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January 26<sup>th</sup>, 2007

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### **IAP COMMENTS ON THE OED SPECIAL EVALUATION STUDY ON INVOLUNTARY RESETTLEMENT**

The International Accountability Project (IAP) hereby submits comments on the OED's Special Evaluation Study on Involuntary Resettlement Safeguards. The IAP appreciates the effort and thoughtful analysis undertaken by the OED in producing this Study to inform the ADB's ongoing safeguard policy update process. Several of the key findings and recommendations of the Study are consistent with our own analysis. Others, however, raise significant concerns from a human rights perspective and run counter to the IAP's experience with involuntary resettlement.

Our comments are based on a thorough review of the Study and informed by our professional experience with development-induced displacement and involuntary resettlement, both at the grassroots level through work with affected communities, and at the policy level through our extensive engagement with various resettlement policy revision processes at the World Bank, IFC and African Development Bank. The comments are organized into 12 bullet-points, elaborated on below.

We hope these comments will contribute to ADB's ongoing effort to reformulate its safeguard policy on involuntary resettlement. The issues we raise in these comments must be addressed if the updated policy is to enhance—and *not weaken*—the policy's effectiveness in ensuring truly equitable and sustainable development.

Before outlining our concerns, we would like to highlight three major recommendations made by the OED Study with which we strongly agree:

- (i) The ADB must shift more resources and attention to implementation, monitoring and supervision.**

The OED Study concludes 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 (p. 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” (p. 25). The Study also concludes that “ADB does not have a system to track and follow up on the recommendations made in Project Completion Reports” (p. 25).

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: 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. We emphatically support the OED’s recommendation that these implementation and supervision issues should be a major focus for improvement in formulating the ADB’s new approach to the involuntary resettlement policy.

**(ii) 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 underestimated: “The actual number of APs recorded was 65% higher than estimated in the [Resettlement Plans]” (p. v). The final report of the World Commission on Dams (WCD) 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.”<sup>1</sup> We would encourage the ADB to review the recommendations made in the WCD final report on how to address this issue, including by improving methodologies for pre-project studies and assessments to identify and define APs. We support the OED in highlighting this issue as an area for much-needed improvement. The improvement is needed not only to ensure compensation and rehabilitation for all genuinely affected people, but also to ensure that accurate understanding of the costs and negative impacts is factored into the initial decision-making about whether or not to proceed with a particular project involving involuntary resettlement.

**(iii) The updated policy should include clearer requirements for time-bound actions.**

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<sup>1</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000, p. 104. <[www.dams.org/report/](http://www.dams.org/report/)>

The OED Study finds 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” (p. 11). This finding is in line with our own experience. 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 key lessons that ‘resettlement should be based on a time-bound action plan of documented measures’” (p. 27).

We support the OED’s recommendation 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” (p. x). Based on our 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, the IAP recommends that resettlement and rehabilitation should be accomplished and finalized *prior* to any project activities that will cause displacement.

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By outlining the following twelve concerns, we hope to contribute to the considerations weighed by the ADB is reformulating its safeguard policy on involuntary resettlement.

**1. The three guiding principles of the policy need to be enhanced.**

The ADB’s Involuntary Resettlement Policy (1995) requires that all planning and execution of projects involving involuntary resettlement be based on the following three principles:

- (i) Avoid involuntary resettlement where feasible;
- (ii) Minimize resettlement where population displacement is unavoidable; and
- (iii) Ensure that displaced people receive assistance, preferably under the project, so that they will at least be as well off as they would have been in the absence of the project.

In summarizing OED’s assessment of the policy’s guiding principles, the Study states that, “OED agrees with the basic philosophy and general principles of the IR policy—as a general principle people should not be adversely affected by ADB-financed projects” (p. iii). While we agree with this bare minimum statement, we believe that *the principles must be enhanced* if they are to effectively ensure that people are not “adversely affected by ADB-financed projects”—and if they are to reflect international best practice on involuntary resettlement,

along with findings of innumerable studies on the topic. Specifically, we recommend that the guiding principles be enhanced in the following three ways:

**a) ADB should preface its policy with a statement about the grave impoverishment risks associated with involuntary resettlement.** Many of the ADB's peer institutions, including the World Bank (WB), the International Finance Corporation (IFC), the Inter-American Development Bank, (IDB) and the African Development Bank (AfDB), include such an opening statement in their policies on involuntary resettlement. This up-front acknowledgement of the severe negative impacts that can result from involuntary resettlement is crucial for placing a resettlement policy in its proper context and for making sure that those responsible for implementing the policy are aware of the impoverishment risks that are at play in the context of development-induced displacement and involuntary resettlement.

The introductory paragraph of the OECD's *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects* provides one example of such a statement:

Development projects that displace people involuntarily generally give rise to severe economic, social, and environmental problems: production systems are dismantled, productive assets and income sources are lost, and people are relocated to environments where their social and productive skills may be less applicable and the competition for resources greater. Involuntary resettlement thus may cause severe long-term hardship, impoverishment, and environmental damage unless appropriate measures are carefully planned and carried out. Past experience indicates that the absence of explicit guidelines regarding involuntary resettlement has contributed in many projects to underestimating the complexity and impact of displacement.<sup>2</sup>

**b) ADB should strengthen its commitment to avoiding involuntary resettlement whenever possible** by including explicit language in the guiding principles about (a) *thoroughly exploring all viable alternative project designs*, and (b) the importance of seriously considering and evaluating, in every case, *the alternative to refrain from carrying out the project (the "non-action" alternative)*, particularly if negative impacts on affected people will be severe. This principle is a core component of the Inter-American Development Bank and African Development Bank policies, as well as of the guidelines developed by the OECD and the World Commission on Dams<sup>3</sup>.

The Inter-American Bank (IDB) policy on involuntary resettlement, for example, states the following as the first of the policy's two "fundamental principles":

Every effort will be made to avoid or minimize the need for involuntary resettlement. A thorough analysis of project alternatives must be carried out in order to identify solutions that are economically and technically feasible while eliminating or minimizing the need for involuntary resettlement. In examining the trade-offs between alternatives, it is important to have a reasonable estimate of the numbers of people likely to be affected, and an

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<sup>2</sup> OECD, *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*, 1992. <[www.oecd.org/dataoecd/37/27/1887708.pdf](http://www.oecd.org/dataoecd/37/27/1887708.pdf)>

<sup>3</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000. <[www.dams.org/report/](http://www.dams.org/report/)>

estimate of the costs of resettlement. Particular attention must be given to socio-cultural considerations, such as the cultural or religious significance of the land, the vulnerability of the affected population, or the availability of in-kind replacement for assets, especially when they have important intangible implications. When a large number of people or a significant portion of the affected community would be subject to relocation and/or impacts affect assets and values that are difficult to quantify and to compensate, after all other options have been explored, ***the alternative of not going ahead with the project should be given serious consideration.***<sup>4</sup> (Emphasis added)

The need to strengthen the commitment—in policy and in practice—of the ADB on this issue is highly relevant to the finding of the OED study that “[m]ost of the project team leaders thought ADB gave either always or sometimes *insufficient resources and time to properly consider project alternatives* with less adverse impacts” (p. 30), as well as the finding discussed above regarding the consistent under-estimation of resettlement impacts. To strengthen the policy and its implementation, the ADB must more carefully evaluate not only the full scope of potential adverse impacts and costs of resettlement, but also factor that into the decision-making about whether to proceed with the project. Given the grave risks and costs associated with involuntary resettlement, it is highly justifiable to dedicate significant time and effort to exploring all viable project alternatives, and to always present the non-action alternative as a legitimate option.

The ADB policy should make it clear that involuntary resettlement should be seen as an extreme option and a last resort. A reference to the fact that the United Nations considers involuntary resettlement to be a *prima facie* violation of many human rights<sup>5</sup> could also help to strengthen this awareness amongst project planners. For example, World Bank former Vice President and General Counsel, Ibrahim Shihata, recognized involuntary resettlement as such: “The potential for violating individual and group rights under domestic and international law makes compulsory resettlement unlike any other project activity.”<sup>6</sup>

**c) The guiding principles must set an objective of *improving affected peoples’ standard of living, not merely restoring them.*** The importance of focusing on *livelihood improvement* rather than *livelihood restoration* is well documented in numerous academic studies by anthropologists, economists, development practitioners, and others. Thayer Scudder of the California Institute of Technology, an internationally recognized expert on development-induced displacement and resettlement, regular consultant to the World Bank, and former commissioner for the World Commission on Dams, has identified several underlying reasons why allowing restoration, as opposed to requiring improvement, tends to make a majority of those resettled worse off:

- (i) Most large development projects that involve resettlement are preceded by a pre-project planning period that tends to go on for years—even 10-20 years in

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<sup>4</sup> IDB, Operational Policy OP-710 on Involuntary Resettlement, p. 1. 1998.

<sup>5</sup> Committee on Economic, Social and Cultural Rights, *General Comment No. 4*, United Nations: New York, 1991.

<sup>6</sup> Shihata, Ibrahim, Legal Aspects of Involuntary Population Displacement. In *Anthropological Approaches to Involuntary Resettlement: Policy, Practice, and Theory*, edited by Michael M. Cernea and Scott E. Guggenheim, pp.39-54. Boulder, CO: Westview Press, 1993.

multiple cases of large dams in Asia. During that time, governments, private sector entrepreneurs, NGOs and project affected people themselves are much less likely to make any investments within the rural and urban areas concerned. This can include, for example, project affected people being less likely to plant full harvests of crops or make needed investments in home repairs, because they know they will be forced to move at some point in the future. It also can mean that government agencies do not provide essential services or invest in municipal improvements in the potentially affected areas. This phenomenon is well-documented by the World Commission on Dams: “At the planning and design stage, an important social impact is the delay between the decision to build a dam and the onset of construction. This can result in communities living for decades starved of development and welfare investments.”<sup>7</sup> Thus, by the time a decision is made to proceed with major feasibility studies, including “base-line studies” to determine pre-project living standards of future resettlers, those people’s living standards will already be worse off than they were before the planning began, and worse off than those of comparable neighboring communities living outside of the project-affected area.

- (ii) Pre-project “baseline” studies tend to systematically underestimate people’s incomes and undervalue their non-income livelihoods and/or community support systems. Affected people often under-report income for a number of reasons—for example, due to forgetting to include contributions made by other family members, or for fear of being taxed or because sources of income may be considered unflattering or not legal. Additionally, baseline studies may not include as official sources of income important pre-project resources including: access to common property resources such as forests, grazing lands, rivers, etc., or economic exchange networks—when in fact these resources often provide key sources of supplemental livelihood.
- (iii) Resettled people often have to deal with increased costs due to loss of arable land and/or common property resources. Resettlers who must buy food and other resources that they were previously able to grow and produce are particularly hard hit by increased costs. Loss of land also contributes to impoverishment over multiple generations, because land is an asset that can be passed on from generation to generation, whereas cash compensation or temporary employment tend to be short-term assets that are quickly dissipated.
- (iv) It is not possible to fully compensate people for the wide range of negative cultural and social impacts reported in study after study that relate to loss of home, burial grounds, religious sites, and ideological and political control over a familiar environment. It is also very difficult to mitigate the health implications of such psychological impacts as “grieving for a lost home” and “anxiety for the future,” which tend to be particularly devastating for indigenous peoples, and rural communities with strong ties to the land. These negative social impacts can also affect the economic well-being of the displaced people. There is no way that

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<sup>7</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000, pp. 99. <[www.dams.org/report/](http://www.dams.org/report/)>

social cost-benefit analyses can accurately reflect the hardships involved in involuntary resettlement; hence the need for resettlement components to be planned and implemented as *development projects* to offset such costs by helping resettlers to *improve* their living standards and become *project beneficiaries*. This approach can help to counter APs' loss of familiar surroundings and the sacrifices that they are being forced to make in the name of development. Development benefits should accrue not only to distant beneficiaries, but also to those who are forced to sacrifice their lands and/or livelihoods to make way for the project.

The concept of ensuring that resettlement activities serve to improve affected people's living standards is inextricably linked to the notion that resettlement activities must be designed and executed ***as development projects in their own right***, which respond to affected people's own development needs and priorities, and ensure that those who are most impacted by the project *also benefit* from that project.

The ADB policy includes this concept (partially) in the list of guiding principles that are outlined in the Bank Policies on involuntary resettlement:

*(iv): Each involuntary resettlement is conceived and executed as part of a development project or program.* ADB and executing agencies or project sponsors, during project preparation, assess opportunities for affected people to share project benefits. The affected people need to be provided with sufficient resources and opportunities to reestablish their livelihoods and homes as soon as possible, with time-bound action in coordination with civil works. (BP pp. 2-4, para.4)

The ADB is right to require that each involuntary resettlement is conceived and executed as a development project, but the language in this paragraph is weak, and falls short of international best practice by focusing on *restoration* rather than *improvement*. An explicit requirement for measurable improvement and resettlement-as-development should be included up front in the three core guiding principles that introduce the resettlement policy.

The final report of the World Commission on Dams makes the following strong statement on this issue:

Impoverishment of affected people is increasingly seen as unacceptable but it is also unnecessary since there are a wide range of opportunities available for making not only resettlers, but all affected people project beneficiaries. This is in the interests of all stakeholders since, as beneficiaries, affected people add to the stream of project benefits, while reducing costs. The problem of making them beneficiaries lies not with the affected people, who time and again have shown the capacity to respond to opportunities that are available, but with the inadequate laws, policies, plans, financing capacity and political will of governments and project authorities.<sup>8</sup>

The WCD report contains guidelines and recommendations for assisting project planners and other actors to achieve desirable sustainable development outcomes.<sup>9</sup>

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<sup>8</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000, pp. 108-109. <[www.dams.org/report/](http://www.dams.org/report/)>

<sup>9</sup> *Ibid.*, *Part II: The Way Forward*, pp. 195-319.

**2. The ADB should not decrease the current scope and inclusiveness of the policy.**

The OED Study argues that the scope of the original involuntary resettlement (IR) policy has expanded since the issuance of the Handbook on Resettlement in 1998 and the ADB's reorganization in 2002. The current policy "is now much more inclusive than the title of 'IR policy' suggests, as it no longer centers on addressing only significant displacement, but on addressing as well all kinds of losses sustained by affected persons" (p. iv). The Study recommends that the ADB clarify the intended scope:

Management and the Board need to reconcile the differences between the 1995 Policy and the currently applied policy, as laid down in the OM F2 section. In OED's view, the three key principles of the policy remain valid, but ADB needs to decide whether to endorse the greater inclusiveness of the IR policy and procedures, or return the current OM and IR practice back to greater focus on displacement of APs (p. x).

We find the current policy to be consistent with international best practice in its inclusion of a wide range of direct impacts from physical and economic displacement, as well as "downstream" (indirect) impacts, including those that result from project-related activities other than physical acquisition of land. By considering a reduction in scope, we recognize that the ADB is following the lead of the World Bank's International Finance Corporation (IFC), which recently attempted to dramatically reduce the scope of its involuntary resettlement policy when it replaced its safeguard policies with the new Performance Standards.

The IFC's attempted reduction in scope was largely thwarted. Civil society groups registered significant concerns with the limited scope of IFC's draft Performance Standard 5 on "Land Acquisition and Involuntary Resettlement," which the IFC intended to limit solely to "project-related land acquisition," which in turn is narrowly defined in a footnote as situations involving transfer of title or granting of an easement. Ultimately, this unwise approach was tempered by the IFC's Board of Executive Directors, which insisted that language be included in the final version of the Performance Standard that recognizes that if adverse economic, social or environmental impacts from project activities in addition to land acquisition become significantly adverse at any stage of the project (such as downstream flooding or destruction of fisheries), the Performance Standard on Involuntary Resettlement should also cover such activities.

The scope of the current ADB policy is consistent with the involuntary resettlement policies of its peer institutions, as well as with the final report of the World Commission on Dams, which recognize resettlement as including both 'physical displacement' and 'livelihood displacement' (or deprivation) caused by any aspect of the project, and call for the full range of impoverishment risks and impacts to be addressed and mitigated by resettlement planning and execution. The WCD report warns that, in the past, resettlement programs have predominantly focused on the process of physical relocation rather than the economic and social development of the displaced and other negatively affected people. "The result has been the impoverishment of a majority of resettlers from most dam projects

throughout the world.”<sup>10</sup>

The WCD report explicitly states that the term “affected” applies to people facing either type of displacement—physical or livelihood/economic displacement or deprivation<sup>11</sup>—and it does *not* condition this as applying only to such impacts that result from official “project-related land acquisition.” To do so is shortsighted and unjust, and inevitably leads to the impoverishment of a significant number of affected people who will fall through the cracks and who will not be covered by any safeguard policy. These impacts constitute significant aspects of involuntary resettlement, and should be fully addressed by any involuntary resettlement policy.

**3. If the ADB is to shift toward a results-based framework and performance standards, these must be based on explicit, concrete requirements that can be easily measured to determine compliance.**

The OED study recommends that the updated policy “should highlight a set of performance standards. It should set standards for both ADB and EA [executing agencies, i.e., borrowers] in terms of vulnerability assessment, public consultation, disclosure of information, reporting, monitoring, and grievance redress” (p. x). The Study also comments that, “[t]he experience of the IFC [International Finance Corporation] is instructive, and not only for ADB practices towards private sector projects” (p. 14).

While we recognize that the IFC’s new Policy and Performance Standards on Social and Environmental Sustainability have some merits, *we would strongly caution the ADB against looking to the IFC policy revision process and outcomes as a model to be followed.*

Hundreds of civil society organizations worldwide, along with academics, development practitioners, and others, have registered major concerns with the IFC throughout its process of creating the Performance Standards. Mechanisms for timely and appropriate consultation and participation during the process were woefully inadequate, and the final text of the Performance Standards includes language that the IAP and other civil society groups find to be highly problematic.

An overarching concern of civil society groups is that the IFC’s new policy and performance standards are overly discretionary, and that they rely too much on client/borrower-generated information, client self-monitoring and client self-reporting. The new framework diminishes the role of the IFC and World Bank Group in ensuring accomplishment of its fundamental mission of poverty alleviation. Civil society groups are also alarmed that there is not a single use of the word “supervise” or “supervision” in the entire set of Performance Standards (1 through 8), nor in the overarching Sustainability Policy. Many groups have called for the IFC to address this gap and to include language in the policy and performance standards regarding the importance of credible, independent

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<sup>10</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000; pp.102-103. <[www.dams.org/report/](http://www.dams.org/report/)>

<sup>11</sup> Ibid.

third-party verification and monitoring, and requiring IFC involvement in assessing the efficacy of its lending rather than depending solely on the client, which in many cases will have a conflict of interest that dictates against generating information that reflects poorly on the development impacts of the project.

For a comprehensive assessment of the strengths and weaknesses of the IFC's new policy framework from a civil society perspective, we would refer you to the recent report published by the Halifax Initiative of Canada, with contributions from the IAP and others. (Halifax Initiative, *One Step Forward, One Step Back: An Analysis of the International Finance Corporation's Sustainability Policy, Performance Standards, and Disclosure Policy*, 2006. <[www.halifaxinitiative.org/index.php/Reports\\_Analysis/683](http://www.halifaxinitiative.org/index.php/Reports_Analysis/683)>)

**4. Any shift toward reliance on country systems for IR must ensure that protections for APs are not compromised, and must include specific minimal standards that will serve as a universal floor for all DMCs.**

The OED Study recommends that:

“The updated policy should elaborate on the objective of greater reliance on country EA systems for land acquisition and resettlement safeguards. The common objective should be for ADB's operations to rely more on country systems for IR. This would need to be accompanied by certifications, preferably by ADB working jointly with other aid agencies, of sufficient convergence with the IR policy and effective implementation capacity” (p. x).

A shift toward increased reliance on country systems may have potential benefits, but it also carries significant risks. We recognize that such an approach has only begun to be explored by the World Bank, and that the ADB and others are cautiously exploring how they will do the same. While many questions remain unanswered and un-formed at this very preliminary stage, we would like to highlight some initial concerns:

**a) Involuntary resettlement is an area of particular concern in terms of shifting to country systems.** In the Asia Pacific region, very few countries, if any, have adequate frameworks and capacity to effectively guarantee protection of the rights and development interests of people who might be affected by involuntary resettlement. We agree with the OED Study in its assessment that:

[d]espite the progress that has been made by some DMCs [Developing Member Countries], continued reliance on ADB's IR policy remains necessary in many countries, since the convergence with domestic law and policy is compromised by continuing lack of capacity and ingrained bureaucratic attitudes, including lack of filtering down of new guidelines to government officials at subnational levels (p. 40).

The Study notes that even in countries such as Sri Lanka, China and India—which the OED assesses to have comparatively strong IR frameworks—significant gaps remain. Given these vast gaps that persist between country systems and ADB standards in the area of involuntary resettlement, and given the grave impoverishment risks associated with resettlement, we urge

the ADB to proceed with extreme caution in exploring avenues for shifting to country systems, and to defer doing so until a reliable system is in place to ensure that *all* affected people, regardless of the country in which they live, will be guaranteed equal protections. To allow otherwise would discriminate unjustly against affected persons in countries with less developed frameworks and capacity for resettlement.

**b) Targets and standards required for protection of affected people must remain universal and non-negotiable.** The OED study creates a false dichotomy and unnecessarily limits the debate by presenting the issue of a shift towards country systems as necessarily requiring a lowering of ADB standards and a re-setting of the bar in every country according to the country's capacity, and also by presenting capacity-building as inherently incompatible with universal standards and firm requirements. The following statement of the OED Study illustrates this kind of framing of the debate, to which we object:

Some of the friction that the policy and procedures cause within ADB is due to their wording. The IR Policy, the OM, and the Handbook on Resettlement do not seem to allow for compromises with national laws, policies, capacities and budget constraints.... The implication is that these are superseded by the ADB policy and project agreements that are built on it. However, this is at odds with the commitment ADB has recently made to align its system with country systems in the context of the 2005 Paris Declaration [OECD, 2005. *Paris Declaration on AID Effectiveness: Ownership, Harmonization, Alignment, Results and Mutual Accountability.*] ...Indeed, the tone of the operational procedures leaves little room for anything other than a somewhat confrontational approach during implementation. For instance, para. 55 of OM Section F2/OP expresses as rule 1 regarding the preparation and review of resettlement planning documents: "All ADB requirements must be met." The irony is that ADB is generally expected to develop capacity in the DMCs, which would imply that variable targets need to be set based on the existing capacity, and that a certain amount of noncompliance would be condoned as part of the learning process. The apparent non-negotiable nature of the policy, however, implicitly works against such capacity development, and instead encourages more punitive behavior towards EAs by ADB staff who are fearful of a compliance review. (p. 10)

We strongly disagree with the assumptions underlying this statement. Universal standards, in accordance with international best practice and universal human rights norms, must set a bar that serves as a universal floor for all DMCs. Procedural flexibility and compromise could potentially enter the equation in regards to *how* an individual country chooses to meet these targets, but the targets must remain firm. The ADB can provide differing levels and forms of capacity-building, according to each country's needs and self-defined development goals, in order to support each country to achieve convergence with their national frameworks and ADB standards/international best practice. "Confrontational" relations are not inherently caused by non-negotiable standards for social and environmental safeguards; they are caused by failure to communicate and agree on these standards and commitments up-front, and by failure to maintain open and supportive communication between EAs and ADB throughout the process, based on mutual respect for one another and for the objectives to be achieved through the development project. They can also stem from a lack of commitment to the policy principles at the DMC level.

We understand that a shift toward more a more inclusive IR policy over time may have contributed to “confrontational” relations with DMCs, but this is not a reason to abandon a set of fundamental, non-negotiable international safeguard standards. Rather, in our view, it points to the need to clarify and re-commit to such standards, and to reaffirm their crucial importance in safeguarding the rights and well-being of the citizens of all DMCs. The ADB can also help to deal with lack of commitment by more clearly explaining the benefits associated with a rights-respecting approach to resettlement, including: increased economic benefits to the DMC by having displaced persons continue to be productive members of society, improved development effectiveness, and reduced resistance to projects (which leads to project delays and reputational/political costs).

Clear delineation of these universal standards for affected people, including requirements for how the borrower’s achievement of these standards will be monitored and evaluated, can lay the groundwork for a shift toward country systems that will truly facilitate increased capacity and ownership in DMCs’ development activities, including those involving involuntary resettlement.

**c) We agree with the Study’s assessment that capacity building to enhance country systems for involuntary resettlement is a valuable use of ADB resources and should be expanded.** The Study recommends that ADB

[d]eepen the involvement in building country systems and capacity for IR. ADB should accord a higher priority to training programs for EA staff, as the payoff may be high in terms of improved resettlement operations. A country review on safeguards should be undertaken as part of country planning, to assess which aspects of the procedures should be instituted over and above the country’s own safeguard systems. ADB TA on country systems, led by RSES, could feed into this. Other than this, policy dialogue with countries needs to continue, as does the harmonization dialogue with aid agencies. Under the IR policy, ADB is required to build capacity for resettlement, but only modest resources have been directed towards this area. A greater effort can be justified (p. xi).

The value of such a focus is affirmed by the Study’s finding that “[h]alf of the EA project directors saw the increase in experience with resettlement safeguards as one of the main benefits of ADB involvement. ADB TA [technical assistance] for IR often had high value in terms of policy development and capacity building” (p. viii). Such capacity-building will be crucial to ensure that all people affected by ADB-financed projects have equal protections of their human rights and equal access to genuine development opportunities.

**5. Poverty alleviation should be the central criterion by which the effectiveness of the IR policy is evaluated.**

The Executive Summary of the OED Study states that “[t]he study asked the question whether the outcomes had been sufficiently positive to justify the incremental costs and the transaction costs associated with ADB’s involvement. This study believes efficiency in policy implementation is a valid criterion” (p. viii). While we recognize that efficiency is indeed a valid criterion, we believe that the ADB, as a development institution with an

explicit mandate of poverty alleviation and sustainable development, must first and foremost assess policy outcomes in terms of poverty alleviation.

Furthermore, the ADB is obligated to ensure that affected people are not impoverished in the name of larger development goals. This is in accordance with ADB's own Poverty Reduction Strategy of 1999, referred to in the study:

The IR policy gained in prominence when ADB issued its Poverty Reduction Strategy in 1999 as its new overarching objective. The implication was the ADB was required more than before to ensure that it would not impoverish the lives of any in the name of larger development goals sought for the majority (p. 7).

ADB also recently re-affirmed its commitment to poverty alleviation in supporting the region to achieve the Millennium Development Goals and issued a report about indicators in the Asia Pacific region. The ADB states its commitment on its website: "Dedicated to its vision of an Asia and Pacific region free of poverty, ADB strongly supports the Millennium Development Goals."

Thus, to fulfill this commitment in practice, *the effectiveness of the involuntary resettlement policy should be principally evaluated through long-term monitoring of the affected people's living conditions and their progress in improving their standards of living.* The involuntary resettlement policies of the Inter-American Development Bank and African Development Bank support this principle in their requirements for determining compliance. Both policies are explicit about their focus on monitoring and evaluating *conditions on the ground* at resettlement sites:

The monitoring activities will focus on compliance with the resettlement plan in terms of the social and economic conditions achieved or maintained in the resettled and host communities. ...Whenever possible, qualitative and quantitative indicators will be included as benchmarks to evaluate those conditions at critical time intervals related to the progress of overall project execution. The final evaluation will be scheduled at a target date estimated for completion of the plan, defined as the date on which it is expected that the living standards the plan was designed to provide are achieved. ...In all cases, independent supervision and multidisciplinary evaluation will be provided to the extent required by the complexity of the respective resettlement plan (IDB OP-710, p. 5, V.7). *(The AfDB has essentially identical language in section IV.4.3.20).*

We do not feel that this gap in the current ADB policy is adequately addressed in the OED study.

**6. The ADB must not undermine its commitment to poverty alleviation in "responding to new lending modalities."**

In evaluating the efficiency of policy implementation, the Study found that there were high incremental and transaction costs for DMCs associated with ADB's involvement in projects involving involuntary resettlement, due to the corresponding requirements that DMCs had to fulfill in order to comply with the IR policy.

Overall, OED believes that the bar is sometimes set at too high a level for countries and EAs, thereby either lowering their interest in requesting assistance from ADB or, when the loan is already signed by borrowers and EAs, creating resistance and delays at the level of implementing agencies (p. viii).

The Study later concludes, “A policy that will not be adopted for locally financed projects cannot be called replicable and is therefore not sustainable in a wider sense” (p. ix).

We recognize that the world of development finance has changed dramatically over the past decade, and that borrowing countries now have a wide array of financiers to choose from, including private banks and other sources of funding that have little or no requirements for safeguard procedures. We understand why this reality is forcing ADB to reevaluate their policy and its sustainability.

However, at the same time we urge the ADB to keep in mind the many other factors that determine true sustainability of policies and institutions. Over the past few decades, many development institutions, including the ADB and the World Bank, learned the hard way that avoiding front-end expenditures associated with safeguard planning and implementation simply resulted in dramatically increased costs down the road, when social unrest, increased poverty, or environmental damage had to be mitigated. Institutional reputations also suffered huge set-backs 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 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 institutions recognize that safeguarding the ‘triple bottom line’ (people, planet and profits) is in fact the most effective way to protect their long-term returns.

Furthermore, it is vital for the ADB and other financial institutions to take into account the fact that, while the financing side of development has changed dramatically over the past decade, affected communities and local and global civil society have also evolved significantly. The OED Study eloquently summarizes some of these trends in their overview of the history of ADB’s resettlement policy:

Some specialists consulted justify the “Policy Plus” elements [the increased inclusiveness of the policy] over the years as being in line with evolving best international practice, notably World Bank practice, and increasingly less passive reactions by persons adversely affected by large projects. The growing realization of practitioners that displacement has consequences above and beyond loss of house or land, affecting livelihoods and social networks, has led to greater rigor in examining the social dimensions of projects, and an urge to treat displacement processes as development projects in their own right (p. 8).

In this present-day context, the ADB cannot reverse the guiding principles or scope of its involuntary resettlement policy. Furthermore, in such a context, the ADB should use its expertise and its commitment to genuine sustainable development as a comparative advantage. ADB staff should remind 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. Instead of a participating in a global “race to the

bottom” in terms of who has the least onerous constraints for ensuring social and environmental sustainability, the ADB and other development institutions should publicize and raise the profile of the importance of these issues, and in doing so encourage other funders to raise their standards as well.

**7. A human-rights approach should guide the updating of the IR and other safeguard policies.**

The OED Study comments that, in reformulating the controversial involuntary resettlement policy, “[i]t may not be possible to develop a consensus among the many widely divergent and strongly held views on the policy and its impact” (p. iv). We would advise the ADB to look to the framework developed by the World Commission on Dams, which found that “[a] rights-based approach... provides a principled basis for mediating development choices among competing interests.”<sup>12</sup> Specially, the WCD report calls for a decision-making framework based on ‘recognition of rights’ and ‘assessment of risks’ (particularly rights at risk). This approach is highly relevant for development projects that involve involuntary resettlement, because of the significance of the rights-related issues as well as the nature and magnitude of potential risks for all parties concerned. The WCD found that such a ‘rights and risks’ framework was the most effective means to integrate the economic, social and environmental dimensions in the processes of options assessment and the planning and project cycles.

The ground-breaking framework proposed by the WCD is widely considered to represent best international practice for development decision-making. We strongly urge the ADB—particularly given the ADB’s status as a former Financial Contributor and Forum member of the WCD—to ensure that all updated safeguard policies adhere to this framework. The ADB should also review the *Basic principles and guidelines on development-based evictions and displacement*, developed by UN Special Rapporteur on the right to adequate housing, Miloon Kothari.<sup>13</sup>

**8. The updated policy should ensure meaningful participation of affected people by requiring that projects have obtained *broad community support* through *negotiated agreements*, that affected peoples have given their *free prior informed consent*, and that all relevant *information has been disclosed* in a timely and appropriate manner.**

The issues of meaningful participation and adequate consultation must be seen as inherent to planning for involuntary resettlement. If projects are going to displace people—to force affected people to make this great sacrifice—these projects absolutely must be respond to genuine and significant development needs of the region in which they are being

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<sup>12</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000; p. 200. <[www.dams.org/report/](http://www.dams.org/report/)>

<sup>13</sup> Kothari, Miloon, *Basic principles and guidelines on development-based evictions and displacement*, E/CN.4/2006/41. <[www.ohchr.org/english/issues/housing/annual.htm](http://www.ohchr.org/english/issues/housing/annual.htm)>

executed. When projects are conceived and designed in response to local and regional development needs as defined by the affected citizens—including the portion of the project that will create development opportunities for displaced and other affected people—broad community support will presumably not be difficult to obtain. A failure to obtain broad community support implies a failure to design a project that truly responds to the development aspirations of the borrowing country’s citizens.

The OED Study 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 safeguard policy update. If a development institution such as the ADB continues to have “weak performance on public consultations and disclosure,” the projects they fund will be undemocratic, uninformed, and unjust. Specifically we recommend enhanced commitment to the following four principles:

**Broad community support (BCS) and negotiated agreements.** ADB’s peer institutions, including the IFC, recognize that broad community support is not only good practice in terms of upholding human rights, but also serves as a ‘social license’ for a project—without which a project will likely encounter significant resistance and project-induced social unrest. “Public acceptance of key decisions is essential for equitable and sustainable... development.”<sup>14</sup>

The OED study acknowledges that adoption of the IFC’s definition of broad community support would “clarify somewhat the issue of what constitutes adequate consultation with APs. IFC, however, does not give guidance on thresholds for broad community support, and how to prove such support” (p. 15). While we see the IFC’s commitment to financing only projects that have obtained broad community support as an important step in the right direction, we agree with the OED that the ADB should go beyond the vague definition used by the IFC, which states that “[b]road community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project.”

Furthermore, the ADB should keep in mind that the concept of BCS is more effective when explicitly combined with a commitment to strive for such acceptance *through negotiated agreements*. The African Development Bank, for example, requires that “[p]roject planners should work to ensure that affected communities give their *demonstrable acceptance* to the resettlement plan and the development program, and that any necessary displacement is done *in the context of negotiated settlements* with affected communities”<sup>15</sup> (emphasis added). The World Bank Operational Policy 4.10 on Indigenous Peoples also provides some guidelines on how broad community support should be obtained.<sup>16</sup>

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<sup>14</sup> World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*, 2000; p. 214. <[www.dams.org/report/](http://www.dams.org/report/)>

<sup>15</sup> AfDB Involuntary Resettlement Policy, p. 10, section III.3.3(a)

<sup>16</sup> See World Bank OP 4.10 on Indigenous Peoples, esp. paragraphs 9-11.

The WCD report emphasizes the importance of a negotiation-centered approach; the report concludes that projects are most effective when project sponsors and affected people negotiate “project-specific agreements, relating, for example, to benefit-sharing, resettlement or compensation.” Furthermore, WCD notes that “conflicts are exacerbated by the absence of an agreed approach and process for assessing and negotiating acceptable project outcomes.”<sup>17</sup> In their ‘Global Review’ of case studies, the WCD found that

[i]n cases where compensation packages were negotiated with project affected people and other stakeholders, the process has resulted in fewer instances of injustice and better outcomes for the resettlement process. Even where everyone may not see negotiated compensation as the most appropriate or effective option, affected people tend to feel more satisfied for having engaged in the negotiation process...<sup>18</sup>

The ADB should ensure that the updated resettlement policy includes clear provisions for ensuring and providing broad community support, and that negotiated settlements are used whenever possible.

**Free prior informed consent.** Free prior informed consent (FPIC) is an internationally recognized human right and is of particular importance to indigenous and tribal peoples. We would like to point out that the formulation used by the World Bank and IFC 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. Free prior informed consent 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.

Several of the ADB’s peer institutions 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.”<sup>19</sup> 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.”<sup>20</sup>

Both the WCD 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

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<sup>17</sup> AfDB Involuntary Resettlement Policy, p. 7.

<sup>18</sup> Ibid., p. 109.

<sup>19</sup> IDB Operational Policy OP-710 on Involuntary Resettlement, pp. 2-3, section IV.4

<sup>20</sup> IFC Performance Standard 7 on Indigenous Peoples, para. 14

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.

**Information Disclosure.** Disclosure of relevant information is crucial for meaningful participation by all stakeholders, including affected people. The OED Study found the ADB’s performance to be weak in this area. This is consistent with our own analysis, and furthermore, we see it as directly linked to the lack of explicit requirements and/or guidelines for effective disclosure in the current involuntary resettlement policy.

ADB should look to several of its peer institutions for examples of stronger disclosure provisions and guidelines. For example, the African Development Bank policy on involuntary resettlement states that “[t]he resettlement plan should include an explicit public information strategy. This would include the use of mass media, particularly radio and television, to advise the dates and times of public meetings, availability of documents, selection criteria, cut-off dates, and compensation measures...”<sup>21</sup> The AfDB also has explicit guidelines for information disclosure as an integral part of meaningful consultation and participation—and which include mention of *rights* and *choices*:

“[D]isplaced persons and host communities should be meaningfully consulted early in the planning process and encouraged to participate in the planning and implementation of the resettlement program. The displaced persons should be informed about their options and rights pertaining to resettlement. They should be given genuine choices among technically and economically feasible resettlement alternatives. In this regard, particular attention should be paid to the location and scheduling of activities. In order for consultation to be meaningful, information about the proposed project and the plans regarding resettlement and rehabilitation must be made available to local people and national civil society organizations in a timely manner and in a form and manner that is appropriate and understandable to local people”<sup>22</sup>

The ADB policy lacks strong statements on creating genuine opportunities for affected people to *participate in and shape project design* and other upstream processes, whereas the AfDB, World Bank and other institutions have much stronger requirements for such participation. For example, the World Bank policy states: “The borrower informs potentially displaced persons at an early stage about the resettlement aspects of the project and takes their views into account in project design.”<sup>23</sup> Ensuring *meaningful participation in planning and upstream processes* is a fundamental component of any policy that is consistent with international best practice on development decision-making.

#### *Grievance mechanisms and protections for ‘whistle-blowers’*

For consultations and negotiated agreements to be meaningful, it is essential that: a) affected people have grievance mechanisms to turn to if agreements and policies are breached, and b) that individuals and groups are protected when they act as ‘whistle-blowers’ to call out such violations. Many of our grassroots partners have experienced retaliation

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<sup>21</sup> AfDB Policy on Involuntary Resettlement, p. 17, IV.4.1.3

<sup>22</sup> Ibid., p. 10, section III.3.3(b)

<sup>23</sup> World Bank OP 4.12 on Involuntary Resettlement, para. 19

(particularly from EAs at the national and subnational levels) when they have submitted complaints or protested against policy violations of ADB-financed projects. Additionally, some groups of affected people who have vocalized concerns or objections to projects have subsequently been excluded from surveys/base-line studies and deliberately deprived of compensation entitlements. The ADB must ensure through effective monitoring and supervision that affected people who expose non-compliance issues are protected. The ADB needs to send the strong message—backed by explicit policy statements and concrete actions—that retaliation against whistle-blowers is absolutely unacceptable.

**9. Protection of vulnerable groups should remain a core component of the policy.**

The OED Study does not adequately address the importance of ensuring that vulnerable groups are afforded special protections by safeguard policies. In relation to vulnerable groups, international best practice on development planning—including for projects involving involuntary resettlement—centers on two principles: that *particular attention must be paid* to the needs of the poorest affected people and vulnerable groups that may be at high risk of impoverishment; and that *specific measures must be planned and implemented to mitigate risks to vulnerable groups* and help them improve their socio-economic well-being. This principle is reflected in the involuntary resettlement policies of the World Bank, IFC, Inter-American Development Bank and the African Development Bank; the OECD guidelines; the World Commission on Dam report; and the *Basic principles and guidelines on development-based evictions and displacement* developed by UN Special Rapporteur on the right to adequate housing, Miloon Kothari.<sup>24</sup>

The current ADB involuntary resettlement policy falls short of the IR policies of its peer institutions in terms of provisions explicitly ensuring the protection of vulnerable groups. The AfDB policy is particularly clear in this regard:

[T]he needs of disadvantaged groups (landless, female headed households, children, elderly, minority ethnic, religious and linguistic groups, etc.) must be at the center of the development approach.<sup>25</sup>

Particular attention should be paid to the needs of **disadvantaged groups** among those displaced, especially those below the poverty line, the landless, the elderly, women and children, and ethnic, religious and linguistic minorities; including those without legal title to assets, female-headed households. Appropriate assistance must be provided to help these disadvantaged groups cope with the dislocation and improve their status. Provision of health care services, particularly for pregnant women, and infants, may be important during and after relocation to prevent increases in morbidity and mortality due to malnutrition, the psychological stress of being uprooted, and the increased risk of disease.<sup>26</sup>

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<sup>24</sup> Kothari, Miloon, *Basic principles and guidelines on development-based evictions and displacement*, E/CN.4/2006/41. <[www.ohchr.org/english/issues/housing/annual.htm](http://www.ohchr.org/english/issues/housing/annual.htm)>

<sup>25</sup> AfDB Policy on Involuntary Resettlement, Executive Summary, p. ii.

<sup>26</sup> AfDB Policy on Involuntary Resettlement, pp. 10-11, section III.3.3(c)

The ADB should ensure that the updated safeguard policy has enhanced provisions for the protection of vulnerable groups.

### *Gender*

The current policy is particularly weak in this regard in terms of adequate provisions for women. Because of the well-documented gendered impacts of resettlement, such provisions are crucial. We encourage the ADB to review the African Development Bank IR policy, the OECD guidelines, and the Kothari guidelines for model language on ensuring gender is effectively taken into account at each stage in the planning and project cycle. For example:

[t]he resettlement plan should also specify safeguards for the quality and quantity of land to be allocated for women in order to ensure means to achieve income generation and food security by an insertion of a specific protocol in the resettlement plan. In the absence of formal legal rights, land titles at the resettlement site or any grants included should be in the name of both spouses...Any compensation payments should be paid into a joint account in the name of both husbands and wives...Women's groups should be involved in resettlement planning, management and operations and in job creation and income generation.<sup>27</sup>

[For consultation, participation and information disclosure,] careful attention should be given in the organization of meetings. The feasibility of holding separate women's meetings and fair representation of female heads of households, in addition to mixed meetings should be explored. Also, the way in which information is disseminated should be cautiously planned as levels of literacy and networking may differ along gender lines.<sup>28</sup>

[R]esettlement offers a unique opportunity for addressing gender inequality in land ownership and control.<sup>29</sup>

In general, the minimal and vague language on gender found in the ADB policy *fails to reflect the importance of gender-sensitive planning*, as recognized in international best practice. The OECD guidelines, for example, state that

[s]ince women are to a great extent responsible for making the natural resource base productive (with their knowledge, skills and labor) and thereby contribute significantly to the well-being of their families, communities and national economies, planning for relocation should consider their preferences and should address their specific needs and constraints.<sup>30</sup>

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.<sup>31</sup>

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<sup>27</sup> Ibid., p. 13, section III.3.4.7

<sup>28</sup> Ibid., p. 10, section III.3.3.(b)

<sup>29</sup> Ibid., p. 17, section IV.4.1.5

<sup>30</sup> OECD, *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*, 1992. <[www.oecd.org/dataoecd/37/27/1887708.pdf](http://www.oecd.org/dataoecd/37/27/1887708.pdf)>

<sup>31</sup> Miloon Kothari, *Women and adequate housing: Study by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination*, March

**10. “Squatters” and non-titled peoples should be fully compensated and assisted.**

The OED Study points out that there are discrepancies between the original 1995 Policy, which broadly stated that “the absence of formal legal title to land by some affected groups should not be a bar to compensation,” and the current policy, which conditions this guarantee by stating in OM F2/OP paragraph 11 that “[r]esettlement assistance to nontitled affected people may also include replacement land, although there is no entitlement to this for such affected people.” The OED study recommends that the ADB clarify its position on “squatters” and non-titled affected people.

(We object to the term “squatters,” as this term is frequently applied to communities who are not “squatting” but instead have customary or community-based property rights to the land and have lived there for significant periods of time, and simply lack official legal recognition or title to this land.)

We recognize that it can be a challenge to design adequate measures to prevent an influx into affected areas of people who are motivated to claim compensation. To prevent this situation, the ADB must ensure that pre-project studies are carried out in a participatory and methodologically sound manner to define and identify all genuinely affected people living in (or using the resources in) the area to be affected. These people must then be guaranteed full compensation entitlements, including for replacement land, relocation assistance, and rehabilitation—regardless of whether or not they have legal title.

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 title to land living in the project-affected area are guaranteed equal entitlements in compensation and rehabilitation measures.

**11. The ADB should consider additional possibilities in responding to the “dilemma” it faces in terms of needing to increase performance on achieving IR objectives without being able to increase staff resources.**

The OED Study states that

ADB is facing a dilemma. The IR bar has been continuously raised. Staff dedicated to IR have increased but not sufficiently. The policy is equivalent to that of the World Bank, but staff resources available for its enforcement are not. The record shows that ADB is giving insufficient attention to supervising the administration of RPs [resettlement plans] and monitoring their implementation. However, ADB shareholders

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2003, E/CN.4/2003/55,  
[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.2003.55.En?Opendocument](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.2003.55.En?Opendocument)

have also made it clear that ADB staff numbers should not grow significantly. Management must find ways to balance the staff resources and the IR policy. Options include some combination of the following: (i) allocating more resettlement specialists, either through reallocation of existing positions or creating more positions; (ii) identifying ways to focus ADB's scarce resettlement expertise in areas of greatest value added; and/or (iii) changing the policy in ways that will be less staff intensive for ADB. This may involve making greater use of country systems" (p. xi).

We object to the framing of this "dilemma": ADB essentially implies that it will be impossible to enhance the quality of performance on IR without increasing the number of staff devoted to IR. Numerous studies and theories on advanced project management directly contradict this assumption; there are in fact numerous ways to increase quality of outcomes without increasing staff, including for complex global projects such as those managed by the ADB. The book *Built to Last* (Porras and Collins), one of the principal texts used by the Stanford Advanced Project Management Program, shows that while hiring more staff and increasing the amount of close supervision is one way to enhance outcomes, an equally or more effective way to enhance performance outcomes is to develop a strong and consistent set of *shared institutional values* that filter down to every level. To do so, these values must be clearly articulated and broadcast; they must be modeled by high-level individuals in the institution; and they must be *reinforced* through performance appraisals and appropriately-structured incentives.

In addition, the OED report contradicts its own assumption by referring to several instances in which innovative *restructuring* of staff led to enhanced outcomes. New collaborations can also be mutually beneficial. The OED Study recommends increased collaboration with civil society groups and affected people in monitoring and evaluating conditions on the ground; following this recommendation would greatly enhance capacity and information flow without necessarily requiring an increased number of staff. NGOs and universities can be effective partners in enhancing planning, options assessment, implementation and monitoring. Such cooperative, mutually beneficial collaborations are another way that each stage of the planning and project cycle can be made more participatory and democratic.

The OED should not artificially limit the possible avenues for achieving enhanced performance in involuntary resettlement. Social and institutional innovation are in reality as unlimited as the human imagination.

<p><b>12. The ADB should reference additional examples of international best practice in involuntary resettlement to inform the safeguard policy update.</b></p>
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Finally, we would encourage the ADB to review a broader range of documents and model policies in its determination of international best practice. The OED Study only reviews the involuntary resettlement policies of the World Bank, the IFC and the Inter-American Development Bank. The ADB should review additional sources, including those referenced in these comments:

- The African Development Bank's policy on involuntary resettlement

- The OECD *Guidelines for Aid Agencies on Involuntary Displacement and Resettlement in Development Projects*
- The report of the World Commission on Dams, *Dams and Development: A New Framework for Decision-Making*
- The *Basic principles and guidelines on development-based evictions and displacement*, developed by UN Special Rapporteur on the right to adequate housing, Miloon Kothari

The scope of case-studies reviewed by the OED should also be broader. Many of our grassroots partners were surprised and disappointed to see that the OED had not included in this evaluation several of the major projects that led to claims being submitted to the ADB for inspection. Such projects are highly instructive in terms of revealing areas for needed improvement in policy, practice and follow-up. The ADB must incorporate the lessons learned in past problematic projects in its process of updating the safeguard policies.

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As a widely influential institution in the Asia Pacific region, the ADB is chartered to ensure just and sustainable development outcomes for all of the region’s citizens. We trust that these comments, submitted to ADB as part of its process for updating its safeguard policy, will contribute to upholding and strengthening ADB’s standards, processes and reputation for adequately addressing the complex and difficult issues raised by involuntary resettlement.

Sincerely,

Joanna Levitt  
 Director of Programs  
 International Accountability Project (IAP)

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