



KEY UNION ISSUES IN MADYA PRADESH POWER SECTOR REFORMS*

REPORT

of

PSI-APRO Research Mission

Jabalpur, Madya Pradesh, India

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1 BACKGROUND

1.1 PSI research mission

A five-person PSI research mission¹ went to Jabalpur in Madhya Pradesh (India) on 15-18 September 2008 to gather information about the impacts on workers of the power sector reform program assisted by the Asian Development Bank (ADB).² The PSI mission met with representatives of twelve (12) unions of Madhya Pradesh State Electricity Board (MPSEB), including representatives who came from Indore and Bhopal.³ Initial findings of the PSI mission were presented to relevant ADB officials during a meeting with the Bank's South Asia Department on 3 December 2008, and again at the 1st ADB-ITUC-GUFs Dialogue Session in Manila on 27 May 2009. Both meetings took place at ADB Headquarters in Manila, Philippines.⁴

1.2 Power sector reforms in India

Power reforms in Madhya Pradesh (MP) were initiated through Madhya Pradesh Vidyut Sudhar Vidheyak, 2000 (the Reform Act) which was brought into force in July 2001. The Reform Act was the most advanced in India at the time and provided for: (a) restructuring of the Madhya Pradesh State Electricity Board/MPSEB, (b) mandatory metering of all consumers, (c) rationalization of tariff that all classes of consumers to pay at least 75% of cost of supply, (d) subsidies through Government of MP/GOMP budget to be allocated before subsidizing any category of consumers, (e) creation of Madhya Pradesh State Electricity Regulatory Commission/MPSEERC, (f) dispute resolution between GOMP and the MPSEERC by reference to the CERC as against reference to the courts, (g) Corporatization and commercialization of the generation, transmission and distribution functions of MPSEB.⁵ In November 2001, the State of MP was bifurcated into MP and Chattisgarh.

¹ The PSI delegation consisted of: Mr Katsuhiko Sato (PSI-APRO Regional Secretary); V Lakshmi (PSI South Asia Subregional Secretary); Mr JL Bhan (National Organisation of Government Employees / NOGE); Mr Kancharla Raghu (People's Monitoring Group on Electricity Regulation / PMGER), and Ms Violeta Corral (Public Services International Research Unit / PSIRU).

² In mid-2008, PSI proposed to conduct a joint PSI-ADB research on labor-related issues under reforms supported by the Madhya Pradesh Power Sector Development Program approved in December 2001. However, the timing for conducting the joint research was not considered right by the Madhya Pradesh authorities due to the upcoming state assembly elections. Since PSI was already preparing for a field research mission in Madhya Pradesh, it decided to continue with the study on its own. The results of PSI's research mission was relayed to ADB in December 2008, with intent to address findings on labor-related issues, including unresolved employees issues, through a joint PSI-ADB research in 2009 onwards.

³ MP State Electricity Employees & Engineers Coordination Committee (MPSEEECC) - an umbrella body of 17 MPSEB unions/workers bodies (e.g., Diploma Engineers Association, Engineers Association); MP Vidyut Sangh; Diploma Junior Engineers Association; Janata Union; Associate Unions; Ekta Manch; Technical Employees Union; MPSEB Karmachari Sangh; Diploma Engineers and Technical Union (DEATU); Class IV association; Driver's Union; AJAKS.

⁴ See: http://isslerhall.org/drupal/sites/default/files/psi_mission-report_adb_mp-power_vpc-oct08.pdf; http://isslerhall.org/drupal/sites/default/files/MP%20POWER_ADB%20HQ_vinay-3dec08.ppt; <http://isslerhall.org/drupal/sites/default/files/POWER%20REFORM%20MP%20LAKSHMI%20MANILA%20MAY%202009.pdf>; <http://www.adb.org/Documents/Speeches/2009/ms2009040.asp>

⁵ <http://www.adb.org/Documents/Profiles/LOAN/29473013.ASP>

Consequently from December 2001, Chattisgarh State Electricity Board (CSEB) came into existence; MPSEB was formed in January 2002.

In 2003, the India Electricity Act was enacted into law and became the cornerstone for power sector reforms in India. The 2003 Act provides for unbundling of state electricity boards (SEBs), open access and competition, full metering for all consumer classes, multiyear tariff determinations, tariffs set within 20% of deemed cost of supply, and 100% rural electrification.

In June 2005, MPSEB was unbundled into five ‘successor’ Companies (generation, transmission, and 3 distribution/Discoms) which started to operate independently; MPSEB remains the principal employer of the 58,000 employees. Operation and Maintenance contracts were entered into between MPSEB and Companies; Companies became agents. In 2006, a power trading company (TradeCo) was also established.

1.3 ADB’s assistance to MP power reforms

In January 1997, the GOMP requested an ADB technical assistance to conduct studies and to facilitate introduction of reforms in its power sector. A subproject on *Review of Electricity Legislation and Regulations* aimed to prepare reform legislation and its associated regulations.⁶ In December 2001, ADB approved US\$350M *Madhya Pradesh Power Sector Development Program (SDP)* – \$150M (program) and \$200M (project) – to assist in restructuring the power sector; Madhya Pradesh was the second state after to receive such ADB assistance. [ANNEX A provides excerpts of the Project Completion Report (PCR), June 2008.]

Since 2000, ADB has focused its lending on Indian states committed to reforming and restructuring their power sectors on the premise that improving the power sector toward financial sustainability will increase the ability of state governments to allocate resources for poverty reduction. In 2003, ADB conducted project performance audits of energy projects in India and identified lessons including: (i) ADB should be flexible and adaptable to changing conditions in India, (ii) construction contracts should be properly packaged to facilitate implementation and coordination, and (iii) loan covenants should be appropriate.⁷

In June 2002, ADB approved a US\$400,000 Technical Assistance (TA) on *Development of a Transfer Scheme for Madhya Pradesh Power Sector Reform*.⁸ The TA aimed to develop an overall strategy for

⁶ *Madhya Pradesh Power Sector Development Program*, ADB TA Completion Report (Oct 2005)
<http://www.adb.org/Documents/TACRs/IND/tacr-ind-2980.pdf>

⁷ From: ADB Report and Recommendation of the President (RRP), Feb 2007
<http://www.adb.org/Documents/RRPs/IND/32298-IND-RRP.pdf>

⁸ The ADB-TA consultants should also assist MPSEB to undertake the following: Review related labor laws and regulations; Update employee data base; assess skills mix and staffing levels by Sep 2002; Develop new organizational and management structures for successor companies by Oct 2002; Formulate framework and process for consultation with MPSEB employees by Oct 2002; Develop a draft transfer scheme including an overall strategy for personnel transfer and various options for MPSEB employees; prepare new service contract, performance measurement framework, staff compensation plan, retirement benefit plan, and voluntary separation scheme by Nov 2002 in full consultation with labor; develop training and re-training programs by Nov 2002; Complete dissemination of a proposed transfer scheme to employees by Dec 2002; Negotiate with labor union

personnel transfer and various options for MPSEB employees. A draft transfer scheme will be developed including an overall strategy for personnel transfer and various options for MPSEB employees. New service contracts, a compensation package, a postretirement plan, and a voluntary separation plan will be developed as a part of the transfer scheme. Two ADB TAs had earlier been provided: *Strengthening Consumer and Stakeholder Communication for Madhya Pradesh Power Sector Reform* and *Legal Support for Madhya Pradesh Power Sector Reform*. [ANNEX B provides excerpts of the 2003 TA Report.]

In March 2007, ADB approved another US\$620M loan (*Madhya Pradesh Power Sector Investment Program*) that aims to: (i) meet part of the transmission utility capital requirements and meet the projected peak demand of more than 10,192 MW in 2012; and (ii) improve operating efficiencies, with focus on the reduction of distribution losses in distribution companies. The new ADB loan is a ‘multitranche finance facility’ (MFF) – i.e., in five tranches over 8 years – and provides for the undertaking of a ‘full consultation and participation process’:

“In order to strengthen the effectiveness of stakeholder consultation and participation in the implementation of the Investment Program, GOMP will cause each Executing Agency to undergo a full consultation and participation (C and P) process including: (i) stakeholder analysis, (ii) provision and disclosure of documents to the stakeholders, (iii) announcement of the date for consultation on specific issues, and (iv) adequate monitoring of the C And P process.”

Moreover, the 2007 financing framework agreement (FFA) between ADB and Government of India (GOI) records the “full set of warranties and representations of ADB operating policies and procedures on all crosscutting themes, covering safeguards, governance, anticorruption, financial management, procurement, and disbursement and subproject selection criteria.” ADB staff will inform GOI, and report to (ADB) Management, and the (ADB) Board on the status of individual loans, including the performance on warranties and representations. Failure to comply with any of these automatically will hold back additional financing under the MFF.” [ANNEX C provides other excerpts of the ADB’s Report and Recommendations of the President/RRP, Feb 2007.]

2. NO RESOLVED WORKERS ISSUES

ADB’s project reports on its assistance to the MP power reforms invariably conclude that there were no unresolved labor issues upon project completion. For instance, two ADB reports (June 2008/PCR; February 2007/RRP) cite only two outstanding issues that need to be resolved by end-2008:

- (a) Legally established trust funds to cover pension arrears: “Executing Agencies will have legally established trust funds to cover pension arrears by 31 December 2008.” (RRP, pp 24-25)
- (b) “Allocation of staff to the corporatized entities is presently provisional and is on an as-is, where-is basis. There is a common seniority list, however the chairman and managing directors are

initiated by Jan 2003; Reach an agreement with labor union by Mar 2003. IN: *Development of a Transfer Scheme for MP Power Sector Reform*, Technical Assistance Report (TAR: IND 36126), June 2002, p. 3 http://www.adb.org/Documents/TARs/IND/r127_02.pdf.

empowered to order transfers within their companies. ... The delay in formalizing the allocation of staff has not adversely affected the functioning of the companies.” (PCR, p 22)

ADB’s South Department also confirmed this when it informed PSI in February 2008 that there are no “no unsolved labor problems” in the Madhya Pradesh power assistance.

None of the above reports provide information on how MPSEB employees’ issues had been resolved, if at all. The PCR does not provide this information under sections on ‘Social impacts’ (pp 12-13) or ‘Status of compliance with major loan covenants’ (pp 43-46).⁹ This implies that MPSEB workers had not been scoped as project stakeholders; (b) the resolution of their issues are not included in major loan covenants, and (c) the resolution of employees’ issues are not part of any ADB monitoring for compliance. ADB reports that there are ‘no operational problems’ and ‘no follow-up action/specific monitoring required.’

ADB failed to report on MPSEB workers’ extreme dissatisfaction and agitation over sector reforms attached to the Bank’s loans and technical assistance. Workers’ legitimate protests and legal challenges had never been mentioned in any of the ADB reports, despite their wide coverage in media, as well as supposed consultations with the workers. The following are some of the protest actions made by MPSEB unions:

- Workers’ agitation and dissatisfaction with proposed reforms in the power sector had already been manifest since the late 1990s, when Ekta Manch – a joint forum of number of unions & Associations – was formed.
- When MPSEB was unbundled in June 2005, workers went on a ‘work to rule’ protest and observed ‘black day’, bewailed government for ‘deceiving MPSEB employees’ and challenging the basis ‘as-is-where-is’ decision.
- MPSEB workers filed many cases in court in which the High Court (Lok Adalat) intervened to resolve many in favor of MPSEB employees.
 - In 2004, amid attempts to abolish MPSEB and make the new companies totally independent, Engineers Association and Employee Unions filed court cases. As a result, Lok Adalat effectively stalled the transfer scheme; all employees are still with the MPSEB.
 - In December 2004, MPSEB and GOMP agreed before the High Court that service conditions of employees and officers would be protected. In 2005, workers’ representations and forceful arguments forced GOMP to issue an amendment of the 2003 Transfer scheme.
 - In 2005, a joint workers’ forum (MP State Coordination Committee of Electricity Employees and Engineers/MPSCCEEE) challenged the unbundling of MPSEB and raised the wage revision issue, among others. After a long battle, a high-level committee was appointed in September 2008 to resolve employees’ issues with finality.

[ANNEX D provides a chronology of MP electricity reforms & MPSEB unions’ actions.]

After 10 years of power reforms, MPSEB workers claim that nearly all their issues remain unresolved – they were not resolved prior to unbundling, during unbundling and till date. No issue stands resolved with finality. Key details of unresolved workers’ issues are presented next and categorized into (a) CLS and related labor laws, (b) financial issues and (c) policy issues.

⁹ ADB Project Completion Report, June 2008 <http://www.adb.org/Documents/PCRs/IND/29473-IND-PCR.pdf>

3. COMPLIANCE WITH CLS & RELATED LABOR LAWS

In 2006, ADB published its *Core Labor Standards Handbook* which commits the Bank to comply with internationally recognized Core Labor Standards (CLS) and related labor laws in the design and formulation of its loans. All ADB interventions must be designed and formulated in accordance with the CLS; as part of its regular loan reviews, the Bank will monitor CLS compliance. CLS 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. In 2001, ADB's *Social Protection Strategy* that provides:¹⁰

“All ADB interventions must be designed and formulated in accordance with the Core Labor Standards...ADB will 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 (e.g., minimum wages, safe working conditions, and social security contributions, etc.) as well as with the CLS. As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.”

[See ANNEX E on how CLS should be incorporated into ADB's Operational Cycle.]

3.1. Freedom of association & collective bargaining

Workers form unions primarily to improve wages, hours, and working conditions; where trade unions are able to operate openly and are recognized by employers, they may negotiate with employers over wages and working conditions. Any activity undertaken by employers, their proxies and governments which subverts or hinders workers from freely organizing, joining and maintaining trade unions is a violation of workers' trade union rights, and is not in compliance with the CLS on freedom of association and collective bargaining. Such 'union busting' includes a wide range of activities such as sowing discord among union members, challenging unions via law courts, strike breaking, lockouts, violent suppression, sponsorship of anti-union organizations, or creation of employer-controlled trade unions.

- (a) Arrests and mistrust sown among workers. In 2000-02, proposed reforms in MPSEB and the power sector as a whole triggered much agitation among workers. There was a lot of mistrust and arrests had been made.
- (b) Non-recognition of unions. Currently, MPSEB has 37 registered unions under the TU Act (Class III-IV); none of these unions are recognized by MPSEB. Earlier only one union was recognized, and had to go to court to get recognition.¹¹ Engineers Association, Diploma

¹⁰ <http://www.adb.org/Documents/Handbooks/Core-Labor-Standards/default.asp>;
http://www.adb.org/Documents/Policies/Social_Protection/default.asp

¹¹ In October 2005, the GOMP issued an ordinance to de-list a recognized MPSEB union (Karmachari Sangh) and seven other workers' unions from the purview of MP Industrial Relations Act 1960 (MPIR Act). The unions filed a petition in court, decrying this action as anti-labor. In February 2006, the MP High Court quashed the amendments made by GOMP, and the unions remained in the list and recognition was also restored. *Union hails HC verdict on MPIR*, Hindustan Times, February 27, 2006

(Junior) Engineers Associations are deemed ‘managerial categories’ and cannot be registered as trade unions.

- (c) Collective agreement withdrawn. Electricity has been transferred out of purview of MP Industrial Relations Act (the State Act), yet Industrial Dispute Act (or Central Act) provisions are also not implemented. IR Act 1960 provides that representative and recognized unions had power to enter into collective bargaining. Over the past three years, no Act had been followed; no union had legal power to enter into negotiations with companies. There is no existing tripartite agreement in MPSEB, unlike in Gujarat and Andhra Pradesh.
- (d) Harassment of trade union leaders. Harassment continues till date. There are a number of problems which remain unresolved, if someone has to talk about the problems, he has to face the consequence. MPSEB unions say workers are now living in an atmosphere of fear. They get harassed by ‘transfer charge sheets’ where workers get assigned to another place as an indirect form of punishment. Simple transfer is already a punishment, but when a whole family gets displaced – children need to go to another school, spouse need to relocate or change jobs, etc – this is already economic punishment. If a worker gets a job suspension and this goes to media, this is a source of big social stigma. In absence of formal and informal grievance mechanisms, employees are also afraid to go to the court for fear of punishment for going against management. There are many employee disputes still pending in the courts, and simply filing a case is cumbersome, and appeals are very costly.
- (e) No formal or informal grievance mechanisms. Earlier, proportional representation was used at the Joint Management Council (JMC) which meets at regular intervals; once a decision is taken, these should be respected by all. After unbundling, the JMC and other formal and informal systems are no longer in place.

3.2. Elimination of forced or compulsory Labor

Since 2006 until December 2008, the right to opt for Voluntary Retirement, under fundamental rules, has been banned, making MPSEB the largest organization of bonded labor. Due to funding constraints, the decision was made not to offer voluntary early retirement as a means of reducing staff costs. Earlier, ADB consultants had urged the Chair and Managing Directors (CMDs) to reconsider this decision because, when implemented properly, early retirement could provide a ‘very high return on investment’ and ‘trouble-free method of reducing employment costs’.¹² Employees were not allowed to leave MPSEB nor allowed to retire, in a state of bonded labor. When the ban on voluntary retirement was imposed, the employees went to court. With the ban, nobody could retire; if they file for retirement, they could not avail of pension. There was no additional staff and service is getting affected; this was particularly felt on lower level employees, officers’ powers are cut, treated like slaves. Workers were forced to work over time with no additional benefit. Moreover, when the Companies were created in 2005, employees were not given the option where to go, unlike in Orissa in 1996 where it was mandatory for the employer to give options. Though inter-company transfers are allowed, they are difficult to avail.

¹² *Development of a Transfer Scheme for MP Power Sector Reform* (ADB TA 3882-IND), Executive Summary, Vol I: Employment Data & Transfer Scheme, 30 August 2003 (32 pp)

3.3 Elimination of discrimination

Two issues are identified here. First is the potential for discrimination in appointment of employees to the new Companies. As of yet, no guidelines are in place (e.g., hometowns, number of years, service period in transmission, competency); the issuance of clear-cut guidelines will prevent bias or discrimination in work assignments, as many would opt to be assigned to the more profitable Transco. Second, some Companies appear to be addressing issues of gender discrimination, e.g. in recruitment process – out of 48 people, 14 are women. Women are well-equipped to perform jobs as well as men – e.g., system study, design EHT lines and ss, oil testing labs, they are in corporate office procurement, issue of bids, inspection of equipment, two women in HR core faculty, one in the design of city transmission system.

3.4 No recruitment for 15 years

Some conditions under the ADB-assisted power reforms were that no recruitment should take place, and that the workforce strength be reduced. Moreover, MPSEB reduced the retirement age from 60 to 58 years. All this resulted in adverse impacts on MPSEB employees -- increasing pressure and excessive workloads on the existing workforce; increasing average age of workers; understaffing; lower quality of electricity service; increasing dependence on outsourcing; and looming threat of 'pocket privatization'. In view of a white paper issued by CEA, estimating the total additional manpower requirement in next 10 years at about 10 lack (including about 60000 Engineers and 1,20,000 Supervisors), the no-recruitment policy is a big challenge for the future.

- 97,000 staff in 1991-92, but now only 48,000 not matching with the increased workload.
- Work load 2-3 times, but work force halved.
- No recruitment after 1992, complete freeze among Junior Engineers (all permanent).
- Actual line men in shortage.
- Consultants generalize – 10,000 class iv (but only 4000 are linemen, others are helpers, truckers, etc) – so they recommend no recruitment in class IV.
- Many took retirement out of fear of not getting pensions.
- Retirements were not replaced by corresponding recruitment.
- No proper planning in recruitment.
- Reducing the work force affects the quality of public service.
- Poor public services pave the way for the service to be privatized.
- In Maharashtra, there are 1,000 new recruitments every year, compared to none in MP.
- Recruitment should be done, if not done many problems will crop up.
- The policy of non-recruitment also weakens trade unions.

3.5 Inferior & unclear service conditions

The employees transfer scheme did not provide protection to labor, pension and service conditions; there was no clear assurance that service conditions would not be inferior after unbundling. In spite of earlier assurances that there will be no change in service conditions and the Lok Adalat decision in 2004, these are being tampered. Workers were told that they will get better service conditions but contrary is true. Inferior conditions, excessive workloads, and the lack of norms for work assignments lead to a continued state of fear and uncertainty among workers.

- After reforms, conditions of employees much worse
- Employees are told there is no additional revenue to give extra wage benefits.
- Working hours are more than 12-13 hours, no holidays, 2-3 times work load, no additional financial benefit.

- Work load norms are not fixed. You may be fired one day for the same thing that was ordered before. Nothing clearcut in procedure, all whimsical. Responsibilities are not defined. Even persons assigned to specific tasks, also asked to do work in other sectors (office plus revenue recovery).
- Employees are forced to perform jobs other than assigned jobs – e.g. Meter reader should do meter reading but section officer is forced to do this. Ministerial staff is asked to do revenue collections. Women are asked to take meter reading, door-to-door revenue collections in areas with big threat of law and order which sometimes is risky work for women.
- There is much uncertainty; no one knows whether at end of day, he/she will get punishment, memo, go home safely, no continuity of policies.

3.6 Benefits & facilities withdrawn

Some 25 benefits and facilities have been withdrawn or curtailed – including Leave surrender, LTC, Home travel concession, Leave encashment, Commutation of pension reduced, Holidays (only 8 holidays vs 30 for everybody else), Overtime allowance curtailed, HRA payment was stopped if employees preferred to stay in own houses, Accidental insurance scheme, Food Grains advance, House building advance, Car advance, Motorcycle advance, Compassionate employment (which was restored in Chattisgarh). Civic and welfare committees became dysfunctional. Employee benefits are frozen.

3.7 Degradation of hierarchy

Serving officials of SEB are neglected, but retired employees are given key positions in the reform process, vested interests are installed in key positions, workers' confidence, pride and security is shattered. This leads to increased political intervention; Immature decisions; Lack of ability to coordinate; No grooming of people.

Companies run by retired bureaucrats. Retired employees are running the show, MPSEB is more of 'Retired Board.' Regulatory committees have become parking places of retired bureaucrats. A number of persons engaged after retirement on contract (work norms written), with such contracts given on basis of favoritism.

(a) Increased political intervention. Below are some issues:

- Workers claim that ADB's PCR (June 2008) report on independence of the Board is incorrect. There is no independence of the Board; now everything is run by bureaucrats. Independence of Directors is only on paper; their expertise is not related to power.
- Every company has a Board of Directors (4-7 members); quorum is formed by 3, and 2 are government representatives. The collector is government representative; he cannot act independently.
- Everything done to appease political motives; policy of 100% meterization in agriculture, not implemented, ~90% of agricultural sector still unmetered.
- Before reforms, direct control of government in day-to-day operations was less; from 1 June 2005, companies report directly to government.
- Earlier MPSEB used to be run by technical persons, although also from bureaucratic side (Indian civil services), but opinion given by technical persons are respected. Bureaucrats have taken control of discoms which technical people earlier used to control utilities; in all the three discoms there are no professionals in the Board.
- Top-level management is easily influenced.

(b) Immature decisions. No person is in a decision-making position, e.g., Genco CMD if approached would refer the person to SEB, SEB would refer to Government. Blame game is prevalent – management blames employees, employees blame management. People have no trust, no confidence. Workers believe many problems lie with top level management, e.g. allegations of corruption.

- (c) Lack of ability to coordinate. Workers do not have feeling now that they are moving in a definite direction; everything had been left to fate. If people do not see where organization is moving, people do not perform well, no motivation.
- (d) No grooming of people. Senior people retiring, no training, no continuity of skills, no grooming of system, outsourced people will come. Even if new recruits will come, there will be no one to train. At present there are sufficient trainers, but no trainees. Talented engineers are not given opportunity, only retired people are given importance. In organization, technical persons should be treated at a higher level than office-level persons, but they are not being rated at par but below par; at entry level at par, but at a later stage some technical issues arise and they become below par.

3.8 Health & safety a much neglected issue

Power sector workers are risking lives everyday, working with livelines, just one mistake may lead to disability, even death. With unbundling, nobody has been paying attention to the health and safety of employees. Situation in the field has not improved. OSH accidents are reported at 272 persons in one year. After reforms mortality rate has gone up. Inhuman conditions, huge mental tension, workload is high, workers living in a state of continued uncertainty these are the most common complaints of workers across all categories. Lack of basic facilities; Substandard materials posing risks to life and limbs; Work overload; Aging workforce; Inadequate treatment and compensation in work-related accidents, even non-payment of compensation for fear of losing job; No OSH committee; Hazardous work for women – These are the major OSH issues resultant from power reforms that had not been addressed at all by HR consultants engaged by ADB/MPSEB. Additional work hazards is also brought about by public anger due to increasing tariffs and disconnections; employees have to bear the brunt of public anger, with increasing incidence of manhandling and physical beatings. Caught in between Government declarations of providing power as a social responsibility and fixation of responsibility on field staff for commercial recovery, officers and staff are facing threat to life and property: “Whether our services are welfare oriented are commercial...unless this is decided nothing can be achieved.”

- (a) Lack of basic facilities. No basic facilities for staff like water, toilets, rest places, computers etc. Victimization of employees reached its peak. Never in history employees accommodation facilities were worst, all employees are forced to opt for bourse quarter; if someone will protest – and go to court, then the threat is given, that he will be transferred to location where there is no water. Basic tools are not available. No material available, e.g fuses etc. No pliers, toolkit, hand gloves, no mobile van. No hydraulic platform, no life saving jackets. Overloading of transformers.
- (b) Substandard materials pose risk to life & limbs. Non-standard materials, no benchmarked practices – everything is coming in the name of reforms. Substandard material is used. One worker lost his hand while working on live wire due to puncture in the hand glove. Right hand was amputated, cannot get new safety glove. In name of reform, some practices are introduced. New set of fuse brought so that rural masses cannot tamper with package, the reason for a number of accidents throughout state. Material coming out changes in system coming out all has become traders of death. No quality purchases, no monitoring on that front.
- (c) Work overload. Too much work pressure. Difficult to follow the prescribed procedure when there is so much additional load, e.g. repair - cannot attend to 50 complaints in one day.

- (d) Aging workforce. Due to no recruitment policy, aged people (technical staff) cannot climb poles. Average age of workers is 48-50 years, and management expects they should work as any youngster of 25 yrs. Mental tension, employees are getting old but forced to work more.
- (e) No adequate treatment in case of accidents. In case of work-based accidents, there is no treatment. Standard life-saving drugs are not available. No proper care in case of accidents. Even the big hospitals do not have the standard life-saving drugs, doctors & nurses. In our hospitals doctors are on daily wages, so how can they pay attention on patients? Medical check-up, almost all will have problems.
- (f) Inadequate compensation in case of accidents. Below are some issues:
- Workers are at the mercy of officers, and compensation is not given. If someone is close to management, he will get payment immediately.
 - Starvation, deaths of accident victims, miserable conditions. One technical employee working on live wire and electrocuted, but his wife did not get any compensation. Having agony of accident, not being cared of by company in human fashion.
 - Even when employees meet accident during service, they are not taking care of employees, for getting their Employees Provident Fund, for getting their money.
 - No compensation for cases other than death, many times falls result in permanent disabilities.
 - If a person lost a hand, not more than 1 lakh compensation (~20,000 rupees); In case of death (1 lakh). Suppose backbone is not damaged but permanently disabled, worker becomes jobless and remains in wheelchair, there is no compensation because no death, but it is more costly to live with permanent disability. For partial disability, if he takes compensation he loses job, so he is not taking any compensation.
 - If MPSEB pays compensation, MPSEB asks you to leave the job; so employee will not insist on compensation so he will not lose his job; he will be transferred where one can work with only one hand.
 - Technical people who are doing actual work feel they remain the most neglected part of the system though they are the backbone of the system; they are not getting their dues even in case of death during accidents, disability, proper compensation not there.
 - Information is available from the unions about the names of workers who met accidents while at work.
- (g) No OSH committee. No Health & Safety committees – its job is limited only when accidents happen. Health & Safety person will come out, local police will come out. He will also lose his job, a compromise (I do not want other person to lose his job). No routine check-ups.
- (h) Hazardous work for women. Women are asked to take meter reading, door-to-door revenue collections in areas with big threat of law and order which sometimes is risky work for women.
- (i) Work hazard due to public ire over reforms in tariff rates. About 66 lakh consumers are angry with employees as tariff hike taking place. Workers and consumers are at logger heads, consumers not happy. Don't supply electricity, cut down electricity to non-payers. Conflict results in tremendous pressure on staff. Employees are beaten up, manhandled, physical harm. More than 70 incidences of employees being manhandled. People not only beat up staff but also damage things.

3.9 Lack of promotions & training

MPSEB workers bewail the lack of incentives such as promotions and training opportunities. People are not getting promotions after 20-25 years in service. Promotional opportunities have gone down; management argues that if people are promoted, who will do the job? There is no HR fund. In many cases, mutual consent of companies is required for promotions (e.g. of engineers). Technical persons who face threat to life but at present are given low priority, ask that they be given better treatment; non-technical staff, they say, are getting better promotions. Juniors get promotions in Chattisgarh, but not in MP. Instead of focusing on hard ware, donors should also invest in the soft ware or human resources. So many changes are taking place in technology, but employees not being trained properly. Earlier, employees used to get proper training, and only after 10 years of experience were they allowed to operate equipments; now inexperienced workers are operating equipments, if anything happens who will take the responsibility? External consultants who come in under various donor-funded TAs are the ones being 'trained' several times over, to the detriment of employees.

3.10 No redress of grievance

There is an absence of effective individual grievance redressal mechanism; much depends on personal relationship. For the resolution of labor management conflicts, neither provisions of State Act (MPIR) nor Central Act (ID) are being implemented. Though it is said that most of the terms of power sector reforms are implemented under the auspices of ADB program/project loans, yet no one is aware of any complaint mechanism under ADB loan. There is lack of information about the projects and safeguards provided to workers, if any, under ADB-assisted loans.

3.11 Outsourcing and contract labor

Labor rights protections are being undermined as permanent, regular jobs are being replaced by contract labor and unstable jobs, or 'precarious work'. Outsourcing involves the transfer of the management and/or day-to-day execution of an entire function to an external service provider. Jobs in all sectors are being outsourced or subcontracted from employment agencies, and short-term contracts have become more common. Many jobs have become temporary and workers in these jobs are subject to unstable employment, lower wages and more dangerous working conditions. They rarely receive social benefits and are often denied the right to join a union. Even when they have the right to unionize, workers are scared to organize if they know they are easily replaceable. Unionized workers are also harmed because with fewer members, they have less power at the bargaining table and less ability to grow. Outsourcing and contract labor contribute to worker insecurity, exploits lower paid workers, and has a detrimental effect on employees who face job disruption and employment insecurity. Moreover, the quality of service may also be adversely affected by outsourced, contractual work.

Due to the policy of no recruitment over the past 15 years, MPSEB unions report increase in outsourced and contract work, which include: Meter reading; Bill distribution; Powerhouse maintenance; Cleaning - coal handling plant, overhauling; Ss maintenance; Security of EHT ss; Patrolling of transmission lines; Computerization of records of Provident Fund and pension.

Outsourced employees are underpaid and have no proper training. They are among the most exploited workers, not being covered by labor laws such as minimum wage and other benefits. Some MPSEB unions provide membership to contract workers, but their plight is not paid much attention by management. For outsourced workers, the certification from contractors that they are

being paid minimum wages, EPF and group insurance is only on paper. Outsourced people who have accidents at work cannot claim any medical benefits. Contractor will not pay benefits, nor will MPSEB; statute is unclear if the MPSEB is the ultimate employer. MPSEB can easily claim that the workers were trespassers (as their IDs would have been issued only after completion of their work, again only on paper). Although bidding and procurement documents may require contractors to afford their workers certain protection, this is not being actively monitored by MPSEB.

MPSEB unions argue that outsourcing should not be resorted to for various reasons:

- O&M work should not be outsourced; new ss are being manned by outsourced workers which is a violation of electricity rules specifications.
- Meter reading should not be outsourced; a meter reader is a key person in revenue generation and his work will affect the commercial viability of MPSEB.
- A low-paid worker cannot be expected to be properly motivated and committed; they do not have the same accountability as regular employee.
- Hidden costs of outsourcing and no recruitment include T&D losses, electricity theft
 - For instance, a meter reader who gets paid 2,250 rupees/month, after 2 months he goes around in a bike worth 20,000 rupees.

4. UNRESOLVED FINANCIAL ISSUES

It should be strongly noted that the Financial Restructuring Plan (FRP) under the 2001 ADB loan is still unapproved. Some action that had been taken include: (a) MSA bonds of 2749 Cr. (2003) were taken by State Government, but in return Government raised the equity stake; (b) Against dues of 1314 Cr. claim against free power (2004-06) was adjusted by withdrawal of equity. As of now, MPSEB technically has no asset, no source of income, and financial liabilities to employees are part of MPSEB. These liabilities, however, do not appear in the MPSEB balance sheet, but only in footnotes. It is unclear, however, how unresolved employees' financial issues are being addressed in the FRP, and how ADB is monitoring its approval and implementation.

Of employees' financial issues, legally binding periodic wage revision is one of the biggest casualty; two wage revisions have already taken place at Chattisgarh SEB (CSEB). Terminal benefits including pension are also under severe risk. A number of facilities were withdrawn, e.g. Earned Leave (EL) encashment, Leave Travel Concession (LTC), House Rent Allowance (HRA), etc, no relief till date, while in CSEB all these have been restored. The section below provides the status till date of employees financial issues.

4.1 Pension Fund Default / Liability

ADB's 2002 TA report (Development of Transfer Scheme) had flagged pension fund as one of the major concerns of MSPEB employees: "...timely decision by MPG on treatment of pension liabilities would expedite the negotiation process, as it was one of major concerns of MPSEB employees." (p. 3) In 2003, pension fund liability was estimated to be Rs 3910 Cr (\$ 870 Mn); updated to about 4500 Cr on 31st March 2005. Unfunded pension liability may now be over Rs 6000 Cr (above \$1.3 Bn); actuarial revaluation may be about Rs 7000 Cr.

Past unfunded liabilities pertaining to terminal benefits had been parked in the State Transmission Utility (Transco), and GOMP had provided for discharge of pension liabilities out of revenues. In

May 2005, provision for pension liability was made in the Balance sheet of Transco (as regulatory asset) at 3910Cr (\$ 870 Mn). However in the final balance sheet (as of June 2008), it stands deleted from the books. Though statutory auditors have stressed that compliance of Accounting Standards provision for terminal benefits (AS-15) is a must, yet no company is making a provision for Terminal dues. Statutory auditors have declared this as violation of AS-15. Pension fund liability is also affecting the credit rating performance of Transco.

Although pension liability is being passed on to consumers as a pass-through tariff (1%), this is not being deposited by the utilities in the pension fund. The Energy Regulatory Commission (ERC) is now asking utilities to first deposit the pension fund and only then will they allow to recover from tariffs. Chattisgarh (CSEB) is making enough provision (11.5% every month) and is raising 2200 cr towards pension fund.

When pension is demanded from management, the response they get is – *do you want your pension or your salary, you decide*. Even if employees go to court, the managers would have retired from office before this issue would be settled.

- STATUS: Pension Trust was formed to cater unfunded liabilities; out of total amount of Rs 5000 Cr (about \$ 1Bn), only Rs 5 Cr (\$ 1Mn), or 0.1%, have been contributed till date, 4 years after unbundling.

4.2 Pension Commutation

There is a facility for commutation of pension as per central rule – now the formula has been changed without due consultation and to the detriment of employees, number of years reduced, became 50% of what was used earlier. In Chattisgarh, commutation as per central rule is restored.

- STATUS: Formula changed to detriment leading to a huge reduction in commutation amount.

4.3 Employees Provident Fund (EPF)

In 2003, the EPF commissioner detected that MPSEB has diverted about 200 Crs from Employees Provident Fund, a criminal offense. A court case is still pending with the High Court. In a meeting with the Chief Minister, default has been admitted, but it is yet to be remitted back. In April 2005, the court ordered Interim Relief in favor of Employees.

- STATUS: Default of about Rs 251.79 Cr (about \$ 55 Mn) is yet to be made good.

4.4 Earned Leave (EL) Encashment

- STATUS: An estimated Rs 263 Cr (about \$ 60 Mn) remains unfunded.

4.5 Wage Revision

In April 2005, Court instructed setting up of a wage revision committee under chairmanship of a retired Chief Justice; after a year, wage revision finally took place in April 2006. Arrears from April 1999 to October 2003 were not paid. A number of recommendations of the committee were not implemented. For MPSEB wage revision is due since 2004, no response from the GOMP. In Chattisgarh, wage revision already took place twice, in 2000 and 2005, and a third revision is due in 2009, there is a commitment from the government to this effect.

- STATUS: Major arrears not paid for the duration April 1999 – October 2003.

4.6 Insurance premium

Between 1998 to 2002, insurance premium deducted from salary was not remitted to Life Insurance Corporation of India (LIC). About 2,000 persons suffered. Only after court intervention, employees/families got the dues. The compensation in group insurance has not been revised since 1989 to take into account the current situation.

- STATUS: Group insurance compensation not realistic to the current situation.

4.7 Dearness Allowance (DA)

- STATUS: DA arrears Rs 270 cr not paid till date, pending since July 2000.

5. UNRESOLVED POLICY ISSUES

MPSEB workers have continually raised concerns on the multi-faceted and unresolved issues of power sector reforms in Madhya Pradesh which are not only related to employees issues but also to larger policy issues. The unions have called for a thorough review of the unbundling philosophy of power sector reforms as the “urgent call of the day,” especially in light of new Appellate decision (July 2009) that unbundling is not mandatory, a decision of far reaching importance and deserving of a close look:

On 15th July 2009, the Appellate tribunal on Electricity, the highest judicial body under Electricity Act 2003 (appeal against which lies only before Supreme Court), opined that Unbundling of SEBs is not mandatory under the provisions of EA 2003. Any one person can continue the business of Generation, Transmission and Distribution simultaneously. It has shattered the myth created and propagated by the Central Government and many state governments that formation of multiple companies is mandatory and unless the same is done no reform is possible. Interestingly, Mr Ramchandran who had been one of the staunch supporter of reforms and advocated unbundling of State Electricity Boards in many states, appeared in this case on behalf of Jindals (JSPL - a private company) to state that the three functions can be done by one company.¹³

5.1 Unfunded generation subsector

One of the biggest problems has been lack of capacity addition. At one time it has been said that ADB threatened GoMP that if capacity addition is done by MPSEB, ADB will withdraw the support. Power plants are not getting funds for maintenance, blame is put on managers. Power shortages result in simultaneous loading of feeders increasing technical losses and transformer failure. At Chattisgarh (CSEB), with same staff, utilization factor is 82%, while MPSEB is still hovering at 70% because MPSEB is not getting funds.

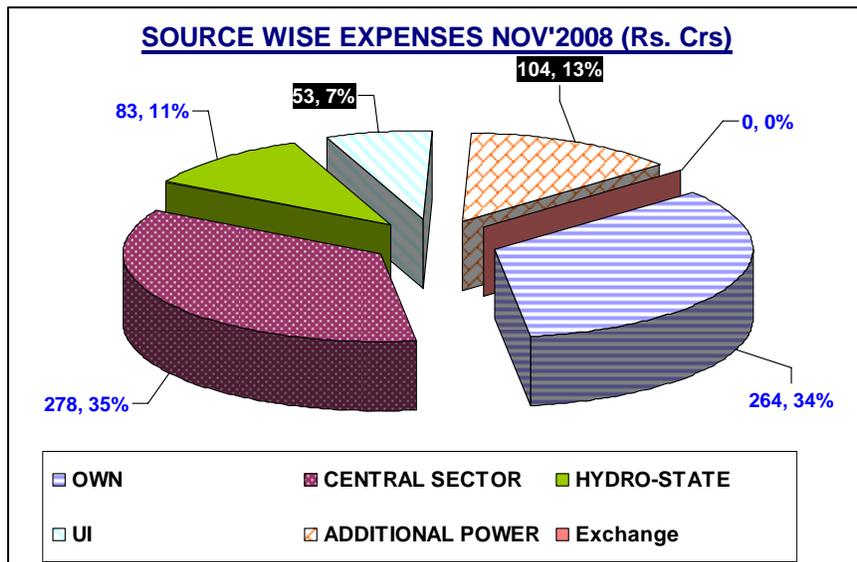
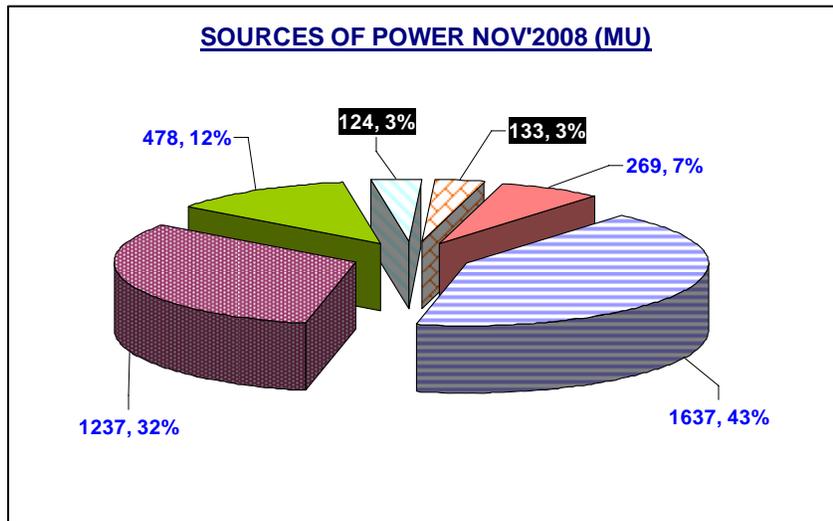
5.2 Over-reliance on expensive private power

There was no emphasis on own generation capacity addition, instead private players were relied upon. Workers have alleged that reform programs were designed to benefit private companies. However, no cheap private power came in; not a single mw came in. Due to excess dependence on private sector, shortages forced MPSEB to go for high cost power purchase, breaking its financial

¹³For the Appellate decision, see: <http://isslerhall.org/drupal/content/india-power-reforms-appellate-decision-july-09-unbundling-not-mandatory>

back. Power shortages also resulted in over loading of LT feeders, higher tech losses, transformer failures & public unrest.

- In 1991, Korba East 100MW plant was sold for 17 Cr. Now, 3 units of 100MW power plant were sold at 17 Cr. only.
- Too much reliance on power purchases.
 - In February 2008, for 5% power, MPSEB paid 20% of revenue. The cost of short term power is above Rs. 8 per unit, Central Sector about Rs. 2.12 per unit, while own power costs only Rs. 1.56 per unit.
 - Huge Unapproved Short time power purchases – 2005-06 to 2007-08 – amounted to 2188 Cr.
 - In November 2008, MPSEB paid Rs 1570mns (20% of Expend.) for just 257 MU (6% of power fed).



5.3 Increased expenditures

Unbundling of MPSEB increased A&G expenses more than two fold and lead to additional tax burden of about 8000 million rupees.

- Increased Expenditure on companies ('Establishment Expenses')
- Huge unapproved short time power purchases amounting to 2188 Cr.
- Avoidable Income Tax Payments (19 Cr.)
 - System is in loss but components are in profit, hence paying taxes.

5.4 More bureaucracy and inefficiencies

One (1) CMD will have 6 advisers, In the past, one person to oversee all operations, no emails, no cellphones, no fax but service is provided even in remotest areas; now 4 different persons do one task.

5.5 Tax apprehensions

- Due to transfer of functions from MPSEB, which was statutory body, to new companies, additional tax demand of about 760 Cr. (\$ 170 Mn) have been raised by various tax authorities.
 - Service Tax on Discoms – more than 600 Cr. (notices in ~June 2008)
 - Service Tax on Transco – above 70 Cr. (Notices in June 08)
 - TDS on Discom above 90 Cr. (Notice Received in Sept 08)
- While the system is in loss, the components show profits. In the last 2 years, it resulted in avoidable income tax payment of 19 Cr. (\$ 4 Mn).
- Unbundling increased A&G expenses more than two fold and lead to additional tax burden of about 8000 million rupees.

5.6 Improvement in T&D due to continued state subsidy thru ADB loans

Over the past two years, some things have improved. T & D losses have come down. But these improvements are also taking place in states without ADB funding, and more so in states without ADB loans (see paper by Indian Institute of Public Administration/IIPA) – 10% T&D losses in MPSEB, 11% CSEB. Being a comprehensive sector, however, bottlenecks in generation and distribution remains. More problems remain in the field; even if there are more subtransmission lines, power consumption has gone down. Although Transco is benefited by ADB loans, consumers had not benefited. Workers question where revenues are going, as there is none for extra wage benefits.

5.7 High tariffs cause conflicts, public ire & workers bear the brunt

Reforms brought about conflicts in society. In the 1990s, MPSEB tariffs were very low, the public was happy, service were of such quality it did not become a political issue. Media has become increasingly aware of electricity issues which has also become a big political issue; a news correspondent was even given an award recently due to his reporting on electricity. Farmers' suicide has gone up with high electricity prices. As tariff hikes are taking place, additional burden is placed on consumers, and about 6.5 million consumers are dissatisfied and angry with MPSEB employees. Caught in between Government declarations of providing power as a social responsibility and fixation of responsibility on field staff for commercial recovery, officers and staff are facing threat to life and property. Unions raise the question: *"Is SEB unbundling for increasing tax revenue of Government of India, or for subsidizing the cost of expensive private power?" If so, who will bear the brunt? If these costs are passed on to consumers, then who will face consumers' annoyance?*

6. COMPLIANCE WITH ADB'S OPERATING POLICIES & PROCEDURES

In 2007, ADB and the Government of India (GOI) entered into a Financing Framework Agreement (FFA) for the new MP power loan (MFF). The FFA binds both ADB & GOI to observe the “full set of warranties and representations of ADB operating policies and procedures on all crosscutting themes, covering safeguards, governance, anticorruption, financial management, procurement, and disbursement and subproject selection criteria.” ADB staff will inform the GOI and the Bank’s Board on the status of individual loans, “including the performance on warranties and representations. Failure to comply with any of these automatically will hold back additional financing under the MFF.”¹⁴ ADB’s operating policies and procedures are mandatory for all Bank-assisted projects; these are collected in the Bank’s Operations Manual (OM).¹⁵ This section highlights key policies and procedures that had not been followed during the implementation of the Bank-funded MP power sector reforms, especially as they relate to workers as key stakeholders in the reform processes.

6.1 Consultation & Participation

Consultation and other forms of participation (C&P) is a process through which stakeholders influence and share control over development initiatives, and the decisions and resources that affect them. C&P is supported by virtually all of ADB's sector and thematic policies, its business processes, and staff instructions. In April 2006, ADB published a *Staff Guide to Consultation and Participation* which provides practical tools and tips to make participation more accessible and effective in improving ADB operations.¹⁶ ADB’s *CLS Handbook* provides that trade union stakeholders are consulted and get to participate in all phases of the project cycle. ADB should ensure that a consultation process is developed during project implementation, including a plans and budgets for stakeholder workshops, training and briefing sessions for specific groups (e.g., trade unions, women’s organizations, and organizations working for the protection of child workers); discussion and awareness-raising sessions with workers under the project. The project completion report (PCR) should also have a factual record of problems encountered and how they have been overcome, and “the focus should also be on labor issues and how the CLS were implemented, if they were important in the project. Any adverse effects of the project on people, mitigation and compensation measures adopted, and the results of these measures should be assessed.” (pp. 99-101, 110)

ADB reports that MPSEB unions will be or had been consulted. ADB’s various project reports claim that MPSEB workers would be consulted in implementation of ADB power projects:

- Feb 2001: In early stages of 2001 loan, “workshops were held in June 1999 and October 1999 to introduce various power sector reform models. The second workshop was set against a background of a lively and noisy demonstration from workers unions from MPEB strongly defending the status

¹⁴ ADB Report and Recommendation of the President (RRP), Feb 2007
<http://www.adb.org/Documents/RRPs/IND/32298-IND-RRP.pdf>

¹⁵ <http://www.adb.org/Documents/Manuals/Operations/default.asp?p=aadb>

¹⁶ <http://www.adb.org/participation/toolkit-staff-guide.asp>;
<http://www.adb.org/Documents/guidelines/strengthening-participation-for-dev/default.asp>

quo.” An Employees Transfer Scheme would be developed where MPSEB employees would be transferred to successor entities in a scheme “in agreement with its labor representatives.”¹⁷

- June 2002: ADB’s TA consultants were tasked to (a) develop a ‘labor participation strategy’ vis the development of the employee transfer scheme; (b) formulate a framework and process for consultation with MPSEB employees. This process would be done ‘in full consultation with MPSEB employees... The final stage will be a negotiation with labor representatives.’ A timely decision by MPG on treatment of pension liabilities will also expedite the negotiation process, because it is one of the major concerns of MPSEB employees.”¹⁸
- Aug 2003: “The unions have been given assurance that there will be a process of consultation prior to implementation of the transfer scheme. A negotiating committee had been formed, and the major likely issues likely to arise had been identified – backdated wage claims; reduced DA; assurances on pensions liabilities; assurances on payment of compensation to employees dying in work-related accidents; assurances that employees contributory pension payments are actually passed on to the insurance company; and various other miscellaneous issues. The report produces what is probably the ‘most comprehensive consolidation of MPSEB service rules and conditions that exists in one single place’, and identifies where management believe changes are necessary... The (ADB) consultants had already prepared a ‘Transfer Notification’ for (GOMP) Cabinet, and a revised draft of the Service Rules, to enable settlement to be reached with the unions.”¹⁹
- March 2005: “The draft transfer scheme underwent rounds of discussions and consultations with various stakeholders and was mutually agreed on between GOMP and ADB. The Cabinet of GOMP approved the finalized transfer scheme on 28 August 2003. The transfer scheme has been approved and implemented in phases. The final phase, the completion of transfer of personnel was completed in September 2004. No follow-up action is required.”²⁰
- Feb 2008: “Employee transfer was agreed to be with full participation and consultation of all affected.” (From: ADB’s South Asia Department)
- June 2008: “As various steps taken by the state government and MPSEB in implementing reforms and sector restructuring were well received by all the stakeholders and there are signs of improvement in power supply, tariffs, and operating efficiencies, no specific monitoring of the program is

¹⁷ *Final Consultants’ Report* by London Economics & Ian Pope Associates (Feb 2001): *Technical Assistance to India for the Madhya Pradesh Power Sector Development Project*

¹⁸ Outcomes and timelines were: Human Resources assessment completed by Sep 2002; New organizational and management structure developed by Oct 2002; Labor consultation framework finalized by Oct 2002; New service contract, performance measurement framework, staff compensation plan, retirement benefit plan, and voluntary separation scheme developed by Nov 2002 in full consultation with labor; Training and re-training programs developed by Nov 2002; Dissemination of a proposed transfer scheme to employees completed by Dec 2002; Negotiation with labor union initiated by Jan 2003; Agreement with labor union reached by Mar 2003. IN: *Development of a Transfer Scheme for MP Power Sector Reform*, Technical Assistance Report, June 2002 http://www.adb.org/Documents/TARs/IND/r127_02.pdf

¹⁹ *Development of a Transfer Scheme for MP Power Sector Reform*, Executive Summary, Vol I: Employment Data & Transfer Scheme, 30 August 2003 (32 pp)

²⁰ *Development of a Transfer Scheme for MP Power Sector Reform*, Technical Assistance Completion Report (TACR), March 2005 <http://www.adb.org/Documents/TACRs/IND/36126-IND-TACR.pdf>

required... All project components have been successfully implemented and are operating without any operational problems.”

MPSEB unions: No consultations took place. MPSEB union, however, are unanimous in saying that there had been “no consultations with unions at any point”, nor was there any participation from the unions in major decisions. Even letters of inquiry from unions were not being responded. Information about the ADB project had not been given to the unions at any time. MPSEB conducted an employees survey in 2004 with 5,000 respondents; 82% replied that reforms were being 82% carried out as per directive of IFIs such as ADB & World Bank. Workers believe that this is one of the weakest link in the whole process – the ownership of reforms. Without any discussion with unions, the Employee Transfer Scheme was notified in 2004; to oppose the scheme, the Engineers Association filed cases in court on behalf of the employees unions.

- No consultations with unions, even way back 1998 on objectives of the reform, not by ADB nor the management nor the consultants.
- Consultation with unions only as per wishes. Neither government nor ADB is consulting us. ADB in the last 6-8 years has never consulted us.
- ADB-TA consultants (ASI) had no more than 2 hours interaction with Engineers Association
- Never in history did any ADB mission meet the unions; if they did not meet with us, they did not meet with anybody else. As far as we know, no unions had been consulted.
- Workers were called in the name of seminar.
- Through there were seminars organized by government before restructuring, at no point in time, had the employees been taken into confidence.
- Nobody explained the whole process clearly to the workers. No prior consultations.
- Only one sided-decisions were taken.
- Workers were told they would be consulted first, but no proper consultation was done.
- Retirement benefits are not secure. Although pension trust was created, no money is credited to the account.
- Stakeholders did not welcome the reforms, and one only needs to read the newspapers for the public’s reaction.

6.2 Transparency & information disclosure

The Bank’s *Public Communications Policy* (2005) provides that ADB “shall share information with affected people early enough for them to provide meaningful inputs into the project design and implementation,” and that there is a presumption in favor of disclosure of information, in absence of a compelling reason for confidentiality. ADB also published a *Staff Disclosure Handbook* with procedures to guide Bank staff in making information and documents publicly available; each stage of project operational cycle requires certain documents to be posted on ADB’s website.²¹ MPSEB workers claim they only get informed after things have taken place and when these affect them directly. They only come to know about the reforms, by what they had been subjected to, or until orders had been issued. Even service conditions were not disclosed or discussed. No relevant ADB project document had been provided to MPSEB unions.

6.3 IPSA & SPRSS

An *Initial Poverty and Social Analysis (IPSA)* is mandatory for all ADB project and program loans, as early as possible in project preparation; this also aims to establish a participatory process amongst all stakeholders. IPSA is an early flagging exercise, designed to determine the scope, data

²¹ <http://www.adb.org/Documents/Handbooks/Disclosure/default.asp?p=disclose>

collection methods, specialist inputs, timeframe and budget expected for a poverty and social analysis that should take place as part of the overall project preparation. The Summary Poverty Reduction and Social Strategy (SPRSS) reflects the results of the poverty and social analysis carried out during project preparation or other due diligence. The key issues addressed in the poverty and social analysis are drawn from the issues identified by the IPSA; the SPRSS is a core appendix to ADB's report and recommendation to the President (RRP).²²

Under 'Social Safeguard Issues' of the IPSA and SPRSS templates, labor issues are flagged and categorized into: (a) Employment opportunities; (b) Labor retrenchment; (c) CLS. Depending on the significance of the identified impacts, some other plan or measures are included in the project design:

- Labor issues are likely to be significant when
 - o workers may lose their employment as a result of public or private sector restructuring;
 - o the project may change or influence labor market policies or practices; and/or
 - o the project will finance construction activities and there is a risk that these activities may not comply with national labor laws and regulations (e.g., related to minimum wage, safe working conditions, social security contributions, etc.) or with any of the international core labor standards, i.e., the project may involve (i) forced labor, (ii) child labor, (iii) discrimination in the workplace, or (iv) preventing workers from associating or collectively bargaining.
- Core labor standards issues can be identified using the following guide:
 - o Will the project finance infrastructure development carried out by civil work contractors? If yes, child labor issues, forced or compulsory labor, and equal wages between men and women for work of equal value may be relevant.
 - o Will the project involve public sector reform including the updating or revision of civil service or other labor-related policies and laws? If yes, legislation related to core labor standards, particularly on hiring or firing, may be relevant.

Some key findings on IPSA/SPRSS: (a) The 2001 ADB project document did not publish an IPSA on the ADB website. If no IPSA was undertaken, then not only was this non-compliance of a mandatory procedure but such negligence weakened the project design by the lack of an early warning system and an effective mitigation plan for the 2001 power loan. (b) The SPRSS in the 2007 RRP glosses over CLS and other workers issues, and excludes MPSEB workers as a distinct set of stakeholders:

- There is some inclusion of issues on child labor, OSH and other labor laws as they relate to construction workers:
 - o "Considering the possible presence of laborers not from the immediate project area for construction work, Executing Agencies (EAs) will take proper care during construction supervision to conduct information and education campaigns on the risks of HIV/AIDS and human trafficking, targeting construction workers at campsites. Also, EAs will ensure that the contracts for civil works require contractors (i) not to employ or use children for labor; (ii) to 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 (iii) to follow and implement legally mandated provisions on labor (including equal pay for equal work), health, safety, sanitation, and working conditions." (p 83)

²² See IPSA and SPRSS templates at: <http://www.adb.org/Documents/Others/Social-Analysis-Toolkit/sat0700.asp>

- The 'Participation Process' does not identify workers as a distinct set of stakeholders, and consequently, does not provide information on a C&P process with workers (pp 81-82)
- Social Safeguards and other Social Risks: "No job will be lost. The project is expected to generate employment opportunities for local communities during the construction and maintenance phases." (p 83) This is an incorrect assessment of the risks posed to MPSEB workers.
- 'Other Risks/or Vulnerabilities': 'Not significant risks; no plan required.'" Again, an incorrect assessment.

7. SUMMARY & RECOMMENDATIONS

After 10 years of power reforms, MPSEB workers claim that nearly all their issues remain unresolved – they were not resolved prior to unbundling, during unbundling and till date. No issue stands resolved with finality. The unions report that no consultations took place nor were the unions provided relevant information about any employee transfer scheme. The ADB-assisted MP employees transfer scheme did not provide adequate protection to labor, pension and service conditions. Core labor standards were not respected. They have expressed deep anxiety over the status of their service conditions and job security after the reforms. All these have resulted in employees' humiliation, frustration, low morale, demotivation and reduction in service performance levels, contrary to ADB claims of 'no adverse effects on functioning of the companies.'

7.1 On Compliance with CLS & Related Labor Laws

Compliance with the four CLS and labor laws has been weak during implementation of power sector reforms in Madya Pradesh. Reported union-busting activities that infringe on workers rights of freedom of association and collective bargaining include harassment of union leaders, arrests and mistrust sown among workers, non-recognition of unions, and withdrawal of collective agreements. Since 2006 until December 2008, the right to opt for Voluntary Retirement has been banned, making MPSEB the largest organization of bonded labor. MPSEB's policy of no recruitment resulted in adverse impacts on working – increasing pressure and excessive workloads on the existing workforce; increasing average age of workers; understaffing; lower quality of electricity service; increasing dependence on outsourcing; and looming threat of 'pocket privatization'. Workers were told that they will get better service conditions but the contrary is true; inferior conditions, excessive workloads, and the lack of norms for work assignments lead to a continued state of fear and uncertainty among workers. About 25 facilities and benefits have been withdrawn or curtailed – including Leave surrender, LTC, Home travel concession, Leave encashment, Commutation of pension reduced, etc. The degradation of hierarchy or lack of grooming within the organization has led to immature decisions and increase in political intervention. Health & safety became a much neglected issue with unbundling. These are the most common complaints of workers – inhuman conditions, mental tension, huge workload, continued uncertainty, lack of basic facilities, substandard materials posing risks to life and limbs, aging workforce; inadequate treatment and compensation in work-related accidents, no OSH committee, hazardous work for women. Lack of promotions and proper training and the absence of effective grievance mechanisms for resolution of labor management conflicts are also major problems faced by unions. Due to the policy of no recruitment over the past 15 years, outsourcing and contract work is increasing, e.g. in meter reading; bill distribution; O&M, patrolling of transmission lines.

Outsourced employees are underpaid, have no proper training and are among the most exploited workers, with no protection from labor laws. O&M work should not be outsourced; aside from exploitative practices, other hidden costs of outsourcing include poor service quality and loss of revenues.

- RECOMMENDATIONS:

- (a) ADB should address the adverse impacts of inadequate social safeguards and non-compliance with CLS and social protection in MP power sector reforms, and ensure that solutions and mitigation measures are implemented in consultation with MPSEB unions.
- (b) Recruitment should start at all levels without delay.

7.2 On Unresolved Financial Issues

Unresolved financial issues include: Pension Fund Liability; Pension Commutation; EPF; EL Encashment; Wage Revision; Insurance premium; DA.

- RECOMMENDATION: ADB should closely monitor the approval and implementation of the Financial Restructuring Plan (FRP), identified as one of the 'deliverables' under the 2001 ADB loan. The FRP should include the full cost of power sector reforms, including unresolved employees financial issues.

7.3 Unresolved Policy Issues

- RECOMMENDATION: In view of the failure of the power sector reforms in ensuring commercial viability of the sector and making cheaper and quality power to all, MPSEB workers call for an urgent need for a thorough review of the unbundling philosophy. In India, the unbundling of State Electricity Boards was never needed; only their autonomy was needed to be assured of capacity additions, as promised in the earlier Act (Electricity Act 1948). Till review of unbundling philosophy, status quo should be maintained. The process of "Employee Transfer" from MPSEB to Companies should remain stayed. Any adventure in the form of 'pocket privatization' or 'franchisee' should not be allowed, particularly during the review period.

- (a) Learn lessons drawn from other Indian states. Though only 8 out of 20 big Indian states have unbundled SEBs, yet for the last 5 years, the top 4 slots as 'Best-Run States' (India Today Survey) and a leading market research firm 'MARG' are held by states having integrated public sector State Electricity Boards: "*Bigger is Better*".
- Himachal Pradesh has opposed the philosophy. Extension granted up to March 2009.
 - Punjab intend not to unbundled till LS elections. Cited that concurrence of all stakeholders is not available.
 - Kerala, when cornered by Central government for reorganisation, decided to go for single company model.
 - Tamil Nadu, under pressure from central government, decided 'in principle' to unbundle but will stick to two-company model instead of multi-company model.
 - Finally, the Federal Government is also realizing, although only partially, the ill effects of commercial model.

- Gujarat SEB – MIS system, did not hire (ADB) consultant, has a very strong public sector.
 - MPSEB is the only SEB with trading company, more than 10 traders.
 - In Orissa, all models – Unbundling / Management Contract / Privatization / appointment of administrator by ERC – have been adopted, but nothing improved.
 - In Delhi, Distribution was privatized. Government had to provide support of Rs 46000 mn (about \$1 bn) in five years. The Honorable High court, Auditor General and Parliamentary standing committee criticized the privatization. City still faces power shortages and tariff has gone up significantly.
- (b) Chattisgarh should be the reform model. Chattisgarh, which earlier was part of MP, has not adopted the reform model, till very recently. It should act as the model. Now it is the only state -- Having zero power cuts; Monthly cash surpluses; Satisfied Employees; One of the highest Plant Load Factors in country.
- (c) More imaginative subsidy management
- In final opening balance sheet the Discom equity is less than 30% of total fund employed, leading to huge cash outgo on interest. Loan should have been either waived or converted to Equity.
 - When sector is in loss, the RoE should have been Zero & not 14%.
 - Instead of adjustment of 460 Cr. tariff subsidy against interest on GoMP loan, there should have been cash support.
 - The liabilities arising out of State bifurcation, amounting to about 1272 CR, should have been taken over by GoMP and not by companies.
 - Old GPF liability of 251 Cr and REC liability of 335 Cr not taken over by GoMP, it has been transferred to companies.
- (d) Other solutions should be explored. A ‘one-size-fits-all’ model is a very convenient package for the bureaucracy and politicians who do not understand the situation of the power sector. Alternative options and solutions should be explored:
- An alternative option to consider to achieve better economy of scale and reduce non-productive overheads, the 3 Discoms (as well as Tradeco), having the same monopoly business on same rates, should be merged.
 - Generation capacity addition in public sector and assured funding for proper upkeep of running facilities should be given high priority. Reduction in power purchase bill will have much larger cascading effect than scattered investments.
 - Payment for every ADB-assisted consultancy should be linked with benchmarked actual deliverables. MPSEB workers claim that the role of consultants is comic and tragic; they created more confusion and chaos than any industry can bear.

7.4 On Compliance with ADB’s Operating Policies & Procedures

The 2007 Financing Framework Agreement (FFA) between ADB & GOI obliged each party to comply with the “full set of warranties and representations of ADB operating policies and

procedures” in implementation of the 2007 ADB power loan. More importantly, failure to comply will hold back additional financing under the MFF loan.

- RECOMMENDATION: ADB should take action on weaknesses in compliance of a number of ADB’s operating policies and procedures– Consultation & Participation; Public Communications Policy; Initial Poverty and Social Analysis (IPSA); Summary Poverty Reduction and Social Strategy (SPRSS); Social Protection Strategy; CLS Handbook.

7.5 Others

- (a) ADB’s procedures on IPSA and SPRSS should be strengthened by including more guide questions on the CLS of freedom of association and collective bargaining, as outlined in ADB’s CLS Handbook:

- Are there mechanisms for voluntary collective bargaining?
- How many trade unions are registered?
- Are there trade unions active in the sector of the economy concerned by the ADB activity?
- Does the government or employer put obstacles in the way of organization and collective bargaining?
- What type of union is it (general, sectoral, etc.)?
- Is there any type of affiliation (ITUC, etc.)?
- How many disputes are there relating to freedom of association and collective bargaining? Have any complaints been made to ILO?
- Are these disputes mainly with national or foreign enterprises?
- Do collective agreements cover aspects of core labor standards and, if so, which aspects?
- Are there free and independent workers’ and employers’ organizations at the national level?
- Are there tripartite bodies at the national level with representatives from the social partners? If so, are the workers’ and employers’ representatives selected by their own organizations or appointed by a government body?
- At the enterprise level are there bipartite arrangements, such as joint worker-management committees, to deal with disputes? Does the disputes procedure follow conventional stages?
- Are any such joint structures balanced so that neither mgt nor workers dominate in terms of a majority?
- Are worker and employer representatives appointed without outside interference?
- Have any worker or employer representatives been penalized for carrying out their activities related to freedom of association and collective bargaining?

- (b) Screening and categorization of ADB projects should also highlight impacts on labor/CLS such that, e.g, a ‘Category A’ project is likely to have significant impacts on workers and their unions, and a ‘Labor/CLS Development Plan’ is required; a ‘Category B’ project is likely to have limited impacts, and no specific action is required; and a ‘Category C’ project is likely to have minimal or no impacts on workers. Moreover, such a screening process should be sensitized to differentiated impacts on different categories of workers based on gender, age, nature of work (regular, outsourced, subcontracted, etc), and such other variations. Categorization of ADB projects based on labor impact assessments should be disclosed at the project website.

- (c) ADB needs to recognize and appreciate that workers are key stakeholders in ADB projects:

- Workers are a key and largely untapped resource; in a capital intensive service like power, the contribution of workers is essential at all levels.

- Use workers' knowledge in the water utility; workers are close to the production and know a lot about how the services are run and what users' needs are. Workers know about problems in running the operations. Workers will often have suggestions how to improve productivity and avoid bottlenecks. Workers will know from a workplace level what services work and what services need to be improved or created.
 - Workers are natural conduits to users with their direct contact with users; they are users themselves and get a lot of input during their work.
 - Workers participation can translate in gain for all partners -- higher quality and efficiency, safer jobs, fewer conflicts, regular dialogue and better reputation for the utility. Listening to the workers and recognizing their skills and knowledge will make workers feel part of a team. Regular dialogue will also reveal what might be controversial and solve problems before they become conflicts; conflicts are less when workers feel safe and trusted. Workers should also be involved at the earliest stage of any enterprise restructuring or implementing reforms.
 - Basic services that ADB assistance supports need a properly paid, trained and stable workforce. In all sectors, workers need to be properly paid, trained and supported to be productive. In many developing countries, key workers responsible for the crucial tasks of e.g., maintenance, connections and collection of bills are often so poorly paid that they resort to extra payments or bribes just to survive. Creating decent levels of pay is a pre-condition for delivering an efficient and effective service.
- (e) Workers also need whistleblower and witness protection. As internal project stakeholders, workers will have knowledge of integrity violations and misconduct but cannot denounce this publicly under threat of termination or other forms of harassment. ADB should include provide for whistleblower protection for workers in the implementation of its projects.
- (f) ADB should strengthen the Bank's institutional competence in identifying and addressing CLS and related labor issues in ADB projects by (i) creating a Labor Desk at ADB; (ii) recruiting more CLS/labor specialists as regular staff of the Bank; (iii) providing more capacity-building trainings on CLS/labor issues to operational staff; and (iv) increasing its interaction with trade unions.

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