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Subject: Comments of civil society organizations of Central-Asian and Caucasus countries to ADB
Draft Safeguards policy

Lost opportunities: safeguard measures will not work in this format

The undersigned representatives of civil society of Central-Asian and Caucasus countries are grateful to Asian Development Bank for the opportunity to express their opinion on proposed document - Draft safeguards policy (SPS).

In a view of wide public discussion of this document in all Asian countries we also got involved in this process and propose the following comments and proposals.

First of all, we would like to say some words about conceptual direction of this document. In the Safeguard Policy Statement (*hereinafter - SPS, or Document*) it is stated about numerous difficulties and aggravated contradictions, as well as on emergence of dangerous challenges. It is concealed to what extent ADB is involved in these problems. Although the recognition of these facts after more than half century of operation for the sake of "poverty reduction" and "prosperity in Asia" is rather brave step. But it is necessary to go further without making the same mistakes. To do so, it is necessary to understand what causes problems in Asia, why environmental situation is worsening, and poverty is aggravating, energy crisis becomes more acute, and water supply is becoming the most serious problem. What needs to be done to mitigate the damage - that is what we tried to find in the given document. ADB announces reforms based on five "vehicles" as its long-term strategy: 1. Private sector development and operation; 2. Good management and capacity building; 3. Gender equality; 4. Education; 5. Partnership. The question to what extent the Bank is committed to these principles in the reality remains open.

Let us consider three sections of *SPS: protection of environment, involuntary resettlement and indigenous people's rights*.

It is stated in the Document that: "... The main principle of safeguards policy consists in the fact that their implementation is the responsibility of the borrower or project sponsor". What is the role of ADB then?" The role of ADB is to explain policy requirements to the borrower/client striving to meet these requirements in the course of project preparation and implementation by means of capacity building program and enabling research and examination, monitoring and control". This is withdrawal from the responsibility, which only reinforces the suspiciousness and undermines confidence in ADB funded projects. Our evaluations and objections are based on personal experience and on the testimony of those people who we try to assist due to our function. So, we cannot stay indifferent and we would like to know if we would be able to rely on safeguard measures proposed by ADB, or this document would become regular declaration on intentions.

What could be welcomed in the Section on environmental protection:

- Inclusion of forbidden investments list (as we understand, this is direct prohibition for certain types of activities funded by ADB from public funds);

- The intention to assess transboundary and global risks of proposed projects, as well as climate change impacts;
- The intention to consider so called "zero option" as an alternative to proposed project ("no project" alternative).

What could be welcomed in the Section on involuntary resettlement:

- Bank's initiative to include Articles 7-8 (additional, rather tangible in terms of material and organizational efforts responsibilities of the borrower/client);
- The requirement of the Bank that stipulates that the objective of Resettlement plan is to provide better living standard and well-being improvement (Article 11);
- We believe that Article 15 is made in very positive sense - meaning that the responsibilities of the borrower/client on calculation and payment of compensation are provided in detail.

What could be welcomed in the Section on the rights of indigenous peoples:

- Obtaining of primary and free consent (paragraph 64) for the implementation of certain project activities that concern the rights of indigenous peoples, we would like this language to be used in the section Safeguards Requirements and in the text as a whole;
- The bank recognized the necessity for social impact assessment to be made by the borrower/client when unexpected negative factors impacting the rights of indigenous peoples are identified (article 23).

We consider the following provisions of SPS controversy or requiring clarification:

In the Section on environmental protection:

- Transfer to the national standards with inoperable of seriously weakened mechanisms of judicial decisions implementation;
- Exclusion of Category B (in the section Safeguards Requirements) from the list of the projects dangerous for the environment;
- More ambiguous definition for the projects belonging to Category A (for instance, in the text, the language is not legally exhaustive, therefore, interpretations are possible; it is proposed to use clearer and obliging definition of the World Bank for the projects of Category A);
- Exclusion of repeated public consultations for the project belonging to category A;
- Unclear (despite of multiple demand to clarify) promise to apply so called "mechanism of addressing concerns" - "grievance mechanism"; at that, we are even more in bewilderment with the term "culturally acceptable grievance mechanism", so we propose to exclude these innovations and refer to internationally accepted ways of conflict resolution and appeal (courts, independent mediators, and finally ADB own department - Accountability Mechanism);
- Use of contradictory language for the selection of potential participants of public consultations - the Bank promises "to facilitate informed participation", which creates an opportunity and even inevitability for manipulations while selecting the participants, that is why we proposed to remove this language from the text since last year.

In the Section on involuntary resettlement:

In the Russian version of the last *SPS*, involuntary resettlers are referred to as "forced resettlers". This is against language norms, but this exactly reflects the essence of the process - compulsion to resettlement. At that, authorities of borrowing countries are addressing all matters of involuntary resettlement. ADB defined its role as "advisor" and "monitor". This is absolutely not enough. The borrower (this is mainly the state) evaluates the land and other property with trifling sum. As a result, people lose everything they have. This is exactly the case when evaluation committee of local authorities in Rasht rayon, Tajikistan, estimated the property of involuntary resettlers of Garm village and other villages of this rayon. In the best case some of them were given plot of land to

build the house in some other place, while many others were not compensated at all for the loss of land use right due to ADB funded road construction.

In the last version of *SPS*, in this key section, in the "tasks, scope and safeguard policy principles for involuntary resettlement", a phrase "as far as possible" is used several times. Our experience of ADB projects monitoring is evidence that "as far as possible" often turns into "as a rule". What does this promise mean: "to avoid involuntary resettlement and minimize it as far as possible"? This phrase in the given section should be changed to more concrete language, namely: "to undertake exhaustive measures to prevent involuntary resettlement". The phrase "at least", which often is repeated and thus depreciates the meaning of safeguard measures in terms of involuntary resettlement. We propose to apply the following terms - "adequate" or "exhaustive", which implies final resolution of conflict caused by involuntary (or made not by one's own will) resettlement.

Article 3 of this Section contains the language that allows for unfair or corrupt borrowers to act in their own interests ignoring the interests of regular people, which considerably raise the level of corruption for the projects. So, we believe that the notion "legitimate expropriation" should be replaced with more correct and legal notion "seizure of the land for state use by means of redemption or provision of equal compensation". Since "expropriation" apart from involuntary paid alienation of property also envisages unpaid alienation implemented by the state bodies.

In Article 5 we propose the following language for this paragraph: "The borrower/client should provide adequate and compliant land as well as structures and monetary compensation for resettlement that would cover full cost of the lost land and premises, adequate compensation for partially destroyed premises, at that, full cost of rehabilitation should be paid, as well as assistance, if need be, for move or before the move in accordance with sub-paragraph 4 (1) and (2), to implement the move. The borrower/client falling under sub-paragraph 4 (3) should provide full size compensation for lost assets, such as dwelling, land improvement; as for the land of those persons that have land use rights, rather than land property rights, those persons should be provided with similar lands at the same conditions".

The following should be introduced into the provisions that stipulate the rights of commercial structures subject to resettlement (Article 6): All hired employees should receive compensation for the period of forced idle time (removal from work due to circumstances beyond the control of the parties).

It is necessary to introduce the provision into the Article 13, according to which after the analysis the borrower/client should apply more progressive norms when implementing the resettlement, - if the requirements of the Bank protect migrants better than local laws, the requirements of the Bank should be applied, and vice versa.

Article 14 should stipulate the requirement that the information about the amount of money allocated for the resettlement should be made public, while cost estimates should be transparent.

In Article 16 it is necessary to specify the responsibility of the borrower/client to arrange tender to select the company that would perform assessment. The tender should be conducted observing the principles enabling selection process transparency.

We propose the following version of Article 18:

"The borrower/client should provide that physical or economic resettlement will not be performed until (1) the compensation for the rehabilitation is fully paid, (2) all rights listed in the table RP are transferred to people in project area, all right institutive documents for dwelling, newly built to replace the alienated one are legalized, and all required utilities are constructed and connected to the dwelling (3) improved rehabilitation program is envisaged funded from the relevant budget. If the project limits access to the land, these limitations should be imposed in accordance with the schedule indicated in approved table RP".

In Article 26 (sub-section "Consultations") it is necessary to include the following provisions:

General principles of consultation process and hearings should be observed:

- Clear definition and fixation of the topic and objective of the discussion;

- Identification of all the stakeholders, registration of the participants;
- Preliminary dissemination of the information on the problem (project);
- Provision of the access to documented information on the problem (project);
- Mandatory preparation of summary documents - protocol of public hearings and recommendations for official structures that make the decisions;
- Summary documents should not only reflect agreement of the parties, but also to record controversy.

We believe that the Bank should establish general requirements on the consideration of the complaints. At that, the provision should be made, which would consider national norms providing for the procedure to appeal actions (negative performance) and decisions of organizations and officials. However, it should be specified that those norms should be applied that provide for observance of citizens rights better. In any case the function of consideration and satisfaction of the complaints of involuntary resettlers should not be transferred to the party that does not belong to the conflict party (this does not concern courts), for instance, to non-governmental organization hired or invited by the Bank cannot play this role.

In the Section on the rights of indigenous peoples:

It is clear that the task of any public institution that calls itself "development bank" should be preservation of cultural heritage and habitat when implementing the projects. However, what should we understand by cultural heritage? Traditionally, this is buildings, premises, memorials sacred sites, as well as crafts, folk arts and etc. There are absolutely not enough guarantees in the document SPS in terms of protection from destruction of artifacts and memorials. No *"social and economic benefits acceptable from cultural perspective"* can return lost heritage. Public consultations (even falling under the definition "free, prior, informed") are not the main mechanism to prevent the conflicts and to provide the remedy for the damage. International legal tools of protection should act, which is completely omitted by the authors of the document.

There is another term, - "intangible cultural heritage". This sphere can also suffer damage from ADB funded projects, so it needs protection.

According to UNESCO International Convention "On protection of intangible cultural heritage", the term covers the following: "Customs, forms of presentation and expression, knowledge and skills, and related tools, subjects, artifacts and cultural space recognized by the communities, groups and in some cases by individuals as a part of their cultural heritage".

We propose to considerably revise the section on the rights of indigenous peoples with the purpose to integrate the provisions of above mentioned Convention and other UN human rights documents. This would be the evidence of the fact that "ADB recognizes the rights of indigenous peoples for the development". Recognition assumes action.

What dropped out from the scope of proposed draft SPS:

1. Labor protection (and especially protection of the rights of hired personnel). Although ADB committed itself to observe so-called Core Labor Standards, this promise obliges the Bank or its clients very little. In addition, the provisions of the international documents on prohibition of children's labor and full prohibition of the worst labor forms should be integrated into this document. We continue to demand that the ADB should study positive experience of the European Bank for Reconstruction and Development (EBRD), which maximally integrated the provisions of ILO conventions into its safeguards policies.

2. *Education system as intangible cultural heritage of our peoples.* Although ADB declares its commitment for education, considering it as one of the "vehicles" of its new long-term strategy, this sphere nowadays is almost completely destroyed (to a considerable extent upon the involvement of ADB funded projects) and needs complex safeguard measures. The educational system that existed here before Asian Development Bank showed up was progressive force in reality, but not only on paper, that allowed our people to be abreast with the most developed nations in the world in twentieth century. So, we consider this system of education as our intangible cultural heritage. Nations that gave world

famous scientists, cosmonauts, prominent writers and poets (Chinghiz Aitmatov, Olzhas Suleimenov, Mirzo Tursun-zade), genius musicians (Kara Karaev, Aram Khachaturyan), now can be deprived of resources to reproduce intellectual elite when one or two generations change. Nowadays many graduates of secondary schools cannot compete with their coevals from other countries (where the governments were much more smart and did not allow ADB to "reform" education policy). Gross, unskilled and forcible invasion of ADB into the educational sphere should be classified as risky investments, and therefore, complex of protection measures should be envisaged. The facts that have been accumulated by our activists already will soon be presented to the Bank with the demand not to allow unpunished destruction of our intangible heritage.

CONCLUSIONS AND RECOMMENDATIONS

The tendencies of the new document are clear - unjustified reliance on fair and consciousness investor, belief (naïve in today's realities of financial crisis, if not to say ill-intentioned) in self- regulation of the market. All those prescriptions that ADB and other international financial institutions gave us during the 90-th of the last century do not save from lawlessness, poverty and corruption.

Countries-borrowers of ADB also found themselves weakened and not able to resist market element and protect ADB funded projects affected people in their respective countries. None of public regulation systems, where ADB intervention was taking place for many years came out of "reform" crucible being strengthened and modernized. On the contrary, now, public services, as never before in the history of our countries, are ineffective, cumbersome, and subject to corruption. Millennium Development Goals today appear to be even less achievable than eight years ago.

However, the draft document (Safeguard Policy Statement), issued by ADB, does not give us any special hopes and does not allow for any other option than the following: civil society organizations should make tenacious efforts to restore protective functions of our states that are being destroyed by the Bank.

National standards that ADB is intended to rely upon, at the moment are in "inoperable" condition and cannot adequately respond to market anarchy challenges.

So, general rules that we propose to radically strengthen safeguard measures to protect from the consequences of any project intervention include the following provisions:

1. The Bank's Safeguard Policy as the main human rights and environment protection document should be based on the relevant UN principles and conventions.
2. Transition to country systems/national safeguard standards cannot annul obligations and guarantees of ADB taken before.
3. DB should not avoid the commitment to achieve Millennium Development Goals, to do so, it should strengthen its Safeguard Policy in line with these obligations.
4. ADB should be committed (in addition to already existent List of prohibited investments, Annex 1) to develop the List of prohibited zones (glaciers, seismic dangerous areas, protected areas, sacral and cult sites, spheres of intangible cultural heritage and etc.)
5. When making Resettlement plans ADB should be guided by the recommendations of UN Special Commissioner on the right for dwelling.
6. ADB should not participate in the projects upon receiving irrefutable independent expert information that these projects contribute to climate change, desertification, manufacturing and distribution of genetically modified organisms.

Today the reputation of ADB as "responsible agent of development" is weighted on the balance of Trust. What the Bank chooses will become the dominant of the interaction between civil society organizations and this institution: constructive criticism or non-acceptance and resistance. Asian Development Bank should understand that the world changes and former approaches might be a deadlock. We hope that ADB understands this and will make proper choice.

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