

December 4, 2008

Mr. Nessim Admed
Safeguard Policy Team
The Asian Development Bank,
Manila

Dear Sir,

Comments on the second draft of the Safeguard policies

This is further to the comments made during the consultation held from 19-21st November 2008 in Manila.

Centre for Environmental Justice based in Sri Lanka, is a member of the NGO Forum on ADB. We thank you for this opportunity to comment on the second draft of the ADB safeguard policies. While we can see number of our recommendations made during the consultation of the first draft of these policies have been included in this draft, we still see number of areas that need further refinement and corrections in the policy language as well as in the policy approach. We think that this draft too will not adequately protect the rights of communities affected by ADB-financed projects.

As we submitted during the consultation the lack of integration of safeguard principles with implementation measures and requirements for borrowers and clients, the proposed use of complex "country safeguard systems" without any proposed increase in resource availability or supervision, the proposed "derogation" or replacement of any or all safeguard requirements, proposed self-regulation, including the devolution of authority from the ADB to the Bank's clients and borrowers for important safeguard assessment, monitoring and other functions and the lack of any specific resource commitments for the increased monitoring and supervision are major concerns to us.

In general, the draft safeguard requirements put most of the responsibility for complying on the borrower/client. However, we believe as a multilateral lender the ADB needs to maintain primary responsibility for implementing the safeguard policies.

FI projects: Page 24 section 74 to 76- This section state that "The very nature of intermediated financing means that ADB will delegate to the FI responsibility for subproject due diligence and monitoring including environmental and social risk management." There is a heavy risk of this approach. It is not clear whether FI project documents subject to the public scrutiny and disclosure.

There is a critical difference between the draft ADB policy related to FI projects and World Bank policy. Both institutions pass responsibility for carrying out environmental risk management on to the FI, but the World Bank policies explicitly require environmental assessment of FI projects while the ADB policies do not seem to require this. We believe that the ADB policies should specifically require a formal assessment for FI projects that are likely to have environmental and social impacts.

Information Disclosure: We appreciate bringing 120 days disclosure period on the public projects back to the Policy. However, the ADB only commits to publishing documents on the web site 60 days in advance of board consideration for private sector projects. There is no good reason for this distinction.

We strongly state that there should be a 120-day comment period for all category A projects regardless of the public or private. We also state that draft resettlement plan and the draft Indigenous Peoples Plan must be available for review at least 120 days before board consideration.

Typical EIA documents do not adequately address the social impacts. Therefore, the EIA language should refine to include the social assessments and that must be prepared under the Involuntary Resettlement and Indigenous Peoples policies and must be available to the local communities and available on the ADB web site.

GHG emissions: The SPS-Environment requires projects to avoid greenhouse gas emissions where feasible. We believe that ADB should not finance projects that emit significant amount of GHG. The projects that emits 100,000 tons CO₂ equivalent per year considered as significant. .

Grievance Mechanism and the Accountability: As we see the language on the Grievance mechanism is mixed up with the Accountability mechanism. (Page 18 item 2-) We suggest that the policy should clearly separate the two mechanisms in the policy language.

Page 23 section 69 – says SPS requires establishing and maintaining a grievance mechanism. As we learnt, that STDP- Sri Lanka Grievance mechanism was not so independent and there were many problems. Necessary language is important to ensure the independence and the well-function of the Grievance Mechanism.

Country Safeguard Systems: As we heard from some government representatives country safeguard system seems not a widely agreed concept since it has many practical implications. It is inappropriate for the ADB to use the Country Safeguard Systems (CSS) approach without any caution. Unlike the ADB, countries need long time for changing laws and policies. As we learnt Sri Lanka will not practice its current Involuntary Resettlement policy which is a blue print of the ADB policy from next year. Therefore we cannot expect countries to upgrade the National Laws and Policies to equivalent to the ADB policies. Poor and the marginalized people will have severe impacts in many countries if ADB push for the CSS approach without caution.

Public participation: Page 17 under section 56 Scope and policy principles item 5- explain about women's participation. However, it is not clear what the mechanism to CONTINUE CONSULTATION is.

Progress Reports: Page 17 item 7 – talks about disclosing periodic progress reports. It is not clear what the mechanism is? Disclosing the reports via website is not adequate for the local people.

Core Labor Standards: Page 17 item 10 – talks about Core labor a standard which is a positive sign. However, it is important to include ILO language which is clearer on the Core labor standards. Page 29 shows the prohibited investment activities which included HARMFUL CHILD LABOR. However, we think that any sort of child labor cannot be accepted.

Social Preparation: Page 18 item 2 – discuss about a 'social preparation' phase in highly complex and sensitive compensation and resettlement decisions- It is not clear what is the SOCIAL PREPARATION PHASE means.

Social Impacts Assessment: Page 20 section 58 -59 – section 59 state that that project will involve involuntary resettlement will prepare a resettlement plan- But they do not talk about a SOCAIL

IMPACTS ASSESSMENT. Normally Environmental Assessment does not adequately address the social aspects in an EIA or IEE.

So we suggest that those projects involving involuntary resettlement should prepare a SIA separately or as an addendum at the EIA stage.

Independent Advisors: Page 21 section 61- Perhaps INDEPENDENT ADVISORY PANEL is a good idea. But we should know what the role is and how independent they are and how to select? As we know, the World Bank requires the borrower to retain "independent EA experts not affiliated with the project to carry out the EA" for category A projects. However, under the proposed policy the ADB policy only requires the expert to be qualified and experienced. We believe that the Safeguard policy should require those experts' independence from the proposed project.

Project Monitoring: Page 22 section 66- it says that "ADB will not finance projects that do not comply with ADB safeguard requirements, or the host country social and environmental laws and regulations". However the problem is how ADB can assess the practice of the good laws and regulations.

Safeguard Framework: Page 24 section 71 – application of Safeguard Framework is still give lots of free hands to the borrower. Especially when it mixes with the CSS it might dilute the safeguards for the affected people.

Safeguard Equivalence: Page 26 Section 77 (vi) – If the stakeholders found the equivalence report is not independent and incorrect what is the redress mechanism. Can public bring it to the accountability mechanism?

Resource Requirements: Page 27 section 83 84 and 85- Resources requirements is a major issue that needs to consider at the consultation stage.

Prohibited Investments lists: Page 29, item ii should include all POPs as per the Stockholm convention not only biphenyl. We also think ADB should consider "NO GO ZONES" for their investments.

The current draft is not pro-poor and it will negatively impact poor and the marginalized which is contrary to the ADB stated vision. We hope you will consider these comments before the next stage of the policy process.

Yours Sincerely,

Hemantha Withanage
Executive Director
Centre for Environmental Justice
20A, Kuruppu Road, Colombo 08, SRI LANKA
Tel/Fax: 0094-11-2683282
www.ejustice.lk

"You cannot solve the problem with the same kind of thinking that created the problems." Albert Einstein