

**Development at what cost?
An examination of the politics and pitfalls behind the revision of the
Involuntary Resettlement Policy at the Asian Development Bank**

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About the International Accountability Project:

The International Accountability Project (IAP) challenges destructive development projects that uproot and impoverish millions of people across the Global South. IAP advocates for international policies that respect the rights and livelihoods of local people threatened by unjust development, and we support these communities to hold their ground and defend their environmental, economic and human rights.

IAP was founded in 2003 by human rights lawyer Dana Clark to improve accountability at international financial institutions, and to defend the rights of people who are threatened with displacement by internationally-financed development projects. This work built on the stepping stones of accountability laid by decades of civil society campaigning to promote principles of justice, accountability, environmental sustainability, gender equity, development effectiveness, transparency, disclosure and participation at international financial institutions. IAP has been instrumental in shaping global standards and norms around involuntary resettlement and providing a voice to the forcibly displaced.

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*"We are poor and where shall we stand if they snatch the land away from us.
 We don't want the open coal mine even at the cost of our blood."
 -- Srimati Murmu, from the Santal community of Phulbari, Bangladesh
 26 November 2007¹*

This quote, from a woman in the Phulbari community in Bangladesh, refers to a massive open pit coal mine under preparation in her home town. The Phulbari coal mine will require the acquisition of 5,933 hectares of land (around 60 sq. km., 80 percent of which is used for agriculture) and will physically displace 50,000 to 100,000 people while cutting off resources used to sustain the livelihoods of at least 200,000 people. This human relocation and displacement is taking place in one of the most densely populated countries in the world. Land, specifically land used for agriculture, and other resources such as timber, fish ponds and bamboo trees, will not be replaced and the scope and impacts from dewatering around the project area will be severe. In short, the lives and livelihoods of tens of thousands of people will be irrevocably disrupted by the mining operation.

Clearly, the impacts from this mine are not limited to resettlement and displacement. According to the project design, eight million metric tons of coal will be exported by rail and barges through the Sundarbans, one of the three largest mangrove forests in the world which is also an international Biosphere Reserve by UNESCO. Four million metric tons would be transported to India through the rail network and three million would be used for domestic consumption. This international transport is planned despite provisions in the Bangladeshi mining law which prohibits the export of coal.

A vibrant grassroots movement has formed around the project and has been, unfortunately, met with gross violations of human rights. In August 2006, the Bangladesh Rifles, a paramilitary force, opened fire on tens of thousands of local people who were conducting a peaceful protest around the Phulbari project area. At least three people were killed, including a 14-year old boy, and several hundred people were wounded.

Despite the clear social, environment and human rights risks associate with this project, the Asian Development Bank (ADB) is considering the provision of significant financing—in the range of \$300 million—to the project sponsor, Asia Energy Corporation (AEC), a wholly owned subsidiary of GCM Resources based in the U.K. The ADB purports that its safeguard policies will bring a value added to the project, making a severely socially and environmentally destructive project less risky.

However, whether or not ADB involvement makes the project marginally more accountable should not be the sole determining factor for supporting such a project. ADB financing sends an important signal to project sponsors and the Bank has a responsibility to consider the full range of risks and the benefits of the project, and determine, among other things, if it is feasible for displaced people to reestablish their livelihoods so that, at minimum, “their economic and social future will generally be at least as favorable with the project as without it,” and, ideally, that they benefit from the project and improve their standards of living.²

While Phulbari stands out as a particularly egregious case, the concerns raised by this project are by no means unique. Unfortunately, they are representative of concerns raised almost across the board in ADB-financed projects causing involuntary resettlement. The fierce struggle of the communities in Phulbari vividly shows how strongly these thousands of local people mistrust and disagree with the course of development being imposed on their region, and the measures being proposed to mitigate its harm on their lives. Their protest is occurring at a time when the importance of strong social and environmental safeguards is being increasingly recognized, from the grassroots to global policy arenas. However, amidst this array of demands for stronger safeguards to ensure just and sustainable

¹ New Nation Report. *Revival of Asia Energy project: Phulbari people worried.*
http://www.meghbarta.org/nws/nw_main_p01b.php?issueId=6§ionId=19&articleId=527

² Asian Development Bank. *Involuntary Resettlement.* August 1995.

development, the ADB is revising its safeguard policies in a manner that threatens to weaken existing procedures and standards.

1. Introduction

In this paper, we overview the confluence of political and economic forces that have resulted in the ADB's Safeguard Policy Update (SPU). We first summarize the trends in development finance that have led to whole-scale review of the Asian Development Bank's Involuntary Resettlement Policy (and other safeguard policies), specifically the movement towards donor harmonization and the use of borrowing countries' safeguard systems. We include a summary of key initiatives employed by the ADB in response to the harmonization agenda and the impact that Middle Income Countries (MICs) have had on this response. This paper will then present a critique of current proposals from the ADB regarding revisions to its Involuntary Resettlement Policy highlighting some of the most dangerous flaws of the proposed new policy. Finally, we recommend concrete ways of reworking the policy that would provide meaningful protection and benefits for those people who are being asked to sacrifice their homes, lands and communities in the name of development. We explore arguments for why the ADB should instead be moving in a direction that would define international best practices for just and sustainable development, specifically in the area of resettlement and displacement.

2. Background on ADB Safeguard Policy Update

2.1. Donor harmonization and move towards country systems

Over the past several decades, the International Financial Institutions (IFIs) have grown in such a massive degree and have expanded their operations in so many countries that the administrative and procedural conditions to which a borrowing country must comply in order to receive development aid can be overwhelming and extremely taxing on the governments' capacities. In the past decades, the physical number of donor institutions has increased from seven in the 1960s to over 50 as of the start of the 21st century. But, perhaps more importantly, the portfolios of these institutions have expanded. The World Bank, for example, provided more than US\$24 billion in loans to its client countries in fiscal year 2007, compared to a total of US\$1.7 billion it committed in 1970.

This dramatic growth has led to a number of donors, all of which that have operational policies and procedures that differ in important ways, to operate in tandem in a particular country. For instance, a typical African country that has about 600 aid-financed projects each year submits 2,400 quarterly reports to different oversight agencies and receives more than 1,000 missions to appraise, monitor, and evaluate projects.³ Because of this, transaction costs for governments have greatly increased (this is also a problem for private companies investing in IFI co-funded operations) and administrative burdens almost exceed governmental resources. Through "harmonizing" donor packages, IFIs hope to develop a common set of policies and procedures, in order to lessen transaction costs and lessen the complexity for recipient governments when multiple donors operate simultaneously in their countries.

The harmonization agenda, though, goes even further than streamlining policies and procedures. As stated in the World Bank Development Committee's report from April 30, 2001:

In reality, harmonization is about more than reducing transaction costs. It is also about the broader goal of building aid recipients' capacity in operational policies and procedures – such as procurement, financial management, and environmental assessment – that are pillars of national management systems and of the international development architecture.⁴

In February 2003, leaders of the major multilateral development banks and international and bilateral organizations, and donor and recipient country representatives committed to the Rome Declaration on Harmonization. This declaration engaged institutions "to take action to improve the management and effectiveness of aid" and sets out an ambitious program of activities:

- Ensure that harmonization efforts are adapted to the country context, and that donor assistance is aligned with the development recipient's priorities.

³ World Bank. *Harmonization of Operational Policies, Procedures and Practices: Experience to Date*. April 13, 2001.

⁴ *ibid*

- Expand country-led efforts to streamline donor procedures and practices.
- Review and identify ways to adapt institutions' and countries' policies, procedures, and practices to facilitate harmonization.
- Implement the good practices principles and standards formulated by the development community as the foundation for harmonization.⁵

Following the Rome meeting on harmonization, several MDBs made an assertive effort to move towards the use of “country systems” in their operations. The World Bank was the first to explore using country systems and, in one of its Progress Reports on Harmonization, addresses the process of implementation of harmonization priorities. It states:

As donor agencies complete their stocktakings and reach consensus on good practice principles or standards, a key implementation challenge will be to voluntarily mainstream these good practice principles or standards into their operations, and apply them in specific country contexts. This process will take time and will occur at different speeds within different institutions. Some institutions may choose to formally adopt these principles and standards through their internal governance structures, and others may choose to apply them gradually on a case-by-case basis to their country operations.⁶

Indeed, various IFIs responded to the donor harmonization and country systems process in different ways. The World Bank, along with producing a number of studies on the need for a more “flexible” approach to lending particularly in middle-income countries,⁷ began implementing a “country systems approach” through a series of pilot projects in 2005. In 2006, The Inter-American Development Bank adopted the use of country safeguard systems whole scale, to be used in whatever project it felt appropriate.⁸ The Asian Development Bank, following a series of internal studies on such things as institutional efficiency, the Bank’s role in middle income countries (MICs) and managing for results, commissioned an update to its three safeguard policies (Environmental Assessment, Involuntary Resettlement and Indigenous Peoples) in order to begin the move towards use of country safeguard systems. Following is a brief overview of some of the key initiatives undertaken by the ADB, all of which have influenced the objectives and direction of the Bank’s safeguard policy update.

2.2. ADB reorganization, the Innovation and Efficiency Initiative, and Managing for Development Results (2002-2004)

As part of its analysis on moving towards harmonization and use of country safeguard systems, in 2002 the ADB conducted a “reorganizational” study “to assess the capacity of the current organization of ADB to effectively and efficiently implement” its long-term strategy framework.⁹ Among other things, this study clearly indicated the need for a new role for the ADB in the Asia region. It states that: “In the last two years, ADB has further reassessed the development needs of the Asia Pacific region. While much has been achieved by some DMCs, the region still houses the majority of the world’s poor and disadvantaged.” Simply put, despite the Bank’s efforts in Asian countries, much of the region’s population continues to struggle with poverty.

Several initiatives focused on the Bank’s effectiveness and role in development finance in Asia sprung from this study and, in some ways, fundamentally changed the vernacular of ADB. For the past several years, key phrases such as “development efficiency”, “managing for results” and “a new business model” have been commonplace in the halls and literature of the ADB. In 2002, the Bank approved a reorganization of its operational structure, “so that it can better deliver its mandate of poverty reduction and effectively respond to the needs of its developing member countries (DMCs).”¹⁰ Soon after that, the Bank announced the Innovation and Efficiency Initiative (IEI) which had the objectives: “to reduce ADB’s transaction costs to its clients; for ADB to be more results-oriented, flexible, and

⁵ Aid Harmonization website. <http://www.aidharmonization.org/ah-overview/secondary-pages/editable?key=106>

⁶ World Bank. *Harmonization of Operational Policies, Procedures, and Practices: First Progress Report*. August 21, 2001.

⁷ For example, see: World Bank. *Strengthening the World Bank Group’s Support for Middle-Income Countries*. March 23, 2001.

⁸ Inter-American Development Bank. *Environment and Safeguards Compliance Policy*. 2006.

⁹ Asian Development Bank. *Reorganizational of the Asian Development Bank*. September 2001.

¹⁰ ADB website. http://www.adb.org/Documents/Others/Reorganization_2002/reorg0100.asp

timely in its operations; align business to country cycles; increase efficiency; and expand and innovate financial instruments/services.”¹¹

The effectiveness of the safeguard policies was originally a priority area under the IEI. Work on the policies was to focus on making safeguard procedures more efficient and relevant to clients, and thus improve the efficiency and quality of project processing and implementation. However, this reform priority was later assigned to the ADB’s Environment and Social Safeguard Division under the Regional and Sustainable Development Department (RSDD) and is where the Safeguard Policy Update is currently managed.¹²

Following the reorganization initiative and launch of the IEI, in 2004 ADB announced a reform agenda focused on managing for development results (MfDR), which emphasizes the importance of project planning that would help to ensure that the *results* of development are sustainable. This agenda emerged in response to growing feeling among ADB staff and member countries that safeguard procedural requirements were too heavy on front-end planning, without actually ensuring or measuring concrete outcomes and development impact. The MfDR initiative is part of the wider effort in the donor community focused on harmonization, alignment and results. The *Paris Declaration on Aid Effectiveness*, endorsed in 2005 by almost every country in the world and major IFIs, summarizes the commitments of the donor community to: (i) adapt and apply to differing country situations; (ii) monitor and evaluate implementation; and (iii) specify indicators, timetable and targets.

Much of this agenda is about meeting good development outcomes, through flexible systems that can be applied in varying environments: i.e. giving project implementers the flexibility to meet ‘results’ in whatever way makes most sense to them, and defining clear benchmarks and evaluative indicators to ensure that the appropriate outcomes are met. These trends in the development community have very much influenced the direction of the ADB’s Safeguard Policy Update.

2.3. *A crisis of relevance in middle-income countries (2004)*

Much of the impetus of the SPU can also be attributed to the analysis ADB began in 2004 on its role and effectiveness in middle-income countries (MICs) and countries that borrow from its Ordinary Credit Resources (OCRs).¹³ Because of the changing economic environment in the region, in particular the increased number of MICs and the demand on these countries to sharpen their competitiveness, the ADB was faced with a significant challenge to remain a relevant and needed development financier.

Furthermore, the ADB had recently acquired a substantial surplus in OCR resources, in the realm of \$22 billion. The primary reasons for the surplus were two-fold: First, loan cancellations, particularly for investment projects, were significant with about 20-25 percent of OCR commitments for investments loans cancelled each year. Second, several big countries, including India and China, had made considerable pre-payments to the ADB on various loans. With such a surplus in the ADB’s coffers, the Bank was feeling an enormous pressure to lend while, at the same time, many of its DMCs were looking towards the private sector for development finance traditionally offered by the ADB.¹⁴

Box 1. Global Trend regarding MICs

ADB is not the only multilateral financial institution (MFI) re-examining its relationship with MICs, many other donor institutions were doing the same. In 2000, the IDB introduced a series of new types of loans based on a waiver of some policy applications (e.g. procurement) and use of country systems and procedures in order to make itself more competitive to MICs in Latin America. The World Bank has developed a MIC Strategy aimed at: (i) streamlining operations; (ii) greater use of country systems on safeguard and financial management; and (iii) increasing the number of infrastructure projects. Finally, the Department for International Development (DFID-UK) issued its MIC strategy in August 2004 focusing on meeting the Millennium Development Goals in middle-income countries.

¹¹ ADB website. <http://www.adb.org/ReformAgenda/org-process-structure.asp>

¹² *ibid*

¹³ In April 2004, ADB management endorsed an initiative to examine the Bank’s role and relevance in middle-income countries (MICs) and countries that borrow from its Ordinary Credit Resources (OCRs). A few months later, a concept paper on this subject was approved and in October 2004, the first “Updated Issues Paper” was circulated on the topic. By February 2005, the Bank had completed a draft progress report on the initiative entitled, “Enhancing the Partnership Framework with MICs and OCR Countries”.

¹⁴ Asian Development Bank. *Enhancing the Partnership Framework with MICs and OCR Countries*. February 2005.

As a result of this changing dynamic in ADB borrowing member countries, in June–December 2004, the Bank surveyed a number of countries for input and conducted a few, select country consultations. Among other things, countries provided the following feedback to the ADB:

- There is a need for a new development paradigm which would include: country leadership; use of country systems; and a customized and flexible approach to each country and operation.
- ADB requirements for each project to have poverty reduction or social development components may not be the best approach.
- A priority for the ADB should be to streamline operations in order to better address countries undergoing rapid transformation.
- Customization and flexibility are not only relevant during project preparation, but also important during implementation.
- There is a need for more Public-Private Partnerships in infrastructure.

The ADB's Safeguard Policy Update is one of the ways in which the ADB is addressing issues related to MICs and its OCR lending window. Simplification through streamlining safeguard procedures would address the recommendation of many DMCs for the ADB to remain "flexible" in its approach, making the ADB more competitive, and would likely lead to quicker processing to meet the ADB's pressure to lend.

2.4. Technical Assistance (TA) on Strengthening Country Safeguard Systems (2005)¹⁵

In December 2005, the ADB launched the TA for Strengthening Country Safeguard Systems, which aims to develop an approach and methodology for assessing country safeguard systems by analyzing the safeguard frameworks in ADB's developing member countries. Country safeguard systems, according to the ADB, are "applicable national laws, regulations, procedures and standards and the country's institutional capacity to implement these laws, regulations, procedures and standards at national, subnational or sectoral levels."¹⁶

This TA initiative, again, is integrated with the ADB's on-going reform agenda and renewed commitment to improve development effectiveness, and is being undertaken in parallel with the Safeguard Policy Update which will ultimately implement use of country safeguard systems. One of the main components of the TA is country-specific studies in five developing member countries, including: the People's Republic of China, India, Kyrgyzstan, Philippines and Vietnam. Another key component of the TA is a planned series of subregional consultations (Central and West Asia, East Asia, Pacific, South Asia and Southeast Asia, and a separate consultation exclusive to the civil society will also be conducted) involving a broad range of stakeholders (including governments, executing agencies, project-affected persons, civil society, non-government organizations, academe and private sector entities).¹⁷

The target date for completion of the TA was scheduled for June 30, 2007, but, according to an ADB Director, "The CSS RETA is still on-going. The country reports are under preparation by consultants. Preliminary TA findings will be shared during the SPU consultations, and we expect to have reports available later in 2008."¹⁸

3. The Safeguard Policy Update process (2005-present)

In July 2005, following the ADB's studies on its own efficiency, direction and relevance in Asia, the Bank announced that it would update its three "safeguard" policies: Environment Policy (2002), Policy on Involuntary Resettlement (1995), and Policy on Indigenous Peoples (1998). According to the announcement, the objectives of the update would be "to enhance the effectiveness of its [ADB's] safeguard policies, and ensure the relevance to changing client needs and new lending modalities and instruments."¹⁹ Following, in October 2005, the ADB issued a discussion note outlining key policy considerations for public review and comment. After a request from a number

¹⁵ NGO Forum on the ADB. This section is adapted from: *Country Systems Briefing Paper*. November 2007.

¹⁶ Asian Development Bank. *Strengthening Country Safeguards Systems: Regional*. Project Information Document. 2005.

¹⁷ Asian Development Bank. *Minor change in scope and budget increase, Strengthening Country Safeguard Systems*. March 2007.

¹⁸ E-mail of Nessim Ahmad (Director, Environment and Social Safeguards, Asian Development Bank) to Mishka Zaman (Manager, Asia Program, Bank Information Center), October 20, 2007.

¹⁹ Asian Development Bank. *ADB Updates Safeguard Policies for Enhanced Effectiveness and Relevance*. July 18, 2005.

of civil society organizations, the ADB also agreed to commission an evaluation of the safeguard policies to be conducted by the Bank's Operations Evaluation Department (OED), before moving any further with the SPU process.

3.1. *Special Evaluation Studies on the ADB's Involuntary Resettlement Policy*

As defined by OED, the goals of the Special Evaluation Study (SES) on the Bank's safeguard policies were to: (i) "provide an independent assessment of ADB's environmental and social safeguards with respect to results on the ground, particularly in terms of actual impacts of ADB-supported projects"; and (ii) "identify key issues needed for the consideration of improvements to the safeguard policies, procedures, and their implementation."²⁰

According to ADB's website, the main methodologies used to conduct the SES included: desktop research and review of documents; consultations with stakeholders; project case studies in the four case study countries; questionnaire surveys for ADB's operational staff and executing agencies of selected ongoing projects; and interviews with selected directors of ADB's sector divisions, safeguard specialists and heads of project administrative units. The case study countries were India, the People's Republic of China, the Philippines, and Viet Nam.

In October 2006, OED completed the SES on the Bank's Involuntary Resettlement Policy including implementation and effectiveness of the policy. The Study resulted in several important conclusions. First, it found that the ADB must shift more resources and attention to implementation monitoring and supervision. It states that:

...ADB does not monitor resettlement implementation intensively, compared with the energy it invests in resettlement preparation before loan approval. In effect, ADB delegates implementation of the RPs [Resettlement Plans] to the EAs [executing agencies, i.e., borrowers] without significant supervision. ADB has failed to implement the measures needed to confidently say that mitigation measures related to resettlement are being effectively implemented, that APs [affected persons] are not disadvantaged, or that problems can be identified so that remedial measures can be taken.²¹

This finding echoes a concern that has been registered numerous times over the years by many civil society organizations and affected communities throughout the Asia Pacific region. These complaints have centered on what the Study describes as "ADB not checking resettlement progress and impacts on APs sufficiently during implementation."²² The Study also concludes that "ADB does not have a system to track and follow up on the recommendations made in Project Completion Reports."²³

These two issues—the lack of effective monitoring and supervision, and the failure to follow-up on and implement recommendations made in Project Completion Reports—indicate serious deficiencies of the ADB safeguard policy framework. Not only do these shortcomings result in greater risks of impoverishment and human rights abuses for affected people, but they also indicate—as the OED Study points out—critical development effectiveness issues for the ADB. That is, ADB is investing large amounts of its time and resources into project planning and preparation, but lacks the ability to ensure that these investments are resulting in the desired outcomes on the ground during and after implementation.

Second, the SES highlighted that the ADB must take measures to address the frequent underestimation of the numbers of affected persons (APs). The OED Study found that, across the board, the number of affected persons impacted by ADB's projects was often significantly undercounted: "The actual number of APs recorded was 65% higher than estimated in the [Resettlement Plans]."²⁴ The final report of the World Commission on Dams (WCD)

²⁰ ADB Website. *OED Undertakes Independent Evaluation of ADB's Safeguard Policies*.

<<http://www.adb.org/Evaluation/safeguard-policies.asp>>

²¹ Asian Development Bank. Operations Evaluation Department. *Special Evaluation Study on Involuntary Resettlement Safeguards: Final Report*. October 2006, p. 21.

²² *Ibid*, p. 25.

²³ *Ibid*, p. 25.

²⁴ *Ibid*, p. v.

points out that such underestimation of the numbers of people facing displacement leads to a distorted understanding of the social, economic and environmental risks and benefits associated with particular projects, and “inadequate understanding of the nature and extent of the negative impacts.”²⁵

Finally, the OED Study found that the updated involuntary resettlement policy should include clearer requirements for time-bound actions. The Study states that “[t]he policy, procedures or Handbook give no indication over what period rehabilitation of APs is expected to take place, making it difficult to assess how much in fact needs to be done over what period.”²⁶ This finding again is in line with experiences from civil society. The establishment of clear timelines and time-bound actions for achieving measurable milestones is absolutely fundamental for effective and timely rehabilitation of affected people. Without requirements for time-bound actions, affected people tend to suffer stagnation and deterioration of their living standards while they wait for promised programs to be implemented, and this also means they often suffer the added uncertainty of not knowing when project phases will start or end. The importance of timelines is affirmed in the Study’s mention that “[p]revious Project Performance Evaluation Reports issued by the OED have identified as a key lesson that ‘resettlement should be based on a time-bound action plan of documented measures’.”²⁷

Related to this conclusion, OED also recommended that “[t]here should be clearer guidelines and procedures regarding compensation and assistance with resettlement operations... [including] definition of the period after which economic rehabilitation should be achieved.”²⁸ Based on civil society experience with problematic resettlement implementation and disturbingly large gaps between the initiation of project activities that will cause displacement and the actual provision of full rehabilitation and resettlement assistance to project-affected people, this OED recommendation points to a concept that resettlement and rehabilitation should be accomplished and finalized prior to any project activities that will cause displacement.

With such noted deficiencies in the ADB involuntary resettlement policy and experience, one of the OED’s concluding recommendations that the ADB should move towards broader use country safeguard systems, is very surprising. The use of country safeguard systems is, in many important ways, a much more complex process than the traditional ADB safeguard model. However, when looking at the SES’s a number of key findings embedded in the Studies’ empirical data are omitted in the executive summary and major recommendations. Indeed, during the public commentary period on the OED Studies, several civil society researchers and activists raised concerns that key findings were being ignored or even misrepresented in the OED recommendations, in order to make their conclusions support the direction in which the ADB was already determined to move.

3.2. Public consultation during the ADB SPU

Each of the OED Special Evaluation Studies were finalized and publicly released by January 2007—a full year since their commencement. Following the completion of these Studies, the ADB began a public consultation process on new safeguard principles for the institution.²⁹ However, since commencement of the SPU, the ADB’s policy proposals have been heavily criticized and the review timeline has been continuously delayed. The public consultations, originally scheduled for late-2006, began in November 2007 after ADB’s release of the first draft Safeguard Policy Statement (SPS). The face-to-face consultations are schedule to continue through April 2008. Final policy approval (originally scheduled for the end of 2007) is now slated for the end of 2008.

Furthermore, prior to release of the November 2007 ADB draft SPS, the SPU process imploded when four staff members from the ADB review team resigned, citing the poor quality of the upcoming draft policy document. “We regard this document not to be of sufficient quality for disclosure to the public,” stated a letter submitted by the four staff. A September 2007 article in the Financial Times commented that the ADB “stands accused of watering down

²⁵ World Commission on Dams. *Dams and Development: A New Framework for Decision-Making*. 2000, p. 104. <www.dams.org/report/>

²⁶ *Ibid.*, p. 11.

²⁷ *Ibid.*, p. 27.

²⁸ *Ibid.*, p. x.

²⁹ The ADB released a “Discussion Note” on the SPU in October 2005 and accepted online comments to the document through March 2006. However, face-to-face consultations on a draft Safeguard Policy Statement did not begin until November 2007.

protection for villagers forcibly resettled by building projects it finances, with four officials having resigned from their posts in protest.”³⁰

However, ADB staff are not the only ones who have backed away from the SPU process. Early 2008 saw a wave of dramatic civil society protest across the Asia-Pacific region and internationally, as environmental, human rights and indigenous organizations found the proposed draft SPS to be extremely problematic and rolling back hard-won protections for local people and the environment. Groups in South Asia were the first to come together and decisively say that they refused to even engage with such a poor policy. Building on that momentum, civil society organizations from Asia, Europe, Australia and the United States announced that they would no longer engage with the ADB on the institution’s latest draft SPS. In a press release issued by the Manila-based NGO Forum on the ADB in February 2008, the coalition demanded that the ADB re-draft the policy before resuming public consultations.³¹

Following this, country-specific coalitions emphasized this call with their own open letters to the ADB. In late-February, directors from several non-governmental organizations in Vietnam sent a letter to the ADB stating their refusal to participate in upcoming ADB consultations in Hanoi, scheduled for March 5-6, 2008. Burmese civil society groups have also sent an open letter to the ADB, stating that the Bank’s weak Safeguard Policy Statement draft will cause not only social and environmental harms but may lead to human rights violations. In a surprising turn of events in Indonesia, a civil society statement rejecting the SPS was endorsed by a major national labor union, which includes government officials in its membership. In the end, civil society groups from Cambodia and Thailand also refused to participate in the Hanoi consultation, resulting in only three NGOs attending the meeting. Such problems in the consultation process seriously bring into question the credibility of the ADB’s SPU process.

4. The draft Safeguard Policy Statement and aid effectiveness objectives

The draft SPS, as currently developed by the ADB, condenses a 16 page policy statement on Involuntary Resettlement, into one-page of policy “principles”. It is yet unclear whether or how supporting IR documentation, such as the ADB’s Handbook on Resettlement (a 100+page of technical guidelines on IR procedures and good practices), will be incorporated into the new safeguard system at the institution. One of the stated rationales for the revision was to “integrate” the various safeguard requirements—which currently are found in a number of different documents and policies—into one coherent policy. While policy coordination is important, there is no reason that such integration need to come at the cost of specific and concrete safeguard benchmarks. Without explicit language included throughout (or in the form of accompanying, mandatory guidance notes) to contextualize policy principles and specify how they must be implemented, the principles remain meaningless and abstract, with dangerous amounts of room for interpretation.

4.1. Problematic and inappropriate structure of SPS

In addition to the highly problematic level of abridging and condensing in the draft SPS, the overarching structure of the document also represents an inappropriate focus on private sector clients. The ADB has identified the International Finance Corporation’s standards for private sector finance as the main model it intends to emulate. This is explicitly stated in the SPU 2005 Discussion Note. However, many civil society advocates, as well as academics and even Bank staff, believe that such an approach is misguided for an institution that continues to serve primarily public sector, state-entity clients/borrowers.

The IFC Performance Standards are designed for private sector clients—not for state entities, as in the case of ADB. The private sector is fundamentally different—private corporations are bound to different entities, primarily their stockholders and board of directors. Private sector entities also have far more discretionary funds, and they are influenced by incentives such as preserving their image, which enable and drive them to decide to spend money on safeguard prevention, mitigation and rehabilitation issues.

In contrast to the private sector, state entities do not have discretionary funds. In fact, states can only spend money on costs that are associated with an explicit legal requirement. Thus, for state agencies, if they are working under a

³⁰ “ADB review sparks resignations.” Financial Times. 12 September 2007.

³¹ “NGOs Cease Talks with ADB on Crucial Environmental and Social Issues”. Press release. NGO Forum on the ADB. February 8, 2008.

Safeguard policy/legal agreement that only vaguely encourages certain mitigation and rehabilitation efforts—rather than one that explicitly requires very clear and objective measures to be taken—they will not have the political will to go above and beyond a very loose interpretation of “flexible” safeguard principles presented by, for example, the ADB.

Thus, it is not appropriate for ADB—as an institution that primarily deals with state entities—to try to copy a policy framework designed for private sector corporations that operate under totally different rules and conditions.

We are also aware that the ADB may be emulating the principles developed by the World Bank for use in country systems pilot projects. These principles were never meant to serve as a stand-alone policy document, as the World Bank maintained its full set of ten discrete safeguard policies. Distilled principles and vague requirements are not an adequate basis for a functional, responsible safeguard policy framework.

4.2. Harmful and misguided approach to Country Systems

Recent findings from World Bank pilot projects show that utilizing a country systems approach involves far more cost, time and human resources than anticipated. The ADB should carefully consider its own limitations in being able to effectively implement a country systems approach, including the size, scope and areas of expertise of its staff and the financial resources available for safeguard implementation. At this time, it may not be feasible or responsible for the institution to move toward a country systems approach. The ADB should first focus on improving and accounting for gaps in its *own* policy and practice.

According to an article completed by the Center for International Environmental Law, “despite suggestions to the contrary by the World Bank, virtually no permanent, legally-binding improvements in country systems are being achieved in the [country systems] pilot project. Measures to address identified gaps largely include short-term fixes, such as non-permanent guidelines, that are mandatory only in the context of a given project as loan agreement requirements.”³² The article also contends that in the past, when facing pressures from powerful clients, MDBs will often back down from requiring and enforcing strong standards. A country systems approach can, arguably, provide countries’ with a framework in which to continue to implement projects in the manner they see fit, regardless of ADB standards.

Most important, the CIEL article points to the concern that the use of country systems will increase communities’ challenges in preventing and reducing the adverse impacts of projects. “The principles of the ADB policies do not provide the ‘full picture’ to communities of the standard applicable to a project. A community can file a claim for an apparent violation of a principle, but in the absence of clear information about what the ADB has embraced in satisfaction of that principle—either the existing laws, policies and procedures of the country of the gap-filling measures—it will be difficult for a community to know if a given activity is acceptable or not.”³³

4.3. Focus on borrowers/clients rather than affected people

The draft SPS completely centers on meeting the needs of ADB and its clients/borrowers. Multiple statements in the October 2005 Discussion Note and other documents reveal that the SPU process is being driven by the primary objective of making lending easier for these parties. This is not the appropriate focus for an update of safeguard policies, which were created first and foremost as tools for protecting the rights and wellbeing of affected people and the environment. ADB leadership must remind management and borrowers that the *raison de etre* for safeguard policies is to ensure that no harm befalls project-affected people, and that their rights and wellbeing are protected and advanced. These people must be kept at the forefront of any meaningful safeguard policy. Any changes in the safeguard policy framework must be firmly backed up by a sound justification/rationale explaining how the change benefits local people and their environment.

³² Perrault, Anne. “An Evaluation of the ADB’s Approach to ‘Country Safeguard Systems’”. Center for International Environmental Law. January 2008.

³³ Ibid.

4.4. Failure to address institutional problems around human resources

The ADB is currently beset by internal and external critiques around human resource issues. Staff inside the Bank are concerned about lack of transparency, correct criteria and Board oversight in hiring decisions. Externally, clients are expressing frustration due to ADB being unresponsive, and to a perceived lack of high-caliber staff and consultants—without which ADB cannot offer any added value. Furthermore, it is widely recognized that ADB needs to enhance its capacity and resources for implementing and monitoring safeguard compliance on the ground. Calls from civil society—that the ADB needs to devote more resources to on-the-ground monitoring and supervision of safeguard implementation—have been affirmed by the recent OED recommendations, as well as by informal assessments from management. The ADB must take bold action to address these crises, otherwise it risks losing qualified staff who will opt to leave, and it will lack the institutional credibility and capacity needed to deliver on safeguard and sustainable development objectives.

To ensure world-class safeguard implementation, the ADB will need to make major institutional changes around hiring staff. The ADB must hire and actively support staff with expertise in safeguards issues, quality monitoring, and diverse arenas of sustainable development. Changes should include deploying more staff and resources to resident missions and project areas, to break away from a headquarters-centric approach, and achieve better safeguard compliance and outcomes on the ground. In order for the ADB to meaningfully deliver on the promise to make safeguards its added value, it will need to undertake some significant restructuring and devote the necessary human and financial resources toward this goal.

5. Analysis of involuntary resettlement components in the draft SPS

This analysis highlights the major high-level concerns with the involuntary resettlement components of the ADB's draft Safeguard Policy Statement (SPS). Among the many substantive flaws in the draft SPS that will endanger the rights and wellbeing of people displaced by ADB-financed projects, the following four shortcomings are particularly salient.

5.1. Reduced Scope

First and foremost, the draft SPS reduces the scope of the resettlement policy to exclude a wide range of displaced people that will suffer adverse impacts from ADB-financed projects. This reduction in scope is a step backwards from ADB's current resettlement policy and falls short of widely recognized international standards. Specifically, the SPS :

- *Narrows the definition of who is considered “displaced” and therefore in need of necessary safeguard protections.* The draft strikes from the previous policy those groups of affected people who are displaced by “changes in land use” and “restricted access to natural resources,” and replaces these widely-accepted definitions with a narrower category of people who suffer from “involuntary restriction on land use” and “involuntary restriction of access to legally designated parks and protected areas.”³⁴ Thus, the SPS entirely removes the category “changes in land use,” and replaces the category “restricted access to natural resources” with the much narrower “involuntary restriction of access to legally designated parks and protected areas.” As a result, many displaced people who will lose access to lands, resources and livelihood sources due to project-related impacts will be excluded from ADB protection. This limited scope falls far below international best practice on involuntary resettlement, which requires that any persons physically or economically displaced by project-related activities and impacts be covered under involuntary resettlement safeguard entitlements.³⁵
- *Excludes all people displaced by the wide range of project-related activities beyond direct land acquisition.* The draft resettlement policy shifts responsibility for a wide array of involuntary resettlement impacts to be covered by the Environmental components of the SPS (e.g. “[A]dverse economic, social or environmental impacts from project activities other than land acquisition” will be covered “through the environmental assessment process.”³⁶) Such shifting is inappropriate and irresponsible. As a general matter, environmental

³⁴ Asian Development Bank. *Consultation Draft of the Safeguard Policy Statement*. (p. 15, under “Scope”).

³⁵ World Commission on Dams. *Final Report*. (p. 103).

³⁶ Asian Development Bank. *Consultation Draft of the Safeguard Policy Statement*. (Attachment B, p. 14, para. 9).

policies are not designed to protect against the unique risks associated with involuntary resettlement. In the case of the specific Environmental components of the draft SPS, there is no mention of the social procedures and protections needed to ensure that affected people's rights and livelihoods are upheld and improved, respectively. This surprising new exclusion of entire categories of affected peoples from the resettlement policy and the lack of appropriate coverage for such affected people under the environment policy, dramatically heighten the risk of institutional neglect of displaced people and hampers efforts to ensure ADB accountability.

- *Imposes the unneeded qualifier “involuntary” before key policy triggers (e.g., “involuntary acquisition of land” and “involuntary restriction of access”³⁷) and fails to explicitly define “involuntary.”* This provision can create a moral hazard by enabling governments to escape policy requirements through declaring coercive land acquisition and other forms of resettlement as “voluntary,” and deprive displaced people of safeguard protections and entitlements. This dangerous semantic loophole has commonly been utilized by governments in countries such as Indonesia where official reports often claim that forest dwelling communities have “voluntarily” given up their forested lands for logging and plantation development, despite the fact that these lands were seized without permission. The ADB should restore the language on scope and triggers used in the existing policy, which does not preface triggers with “involuntary.” Furthermore, in sections of the revised policy in which “involuntary” is utilized, the ADB should follow the lead of peer organizations, such as the World Bank and IFC, which have sought to address the inherent coercion involved in the use of expropriation or other government land use restrictions by providing explicit definitions for “involuntary.”³⁸

5.2. Weakened provisions for compensation and rehabilitation

The requirements and specific provisions relating to compensation, rehabilitation, replacement of land and lost assets, and other entitlements owed to affected people have been significantly weakened from the existing ADB policy and previous drafts of the SPS. For example, the SPS Consultation Draft:

- *Eliminates key provisions of the current ADB policy that outline detailed and explicit requirements for restoring access to common property resources* such as forests and grazing lands, public facilities and cultural sites. The new draft contains no meaningful mention of common property resources. Such regression is yet another major step backwards that is inconsistent with current international standards.
- *Fails to state or adequately emphasize that compensation alone is not enough to improve, or even restore, livelihoods after displacement.* Instead the new language inappropriately stresses compensation as a *primary* means of rehabilitation and livelihood improvement. It is widely recognized that compensation-based schemes lead to impoverishment. The existing ADB policy, along with those of its peer institutions, explicitly recognizes that compensation should be just one part of a broader package of development assistance measures designed to genuinely rehabilitate affected people, and which factor in their development needs and priorities.³⁹ The revised SPS should restore and strengthen such language, backed by explicit requirements and guidelines.
- *Removes key requirements for benefit-sharing mechanisms that were included in the July 2007 version of the draft.* This is an unacceptable regression, and also fails to incorporate recent findings and best practices in benefit-sharing. As a fundamental component of international best practice for resettlement programs, benefit sharing must be a central pillar of any resettlement policy. Resettlement specialist Michael Cernea, among other experts, argues that resettlement policy and practice must move away from a focus on compensation and

³⁷ Ibid., p. 15, under “Scope”.

³⁸ IFC Performance Standard 5 provides: “Resettlement is considered involuntary when affected individuals or communities do not have the right to refuse land acquisition that results in displacement. This occurs in cases of (i) lawful expropriation or restrictions on land use based on eminent domain; and ii) negotiated settlements in which the buyer can resort to expropriation or impose legal restrictions on land use if negotiations with the seller fail.” Similarly, the World Bank policy defines involuntary as “actions that may be taken without the displaced person's informed consent or power of choice.” (OP 4.12, footnote 7).

³⁹ For example, the World Bank Policy on Involuntary Resettlement requires that displaced people are “provided with development assistance in addition to compensation measures, such as land preparation, credit facilities, training, or job opportunities” (OP 4.12, para. 6).

toward an emphasis on benefit-sharing, in order to prevent impoverishment and contribute to meaningful development impact.⁴⁰ This issue is addressed in more depth in the following section.

5.3. Weakened requirements for meaningful participation

The SPS's draft language on consultation, participation, and communities' rights to free prior informed consent is inadequate and falls far short of standards upheld by the ADB's peer institutions and even provisions set forth in previous SPS drafts. For example, the SPS:

- *Fails to require free prior informed consent of affected communities, or even encourage reaching agreements through negotiated settlements.* These concepts are basic pillars of contemporary best practice on development decision-making (see, e.g., IFC Policy on Social and Environmental Sustainability; and, World Commission on Dams Final Report). Failure to even mention these concepts demonstrates the retrograde nature of the proposed policy. The Consultation Draft eliminates positive changes presented in the July 2007 version of the draft SPS which included explicit requirements for: meaningful participation in shaping project and resettlement plans; rights to free prior informed consultation and consent; and reaching agreement through negotiated settlements.

5.4. Vague, confusing language and lack of measurable criteria

The draft SPS lacks clear, objective and measurable criteria that define the nature of project impacts and the corresponding mitigation measures required to protect displaced people. Without such essential criteria, it will be impossible to ensure accountability and that the client/borrower and ADB comply with policy requirements. Specifically, the draft SPS:

- *Removes clear language on project categorization and reporting requirements for projects causing involuntary resettlement, and replaces these with muddled provisions* that will likely cause confusion for affected people as well as ADB managers and project implementers. (e.g. "Resettlement plans will be prepared commensurate with the extent and scale of the impacts"; and "If these impacts are found significantly adverse at any stage of the project, the borrower/client will consider applying the policy principles and safeguard requirements on involuntary resettlement...") Rather than offering clarity, such language poses questions about exactly how "extent and scale" of impacts will be determined, who shall make such decisions, in what sequence these assessments will be made during project development, and exactly what impacts must be addressed by specific mitigation measures.
- *Lacks explicit and measurable criteria that will enable effective project oversight and evaluation and ensure institutional accountability.* More specifically, the draft SPS fails to protect against cases in which implementing agencies may have a conflict of interest against declaring a project's impacts "significant," or otherwise upholding the policy objectives and principles.
- *Reporting requirements have been dramatically weakened.* The existing ADB policy contains provisions explicitly requiring, for example:

"To ensure proper and timely implementation of the resettlement plan/framework and adherence to agreed land acquisition and involuntary resettlement covenants, ADB requires, for all involuntary resettlement category A and B projects, that: (i) EAs or project sponsors submit quarterly or semiannual progress reports, as deemed necessary by ADB, on implementation of resettlement plans; and (ii) this requirement must be reflected in the loan agreements. Monitoring and evaluation reports are required, preferably from an external monitoring and evaluation agency. These must be reviewed by the resettlement specialist in the operations department that has the responsibility for resettlement supervision, with a copy of the reports and the operations department's assessment are to be sent to RSES" (ADB Policy on Involuntary Resettlement, p. 14, para. 46).

⁴⁰ See: Cernea, Michael. *Financing for Development: Benefit-sharing mechanisms in population resettlement*. Economic and Political Weekly. March 2007.

In the draft SPS, such requirements have been replaced by phrases such as the following: “The borrower/client will prepare periodic progress reports that describe progress with implementation of the RP or equivalent planning document(s), and if any, compliance issues and corrective actions” (SPS Consultation Draft, Attachment B, p. 17, para. 26). Such a statement (“periodic progress reports”) is very difficult to enforce.

This statement is followed by language stating that, for “projects with large-scale involuntary resettlement impacts,” the borrower/client must submit “at minimum, semiannual resettlement progress reports.” However, the draft SPS fails to define how it is to be determined whether a project has “large-scale” impacts, and who shall make and verify that determination. Thus, once again, the draft makes compliance unnecessarily difficult to determine and enforce.

The ADB should ensure that the revised policy contains unambiguous, explicit language on reporting requirements and procedures. If the revised policy contains any vague principles or requirements, these should be systematically backed up—in the same way that, for example, the IFC Performance Standards are clarified by the full set of Guidance Notes.

The vague nature of the language throughout the entire draft SPS constitutes perhaps the single most problematic aspect of the document.

6. Recommendations for the ADB on the SPU

6.1. Seek input from wide array of experts on involuntary resettlement

To date, the ADB has received substantive comments only from a handful of NGOs, and has failed to draw upon the large, multi-disciplinary community around the world with expertise on involuntary resettlement issues and best practices. ADB should proactively seek input and guidance from a diversity of academics, NGOs and communities with extensive experience in involuntary resettlement. Such input is necessary in order to design a resettlement policy that truly responds to the lessons learned over the past decades, and which effectively addresses the trends, injustices and challenges of development-induced displacement in the 21st century.

Following the resignation of core safeguard specialists from the SPU process, the ADB must ensure that *additional qualified experts are brought in to the process of revising that SPS*, and, that the *Board is involved in reviewing all proposed revised and new Safeguard-related documents*. In the wake of the original staff members resigning from the drafting process, we are concerned about who will be drafting the SPS from here on out. It is essential that qualified experts are leading the effort, supported by adequate resources and leadership/management with demonstrated commitment to safeguard objectives and ideals. The process must be fully transparent, and include public and Board review of all components—including any revisions to the Operations Manuals.

6.2. Require livelihood improvement across the board

Over the past two decades, a strong consensus has developed among social scientists, economists, implementing agencies and NGOs that development institutions must abandon an emphasis on *restoration* of incomes, and commit instead to requiring *improvement* in the income, livelihoods and lifestyles of *all* project-affected people. Requiring improvement is essential to shift resettlement practice away from impoverishment and towards development.⁴¹

The draft SPS requires improvement for poor and vulnerable populations, but renders this requirement effectively meaningless by failing to delineate how such populations will be identified and how improvement will be measured and verified. Furthermore, in a number of sections, the draft includes the phrase, “Improve or at least restore livelihoods of all affected people.” Presenting restoration as an acceptable outcome will result in the continued impoverishment of those who are forcibly resettled as a result of ADB-financed projects. Any mention of mere restoration should be abandoned entirely. By moving to a clear across-the-board requirement for measurable improvement, the ADB would be applying one of the foremost lessons learned in resettlement over the past decade.

⁴¹ For more in-depth explanation as to why allowing restoration, as opposed to requiring improvement, tends to make a majority of those resettled worse off, see IAP’s January 2007 *Comments on the OED Special Evaluation Study on Involuntary Resettlement*, attached and available at www.accountabilityproject.org.

The arguments in favor of improvement rather than restoration were supported by the 1998 World Bank OED review, which criticized the existing World Bank standard (that involuntarily resettled persons should have their standard of living restored, if not improved) as not going far enough towards implementing the purpose of development. (OED Overview, p. 8, 67) The OED said that if the Bank did not place greater emphasis on improving standards of living, it would contribute to the stagnation of the standard of living for resettled populations.

As Dinesh Agrawal and other social scientists have shown, restoration of a previous standard of living has no relevance if resettlement is supposed to be accomplished in the context of a development program. Restoration as a threshold is difficult to define and invites dispute. While it will require further definition, an improvement standard is easier to gauge and plan for than is restoration. Improvement could require, for instance, that the project provide appropriate health and education programs, adequate sanitation and water supply, access to electricity in the case of power projects, and the provision of other essential public services; an improvement standard would also include respect for cultural values, and the replacement or enhancement of community-based resources, in addition to enhancement of livelihoods.

This standard will truly allow resettlement to be conceived as a development project, consistent with the language of the existing ADB policy. The locally affected people should be consulted early in project design to determine their preferences for how to achieve improvement in the quality of their lives; they should also be included in the assessment of whether such improvement has occurred as a result of the project. Baseline studies must be conducted early in the process, in a participatory and transparent manner.

A policy of improvement should have the added benefit of making the resettlement process less contentious and more acceptable to local communities. This will, in turn, reduce the social tension and friction that comes from involuntary impoverishment. It is also the ethically correct role for a development institution that is forcing people to abandon their known habitats, homes and livelihoods and community structure. The ADB claims to promote the right to development. At the very least, that right should be afforded to the millions of people who are forcibly displaced in the name of development.

6.3. *Democratize development decision-making; Uphold the right to free prior informed consent*

Ensuring meaningful participation in all project phases—including upstream processes—is a fundamental component of any policy that is consistent with international best practice on development decision-making. Resettlement will not be effective if the affected communities, both resettlers and hosts, are not properly involved in the analysis of alternatives, the design of the project, its implementation, and monitoring. The knowledge base of local people is an asset that has been historically under-valued by the ADB. The resettlement policy should build in procedural mechanisms to require and encourage consultation between Bank staff and project-affected communities at all stages of design and implementation.

The recent ABD OED Study on Involuntary Resettlement found “relatively weak performance on public consultations and disclosure” (p. 24) and also concluded that “[n]o clear guidance is given about the level of public consultation required” (p. 11). This assessment affirms the dire need to dramatically enhance policy and practice on this issue through the SPU process. If a development institution such as the ADB continues to have “weak performance on public consultations and disclosure,” the projects the Bank funds will be undemocratic, uninformed, and unjust. To overcome these weaknesses, and to uphold relevant international law, the revised policy must require that the *free prior informed consent* of affected communities is obtained for any projects causing displacement.

Free prior informed consent (FPIC) is an internationally recognized human right and is of particular importance to indigenous and tribal peoples. The formulation used by the ADB of “free prior informed consultation” is in no way equal to the concept of free prior informed consent, as it has been defined in international law. FPIC is based on indigenous peoples and affected communities having the right to give *or withhold* their consent for a proposed project, based on access to all relevant information, to communicate this decision through their own recognized authorities, and to have this final decision respected. FPIC is about equal negotiating power, the right to self-determination, and fundamentally about democratizing development.

This right has recently been enshrined in the UN Declaration on the Rights of Indigenous Peoples. The updated ADB Safeguard policies must be consistent with this principle of international law. Several of the ADB’s peer

institutions already recognize this right (to varying degrees) for indigenous and tribal peoples. The Inter-American Development Bank requires that affected indigenous people “have given their informed consent to the resettlement and compensation measures.”⁴² The IFC Performance Standard 7 on Indigenous Peoples, while not officially recognizing the right to free prior informed consent, states that in the case of involuntary “relocation” of indigenous peoples, the project will not proceed unless the “client” (borrower) has reached agreement with the affected indigenous peoples through good faith negotiations: “[t]he client will not proceed with the project unless it enters into a good faith negotiation with the affected communities of Indigenous Peoples, and documents their informed participation and the successful outcome of the negotiation.”⁴³

Both the World Commission on Dams final report and the final report of the World Bank Extractive Industries Review call for recognition and implementation of the right of communities to FPIC, both as a principle of international law, and as a means to ensure their genuine participation in decision-making processes and securing their long-term benefits. The ADB should commit to upholding this fundamental human right in project planning and decision-making.

6.4. *Include explicit provisions for equitable benefit-sharing*

The draft SPS has almost no mention of benefit-sharing, and lacks any explicit requirements or guidelines for the establishment of equitable benefit-sharing mechanisms. This omission constitutes a failure to incorporate a major lesson learned in recent studies on resettlement and best practices. For example, an announcement of the forthcoming book, *Can Compensation Prevent Impoverishment? Reforming Resettlement through Investments and Benefit-Sharing*, edited by Michael Cernea and Hari Mohan Mathur (2008, Oxford University Press), notes that:

This volume contributes significantly to the international public debate on development-caused displacement and resettlement. It rejects the long-held thesis that compensation is in itself enough to restore and improve the livelihoods disrupted by displacement. Instead, the authors of this volume, a group of the world’s best known resettlement scholars — sociologists, anthropologists, economists, ecologists and legal experts — recommend changing displacement policies, laws and practices, by adding investment financing and ex-post benefit-sharing to full compensation. This book comes at a time when those displaced are increasingly opposing impoverishment by forced displacement. Their voices, argue the authors, speak of basic needs and human rights, and must be heard.

This passage makes glaringly clear the fact that the draft SPS—by failing to meaningfully incorporate provisions on benefit-sharing, and regressing to an increased reliance on monetary compensation—is far behind current understanding and best practices on designing rights-respecting resettlement paradigms.

Furthermore, this underscores the earlier point that ADB is failing to draw upon the expertise of the global community of scholars and practitioners working to advance more just models for remedying development-caused displacement. The revised policy should strongly reflect the new consensus around the importance of benefit-sharing arrangements, arrived at through negotiated settlements and respect for the right to FPIC.

All entitlements and benefits should be applied equally to all affected people, regardless of whether or not they have legal/legalizable title to land. A policy that discriminates against non-titled APs will compromise the true sustainability of the project and inevitably lead to unnecessary and increased impoverishment and strife among affected people. In accordance with international best practice on the protection of vulnerable groups and the human rights principles of equality and non-discrimination, the ADB should reaffirm its commitment to ensuring that affected people without legal or legalizable title to land living in the project-affected area are guaranteed equal entitlements in compensation and rehabilitation measures.

⁴² Inter-American Development Bank. *Operational Policy OP-710 on Involuntary Resettlement*. (pp. 2-3, section IV.4).

⁴³ International Finance Corporation. *Performance Standard 7 on Indigenous Peoples*. (para. 14).

6.5. *Require achievement of rehabilitation milestones before allowing initiation of civil works*

The ADB should take financial responsibility for resettlement as part of the main investment project, and *require that disbursements and/or awarding of civil works may only go forward after agreed-upon rehabilitation milestones have been achieved and independently verified*. This is essential to create an appropriate incentive structure for clients/borrowers and ADB, which will facilitate the prioritization and timely achievement of resettlement and rehabilitation objectives. Too often, social and environmental mitigation lags far behind the completion of the civil works. When there is little money left in the project, problem-solving become much more difficult for the ADB, as the Bank's leverage lessens. Local people and their environment pay the price.

The draft SPS states in para. 16 of Attachment B, Involuntary Resettlement Safeguard Requirements for Borrowers/Clients: "The borrower/client will establish clear milestones to ensure that no physical and economic displacement of affected people occurs until all compensation payments at full replacement cost and other entitlements are made..." This passive language avoids saying what should be obvious, and what should be included: the ADB should not allow implementation of the investment component of the project to proceed to a point where it impacts communities until such time as the resettlement components have been adequately implemented to protect the rights and interests of the communities affected. The revised policy should also include an explicit link to supervision requirements. If implementation of resettlement activities is lagging, the ADB should withhold further disbursements for the main investment component until the project is in compliance with the policy. Such a requirement would incorporate a fundamental lesson learned in resettlement best practice over the past decade.

6.6. *Strengthen provisions for gender analysis and protection of women's rights*

The existing ADB policy is relatively weak in terms of adequate provisions for ensuring gender-sensitive resettlement plans and practices and safeguarding women's rights. It is thus shocking that the draft SPS is far worse in this arena than the already-flawed existing policy. The draft SPS makes essentially no mention of "gender" or "women" anywhere in the involuntary resettlement components of the draft, other than to call for gender-disaggregated data, and listing women as a vulnerable group.

This falls vastly below international best practices. See IAP's January 2007 *Comments on the OED Special Evaluation Study on Involuntary Resettlement* (www.accountabilityproject.org) for examples of model language from ADB's peer institutions that better reflect best practice on gender and women's rights. Much of that language centers on specific means for ensuring women's equal access to and participation in decision-making processes at all project phases.

The importance of ensuring gender-sensitive planning in resettlement is of vital importance to women's rights and wellbeing. During his term as UN Special Rapporteur on the right to adequate housing, Miloon Kothari found that there was such a great need to account for and specify women's particular risks and needs in regards to forced displacement and eviction, that he developed an entire set of guidelines specifically on women and adequate housing. Women's human rights can be endangered in grave ways by forced resettlement, including through being made more vulnerable to violence, sexual abuse, and trafficking and other forms of exploitative labor.

Again, this points to the need for ADB to proactively seek guidance and input from the global community of scholars, advocates and practitioners working to advance understanding and best practices for rights-respecting resettlement—including in the arena of women's human rights and equality.

7. *Conclusion*

The ADB currently finds itself under significant pressure to complete the now long-overdue process of "updating" its safeguard policies. At the same time, international attention and pressure is mounting around the volatile situation in Phulbari, Bangladesh. While ADB management and its Board internally debate the best course for the institution to follow in terms of revising its safeguard policies and systems, tens of thousands of people in the Phulbari area of Bangladesh are taking to the streets to remind us all of the enormous human and environmental costs that are at stake with these policies and the decisions they inform.

In many ways, the Phulbari project embodies the challenges and responsibilities that multilateral development institutions must face in the 21st century regarding such issues as forced displacement and involuntary resettlement. If implemented, the project would displace at least 50,000 people in one of the most densely populated corners of the world. This displacement would add to the growing level of forced migration worldwide which is reaching an unsustainable and potentially explosive tipping point. Along with development-induced displacement, the growing global migration crisis is also partially due to the impacts of climate change, which disproportionately affect people poor countries that have limited capacity to mitigate such things as rising sea levels, unprecedented and widespread droughts, and increasingly frequent and violent weather events. A recent report by the international human rights organization Christian Aid concludes the following:

As the effects of climate change join and exacerbate the conflicts, natural disasters and development projects that drive displacement, we fear that an emerging migration crisis will spiral out of control... Christian Aid predicts that, on current trends, a further 1 billion people will be forced from their homes between now and 2050. We believe forced migration is the most urgent threat facing poor people in developing countries. The time for action is now.⁴⁴

The Christian Aid report highlights the ramifications of this “migration crisis” on human rights, the global environment, and political security and stability, among other arenas. The report makes a powerful case for why we cannot afford to continue to perpetuate a development model based on excessive and often unnecessary displacement. Given this global context, **the ADB should reinforce its commitment in policy and practice to avoid resettlement.** This avoidance should include a commitment to *always consider the no-project alternative*, and, in cases where resettlement cannot be avoided and it has been democratically determined that the proposed project merits going forward, the project must be carefully designed to *minimize resettlement*.

The Phulbari project also demonstrates the power and voice of affected peoples determined to protect their homes, lands and livelihoods. Tens of thousands of local residents have expressed their absolute disagreement and resistance to the project. The centrality of upholding the human right to *free, prior informed consent* is now firmly recognized as not only an international human rights obligation—with respect to Indigenous Peoples—but also as a mechanism by which to ensure that development is equitable and sustainable. How then, can the ADB and its private sector counterparts possibly justify moving forward with the Phulbari mine in the face of such overwhelming resistance? **The ADB should commit to respecting the right of local communities and Indigenous Peoples to free, prior informed consent.** To fail to do so would result in the financing of projects that deepen a crisis in democracy and development inequality.

Through its safeguard policies revision process, the ADB has an opportunity to emerge as a leader among development institutions in formulating and implementing international best practices. Donor harmonization of safeguards standards should not result in a global race to the bottom in terms of who has the least onerous constraints for ensuring social and environmental sustainability. Rather, the ADB should take this opportunity to lead the way in raising awareness of the importance of strong safeguards, and, in doing so, encourage and inspire other funders to raise their standards as well. ADB leadership must remind staff and potential borrowers that safeguard policies were adopted because they make social *and* economic sense in the long term, and that prioritizing such safeguards is a wise investment.

Over the past several decades, many development institutions, including the ADB and the World Bank, learned the hard way that avoiding safeguard planning and implementation upstream in the project cycle simply resulted in dramatically increased costs down the road, when social unrest, increased poverty, or environmental damage had to be mitigated. Institutional reputations also suffer due to failed projects. Indeed, it was the urgent need for enhanced development effectiveness, plus a reputational crisis as an institution, that initially motivated the World Bank Board of Directors to push for the systematic adoption of safeguard policies. Today, in addition to the multilateral development banks, a growing number of major commercial banks (currently over 40) have adopted the Equator Principles, as these corporations recognize that safeguarding the ‘triple bottom line’ (people, planet and profits) is in fact the most effective way to protect their long-term returns.

⁴⁴ Christian Aid. *Human Tide: the real migration crisis*. May 2007.

There is no reason the ADB cannot simultaneously enhance its standards *and* make itself more competitive and attractive as a lender; it is disingenuous and irresponsible to create an either-or tension between these two goals. In response to the new ‘relevancy crisis’ facing ADB and other multilateral development banks, **the ADB can market its expertise and commitment to sustainable development as a comparative advantage.** The ADB itself speaks of strengthening its capacity as a ‘knowledge bank’ in providing expertise to member countries on addressing risks involved in development. Promotion of best practices to effectively design and implement safeguards to ensure sustainability would be an invaluable service of any such ‘knowledge bank’ and a clear comparative advantage over other financiers.

The ADB risks losing its value-added and relevance as an institution if it does not address the serious deficiencies in the draft SPS and establish much more accountable safeguard systems. Undermining protections for local people and the environment is not an acceptable response to the changing scenario of development finance. We challenge the ADB to do better.

The International Accountability Project (IAP) challenges destructive development projects that uproot and impoverish millions of people across the Global South. Working with grassroots and international partners, IAP advocates for international policies that respect the rights and livelihoods of people threatened by unjust development, and we support communities to hold their ground and defend their homes, environment and human rights.

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