://beta.adb.org/about/overview>

<sup>7</sup> Agreement Establishing the Asian Development Bank, 1966

young new entrants in the development process. However, growth alone is not a sufficient condition for generating inclusive societies. Populations, households, and individuals face various risks that can plunge them into poverty, so societies have to take steps to reduce their vulnerability and to cope with the effects when shocks occur.<sup>8</sup>

Risks may include natural disasters; civil conflicts; economic downturns, of which the 1997 Asian financial crisis is the most recent example; or household reversals, such as crop failures, unemployment, illness, accident, disability, death, and old age, threatening the future of the household and its members. Development interventions may themselves create new vulnerability and risks through involuntary effects such as less affordable goods and services, temporary job loss, loss of common property, displacement, and loss of community support networks and social capital.

Globalization is shifting trade, capital, technology and information flows, changing values and social structures. The increased opportunities resulting from access to new ideas, goods, services, and technology are also accompanied by increasing risks. Interdependence and economic integration may lead to possible economic shocks and downturns; if no social policies and safety nets are in place, countries may experience mounting unemployment, poverty, marginalization, and political conflict.

Globalization requires the development of effective social protection systems in both developed and developing countries. The world's development agenda should give social protection a primary role to sustain growth and well-functioning markets.

Some risks affect all population groups equally; others have more intense impacts on the poor. The poor are highly vulnerable to risks and are constantly preoccupied with risk-averse and coping strategies to avoid sinking further into poverty. Social risk is a dynamic concept—insecurity means exposure to risks of events that if they occur, result in further vulnerability. While anyone can be vulnerable, the poor and the near poor are particularly at risk since they have fewer assets, reserves, or other opportunities to fall back on. Social protection presents a variety of instruments to deal with the diversification of most of these risks.

The long-term solution to vulnerability depends on good social and economic development decisions that address the structural causes of vulnerability. Development policies should therefore (i) involve proactive interventions to reduce vulnerability and support populations to overcome poverty; and (ii) try not to alter existing informal family and community-based mechanisms to cope with risk, given that these provide a level of social protection to the population, and when possible, encourage community-driven interventions.

With these considerations in mind, ADB has developed a definition of social protection based on labor markets and small-scale agriculture, in line with ADB's overarching goal of reducing poverty in the Asia and Pacific region.

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<sup>8</sup> Social Protection, Our Framework Policies and Strategies, Asian Development Bank, Manila, July 2003

Social protection is defined as the set of policies and programs designed to reduce poverty and vulnerability by promoting efficient labor markets, diminishing people's exposure to risks, and enhancing their capacity to protect themselves against hazards and interruption/loss of income.

The World Bank definition of social protection is based on social risk management; the Inter-American Development Bank (IADB) emphasizes social protection as a means to address macroeconomic and catastrophic shocks. International Labour organization (ILO), which is the senior agency dealing with social protection topics, maintains a structured view of social security based mostly on social insurance and labor standards.

As social protection took on a new urgency at ADB, the need for more effective coordination strategies became clear. In October 1998, an interdepartmental working group was formed to explore options for ADB's future interventions in social protection. A framework for operations on social protection was developed in July 1999, after close consultations among departments, and was distributed and discussed with selected DMC governments, NGOs, and other aid agencies. The various drafts ended in a formal submission to the 57 ADB member countries in April 2001, and a consensus was reached on 13 September 2001, when the ADB Social Protection Strategy was approved.

### **ILO and Social Protection**

Access to adequate social protection is recognized by International labour standards and the UN as a basic right. It is also widely considered to be instrumental in promoting human welfare and social consensus on a broad scale, and to be conducive to and indispensable for fair growth, social stability and economic performance, contributing to competitiveness.

Social Protection is one of the four strategic objectives of the Decent Work agenda that define the core work of the ILO. Since its creation in 1919, ILO has actively promoted policies and provided its Member States with tools and assistance aimed at improving and expanding the coverage of social protection to all groups in society and to improving working conditions and safety at work.

#### **The ILO has set out three main objectives reflecting the three major dimensions of social protection:**

1. Extending the coverage and effectiveness of social security schemes.
2. Promoting labour protection , which comprises decent conditions of work, including wages, working time and occupational safety and health, essential components of decent work.
3. Working through dedicated programmes and activities to protect such vulnerable groups as migrant workers and their families; and workers in the informal economy. Moreover, the world of work's full potential will be used to respond to the AIDS pandemic, focusing on enhancing tripartite constituents' capacity.

## ADB's Social Protection Strategy

The vision of the ADB's Social Protection Strategy (SPS) is the provision of social protection to all citizens of the Asia and Pacific region through the development of sustainable, statutory programs with universal coverage to effectively assist DMCs to reduce poverty, achieve growth by enhancing productivity, and create opportunities for individual self-reliance.

[ADB's Social Protection Strategy](#) identifies common issues to be addressed in the region, but recognizes that individual countries have specific needs. Country initiatives are developed based on the

- country's needs
- available resources
- feasible institutional arrangements
- political economy of reforms

Selected social protection interventions include:

- providing adequate coverage
- targetting vulnerable groups and gender issues
- ensuring sustainability and good governance
- having an integrated approach

Social Protection Strategy as devised by ADB, has five basic components:

- labour market policies and programmes designed to generate employment, improve working conditions and promote the efficient operation of labour markets
- social insurance programmes to cushion the risks associated with unemployment, ill health, disability, work-related injury and old age
- social assistance and welfare service programmes for the most vulnerable groups with no other means of adequate support, including single mothers, the homeless, or physically or mentally challenged people
- micro and area-based schemes to address vulnerability at the community level, including micro-insurance, agricultural insurance, social funds and programmes to manage natural disasters
- child protection to ensure the healthy and productive development of children.<sup>9</sup>

Accordingly, the labor market improvements to enhance social protection include the following.

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<sup>9</sup> [www.adb.org/Documents/Policies/Social\\_Protection/default.asp](http://www.adb.org/Documents/Policies/Social_Protection/default.asp)

(i) Labor market assessments analysing demographic trends, labor absorbing sectors, unemployment, migration flows, and the size and causes of the rise of informal sector can help identify a country's needs and development options.

(ii) Active labor market programs facilitate (a) direct employment generation (promoting small and medium enterprises, public works); (b) labor exchanges or employment services (job brokerage, counseling) linking supply with demand for labor; and (c) skills development programs (training and retraining of labor).

(iii) Passive labor market policies include (a) unemployment insurance, (b) income support, and (c) an appropriate legislative framework that strikes a balance between economic efficiency and labor protection.

An appropriate legislative framework points at provisions on minimum age, maximum hours and overtime, labor contracts, industrial relations, special protection appropriate for new mothers, and anti-discrimination provisions to protect women and minorities. Internationally recognized labor standards, when ratified, are also part of the legislative framework of a DMC.

(iv) Appropriate steps should be taken to ensure that procurement of goods and services, contractors, subcontractors, and consultants, comply with the country's labor legislation (e.g., minimum wages, safe working conditions, social security contributions, etc.) as well as with the Core Labor Standards.

The existing ADB social impact assessments, mandated by Management and the Board since 1991 (Operations Manual OM 47: *Incorporation of Social Dimensions into Bank Operations*) continues to ensure that vulnerable groups are not negatively affected by an ADB intervention. Specific social protection issues include the following:

(i) vulnerable groups that maybe negatively affected by an ADB intervention must be adequately compensated and mitigation measures put in place to avoid creating further poverty (e.g., in case of public or private sector restructuring, workers, particularly low-income workers, should not be unfairly disadvantaged, regardless of race, skills, gender, age, or religious and political beliefs) ; mitigation measures should always aim to adequately balance social objectives and economic sustainability;

(ii) (a) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards; (b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation and Core Labor Standards;

(iii) As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.

## **Operationalising Social Protection Strategy**

Implementation of ADB's SPS is clearly defined in terms of institutional arrangements and assignment of responsibilities.

Country priorities in selectively developing social protection measures are determined through country poverty analysis to be carried out by the regional departments, particularly the resident missions and social sector divisions assisted by the Poverty Reduction and Social Development division in the Regional and Sustainable Development Department (RSDD). The social protection interventions are designed by social sector and other sector divisions. The selected interventions and justification should be reflected in the Country Strategy and Program (CSP).

Such interventions, either in labor markets, social insurance, social assistance (loans/TAs) should address priority areas like child protection, vulnerable population groups, women and the poor to effectively reduce their exposure to risks, sustainability and good governance and their prospects for human capital development.

To ensure that vulnerable groups are not negatively affected as a result of an ADB intervention, mitigation plans as mandated by the social impact assessments (OM 47) have to be developed to offset impact such as of labor retrenchments. Temporary safety nets e.g. tiered pricing of utilities. Exemption from user charges, allowances etc. have to be designed to promote good social protection practices. These responsibilities rest with the sector divisions, resident missions, Office of the General Counsel, operating services offices and the Poverty Reduction and Social development Division in RSDD.

As an institutional arrangement, the labor trade unions should have an official interlocutor at ADB and the NGO Centre responsible for compliance with country specific labour legislations and the core labour standards. To facilitate such interventions strategic partnerships were formalized through MoUs between ADB and ILO.

Human resources development to implement SPS through staff appointment and internal and external trainings and skill development are the responsibilities of ADB's Human Resources Division, and ADB Institute.

And finally, the coordination, implementation and monitoring of SPS have to be carried out by the Poverty Reduction and Social Development Division of RSDD, including publication of manuals and guidelines.

## Chapter III

### **Compliance with labour standards and ADB-ILO cooperation**

#### **Labour standards and core labour standards**

Labor standards are rules that govern how people are treated in a working environment. They come in a variety of forms and originate at the local, national, and international levels. It can be as simple as ensuring that basic rules of good sense and good governance have been taken into account.

Labor standards cover a very wide variety of subjects, mainly concerning basic human rights at work, respect for safety and health, and ensuring that people are paid for their work. They also extend to questions of good governance, such as labor inspection and basic labor administration. In an economic context, they are important for raising productivity and competitiveness over the long term.

At the national level, labor standards are usually set by laws and regulations. Some can also be found in collective agreements. Normally, these bind only the contracting parties—trade unions and employers—but once accepted in some countries, they acquire the force of law for the entire country or economic sector.

At the international level, labor standards are found in international conventions and recommendations. International labor standards (ILS) are important for two reasons. First, they represent the international consensus on minimum best practices, whether on human rights generally or more precisely on labor matters. Second—and more immediately important in many cases—when they have been ratified by member countries they constitute binding legal obligations in national and international law, and may even be incorporated in national law.

There are a set of four internationally recognized basic rights and principles at work:

- (i) freedom of association and the effective recognition of the right to collective bargaining,
- (ii) elimination of all forms of forced or compulsory labor,
- (iii) effective abolition of child labor, and
- (iv) elimination of discrimination in respect of employment and occupation.

While there are many types of labor standards, the four listed above have achieved consensus internationally as the “core” labor standards. International support for these standards reflects an understanding that they are applicable to all countries. They do not establish a particular level of working conditions, wages, or health and safety standards to be applied internationally. They are not intended to alter the comparative advantage of

any country. These basic rights have been repeatedly articulated in international human rights instruments and declarations, such as the Universal Declaration of Human Rights in 1948 and the Convention on the Rights of the Child, 1989. Their most prominent recent expression is in the Declaration of the 1995 Copenhagen Summit on Social Development.

The ILO further substantiated the CLS in 1998 by the Declaration on the Fundamental Principles and Rights at Work, which calls upon its member countries to comply with the four principles, regardless of whether they have ratified the relevant conventions. It also identified a role for international organizations, such as the World Bank and ADB, in promoting respect for CLS.

### **International Labour Standards and the ADB-ILO Cooperation**

While each of the CLS corresponds to one or more ILO conventions, a country may be in compliance with a core standard even if the conventions have not been ratified. Conversely, the fact that a country has ratified a convention does not automatically prove its compliance with that standard. In all cases, domestic legislation and practice must be considered. It should be recalled that an obligation to respect the CLS is an inherent part of membership in the ILO. The CLS form more specific international obligations when the conventions containing them are ratified.

There are additional standards that develop aspects of these CLS, such as those on workers with family responsibilities, protection of migrant workers, working hours for young workers, and industrial relations. Other labor standards cover such subjects as

- (i) occupational health and safety (OHS);
- (ii) employment promotion, including mechanisms (employment exchanges, etc.);
- (iii) minimum wages and payment of wages;
- (iv) social security;
- (v) labor administration (including labor inspection); and
- (vi) specific economic sectors or occupations (seafarers, dockworkers, nursing personnel, home workers, plantation workers, etc.).

ADB's Social Protection Strategy and its Action Plan commit ADB to comply with the CLS, and guide ADB operations to good labor and social protection practices.

The 1998 ILO Declaration specifically asks international organizations, such as development banks, to promote an atmosphere conducive to the achievement of CLS. Accordingly, although compliance with CLS may not be a condition for lending or technical assistance in client countries, ADB staff are encouraged to analyze the situation relating to CLS in formulating CSPs and individual loan projects. The question is how can ADB staff, project teams, etc., ensure that CLS are included in ADB operations? How can they find out if CLS are being respected? At what stage/s of the operational cycle can CLS be incorporated to ensure that ADB's overarching goal, strategic objectives, and operational priorities are met? A parallel question concerns the relationship of CLS and

other labor standards. Since ADB needs to comply with CLS “in the design and formulation its loans”, the same does not apply literally to the rest of the labor standards. However, it is important to notice that several labor standards have either been ratified by a particular DMC or integrated into its labor legislation. Therefore, it is necessary to consult the existing labor legislation, since ADB needs to ensure that ADB-financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country’s labor legislation.

ADB recognizes the specific priorities in the 1998 ILO Declaration ranging from freedom of association to the elimination of discrimination in employment and occupation.

Since 1999, interaction between ADB and the ILO has intensified in four main areas: strategic consultations in preparing ADB's Social Protection Strategy; regional technical assistance on improving the role of labor standards in selected developing member countries; training on emerging issues in social protection and social safety nets; and project technical assistance and lending activities.

ADB and ILO have complementary roles and a mutual interest in intensifying cooperation in their shared thematic and geographical areas and in establishing working procedures in the Asian and Pacific region. ADB is a regional development bank for Asia and the Pacific with the overarching objective of poverty reduction. ILO is a specialised agency of the United Nations system committed to attaining social justice through the promotion of decent work in terms of labor standards, employment, social protection, social dialogue, and crosscutting gender issues. ADB's Board of Directors endorsed the development of the ADB-ILO MOU on 13 September 2001, date of the approval of the ADB Social Protection Strategy.

To further strengthen this cooperation a Memorandum of Understanding (MOU) was signed by Myoung-Ho Shin, ADB Vice-President (Operations 1) and Yasuyuki Nodera, Regional Director, ILO Asia-Pacific Region on the eve of ADB's 35th Annual Meeting of Board of Governors in Shanghai, China on May 09, 2002.

The International Labour Organization’s (ILO’s) commitment towards achieving decent work for all is consistent with and supports ADB’s goal of poverty reduction in the region. Recognizing a common ground, ADB and the ILO have identified areas for cooperation, collaboration and coordination to improve their contribution to the achievement of these goals.

ADB and ILO will collaborate in the following areas:

- The exchange of documentation, studies, research and best practices to promote cooperation and complementarity in operations.
- Consultations on ADB country strategies and assistance plans. ILO technical staff will participate in some ADB country poverty analysis or country strategy and program preparatory missions, contributing advice and labor market assessments,

- to ensure that ADB's portfolio supports inclusive, employment generating development patterns, and enhances workers' welfare.
- ILO will facilitate ADB's participation in developing a cooperative framework among counterpart ministries, employers, workers' organizations, civil society partners, and development institutions in countries where ADB plans a social protection intervention.
  - ILO will help implement ADB-funded lending and non-lending activities in areas relating to its competence and capacity, such as regional, advisory, and project preparatory technical assistance.
  - ILO will assist ADB's project design and review missions through interagency consultations and engagement of ILO experts by ADB.

ILO and ADB will hold a senior consultation meeting at least once a year on issues of strategic importance to review regularly the implementation of their programs. In addition, staff will maintain regular consultations on activities of common interest.

ILO, which is a specialized agency of the United Nations system, is committed to the attainment of social justice through the promotion of decent work with its strategic components of CLS, employment, social protection, social dialogue, and cross-cutting gender issues, in order to enable men and women to have decent and productive work in conditions of freedom, equity, security, and human dignity. ADB and the ILO recognize the expertise of each organization and seek to establish an operational framework and practical modalities for their cooperation, which focus on development issues, including (i) consultations between the two organizations on ADB country strategies and assistance plans, and, where appropriate and feasible, participation by ILO technical staff in ADB country poverty analysis or country strategy and program preparatory missions, by contributing advice and a summary labor market assessment, to ensure that ADB's portfolio supports inclusive, employment-generating development patterns, enhances welfare, and helps to allocate human resources to their most productive uses; (ii) contributions by ILO, within the framework of its mandate, to the development of a cooperative framework and networking among ministries, social partners, and other civil society partners in countries where ADB is planning a social protection intervention in line with its social protection strategy; and (iii) assistance from ADB to ILO in the development of decent-work country programs through interagency consultations.

### **Core Labour Standards in ADB Operations**

ADB's country strategy and program (CSP) provides the overall strategic framework to guide ADB's operations in a country over a 5-year period. The conduct of a country poverty analysis, thematic assessment—environment, gender, private sector, governance—and sector roadmaps constitute essential elements of CSP preparation, and they are important tools for assessing the importance of labor issues and CLS in country programming.<sup>10</sup>

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<sup>10</sup> Core Labour Standards Handbook, Manila, 2006, ADB and ILO

CLS can be addressed through issues related to governance, foreign direct investment or in sectoral issues. Addressing CLS in CSP should depend on the strategic focus of CSP, and as part of country poverty and social analysis in the context of human development or labor market reform.

The risk and vulnerability profile done while preparing the Country Poverty Analysis (CPA) assist in understanding the dynamics of poverty. The profile should depict the major risks that affect poor people.

A labour market assessment includes among other things an analysis of ILS/CLS in the DMC. Given that all ADB interventions need to be designed in accordance with CLS, the summary assessment should indicate the country's compliance/noncompliance with labor standards, including CLS. The enforcement related issues should also be studied during the assessment.

Ideally, information collection should involve collaboration and consultation with relevant international, national, and local organizations and institutions, such as the ministry responsible for labor; national statistics office; national trade unions and employers' organizations; international trade unions and employers' organizations; labor research institutes, often in national universities; regional representation of the ILO; and other civil society organizations concerned with labor issues (women's organizations, child protection organizations, trade associations, etc.).<sup>11</sup>

Often a full labor market assessment might be too resource-intensive and, therefore in most countries, utilizing existing ILO country studies should be considered and explored, and only in exceptional cases where labor market issues are of particular importance, an ADB assessment may be considered. Even if it has not been possible to carry out a full labor market assessment, the analysis should at least signal the existence of any major labor problem, which should be addressed as a priority issue through ADB.<sup>12</sup>

The following table provides information on the generic processes and analyses required at the various stages of the ADB operational cycle for considering or integrating core labor standard concerns into ADB operations. The table gives further advice on different activities during project design and implementation with regard to CLS.

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<sup>11</sup> Ibid

<sup>12</sup> See also the Economic and Research Department's publication on labor markets: Felipe, J., R. Hasan (eds.). 2006. *Labor Markets in Asia: Issues and Perspectives*. London: Palgrave Macmillan for the Asian Development Bank

## Core Labor Standards in ADB Operational Cycle

<b>Operational Cycle</b>	<b>Issues related to Core labor Standards</b>
<p><b>Country Strategy and Program</b></p> <ul style="list-style-type: none"> <li>• Country poverty analysis</li> <li>• Country strategy and program</li> </ul>	<ul style="list-style-type: none"> <li>• Risk and vulnerability profile</li> <li>• A summary of labor market assessment</li> </ul>
<p><b>Pre-project Design (PPTAs)</b></p> <ul style="list-style-type: none"> <li>• Concept papers</li> <li>• PPTA fact finding missions</li> <li>• Initial poverty and social assessment</li> <li>• Technical assistance report</li> </ul>	<ul style="list-style-type: none"> <li>• Identification of bonded labor, child labor, or gender and other inequalities in employment</li> <li>• Identification of special consultants in the PPTA team (labor, gender, etc)</li> <li>• Identification of the situation concerning freedom of association</li> </ul>
<p><b>Project Design</b></p> <ul style="list-style-type: none"> <li>• Selection of consultants</li> <li>• Inception report</li> <li>• Mid-term report</li> <li>• Final report</li> <li>• Draft RRP with SPRSS</li> <li>• Loan negotiations</li> </ul>	<ul style="list-style-type: none"> <li>• Designing necessary interventions to adhere to CLS</li> <li>• Participation of stakeholders concerning the future implementation of CLS clauses</li> <li>• Formulation of appropriate of assurances/covenants for inclusion in loan documents</li> <li>• Scrutinizing draft bidding documents</li> </ul>
<p><b>Project Implementation</b></p> <ul style="list-style-type: none"> <li>• Government, executing and implementing agencies, beneficiaries</li> <li>• Contractors, suppliers, consultants</li> <li>• Review missions, progress reports</li> <li>• Mid-term review</li> <li>• Project Completion Report</li> <li>• Project Performance Evaluation Report</li> </ul>	<ul style="list-style-type: none"> <li>• Consultations with implementing agencies on CLS</li> <li>• Drafting model clauses for bidding documents</li> <li>• Compliance with national legislation concerning CLS and ILS</li> <li>• Monitoring and evaluating of CLS</li> </ul>

PPTA= Project Preparatory Technical Assistance, IPSA= Initial Poverty and Social Assessment, RRP= Report and Recommendation of the President, SPRSS- Summary Poverty Reduction and Social Strategy

## Chapter IV

### **Implementation of Core Labour Standards in ADB Operations: A Reality Check**

According to the ILO-ADB MoU, at least once a year, the ILO and ADB were to hold a senior consultation meeting on issues of strategic importance, to permit a regular review of the implementation of the Memorandum of Understanding. In addition, the parties were to maintain regular consultations as necessary on activities of common interest, including through video conferencing where appropriate and feasible, for the purpose of furthering the effective achievement of common objectives, and the coordination of activities with a view to maximizing complementarity and mutual support.

The publication of CLS Handbook was a joint initiative since the MoU was signed. Annual high-level consultations between ADB and ILO were scheduled to be held every year. Hiro Ishibashi, Senior Specialist on Workers' Activities, ILO Sub-Regional Office for S E Asia and the Pacific, while making a presentation on ILO-ADB MoU in Reality (2008), said that very limited progress in implementing the key agreements was made and that exchange of information had slightly improved after 2006.<sup>13</sup>

In the ILO-ADB Annual Meeting held on May 29, 2009, Ursula Schaefer-Preuss, ADB Vice President acknowledged that “a working group has agreed to work together on a number of joint researches and studies to help us better understand the impact of the crisis on those most likely to be affected – women, the youth and workers in the informal sector.”<sup>14</sup> She also mentioned that on social protection collaboration, ILO and ADB's Poverty Reduction, Gender and Social Development Division have agreed to work together on two major strategy development undertakings: a social protection plan for Asia and the Pacific; and the use of conditional cash transfers as a social assistance tool.

The ILO and ADB met for their annual MOU consultation meeting on the 15th of August, 2011, in Manila where he meeting acknowledged the positive collaboration during the past year and decided to continue cooperating on the following areas: Statistics, Labour market Information, Education and Skills Development, Inclusive Job Creation Strategies/Green Jobs and Social Protection and HIV/AIDS. The meeting was concluded by the signing of an agreement to continue cooperation in the specific thematic areas during 2011-2012.<sup>15</sup>

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<sup>13</sup> Hiro Ishibashi, Senior Specialist on Workers' Activities, ILO Sub-Regional Office for S E Asia and the Pacific, ILO and Core Labour Standard Handbook, 2008

<sup>14</sup> <http://beta.adb.org/news/speeches/opening-remarks-adb-ilo-meeting>

<sup>15</sup> [http://www.ilo.org/asia/whatwedo/events/WCMS\\_162069/lang--en/index.htm](http://www.ilo.org/asia/whatwedo/events/WCMS_162069/lang--en/index.htm)

In 2005, ADB's *Procurement of Works Standard Bidding Document* was amended to be consistent with the *MDB Harmonised Edition 2005* which includes 22 labor-related clauses covering some CLS areas.<sup>16</sup>

Public Service International (PSI) which started its regular engagement with the ADB since 2005 on the CLS, states:

“Many cases of CLS violations take the form of physical violence against union organizers and officials, apart from the usual discrimination and dismissals and other work-related anti-union/worker action. Slave labor and bonded labor are still found in the Asia-Pacific region, mainly affecting the most vulnerable, i.e., children and women. About 60 percent of the workers in the region are in the informal economy; in some countries, informal economy accounts for over 90 percent. Informal economy workers or those engaged in ‘atypical work’ are the most exploited, most neglected and is characterized by low wages, long working hours, lack of social protection, lack of job security, absence of occupational health and safety measures, and are largely unorganized and exempted from labor laws. A typical work is commonly characterized by its contingency, transitoriness (sic), different working conditions compared to regular workers in the same job, and precariousness of employment such as part-time job, dispatched workers, temporary or contractual workers, or outsourced workers.

Moreover, in many of our discussions with PSI affiliates and other workers organizations affected by ADB-supported activities, we have found very weak the Bank's implementation of ADB's *CLS Handbook* and *Social Protection Strategy*. Problems in the field include: absence of a labor participation strategy; non-consultation with and participation of workers organizations/unions; no timely disclosure of relevant information to workers organizations/unions; lack of adequate mitigation measures that are agreeable to affected workers; no grievance nor monitoring mechanism.<sup>17</sup>

As ADB's Safeguard Policy considers only the issues of resettlement, environment and indigenous people, the PSI, in its submission during the Safeguard Review in 2008, had urged the Bank to “embark on a new and separate review and ‘update’ of its existing labor safeguards and social protection strategy that will provide for mandatory and clear-cut operational guidelines vis (sic) compliance to all four core labor standards and decent work agenda.”

The ADB-SPU team responded saying, “On the scope of the SPU, as approved by ADB Management, the SPU covers environment, involuntary resettlement, and Indigenous Peoples. It is envisaged that *labor issues will continue to be addressed through ADB's Social Protection Strategy and as part of the requirements indicated under OM Section C3 on Incorporation of Social Dimensions into ADB Operations*. Comments related to core labor standards would be addressed in that context.”

<sup>16</sup> [http://www.adb.org/Documents/Manuals/Bidding\\_Documents/Prequalification/fidic-conditions-of-contract-for-construction.pdf](http://www.adb.org/Documents/Manuals/Bidding_Documents/Prequalification/fidic-conditions-of-contract-for-construction.pdf)

<sup>17</sup> PSI Comments on ADB's Safeguard Policies, 2008, APRO, Singapore

Building and Wood Workers' International (BWI) in its May 2011 publication "Labour Desk Handbook", points out that "...sadly, violations of the rights of workers and trade unions in ADB sites persist. Workers directly employed by ADB contractors and sub-contractors continue to work and live under poor conditions and have very little means to bring their plight to the ADB for appropriate action.

To date, the ADB does not have a specific department dedicated to deal with complaints and issues of violations of labour conditions in the projects it finances. The role of the ADB in holding contractors responsible for labour rights violations is likewise undefined and loose."

Despite the general inclusion of CLS into official ADB documents and guides for ADB staff and contractors on how to respond to CLS, there is a huge gap between these documents and the respect for CLS on the ground in ADB-financed projects. While the ADB makes it clear in its documents that all procurement contracts must include CLS clauses and that it is the strong preference of the ADB to ensure CLS are met, ADB has very few accountability mechanisms which force companies and governments to respect the core labour standards. Through its accountability and complaint mechanisms, the ADB cannot be held accountable for the violation of CLS on its sites and nor does it have an obligation to hold its contractors to account.

Without the ADB itself being held accountable for violations of core labour standards, the ADB effectively renders the inclusion of CLS in procurement documents as meaningless because of the absence of effective accountability measures for contractors.

While ADB documents suggest complaints about violations of CLS be made directly to the companies and governments carrying out ADB-funded projects, the fact that companies and national governments often do not take the core labour standards seriously means that the chances of effecting change and reform in their actions are unlikely.<sup>18</sup>

The Global Union Federations (GUFs) have been proposing a labour desk in the ADB for several years now but ADB has so far resisted these efforts. At the 2010 ADB Annual Governor's Meeting in Tashkent, Uzbekistan, GUF representatives from the BWI, Public Services International (PSI) and Union Network International (UNI) presented to ADB President Haruhiko Kuroda a model labour desk and pressed him to establish a functioning labour desk in order to protect workers' rights in ADB-funded project sites and areas of operation.

However, President Kuroda reiterated the ADB's refusal to consider developing a labour desk – arguing that current accountability mechanisms are sufficient to address the concerns and complaints of Civil Society Organisations, including trade unions. In separate meetings in Manila in January, 2011, senior ADB staff reiterated this message and challenged the GUFs to find examples of labour desks in other regional development banks for the ADB to emulate.

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<sup>18</sup> Labour Desk Handbook, Building and Wood Workers' International, Asia Pacific Regional Office, May 2011, Kuala Lumpur

In selected case studies of ADB funded projects both BWI and PSI found serious violations of CLS in Melamchi Drinking Water project (Nepal), Regional Railway Construction Network project (Cambodia), Uttarakhand Power Sector Investment Program (India) and Madhya Pradesh Power Sector Development Programme (India).

Most of the reported violations relate to right to freedom of association and collective bargaining, bonded labour, lack of fresh recruitment, working conditions, health and safety, social security risks, lack of consultation with trade unions and participation of workers and employees during the design and implementation of the projects, contractualisation and pending regularization of workers, payment of wages to casual and contract workers, rest days and holidays, absence of formal contract of employment, and impact on both formal and informal workers and employees of public enterprise restructuring and sectoral reforms.

## Chapter V

### **Inclusion of Core Labour Standards in ADB funded Power and Urban Development Sector projects in Bihar, India: Reflections from the current Study**

In 2010, ADB funded 17 energy sector loans amounting to US\$ 2385.2 million and the proposed assistance for 2011 is pegged at US\$ 715.1 million extended to 5 loans.

During this period, ADB extended its assistance to Uttarkahand, Himachal Pradesh, and Bihar State Power Sectors.

The most recent power sector loan project - Bihar Power System Improvement project – was approved by the ADB Board in October 2010 and signed between the Government of India and ADB on June 15, 2011.

Water supply and sanitation development and improvement are part of ADB assisted urban development projects in India. Urban development projects funded by ADB have been undertaken in Karnataka, Kerala, Rajasthan, North Eastern Region, and West Bengal.

In 2010, ADB approved loans amounting to US\$ 1620.6 million for 16 projects and US\$ 463 million assistance proposed for 6 loan projects in 2011. These loans are extended to the states of Jammu and Kashmir, Uttarakhand, Madhya Pradesh, Bihar and National Capital Region of Delhi.

Currently Technical Assistance (TA) projects under Urban Development Programme are in progress and a loan project is scheduled to be approved in November 2011. ADB's fact finding mission has already visited Bihar in April 2011.

#### **The selected projects for the study**

The two projects selected for the study are:

- i. Bihar Power System Improvement Project; and
- ii. Urban Water Supply under Bihar Urban Infrastructure Development Sector Programme

#### **Methodology of the Study**

1. Access relevant documents from the ADB and ILO including their websites and other internet based sites.
2. Review of the social safeguard documents of the ILO and ADB.

3. Literature Review of the ADB project documents related to power and water sectors in Bihar.<sup>19</sup>
4. Field work in Patna, Bihar to meet relevant officials of Bihar State Electricity Board (BSEB), Urban Development Department/Patna Municipal Corporation and Project Implementation Units (PIU) trade unions and workers and employees unions.<sup>20</sup>
5. Liaison with responsible ADB officials for relevant information and response.<sup>21</sup>
6. Collecting testimonies of representatives of trade unions, employees unions and workers.
7. Documenting existing practices of CLS implementation in the relevant projects.

### **ADB's Country Strategy Programme, India (2009-2012) and CLS**

As part of the CSP, no labour market assessment has been done for the current India programme. In the Country Partnership Strategy Framework results, only strengthening gender mainstreaming in all sectors of ADB operations is mentioned. That 'all children enjoy safe childhood free from compulsion to work' is included under social development goals. Pension gets mentioned under key areas of ADB's intervention. The CSP, while discussing staff recruitment and upgradation in SARD, does not provide any indication towards development of dedicated Staff for CLS related work in India.

### **ADB's Evaluation of Energy Sector Assistance and CLS**

The Evaluation of Sector Assistance Programme for Energy Sector was published in 2007. The objective and scope of the sectoral evaluation does not include Social Protection Strategy and CLS. The SAPE evaluated the performance of loans, investments and TA.

The methodology of evaluation of ADB assistance does not include the trade unions and power sector unions as stakeholders.

Where the non sovereign transactions in ADB energy sector assistance is projected to increase, there is no indication on how the SPS and CLS issues are going to be addressed in non sovereign assistance and increasing private sector projects.

### **Bihar Power System Improvement Project**

The project is included in the Country Partnership Strategy (CPS) for India 2009-2012.

LOAN AMOUNT:	US\$132.2 million
BOARD APPROVAL:	October 19, 2010
LOAN AGREEMENT:	June 15, 2011

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<sup>19</sup> See Reference page 53

<sup>20</sup> See Appendix II page 52

<sup>21</sup> See Appendix I page 50

CLOSING DATE: June 30, 2016  
 EXECUTING AGENCY: Bihar State Electricity Board (BSEB)

The Project will upgrade the electrical system, increase reliability and quality of supply, and address energy efficiency through physical electricity infrastructure investments in the state of Bihar, India, coupled with a capacity development component. Project investments include installation of new, as well as renovation and modernization (R&M) of existing transmission substations, installation of new, and reinforcement of existing transmission lines, and the strengthening of distribution systems in 7 identified towns in Bihar, to reduce system bottlenecks to allow increased power supply, increase system reliability, and to reduce technical and commercial power system losses.<sup>22</sup>

**Impact and Outcome.** The Project's impact is a more sustainable state power sector providing better services to end users. The outcome is improved and expanded T&D capacity, increased T&D system efficiency, and enhanced quality and reliability of service in Bihar. Specifically, the investment components will focus on 7 districts within 4 of the 16 distribution circles in Bihar.

**Outputs.** The Project's outputs include transmission and distribution system components, and a capacity development component. Transmission component outputs include (i) transmission expansion via one new 220/132 kV grid substation at Pusauli, (ii) two new 132/33 kV substations at Dhanha and Gangwara, respectively, (iii) erection of additional 132 kV bays at six existing substations, (iv) erection of additional 220 kV bays at the Dehri substation, (v) erection of new 33 kV bays - 10 numbers each at Gangwara and Dhanha and (vi) approximately 368 km of new transmission lines (consisting of 33, 132 and 220 kV lines).

The Distribution component outputs include the following to be implemented in 7 towns within Bihar (i) construction of new 33/11 kV substations together with R&M of existing 33/11 kV substations, (ii) construction of new 33 kV, 11 kV and low tension (LT) lines together with R&M of existing lines, (iii) installation of new distribution transformers together with capacity augmentation and R&M of existing transformers, and (iv) installation and/or replacement of consumer metering equipments.

The capacity development component<sup>23</sup> has been designed to assist the executing agency, Bihar State Electricity Board (BSEB), with project implementation support and construction supervision as this is their first loan with a multilateral development institution and though their procedures are thorough, as a new executing agency, familiarity with ADB guidelines and implementation processes is required for BSEB. This component also includes training in high voltage distribution systems (HVDS) and will fund feasibility studies related to a small pilot HVDS project, as well as other training programs on financial management and corporate and managerial planning.

<sup>22</sup> Project Administration Manual, India: Bihar Power System Improvement Project, Project Number: 41626, September 2010

<sup>23</sup> A piggy back TA to the loan project - Bihar Power Sector Capacity Development and Implementation Support

### **BPSIP and power sector reform**

At a first look, the project seems to be facilitating construction of new transmission lines, substations, T & D efficiency to improve, augment and streamline BSEB's transmission and distribution system while developing the institutional capacity of the BSEB staff through training for better implementation of the project.

However, according to the PID of the project:

“Power sector reforms required by Electricity Act, 2003 and National Electricity Policy, 2005 are yet to evolve in Bihar and a comprehensive restructuring of the power sector is essential to the state's overall economic and social development. The Government of Bihar (GOB) is in the process of organizational restructuring for the power sector through evaluating different options for unbundling of Bihar State Electricity Board (BSEB) into generation, transmission and distribution companies. Subsequently, a financial restructuring plan will be developed.

... The GOB is cognizant that power sector reforms are essential with the core objective of strengthening the ability of public and private entities to deliver such an electricity supply to all consumers. The reform plans is coupled with a realistic investment program, designed to remove current constraints and to meet forecast demand growth through capacity augmentation and loss reduction, and a tariff regime that recognizes actual and reasonable operating costs and encourages efficient use of capital.”

In the “Draft Design and Monitoring Framework” document dated August 2010, the impact of the project has been subjected to or conditioned under Assumptions which read “GOB remains committed to power sector reforms and institutional improvement”. (pg 3)

Under Schedule 5 – Execution of Project and Operation of Project Facility (pg 18), attached to the Loan Agreement of the project signed by the representatives of Government of India and ADB on June 15, 2011, para 10 for Institutional Reforms reads:

“The State shall ensure that by no later than 1 year from the Effective Date, a roadmap shall have been approved by the appropriate authority of the State and the Borrower, showing a plan with milestones for restructuring and unbundling activities of the BSEB in accordance with the Borrower's Electricity Act, 2003.”

This is in sink with ADB's Operational Evaluation Department's evaluation of power sector assistance in India. In 2007, a sector assistance program evaluation of India's energy sector identified the following main lessons: (i) ADB's approach to lending at the state level has worked well and should be used as a model for future assistance; (ii) sustained technical assistance has been crucial to the success of state programs, both before and after loans were made; and (iii) corporatization via the introduction of commercially and financially sustainable principles into state entities, and increasing the

quality of governments can considerably improve efficiency and deliver better services to customers.<sup>24</sup>

The Report and Recommendations of the President to the Board of Directors (RRP), dated September 2010, the base document upon which the project was approved in October 2010, referring to the 2007 lessons, states:

“These experiences are reflected in the design and preparation of the project, as this is ADB's first power sector intervention in Bihar—a state with a high level of poverty and significant needs for upgraded electricity infrastructure. The project is accompanied by TA aimed at capacity development and improvements in financial management and governance.”

“Regarding improving sector policy and institutional environments, the Government of Bihar is in the process of planning the restructuring and unbundling activities of the Bihar State Electricity Board (BSEB) in accordance with the Electricity Act, 2003”, the RRP emphasizes.

Furthermore, ADB’s “Sector Assessment: Bihar Power Sector”, prepared in 2010, while discussing the State’s road map and policy mentions that “Bihar has decided in principle to restructure its power sector and set up new entities to manage different functions of generation, transmission, and distribution. However, there is some debate on the number of distribution companies to be formed. The central government and the Government of Bihar are engaged in a dialogue regarding the state road map for power sector reforms.”

This document further informs that the ‘state of Bihar has initiated an urban franchise model to take over operation and maintenance as well as billing and collection for a period of 10 years in four cities of Bihar. Agencies have been chosen for two of the electricity franchise areas, including the capital city of Patna. In 2006, Bihar has also initiated a successful model of rural franchising, handing over more than 325 11-kV feeders to small entrepreneurs.’ (Pg 3-4)

All the information cited from the documents as above prove conclusively, that power sector reform in Bihar in accordance with the Government of India’s Electricity Act, 2003, unbundling and restructuring of BSEB are important components of the ADB funded Bihar Power System Improvement Project and the outcomes and outputs of the ADB assistance heavily depend on unbundling and restructuring of BSEB.

The state should need to show a clear reform commitment before lending begins, a program loan should be divided into tranches, and a project loan and TA should again be adopted. There should be reform covenants to be met before lending begins and as a condition for tranches, as with the existing loans.<sup>25</sup>

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<sup>24</sup> Energy Sector in India – Building on Success for More Results, Sector Assistance Program Evaluation for India Energy Sector, Operations Evaluation Department, Asian Development Bank, August 2007

<sup>25</sup> Ibid

However, the power sector reform, unbundling and restructuring in BSEB which has already been initiated is not reflected through the design of SPS and compliance with CLS in the project documents.

None of the project related documents available in the public domain include a social strategy related to labour standards, core labour standards and decent work related to sectoral reform programme and public enterprise restructuring as provided in the Handbook on Poverty and Social Analysis published by ADB.

This document it recognizes that labor issues are likely to be ‘significant’ when workers lose their employment as a result of public sector restructuring.

In case of public enterprise restructuring,

- i. preparation of retrenchment plan (Appendix 9.2 and 9.3)
- ii. Focus on work consultation in the participation strategy (Appendix 4.4)
- iii. Preparing gender plan (Appendix 5.1)
- iv. Quarantine of social services such as housing, healthcare and educational facilities from divestiture, and
- v. Summary labour market assessment

are recommended.

### **Core labour standards and decent work related issues as represented in the project documents**

The tabular representation of the project at a glance in the RRP of the project shows:

- vi. Institutional development is not one of the primary sub-themes;
- vii. No gender issues are present;
- viii. Project risk has been categorized only as complex; and
- ix. Safeguard categorization includes only environment (B), involuntary resettlement (B) and indigenous peoples (C);

The piggy back TA component of the project – Bihar Power Sector Capacity Development and Implementation Support, which has been approved along with the loan project targets specific capacity development needs of the executing agency of the loan, Bihar State Electricity Board (BSEB), particularly the most urgent capacity development needs associated with project implementation.

The TA's impact would be strengthened institutional capacity on general project implementation matters. The outcome of the TA would be solid implementation of the Bihar Power Sector Improvement Project combined with knowledge transfer. ADB's technical assistance will assist BSEB by addressing immediate project implementation capacity needs. This includes assistance and training related to procurement and contracts management, environment and social safeguards, training and human resource management, and finance and accounts management and reporting.

As the TA is in its initial period not much progress has been made on the issues of capacity development and implementation. The terms of reference and tasks of the social, environment and resettlement specialist to be appointed do not include any activity related to labour standards and their inclusion in the implementation of the project. However, the appointment of a procurement specialist and institutional specialist is well within the scope of the TA. The scope of work and tasks of the institutional specialist includes ‘review of BSEB's corporate and management planning activities and capabilities.’

The TA or any other available project preparation document does not include the Initial Poverty and Social Analysis (IPSA) for assessing the significance of various social issues. According to Mr. A Jeffries, Energy Specialist and Mission Leader, SARD, ADB, the IPSA has been superseded by the SPRSS here. (See also appendix I).

The para 28 of the RRP only states that, “ADB also has provided support to BSEB in preparing bidding documents in accordance with ADB's Procurement Guidelines (2010, as amended from time to time), including training and knowledge transfer of procurement matters.” Para 33 further states, “Regarding gender issues, the loan agreements include a standard assurance related to core labor standards for contractors (including equal pay for equal type of work), and an awareness program on HIV and sexually transmitted diseases and human trafficking.”

Regarding Procurement of Goods, Works and Consulting Services, the provisions of Schedule 4 of the Loan Agreement subjects them to ADB's Procurement and the Consulting Guidelines, respectively.

Schedule 5 of the Loan Agreement does mention labour laws in the context of the civil contracts under the project, where it says,

The EA shall ensure that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and

HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.

The Project Administration Manual (PAM) has provisions on safeguard and safeguard monitoring covering only the issues of environment and resettlement. The section VII of PAM titled Gender and Social Dimensions has a para only which states that:

“There are no significant impacts on gender (either positive or negative) associated with this project. However, regarding gender issues, a measure taken is that the loan agreements include a standard assurance related to core labor standards for contractors,

including gender equal pay for equal work, an awareness program on HIV and sexually transmitted diseases and human trafficking. This is also specified in the summary poverty reduction and social strategy (SPRSS) report which is a linked document to the RRP.”

The cost estimates indicate that the Government of Bihar will spend an amount of US\$1.5 million on environment and social mitigation which is only 1% of the base cost. No specific mention is made on CLS, however.

PAM covers the Stakeholder Communication Strategy in section IX E where it is mentioned:

“Consultation will be carried out during all stages of the project. At the project preparation stage, the BSEB with TA consultants have carried out consultations with the key stakeholders at the three Grid substations sites and nearby villages which falls in the corridor of transmission line.

Consultations were carried out with affected households, vulnerable displaced persons and panchayat members of the village. These consultations and disclosure activities would also be carried out during project implementation.

Prior to the implementation of the Resettlement Plan, regular consultation would be held with all the stakeholders to detail out a RP implementation strategy. These would be facilitated by the SEU assisted by the local NGO. It would be imperative for BSEB member/s to participate in each of these consultations.”

However, the Communication Strategy does not include labour trade unions, employees and workers organizations and employees in general.

The Design and Monitoring Framework has nothing on labour standards, its monitoring and/or implementation.

Similarly, the Risk Assessment and Risk Management Plan document fails to include compliance with core labour standards and implementation of the labour laws while making a cursory reference to ‘ADB guidelines on procurement and consulting services and standard bid documents to allow better monitoring.’

In the Summary Poverty Reduction and Social Strategy (SPRSS) document, section C covers Gender and Development which comes under Social Analysis and Strategy. The key issues flagged off here:

- i. Greater and more reliable power supply can boost job creation benefiting both men and women; and
- ii. Efficient power supply that covers a greater number of villages can render household duties and activities generally carried out by women less burdensome.

A gender plan has not been included in the project design.

On labour issue, (1) employment opportunities has been flagged as temporary employment opportunities will be available to unskilled labourers for 2-3 years and (2) core labour standards included as standard assurance in civil works contract.

No specific plan is included.

On the issue of other risks and/or vulnerabilities it is noted that ‘the labour movement may have some impacts on the local communities. Standard assurances on labour standards will be included in civil works contracts.’

The project, as mentioned, does not expect any impact on the affordability issue.

In the Monitoring and Evaluation plan, no social indicators are included in the design and monitoring framework to facilitate monitoring of social development activities and/or social impacts during project implementation.

It is also worthwhile to mention that in the document on Sector Assessment: Bihar Power Sector, “insufficient number of well trained staff in BSEB” has been shown as a problem and “manpower assessment and contractual employment” are recommended as interventions without designing any relevant safeguard measure and/or labour standards for contractual employees.

Without proper safeguard measures for labour and labour standards being incorporated in the project design, the entire project linked to power sector reform and BSEB restructuring become all the more problematic if we take in to account the current employee pattern in BSEB and the employee relations.

### **Current employee pattern and employee relations with BSEB: A situational analysis**

According to the representatives of major trade unions operating in BSEB, the sanctioned post of permanent employees in 1973 was 40,000. In the next 20 years, the number of employees came down to 20,000 and as on January 01, 2010, the employee strength of BSEB was only 9,000.

Currently only 1,000 officers out of a sanctioned strength of 4,400 are employed by the BSEB.

This indicates non recruitment of permanent employees for quite a long period of time.

The Bihar State Electricity Board Pensioners’ Forum puts the number of retired pensioners of BSEB at 21,000.

Apart from the permanent employees there are around 4,000 contract workers and 5,000-6,000 casual labourers getting only a daily minimum wage of Rs.133 at present. No other benefits are extended to them.

In the transmission sector, 3,000 workers have been appointed by the BSEB as junior linemen and switchboard operators and are paid only Rs.600 per month.

Another set of 7,000 – 10,000 private workers are operating in the transmission and distribution sectors of BSEB who basically attend to day to day fault and repair workers and derive their remuneration from the tips paid by the customers. According to the General Secretary of the Jharkhand Bihar Field Kamgar Union, they are illegal workers and the matter is under investigation by the State Labour Department.

The unions have also alleged the issue of mass transfer of BSEB employees. As on June 15<sup>th</sup> 2011, around 7,000 employees out of a total strength of 9,000 have been issued with transfer orders.

### **Issues before the BSEB labour unions**

The BSEB unions are faced with a lot of pending issues before the BSEB management. These include fresh recruitment, regularization of contract workers, free electricity, increase of medical allowance, overtime wages and various other demands with regard to the security of the pensioners.

Since early 2007, the trade unions are struggling against the proposed restructuring and unbundling of the BSEB. It all started with a strike call given in February 2007 when the unions went to the High Court on the issue of security of service conditions, transfer to any other company and employee benefits. The court ruled in favour of the employees and the BSEB management was forced to stop the process of restructuring and unbundling which was already taking shape.

According to this proposal, The BSEB was restructured into 8 companies as given in the table below.

<b>Nature of the Company</b>	<b>Name of the Proposed Company</b>
Holding Company (1)	Bihar Rajya Vidyut Company Ltd.
Generation Company (1)	Bihar Rajya Utpadan Company Ltd.
Transmission Company (1)	Bihar Rajya Vidyut Sancharan Company Ltd.
Distribution Companies (5)	1. Uttar Bihar Vidyut Apurti Company Ltd. 2. Patna Vidyut Apurti Company Ltd. 3. Dakshin Bihar Vidyut Apurti Company Ltd. 4. Purvottar Bihar Vidyut Apurti Company Ltd. 5. Kosi Prakshetra Vidyut Apurti Company Ltd.

The Energy Department, Government of Bihar (GOB) vide its Resolution No. 3006 dated August 2, 2006 (read with Energy Department, GOB's resolutions no. 218 dated January

31, 2006 and 733 dated March 3, 2006) decided to form the above successor corporate entities.<sup>26</sup>

Subsequently, the BSEB, went to the High Court against its 2007 order and the matter is pending before the Court.

At a broad policy and implementation level the unions have managed to stall the restructuring process temporarily. But, as the ADB funded Bihar Power System Improvement project concept shows that the BSEB has to restructure and unbundle itself following the Electricity Act, 2003 as a major condition for the loan.

While the BSEB has gone ahead with the project, signed the project documents with ADB and the Government of India, established the project management unit (PMU and the ADB Cell) and also advertised tender bids of the project since March 2011, none of the 16 trade unions and employees' organizations and the engineers' and officers' associations have any knowledge of the ADB funded project. The General Secretary of the Jharkhand Bihar Field Kamgar Union came to know about the project only on the 16<sup>th</sup> of June from a newspaper report after the project agreement was signed in New Delhi on June 15, 2011.

That the unbundling the BSEB is very much relevant to the ADB funded BPSIP was proved beyond doubt when within two months of the signing of the agreement with ADB, the BSEB board took a decision to reconstitute BSEB by dividing it into five different companies which was passed by the Bihar Cabinet on 02-08-2011. Bihar State Electricity Company ( BSEC)) will be the holding company and other four companies will be known as Bihar State Electricity Production Company, Bihar State Electric Transmission Company, South Bihar Electricity Supply Company and North Bihar Electricity Supply Company.<sup>27</sup> Three distribution companies from the earlier mentioned eight were dropped in the current proposal.

However; the state government will work as a guarantor and ensure that the services of BSEB employees are not affected. Service conditions of the employees will remain unchanged, said cabinet secretary Ravikant while briefing newsmen after the cabinet meeting. "The services of BSEB officers and employees will continue in the new companies and there will be no dilution in their service conditions," official sources said. The unbundling plan includes requirement of an additional 10,000 employees.

Restructuring of BSEB not only mean the formation of new corporate entities but will also entail mass transfer of employees to new entities, re-deployment, re-designation, some redundancy in the workforce, and will raise the security and liability of the pension fund and the service condition and benefits of the employees and may create more unforeseen problems.

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<sup>26</sup> Final Report on Restructuring of BSEB, "Organisational 7 HR Aspects – Organisational Structure", Vol.- 1, PFC Consulting Ltd., New Delhi, July 2008

<sup>27</sup> PTI, Patna, 28.07.2011 and Times of India, Patna, 03.08.2011

Moreover, the fate of contract and casual workers remain uncertain and it is already recommended in the project document that new manpower should be recruited through contractual employment.

Conversation with the nodal officer of the PMU of the project in the BSEB's ADB Cell pointed to the facts, that:

1. The concerned officer is not aware of the issue of inclusion of core labour standards in the project design and its compliance , and
2. Even though a number of tender bids have been floated, the PMU is not aware that bidding documents and the procurement of goods and contract should follow ADB guidelines on core labour standards.

“As bidding documents are prepared by a consultant, the concerned nodal officer may not be aware of the ADB guidelines on CLS”, said A Jeffries, ADB's Energy Specialist.

While inclusion of core labour standards including gender dimension in the ADB funded project design and monitoring of compliance with the core labour standards is elaborately discussed in the ADB and ILO Joint Publication – Core Labour Standards Handbook, the issue of labour in public enterprise restructuring has been dealt with in the ADB publication (December 2006) – Technical Note, Labour Issues in Public Enterprise Restructuring and the Handbook on Poverty and Social Analysis.

### **Bihar Urban Infrastructure Development Sector Programme**

This programme is now in its initial phase with several TAs running simultaneously and preparing for the first loan project – Bihar Urban Development Project. The Bihar Urban Infrastructure Development Sector Programme (BUIDP) in its entirety is a Multi-Tranche Financing Facility (MFF) programme where the facility concept has been cleared on 11 April 2011, the ADB fact finding mission visit took place between April 7 and 15, 2011 and the loan of US\$ 200 million is scheduled to be approved by the ADB Board on 15 November 2011. The first tranche of US\$ 65 million will be approved by the ADB Board on 15 December 2011.

The Urban Development and Housing Department, Government of Bihar, is the Executing Agency (EA).

### **Information constraints**

As the ADB fact finding mission has just visited in April 2011, the relevant documents like the RRP of the programme, loan agreement, project document and project administration manual are still to be prepared. For MFF projects, these documents are prepared mainly following the facility concept and not according to the tranche investments.

Following an application filed under the Public Communication Policy (PCP) of ADB, the disclosure unit wrote back in June 2011, that “We regret that we cannot disclose the

report of the initial fact-finding mission by the ADB team, which constitutes internal information that falls under exception 126.1 of ADB's Public Communications Policy (PCP): "Internal information, that, if disclosed would or would likely compromise the integrity of ADB's deliberative and decision-making process by inhibiting the candid exchange of ideas and communications".

Therefore, the only information sources are the following:

- i. PID of Bihar Urban Infrastructure Development Sector Programme – MFF (Facility Concept)
- ii. PID of Bihar Urban Infrastructure Development Sector Programme – MFF (Tranche 1)
- iii. Component Technical Assistance, India: Bihar Urban Development Project, Final Report, Volume I – Main Report, May 2008, and
- iv. Technical Assistance Report, India: Preparing the Urban Development Project, July 2008

### **MFF and ADB Policies**

An MFF is a financing modality that supports a client's medium- to long-term investment program or plan. ADB's Board of Directors approves a maximum amount for an MFF, and the conditions under which financing will be provided. On the basis of the Board's approval, and at the client's request, ADB Management converts portions of the facility amount into a series of tranches to finance eligible investments. A tranche can be a loan (other than program or a sector development program loans), grant, guarantee, or ADB-administered cofinancing. Financing terms and conditions can differ between tranches. The overall amount of the MFF is not recorded as a legally binding financial commitment on the part of either ADB or its clients; only the amounts converted (into loans, grants, guarantees or ADB-administered cofinancing) are recorded as committed, if and when approved.

The MFF is like a standby letter of credit. The ADB Board approves a maximum amount for each MFF project under specific terms and conditions. Based on the Board's approval, management then converts this amount into a series of loans, guarantees, or credit lines through the MFF as and when investments are ready to be rolled out, with a client's requests for financing.<sup>28</sup> The participation of the private sector in projects is a strong feature of the MFF, which is in accordance with the ADB's Strategy 2020.

The MFF modality of investment shifts the focus of a project from the front loaded process part to the implementation end where sub projects under tranche facility are designed, the scope can be changed or modified according to the investment. Therefore, the social safeguards and/or social protection strategy adopted during the initial facility concept may literally carry no meaning in subsequent tranches. There are deep concerns about the "design of project components that take place during implementation" because such projects would not be subject to the same kind of scrutiny regarding impacts *prior*

<sup>28</sup> Avilash Roul, The MFF: Once Upon a Time... There was a Board Approval, [www.forum-adb.org](http://www.forum-adb.org)

*to the commitment of public funds for their support.* The MFF approach (approval *en masse* of multiple tranches at once) appears to be an end-run around the need for public consultation and careful assessment of environmental and social impacts *prior to release of project finance.*

The MFF programmes which can include “projects delivered through sector lending” or “where subprojects are prepared after Board approval,” could greatly reduce, if not eliminate, the possibility of social protection and safeguard inputs, and related mitigation measures vastly decreasing the ability of affected peoples to ensure that their lives and livelihoods are not threatened by poorly designed or poorly implemented projects.

The MFF, thus provides less opportunity for civil society engagement in any ADB-funded project or program. The MFF will be scrutinized by ADB management instead of the Board which has played such an oversight role for some time. There is less faith among CSOs regarding the capacity of ADB management to perform with transparency and accountability. It is more straightforward to engage with the Bank’s 11 Executive Directors than with the management as it seems.

Program lending helps with reforms, including the creation of a policy framework, but does not finance investments. MFFs require a policy framework up front and do finance investments. Although policy dialogue is possible with MFFs, this is not the same as developing a framework from scratch. Program lending does not always require a sector strategy, although one would be desirable.<sup>29</sup>

MFF approach is like a “work in progress” safeguards is a crosscutting theme.

In compliance with ADB’s *Public Communications Policy* (2005), the following documents will be made publicly available: (i) FFA upon approval of the MFF by the Board; (ii) legal agreements upon signing; (iii) project information document for each tranche upon processing of such tranche; (iv) the annual report to the Board upon circulation to the Board; (v) facility completion report upon circulation to the Board; (vi) safeguard frameworks for the MFF before appraisal; (vii) the summary environmental impact assessment or summary initial environmental examination for the tranche, where applicable, 120 days before the approval of the tranche; and (viii) draft resettlement plan and draft indigenous people’s development plan before appraisal, in case of the first tranche, and before Management review of the PFR, in case of the second and subsequent tranches. ADB shall also make the PFRs available to interested parties on request.

There is no separate information available on how core labour standards could be included in the DMF of MFF tranches and sub projects and compliance monitoring of the CLS.

### **The Urban Development Project: A preliminary understanding**

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<sup>29</sup> Mainstreaming the Multitranches Financing Facility, ADB Policy Paper, June 2008

The proposed loan will be utilized to improve the infrastructure facilities in the cities of Patna and Gaya as also capacity building in all the seven municipal corporations and related departments in the state of Bihar. The Asian Development Bank support will be for improving infrastructure and municipal service delivery in Patna and Gaya and 5 other municipal corporations in Bihar. The seven cities are Patna, Gaya, Muzaffarpur, Bhagalpur, Darbhanga, Bihar Sheriff and Arah. The project will include investment in physical infrastructure at city level and with proposals for capacity building and institutional strengthening of municipal and state authorities.

The MFF Facility Concept details an investment program that will improve and expand the water and sewerage infrastructure in the four towns of Gaya, Muzaffarpur, Bhagalpur and Darbhanga and assist the urban local bodies (ULB) of the four towns, the owners of such infrastructure, in bringing about operational disciplines and structures, which will ensure sustainable O&M.

These towns are not able to sustain the key urban services because of the core problem, that is, the infrastructure is not adequate in terms of size and condition. This is mainly attributed to inadequate new investment, and O&M, stemmed from the four main root problems:

(i) User charges. There is no user charge, and therefore, ULBs cannot recover O&M cost. Inability to capture (a) accrued revenues and expenditures, and (b) apportioned common expenses makes it difficult to calculate appropriate user charge levels, even if ULBs are willing to levy user charges.

(ii) Accounting practice. In the absence of a ring-fenced account specific for each urban service, ULBs cannot accumulate internal reserves for major investments. This led ULB to rely on grants from the various national and state schemes. Uncertainty in availability of financial resources made it difficult to plan the future.

(iii) Public Administration. The absence of the municipal civil servant system makes it difficult to accumulate skills within ULBs. Much of the staff is on contract with multiple assignments, hardly matching the required qualifications and rarely devoting to specialized tasks.

(iv) Human Resources. The recruited staff number is too low to sustain the water supply, sewerage and SWM services at the national goal level. Coupled with difficulties in attracting qualified personnel, it is hard to prepare a long-term plan and prepare project proposals, which attract financiers.”<sup>30</sup>

The state government has been undertaking various urban municipal governance reforms with assistance of the Support Program for Urban Reforms (SPUR) since 2010, financed by the United Kingdom’s Department for International Development. SPUR is US\$ 61 million program in the areas of urban governance and planning, municipal financial management, municipal infrastructure management, local economic development, and poverty alleviation in the 28 ULBs on first-come first-serve basis, which include the four towns. SPUR focuses on capacity building, which covers most of the reforms requirements under the roadmap.

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<sup>30</sup> PID, BUIDP (Facility Concept)

ADB will support a part of the funding shortfall in water supply and sewerage infrastructure improvement in the roadmap through the investment program, aiming to develop a complete system in a town by complementing the ongoing investment of the government and the state government. Also, the investment program will bring about efficiency and cost-effectiveness in O&M arrangement by outsourcing operations through design-build-operate (DBO) contractual arrangements, and tap into the efforts of SPUR in the areas of user charge, subsidy and accounting specific to water supply and sewerage operations.<sup>31</sup>

The SPUR has already facilitated reform and restructuring of the various urban municipal and non municipal service delivery agencies within the Patna jurisdiction with the formation of the integrated Patna Nagar Nigam and consolidated by the new Municipal Act 2007 as the chief legal instrument.

The **objective** of the project loan is, (i) supporting GoIs policy for urban development; (ii) contributing to poverty reduction and environmental improvement in the project towns; and (iii) enhancing the efficiency and effectiveness of urban planning, development of urban infrastructure services, and promotion of good urban governance.

**Impact.** The proposed project will improve living conditions and the urban environment in the selected city corporations in the state of Bihar.

Rehabilitation and improvement of water supply is one of the project components. That includes imposition/revision of water tariff and a pricing framework at an early stage to facilitate the implementation process.

Project will lay stress on service delivery initiatives that will cover long-term operation and maintenance of the infrastructure assets and ensure full O&M cost recovery. The Project will develop various contractual mechanisms to ensure that service delivery meets standards recommended by various national and state authorities. The capacity development plan will provide support to the State line departments and MCs in improving service delivery.

The loan will facilitate incorporation of private sector efficiencies in development, management, services and undertaking projects through public-private partnerships (PPPs).

### **Poverty, social and gender analysis in the Component Technical Assistance to BUDP**

The outputs from the CTA are a series of components to improve city wide urban infrastructure services with the integration of poor settlements within the overall urban development process. Specifically, the Project will provide (i) basic infrastructure services to increase economic opportunities and to reduce vulnerability to environmental degradation and urban poverty in the two cities and (ii) improve urban governance and

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<sup>31</sup> PID, BUIDP (Facility Concept)

increase capacity of all the seven municipal corporations to undertake urban planning activities. The Project will also focus on improving the conditions of the poor through undertaking community infrastructure development and poverty alleviation at selected slums in Municipal Corporations of Patna and Gaya.

A Gender analysis and Action Plan has been prepared for BUDP which aims at integrating different circumstances and interests of women / gender perspective at various stages of the Project (design, implementation and monitoring), including resettlement planning and implementation and institutional capacity building. A detailed gender action plan is prepared to include gender perspective in the project design including recognizing women as stakeholders but the GAP has not been linked to any CLS issues.

The overall social and poverty criteria require each project component to:

- (a) meet GoI, GoB and ADB social policy objectives,
- (b) be affordable / accessible by the poor;
- (c) meet the expressed needs of the community and women, and
- (d) ensure that the poor have been consulted in project preparation.<sup>32</sup>

The CTA has not discussed the inclusion of CLS in the project design as an important component of ADB social policy objectives. While there has been various stakeholders detailed in the consultation process and ULB representatives, NGOs and CBOs have been consulted during the TA, trade unions or workers unions representing the ULBs and related agency employees and workers have not been consulted. There is no capacity building programme for the concerned unions in the proposed project design.

### **Implementation arrangements**

BUDP project implementation components including performance monitoring and evaluation do not include CLS issues.

The proposed project costs for BUDP does not indicate any separate expenses for design and implementation of CLS. Consultancy and professional fee for social development specialist and NGO are, however, included.

### **Summary Poverty Reduction and Social Strategy**

The draft SPRSS provides for only a gender action plan and other action for employment opportunities. Interventions related to labour retrenchment, core labour standards, affordability, HIV/AIDS have been left out of SPRSS. It is only stated that ‘Contracts shall specify that child labor – common in Bihar - shall not be used in project implementation.’

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<sup>32</sup> Component Technical Assistance, India: Bihar Urban Development Project, Final Report, Vol 1 Main Report, Government of Bihar and Asian Development Bank, May 2008

## Locating the CLS issues in the project

The MFF programme involves large scale reform in Bihar urban infrastructure services involving municipal corporations and other ULBs. The project objective indicates that restructuring of public services and utilities erstwhile managed by the state government and the ULBs. The water supply and sanitation development programme includes private sector and PPP projects. Privatisation of public services, PPP projects and a reform and restructuring will have long and short term impact on the serving employees and workers in terms of transfers, re-deployment, retrenchment, contractualisation and security of service conditions and benefits.

The programme, therefore, may encounter resistance from the trade unions and employees and workers organizations and require intense consultations and respecting freedom of association and right to collective bargaining – included in the core labour standards.

While the project preparatory TA, MFF facility concept and available documents provide a cursory mention of including gender plan, CLS in contractors' guidelines, no detailed intervention on CLS or likely CLS designs are included.

The possible steps to address and implement the CLS issues could be:

- ✓ The project design should develop a labor adjustment program to address issues of redundant or surplus labor as well as take actions to mitigate the negative impacts of the reforms.
- ✓ The restructuring programme should be developed by the ULBs and the government in consultation with the labour unions and implemented jointly with private investors and operators.
- ✓ \
- ✓ A labour retrenchment plan along with employee re-training and skill development plan need to be developed.
- ✓ Throughout the implementation of the programme core labour standards and other national labour laws should be followed and complied with.
- ✓ Tripartite negotiations and collective bargaining should be encouraged and facilitated.
- ✓ Many of the services will be privatized and/or operated through PPP. Therefore, labour retrenchment and redundancy have to be offset through proper social security measures. Contractualisation has to follow the national labour law.
- ✓ The procurement of goods and services, and contracts are scheduled to follow the ADB Guidelines, but emphasis has to be given on the compliance with the core

labour standards, particularly child labour and forced labour in the civil contracts, taking in to consideration the incidence of such labour in Bihar.

- ✓ The gender action plan has to be linked to the CLS.
- ✓ Loss of livelihood and employment, such as for hawkers and vendors, even if for a temporary period should be compensated.
- ✓ As user charges will be introduced or user charges will be increased in the ULB areas, it has direct impact on the affordability of the poor including the workers. Water supply to urban slums have to be subsidized or unaffordable user charges have to be compensated for workers.

## Chapter VI

### Findings and Recommendations

#### Findings

1. A detailed labour market assessment has not been done for ADB's current Country Strategy Programme, India (2009-2012). The risk and vulnerability profile does not include the core labour standards and decent work issues.
2. The CSP does not provide for any dedicated staff in the ADB IRM for development of CLS related work in India.
3. There is no indication in the CSP that ILO specialists have been engaged or there has been any discussion with the ILO regarding CLS issues in ADB projects in India.
4. The objective and scope the ADB's energy sector assistance programme evaluation for India (2007) does not include Social Protection Strategy and CLS.
5. Trade unions and power sector unions have not been considered as stakeholders in the evaluation process.
6. The sectoral evaluation does not indicate how SPS and CLS issues are going to be addressed for non sovereign assistance and private sector programmes which are projected to be on the rise.
7. Available ADB documents related to the BPSIP clearly point out that the ADB assistance was provided to BSEB with the express condition that BSEB will undertake restructuring and unbundling activities and a road map to this effect has to be drawn up within one year of the signing of the project.
8. The cabinet of the Government of Bihar has already passed the BSEB Board approved restructuring process within two months of the signing of the project but the BPSIP project design does not include mitigation measures on the impact of such restructuring on the employees and workers of BSEB as discussed and detailed in the ADB publications "Handbook on Poverty and Social Analysis" and "Labor Issues in Public Enterprise Restructuring".
9. The TA to the project does not involve Initial Poverty and Social Assessment (IPSA) for assessing the significance of various social issues including the CLS.
10. The project design fails to acknowledge the problems that may arise in the implementation stage considering the current employee situation in BSEB where the number of employees including officers have come down to only 10,000 from 44,400 in 1973; there are currently 21,000 pensioners with huge pension liability; 4,000 contract workers and 5,000-6,000 casual labourers are being engaged by the BSEB at a daily minimum wage with no other benefits and there are 3,000 workers appointed by BSEB at Rs.600 per month with around 7,000 more who survive only on tips provided by customers.

11. The BSEB employees are also agitating on the issues of lack of fresh recruitment, regularization of contract employees, security of pensioners and service benefits and allowances.
12. The project design does not recognise the BSEB unions as stakeholders and are not included in any consultation and/or communication strategy.
13. The Summary Poverty Reduction and Social Strategy (SPRSS) does not have a gender action plan, flags off (i) temporary employment opportunities for 2-3 years and (ii) core labour standards included as standard assurance in civil works contract.
14. SPRSS says,
  1. Greater and more reliable power supply can boost job creation benefiting both men and women; and
  2. Efficient power supply that covers a greater number of villages can render household duties and activities generally carried out by women less burdensome.
15. The PAM states:  
There are no significant impacts on gender (either positive or negative) associated with this project. However, regarding gender issues, a measure taken is that the loan agreements include a standard assurance related to core labor standards for contractors, including gender equal pay for equal work, an awareness program on HIV and sexually transmitted diseases and human trafficking.
16. According to the Loan Agreement (Schedule 5), “The EA shall ensure that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions. Such contracts shall also include clauses for termination in case of any breach of the stated provisions by the contractors.
17. In the Monitoring and Evaluation plan, no social indicators or CLS issues are included in the design and monitoring framework to facilitate monitoring of social development activities and/or social impacts and CLS compliance during project implementation.
18. The Risk Assessment and Risk Management Plan document fails to include compliance with core labour standards and implementation of the labour laws.
19. The project does not expect any impact on affordability issue.
20. The cost estimates indicate that the Government of Bihar will spend an amount of US\$1.5 million on environment and social mitigation which is only 1% of the base cost. No specific mention is made of CLS, however.
21. The TA – Bihar Power Sector Capacity Development and Implementation Support, approved by the ADB, mainly to facilitate implementation of the BPSIP,

- does not include any labour standards specialist as consultant and has no specific capacity building component for the BSEB workers and employees unions.
22. The PMU of BPSIP embedded in the ADB Cell of the BSEB does not have an understanding of the inclusion of CLS in the project and how CLS could be implemented and monitored.
  23. BUDP is a part of the Bihar Infrastructure Development Sector Programme under Multi-Tranche Financial Facility (MFF) concept. Projects under MFF programme involves drawing up the full project under a facility concept then approving separate tranches according to the availability of the loan finance and modality of the finance.
  24. MFF programme are now in their post pilot study phase and their project cycles have a marked difference with that of a conventional ADB project cycle. The consequent ramifications and impacts related to social protection and CLS are still to be studied in detail and dovetailed in to relevant strategies and policies, especially when the scope the project can change depending upon the availability of finance and source of the finance.
  25. Development of water supply infrastructure and improvement under BUDP involves restructuring of existing agencies and integrating them under concerned ULBs and bring about efficiency and cost-effectiveness in O&M arrangement by outsourcing operations through design-build-operate (DBO) contractual arrangements. The loan will facilitate incorporation of private sector efficiencies in development, management, services and undertaking projects through public-private partnerships (PPPs).
  26. Both the Component Technical Assistance and TA for preparing the BUDP have not developed any mitigation measure of the impacts of public enterprise (related to basic public services) restructuring, private sector operations, outsourcing and PPP.
  27. Measures detailed in the Handbook on Poverty and Social Analysis and Labor Issues in Public Enterprise Restructuring have not been considered while preparing the proposed project.
  28. A gender analysis and action plan has been prepared for the BUDP, which recognizes women as stakeholders but GAP is not linked to CLS issues.
  29. The trade unions and employees unions representing the workers and employees of ULBs and the related agencies have not been recognized as stakeholders.
  30. Both the TAs discuss in detail the issues of stakeholder consultation and capacity building but there is no space for unions to be consulted or a need for their capacity building.
  31. BUDP project implementation components including performance monitoring and evaluation do not include CLS issues.
  32. The draft SPRSS provides for only a gender action plan and other action for employment opportunities. Interventions related to labour retrenchment, core labour standards, affordability, HIV/AIDS have been left out of SPRSS. It is only stated that ‘Contracts shall specify that child labor – common in Bihar - shall not be used in project implementation.’

33. In the event of proposed user charges for water supply and installation of water meters, the issue of affordability for the slum population consisting mainly of urban poor assumes significance. The issue has been glossed over in this project in lieu of a proposed subsidy for those not being able to afford the increased user charges.
34. The proposed project costs for BUDP does not indicate any separate expenses for design and implementation of CLS. Consultancy and professional fee for social development specialist and NGO are, however, included.
35. The project design of both the ADB funded Bihar projects indicate that formal cooperation between the ADB and ILO needs to be strengthened on the ground and inter-agency coordination facilitating exchange of expertise and interaction seems lacking leading to the non implementation of CLS and related workers' issues in ADB's development assistance programmes in India.

### **Recommendations**

1. ADB's Country Strategy Programme, India should carry out a mandatory labour market assessment, Together with the country poverty analysis and the risk and vulnerability profile, the labour market assessment would bring out the significance of addressing workers' issues through the implementation and monitoring of CLS in the ADB funded projects.
2. The objective and scope of ADB's evaluation of its sectoral assistance programmes in India should include SPS and CLS and recognize trade unions to be a legitimate component of the evaluation process and methodology.
3. As a continuation of the ADB-ILO Cooperation, ADB's country specific labour market assessment and sectoral evaluation studies should involve concerned ILO specialists and representatives of trade unions.
4. The implementation of CLS and its monitoring in ADB's development assistance in India can be strengthened in the future only if trade unions are recognized as legitimate and significant stakeholders both by the ADB and the borrower Indian Government.
5. The project design of BPSIP and PPTAs of BUDP in not addressing adequately the CLS issues signify that more joint efforts need to be planned and undertaken to implement in practice the letter and spirit of the ADB-ILO MoU of cooperation and the elements of the publication on core labour standards.
6. The framework of "Core Labour Standards in ADB Operational Cycle" as developed in the joint publication on core labour standards, should be the basis for inclusion of CLS in ADB funded project design facilitating implementation and monitoring of CLS issues in the two Bihar projects.
7. Addressing CLS both within IPSA and SPRSS should be made mandatory for the project designs of the projects studied here.
8. Ongoing restructuring of public utilities, privatization and outsourcing of its services during the TA and project period should be recognized by the ADB as project related developments and the project designs, therefore,

- should address the impact of such restructuring and privatization and incorporate mitigation measures as discussed in the Handbook of Poverty and Social Analysis and Labor Issues in Public Enterprise Restructuring.
9. The BPSIP and BUDP project design and implementation team should include a labour standard specialist/consultant.
  10. There should be a mandatory allocation of cost towards designing, implementation of CLS and capacity and awareness building of the trade unions in relation to the two projects.
  11. The project designs should include a Joint Implementing and Monitoring mechanism for CLS including at least ADB, ILO, the EA and trade unions of both BSEB and Patna Nagar Nigam and other ULBs under the BUDP in Bihar.
  12. The ADB should immediately establish trade union focal points both in the ADB HQ and country resident missions including the IRM in New Delhi.
  13. ADB and ILO should organize joint technical workshops for the trade unions in India on the understanding of impact on workers of development assistance, sectoral reforms, restructuring and mitigation measures.
  14. More regional workshops such as in the south Asia region including India, needed on core labour standards in ADB operations. These programmes could be the logical outcome of ADB ILO cooperation and facilitated by the ILO South Asia Office.

### **Other relevant recommendations**

15. ADB operational staff should be adequately trained to understand the relevance and significance of CLS issues.
16. The PIU and PMU staff should be adequately trained in ADB operations and CLS issues, especially in the case of two projects under consideration.
17. MFF being a relatively new concept within the framework of ADB's development finance, fresh understanding of the MFF concept, its framework, financial modalities, policy mainstreaming and impacts on workers and core labour standards need to be developed jointly by ADB and ILO.
18. Accordingly the CLS Handbook needs to be upgraded to include MFF, new ADB operational cycles related to private sector operations and other non sovereign financial operations to comprehensively address not only ILO's and internationally recognize core labour standards but also impacts and mitigation measures in line with various ILO Conventions.
19. Now that the current ADB's Safeguard Policy does not address CLS and its inclusion, it is high time that the SPS and CLS are incorporated in to a policy statement making it mandatory for any ADB funded and assisted project to incorporate that policy before being approved and cleared by the ADB Board and the borrowers.

20. Regular consultation with trade unions and capacity building programmes for trade unions will go a long way in being instrumental in ushering in sustainable growth and tackling poverty through development assistance and aid.

## Appendix I

### **Email response of A Jeffries, Senior Energy Specialist, SARD, ADB**

The paragraphs you have cited in the Public Information Document (PID) are part of a background description of the central government laws and policies governing the power sector in India, how ADB's program in India is consistent with government law and policies, followed by a description of the current status in Bihar related to such central government requirements. This describes the setting and current situation in Bihar but does not describe the ADB funded Bihar Power System Improvement Project, which as I stated in an earlier reply to you, **simply funds transmission and distribution system lines and substations and aims to improve BSEB's management and implementation of these and other such investment projects**. Perhaps this needs to be made more clear in this PID.

This portion of the Report and Recommendation of the President (RRP), is also a description of an evaluation of ADB power sector activities in India, and how the Project is cognizant of this evaluation. In fact, the Bihar Power System Improvement Project takes into account points (i) and (ii) in that it is a project at the state level and includes technical assistance. As the Project is BSEB's first such project with an external funding source, we have deliberately kept the Project scope narrow and specific to investments, and have thus not attempted any activities related to point (iii) in this particular project. Please note that most ADB assistance to states involves a series of loans, projects and technical assistance over time, and that this Project is a just a first, small step in what intends to be a longer term engagement in the Bihar power sector. (Note the Partnership Strategy outlines such sector support).

The purpose of the sector analysis is to describe the sector and state what is happening on-the-ground in Bihar. For example, the state has had a roadmap and plan for carrying out the unbundling required by Indian law since 2007, the introduction of a franchising model for distribution system billing and collections is an ongoing BSEB initiative over the last few years. **This is not, however, part of the ADB project.**

The Summary Poverty Reduction and Social Strategy is a document outlining the impacts of the project. As the Project merely funds some investments, and the actual construction of the lines and substations will be conducted by contractors, the role of BSEB is in managing and implementing the process. Other areas of BSEB staff are not involved in this management implementation process, and no labor retrenchment is foreseen as a result of making physical transmission and distribution system investments in Bihar.

The Design and Monitoring Framework (DMF) shows each and every project output so that they can be monitored. Social impacts related to these outputs are addressed separately in the Resettlement Plan, which is available on the ADB website, and contains

details on the social survey work and analysis of all project affected persons. ADB has also provided a consultant to assist BSEB's project management unit in carrying the monitoring of environmental and social safeguards impacts and mitigating measures and part of this consultant's terms of reference is to build capacity within BSEB on the ability to monitor and report on these

This loan covenant involves having a *plan* in place for the restructuring and thus acknowledges an activity that has taken place throughout India as required by Indian policy. This loan covenant does not require actual restructuring to occur as this project does not fund the restructuring or any associated restructuring plan. The timeframe for having is plan is one year after loan effectiveness. As the loan was just signed on 15 June 2011 and is loan effectiveness is expected by the end of August, this would thus require a plan by August 2012. As we discussed, it appears the Government of Bihar is way ahead of this time frame based on their recent decision to proceed with restructuring.

Risks and assumptions under a DMF are, by definition, activities that are outside the Project but can affect the Project. As mentioned previously, the Bihar Power System Improvement Project is deliberately a simple investment project and any reform process embarked on by the government and is external to the Project.

Conclusion. You are correct that BSEB will undergo reform and restructuring, as have most of the state electricity boards in India since it is Government law and policy that they do so. Your principal concern appears to be that (i) ADB is the driver of this process via this Project, and (ii), as such, the ADB Project should thus have included in its design elements to address public enterprise restructuring.

Regarding your concern that ADB is the driver of this process, this process has been ongoing in Bihar for some years regardless of ADB's Project. As I have earlier stated, the ADB Project deliberately keeps its scope limited to some straightforward investments and their implementation. As BSEB's first externally funded project, what is important is to start small and build on the experience of this first project.

Regarding your concern that the project does not address public enterprise restructuring, I have also earlier stated that this project does not attempt to address a myriad of internal challenges faced by BSEB but has been kept simple. This does not mean that the Project cannot assist BSEB on some of these issues. There are funds earmarked for training programs which have not yet been designed. Since they are funded by loan funds, it will be BSEB's ultimate decision on the allocation of these training funds, but ADB will have a dialogue with BSEB on their capacity needs and how the training may assist in meeting them. If you have any suggestions for this training, please let me know.

## Appendix II

### **Persons interviewed during the Study**

1. Chakradhar Singh, General Secretary, Bihar State Electric Supply Workers Union and General Secretary, All India Federation of Electricity Employees.
2. D P Yadav, Bihar State Electric Supply Workers Union.
3. Prakash Singh, BSEB Pensioners' Forum.
4. Gazaffar Nawab, AITUC.
5. Kaushal Kishore Prasad Singh, Bihar Rajya Vidyut Mazdoor Union.
6. D Ram, General Secretary, INTUC, Bihar.
7. Chandra Prakash Singh, President, INTUC, Bihar.
8. Neeraj Verma, General Secretary, Patna Nagar Nigam Staff Union.
9. Shivkant Jha, Patna Jal Parishad Karamchari Sangh.
10. Amarendra Mishra, General Secretary, Bihar Jharkhand Rajya Vidyut Parishad Field Kamgar Union.
11. C L Prakash, President Power Engineering Service Association and serving Chief Engineer, BSEB.
12. G K S Parmar, Head ADB Cell in BSEB and PMU of BPSIP.
13. Andrew Jeffries, Senior Energy Specialist and Mission Leader, BPSIP, ADB Head Quarters.
14. A group of BSEB pensioners.
15. A group of BSEB workers and employees.
16. Two machine operators on contract job with Bihar Rajya Jal Parishad. (Name withheld on request)
17. Two pumping station caretakers working with Patna Nagar Nigam. (Name withheld on request).

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