



Safeguarding or disregarding?

**Community experiences with the
Asian Development Bank's Safeguard Policies**



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While we have drawn on many people's writings and experience in preparing this report, the interpretation and views expressed here are those of the authors alone.

COVER Villagers harassed by a bulldozer for the Highway 1 Project (photo NGO Forum on Cambodia); Women are an important part of the fisheries workforce in Chong Kneas (photo Mekong Watch); Community gardens demolished for the Southern Transport Development Project (photo Hemantha Withanage/NGO Forum on ADB); Community meeting about the Highway 1 Project (photo Mekong Watch); Cracked earth due to the Chashma Right Bank Irrigation Program (photo BICUSA); Khun Siributr, 70, once a prosperous merchant, has had to sell of parts of his home and property to pay for medicine for his respiratory ailments. Environmental activists and villagers believe that emissions from the Mae Moh power plant are the principal cause of respiratory disease in this area (photo Greenpeace/Yvan Cohen).

The Mekong River Basin Management Program

This publication is produced as part of the Mekong River Basin Management (MRBM) program, a joint Oxfam program which addresses natural resource management issues in the Mekong River Basin. The MRBM's particular focus is on the rights of small-scale farmers and fishers to access and control over their land and water resources in the Mekong River Basin. The participating Oxfam agencies work in close cooperation on the MRBM by supporting local partners and facilitating sustainable community development in the region. Within the MRBM program Oxfam Australia takes the lead on advocacy campaigns around Mekong issues at the international level, particularly in regard to international financial institutions.

Oxfam Australia's rights-based approach

Oxfam Australia takes a rights-based approach to its work. This approach reflects the view that poverty and marginalisation result from the denial and violation of the human rights of women and men by those who have greater access to power, and through systems based on injustice, inequality and discrimination.

In collaboration with many partner and allied organisations, Oxfam Australia has long monitored the operations of the Asian Development Bank, especially projects that impact on the livelihoods of poor and marginalised people. A key part of this work is monitoring and engaging the ADB and its member governments on its policies, especially those designed to address accountability.

Oxfam Australia is affiliated with the following organisations: The Australian Council for International Development (ACFID), whose code of ethics we are bound by (for a copy of the code contact our national office); Oxfam International, whose constitution and code of conduct we are bound by; and the Refugee Council of Australia.

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Lia Kent and Michael Simon



 **NGO Forum on ADB**

This report produced in association with the NGO Forum on ADB.



Abbreviations

ADB	Asian Development Bank
AfDB	African Development Bank
CKEIP	Chong Kneas Environmental Improvement Project
CRP	Compliance Review Panel
CSO	Civil Society Organisation
DMC	Developing Member Country
EIA	Environmental Impact Assessment
IDB	Inter-America Development Bank
IFC	International Finance Corporation
IP	Indigenous Peoples
ISA	Initial Social Assessment
KUIDP	Karnataka Urban Infrastructure Development Project
KUDCEMP	Karnataka Urban Development and Coastal Environmental Management Project
MDB	Multilateral Development Bank
MWSP	Melamchi Water Supply Project
OED	(Asian Development Bank) Operations Evaluation Department
OECD	Organisation for Economic Cooperation and Development
OM	Operations Manual
NGO	Non-government organisation
SPF	Special Project Facilitator
STDP	Southern Transport Development Project
WB	World Bank
WCD	World Commission on Dams



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Executive summary

The Asian Development Bank (ADB) is now engaged in an 'Update' of its Safeguard Policies on Indigenous Peoples, Environment and Involuntary Resettlement. These Safeguards are designed to protect vulnerable groups, Indigenous communities and the environment during implementation of ADB projects. The Update's stated aim is to consider the "relevance, effectiveness, efficiency and sustainability" of the Safeguards.¹ It provides a timely opportunity to reflect on their effectiveness and how they might be improved. This report uses case studies to examine how a number of ADB-funded projects impact on local communities, and through this to analyse the Safeguards' effectiveness.



Village meeting to discuss the Chashma Project, Pakistan. Photo Bank Information Center.

Oxfam Australia's research finds that despite the Safeguards' existence, a number of ADB-funded projects in countries including Sri Lanka, India, Pakistan, Laos, Cambodia, Nepal, Thailand, the Philippines, Bangladesh and Papua New Guinea continue to have negative impacts on communities. Resettlement continues to exacerbate poverty through income loss, food insecurity, landlessness and increased conflict. ADB projects continue to cause environmental degradation and pollution, affecting community livelihoods and health. Indigenous communities continue to experience dislocation, deprivation of their livelihoods and disruption of their culture and traditions.

Building on evidence presented in the case studies, the report concludes that the Safeguard Policies contain significant gaps, and that the ADB's capacity to implement, monitor and generally comply with its own policies is questionable. The report also raises concerns about any shift by the ADB towards a greater reliance on 'country systems' in implementing Safeguard Policies, and raises questions about the ADB's accountability more generally.²

Oxfam Australia believes that any Update process seeking to examine the application, "relevance, effectiveness, efficiency and sustainability" of Safeguard Policies must draw on the experiences of affected communities, and assess policy outcomes in terms of poverty alleviation. This is an opportunity for the ADB to draw valuable lessons from the ways *people experience* the implementation of these policies. Given that poverty reduction is the overarching goal of the ADB, these lessons are essential to learn.



Summary of general recommendations

Retaining and strengthening the Safeguard Policies

Recommendation 1: The ADB should retain and strengthen each of its three Safeguard Policies with reference to international standards on human rights, environmental protection, Indigenous Peoples' rights, resettlement and participation.

Recommendation 2: The wording of the Safeguard Policies and Operations Manuals should be revised and clarified, emphasising mandatory requirements for ADB staff and implementing agencies regarding project appraisal, planning and implementation. Operations Manuals should outline specific processes to be followed in policy implementation.

Developing an improved policy framework

Recommendation 3: Given the interrelated nature of many Safeguards issues – including links between environmental and social impacts – the Safeguard Policy Update should consider development of an overarching framework for social and environmental protection. There is still a need to retain the individual Safeguard Policies, which would fall within this overarching framework.

Recommendation 4: For each project where the Safeguard Policies are applied, the ADB should develop an integrated social and environmental action plan based on mandatory requirements outlined in the Operations Manuals, stating clear responsibilities of the different actors.

Recommendation 5: Safeguards assessments should look beyond each project to address its cumulative and potential broader impacts.

Recommendation 6: The ADB should consider social and environmental issues beyond the individual project level when conducting country-level planning. The ADB's *Environment Policy* includes a stronger requirement for Country Environmental Analyses than other Multilateral Development Banks (MDBs). This should be

maintained, and adequate institutional resources provided to ensure its effective implementation.

Compliance and accountability

Recommendation 7: The ADB should address its internal 'culture of approval' of projects. Clearer mechanisms to hold staff accountable for Safeguards compliance are needed. Staff performance assessments should consider Safeguard implementation, with sanctions for failure to comply and rewards for successful implementation.

Recommendation 8: The ADB should be held accountable for projects' environmental and social impacts, including after project completion. The Accountability Mechanism review should consider these issues, along with ways to strengthen the Mechanism based on lessons learned from previous cases.

Monitoring and implementation

Recommendation 9: The ADB should focus greater attention on monitoring the Safeguards. As a minimum, it should require establishment of independent monitoring mechanisms involving local communities for all projects where the Safeguards are applied. The monitoring process should be participatory, including affected peoples, local Civil Society Organisations (CSOs), independent analysts and Executing Agencies. An independent monitoring team should be established in the project design phase with the agreement of concerned stakeholders, and their reports publicly disclosed in relevant local languages.

Recommendation 10: In order to assess possible impacts (positive and negative) of projects on local communities and the environment, the ADB should ensure the production of independent social and environmental baseline studies, incorporated directly into the Environmental and Social Impact Assessments. These should accurately depict the state of the environment (including water and

air quality) and communities' health, employment and other development-related indicators prior to commencement. They should be developed with strong participation by local communities, especially women and vulnerable groups.

Recommendation 11: The ADB should ensure that developing member countries are able to play a more effective role in implementation and monitoring of Safeguards, by building a participatory assessment of governments' capacity to do so at the project inception phase. This should then form the basis for decisions about project viability and/or resources required for capacity-building.

Recommendation 12: There should be careful consideration of the enormous risks involved in any shift towards greater reliance on 'country systems' for Safeguards implementation. Such consideration should:

- a. be based on a comprehensive risk assessment, involving independent analysis and high levels of transparency and participation;
- b. maintain strong, mandatory, internationally-recognised social and environmental policies that ensure ADB accountability for the impacts of their projects;
- c. not be viewed by the ADB as a means of cost-cutting; and
- d. ensure that any 'country systems' agreement maintains communities' right to file complaints to the Accountability Mechanism on issues of compliance and/or project impact.

Recommendation 13: The ADB should act on the results of monitoring by establishing mechanisms to ensure that feedback from affected parties leads to meaningful revisions to the project.

Recommendation 14: The ADB should increase internal resources dedicated to Safeguards implementation, to increase effectiveness of project implementation and monitoring. This will reduce long-term costs associated with project failure and policy non-compliance.

Recommendation 15: Co-financed projects present particular difficulties for the application of Safeguard Policies. In such cases, the ADB should ensure its policies apply to the whole project, not only ADB-funded aspects.



A government survey team came and painted an ID number on this Chong Kneas floating house for resettlement. Photo Mekong Watch.

Participation and consultation

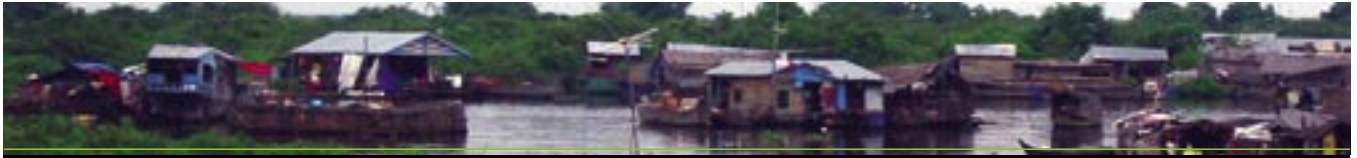
Recommendation 16: The ADB should ensure meaningful project participation by local communities, including both access to relevant information – in the most accessible and appropriate forms and languages – early in the project cycle, and the power to affect decision-making. Participation should be ongoing, and specifically require the negotiation of project-specific agreements with affected people.

Recommendation 17: Key to an effective participation framework should be the comprehensive exploration of options, including a 'no project' alternative. Where participation results in communities saying 'no', all agreements reached and fundamental design changes should be placed on the public record. The ADB should only proceed with a project with the free, prior and informed consent of affected communities.

Gender and vulnerable groups

Recommendation 18: The Safeguards Update should result in increased analysis of gender-specific impacts in each of the Safeguard Policies, including mandatory requirements that Safeguards assessments include gender-disaggregated data.

Recommendation 19: The Update should result in enhanced provisions for the protection of vulnerable groups in each Safeguard Policy.



Introduction

This report draws on the work of civil society organisations (CSOs) working directly with communities affected by Asian Development Bank (ADB)-funded projects. It analyses selected projects to determine the effectiveness of ADB Safeguard Policies, which are intended to protect vulnerable groups, Indigenous communities and the environment during project implementation.

Yet as this report illustrates, the Safeguards have often been ineffective and have even increased poverty, environmental degradation and caused other negative impacts. The report focuses on affected communities' experiences with the Safeguards, as it is these communities who bear the brunt of their poor implementation.

The report is structured as follows:

- Part 1 outlines the Safeguard Policies and their purpose.
- Part 2 considers communities' experiences of a number of ADB-funded projects, including: the Southern Transport Development Project in Sri Lanka; the Highway 1 Project in Cambodia, the Chasma Right Bank Irrigation Project in Pakistan; the Basic Girls Education Project in Laos; Urban Infrastructure Development Projects in Karnataka, India; the Chong Kneas Environmental Improvement Project in Cambodia; the Melamchi Water Supply Project in Nepal; the Samut Prakarn Wastewater Management Project in Thailand; the Mae Moh Power Plant in Thailand; Small Hydropower Projects in Uttaranchal, North India; and the Chittagong Hill Tracts Development Project in Bangladesh.

The report identifies a number of impacts on local communities resulting from these projects, including environmental degradation, economic and livelihoods impacts, land, forced displacement and resettlement, specific impacts on Indigenous communities, and lack of consultation and participation.

- Part 3 analyses the Safeguard Policies' implementation based on the case studies, providing recommendations for the ADB and others for improving the Safeguards and their implementation.

In addition, the report is interspersed throughout with examples from key problem projects.

This report is written as the ADB undertakes its Safeguards Policy Update. A key aim of the report is to raise issues that may inform this process, in particular to ensure that the experiences of project-affected people and adverse environmental effects are not forgotten. While the Update provides an opportunity to strengthen the Safeguards, many local Civil Society Organisations (CSOs) have been concerned that the opposite could occur; that the Safeguards could be weakened due to various pressures on the ADB.



When NGOs visit communities affected by the Highway 1 project, many people, especially women, still come to voice complaints about its impacts.
Photo Mekong Watch.

The development finance sector has changed dramatically over the past decade. The ADB is struggling to maintain its competitiveness, with borrowing countries now able to choose from a wide array of funders, including private banks and others with little or no requirements for Safeguard-type procedures. Following World Bank trends, the ADB is considering an approach to Safeguards implementation that relies on developing member countries' own policy and legal frameworks – a 'country systems approach'. Although robust national environmental and social standards are key to sustainable development, CSOs are concerned that such an approach could weaken Safeguard Policies if viewed as a cost-cutting exercise. The ADB must remain fully accountable for the implementation of social and environmental protections.

Rather than engaging in a global 'race to the bottom' among development financiers, CSOs argue that the ADB should enhance its competitiveness by raising the profile of Safeguards issues, reminding member countries and other funders that strong Safeguards protect not only affected people and the environment, but also long-term financial returns and institutional reputations. In other words, commitment to and expertise in Safeguard issues should be regarded as a competitive advantage.

Methodology

The report analyses a range of ADB projects from the past decade to draw out lessons about the Safeguards. It is based on the ADB's own reports, project evaluations and compliance review reports, along with analysis by independent commentators and CSOs. It also refers throughout to the recently-released findings of the ADB Operations Evaluation Department's Special Evaluation Studies on the Environment and Involuntary Resettlement policies.

This report is not intended to comprehensively summarise or evaluate the ADB's performance in applying its Safeguards, but rather to raise issues of concern by examining a cross-section of projects. Although the number examined is not large, they reveal serious and widespread enough trends to warrant the ADB's urgent attention.



Erosion from flash floods at Gat Village as a result of changes to the natural flow of hill torrents, which have been blocked by the Chashma canal.
Photo Bank Information Center.

A great deal of documentation exists – some already in the public domain – about community experiences with ADB projects over the past decade. This report examines both older and more recent projects. Although some have been widely written about, many of their impacts are ongoing, and thus of current concern.

The report complements and draws on analyses prepared by other CSOs as part of collective efforts to strengthen the Safeguards. Members of the NGO Forum on the ADB are compiling specific case studies written by Non-Government Organisations (NGOs) directly involved in projects.³ Complementary work is also being undertaken by NGO Forum members comparing ADB Safeguard Policies to best practice.⁴



Part 1. Overview of the Safeguard Policies

This section briefly describes the three Safeguard Policies and how they are applied. It also gives an overview of how the Safeguards intersect with the ADB's overall policy framework, particularly the Accountability Mechanism.

1.1 Overview of the Safeguard Policies and how they relate to ADB operations

The ADB, like other Multilateral Development Banks (MDBs) including the World Bank, has developed a number of policies – collectively referred to as 'Safeguard Policies' or 'Safeguards' – that seek to offer protection during the implementation of ADB projects to vulnerable communities, population groups and the environment. ADB Safeguard

Policies are explicitly linked to the ADB's Poverty Reduction Strategy and its Long Term Strategic Framework. By referring to the Safeguard Policies as being "consonant with" and "grounded in" these strategic documents, the ADB emphasises that they are central to the institution's approach.

ADB policies are applied by the institution in each policy area in accordance with Operations Manuals. These are plain language guides for ADB staff on ensuring policy compliance in project design and implementation.⁵

1.2 Accountability

Although the Safeguard Policies and Operational Manuals are designed to guide and direct project design and implementation, the case studies



Community gardens and houses were destroyed by the Southern Transport Development Project. Photo Hemantha Withanage/NGO Forum on ADB



Samut Prakarn Wastewater Management Plant, seen from the canal. No construction is ongoing. Photo Yu Terashima/Fukuoka NGO Forum on ADB.



Travelling up Klong Dan. Since the Samut Prakarn Wastewater Management Project was halted, communities have observed that trees and fisheries are healthy and rejuvenating. Photo Mekong Watch.

explored here demonstrate little evidence that compliance failure has any substantial consequences for the ADB. The ADB argues that it is immune and not accountable under international law to any domestic or international courts, although this argument is challenged by an increasing number of international legal scholars and practitioners. Moreover, there is little evidence that ADB staff are penalised for non-compliance. However, the ADB – like other MDBs including the World Bank – has its own internal, semi-independent process, the Accountability Mechanism. It provides some limited access for people to raise concerns about project impacts and policy compliance.⁶

The Accountability Mechanism has two complementary phases: a consultation or problem-solving phase and a policy compliance phase. The Special Project Facilitator (the Facilitator), which reports directly to the ADB President, handles the problem-solving phase, using various approaches to seek mutually agreeable solutions to project issues on behalf of all parties. The Compliance Review Panel (the Panel) handles the second phase, and can be called on by complainants unhappy with outcomes of the Facilitator process, or who feel that there are unresolved issues of policy compliance.

The Panel reports to the Board of Directors and is independent from ADB staff and management. It assesses whether the ADB has complied with its own operational policies and procedures in project design and implementation.⁷ All Safeguard Policies and their relevant Manuals are eligible for inspection under the 2003 Accountability Mechanism.⁸



A boy navigating the lake at Chong Kneas.
Photo Mekong Watch.

1.3 The Safeguard Policies

The ADB has three Safeguard Policies: a *Policy on Indigenous Peoples* (1998)⁹, an *Involuntary Resettlement Policy* (1995)¹⁰ and an *Environment Policy* (2002).¹¹ Key elements of each are outlined in greater detail in the three appendices to this report.

The ADB's *Policy on Indigenous Peoples* is to be applied when an ADB-supported project is anticipated to have significant negative impacts on Indigenous Peoples. The main objective is to ensure that, for projects it supports or assists, "... affected populations and persons are at least as well-off as they would have been in the absence of the intervention, or that adequate support and appropriate compensation be provided".¹²

The ADB's *Involuntary Resettlement Policy* is based on three principles. The first is to avoid involuntary resettlement where feasible. The second is to minimise resettlement where population displacement is unavoidable. The third is to ensure that displaced people receive assistance so that they would be at least as well-off as they would have been in the absence of the project.¹³

The ADB's *Environment Policy* has five main principles. The first is to promote environment and natural resource management interventions that directly reduce poverty. The second is to assist developing member countries to 'mainstream' environmental considerations in economic growth. The third is to help maintain global and regional life support systems that underpin future development prospects. The fourth is to build partnerships to maximise the impact of ADB activities, and the fifth to integrate environmental considerations across all ADB operations.¹⁴



Part 2. Experiences from the ground

Despite the existence of the Safeguard Policies, ADB-funded projects have often had negative social and environmental consequences for local communities. This section discusses some of these impacts.

2.1. Land, forced displacement and resettlement

Involuntary resettlement of communities is often required for large-scale ADB projects, particularly those involving infrastructure construction. The Operations Evaluation Department's (OED) recent *Special Evaluation Study on Involuntary Resettlement* notes that, according to the ADB's *Reports and Recommendations of the President*, "projects approved between 1994 and 2005 were expected to affect 1.77 million persons in terms of their access to, or use of, land and often also in terms of loss of house or other structure".¹⁵ The OED also points out that ADB estimates were often incorrect and that the total number of people affected is actually 65 per cent higher.¹⁶

Involuntary resettlement involves a violation of fundamental human rights, as has been recognised by the *Basic Principles and Guidelines on Development-based Evictions and Displacement*, developed by the UN Special Rapporteur Miloon Kothari.¹⁷ Involuntary resettlement may cause a range of complex, interrelated and often-unanticipated problems. International resettlement expert Michael Cernea has identified these as including landlessness, joblessness, homelessness, marginalisation, food insecurity, increased morbidity and mortality, loss of access to common property, social disintegration and loss of access to community services. Resettlement can also result in violations of civil and political rights, including arbitrary arrest, degrading treatment or punishment, temporary or permanent disenfranchisement and loss of a political voice. It also carries the risk of communal violence and conflict, when new settlers move in amongst existing populations.¹⁸

A critical principle of the ADB *Involuntary Resettlement Policy* is to avoid it where feasible. Yet in many cases the ADB and Executing Agencies have not placed enough emphasis on identifying alternatives. Resettlement as part of a number of ADB projects has caused a multitude of problems such as those Cernea describes. The **Southern Transport Development Project, or STDP (case study 1)**, is one example. Many of the resettlement sites lack basic infrastructure and amenities, including paved roads, street lamps and postal services.¹⁹ A number are in inaccessible areas and often lack basic amenities including roads, drinking water and proper sewerage systems.²⁰ A recent fact-finding visit by the Bank Information Center and NGO Forum on the ADB identified that some families had lost their income from activities such as selling food packages to nearby factory workers, and that the small amount of compensation provided has not been sufficient to start or sustain economic or livelihood activities.²¹ Many children have experienced interrupted schooling, as a number of resettlement sites are located far from educational institutions.

In cases where resettlement is unavoidable, ADB policy requires that resettlement plans be developed to mitigate negative impacts. It also requires that affected people should be fully informed and consulted during planning, implementation and monitoring of resettlement activities. However, resettlement plans are not always implemented. For example, a plan was developed in the STDP case that recognised "the need to pay replacement rates and to restore/improve living standard of affected peoples".²² It also provided for adequate compensation of people who did not have title to land and noted that "income restoration programs are being provided for vulnerable affected peoples while relocation sites with basic infrastructure are being provided to those affected peoples who choose to relocate".²³ Despite this promising rhetoric, almost four years since the loan's approval most of the plan's provisions have yet to be implemented, and the process has become highly politicised.²⁴

Case Study 1: The Southern Transport Development Project, Sri Lanka



Established home gardens provide food security. Resettlement forces people to start again, planting gardens that produce less food for many years.
Photo Hemantha Withanage/NGO Forum on ADB

The Southern Transport Development Project (STDP) in Sri Lanka has been controversial from its inception. It aimed to construct a 128-kilometre expressway connecting Matara and the outskirts of Colombo, crossing four river basins, more than 100 small and large wetlands and many acres of paddy fields. It also passes through many villages and home gardens, involving demolition of more than 1,300 houses.²⁵ A key issue has been ADB failure to adequately manage resettlement issues throughout the project.

With the support of Sri Lankan NGOs, local communities from four districts through which the expressway passes have been protesting against the project's design, resettlement and compensation processes, and its impacts on the local ecology and economy. A key issue has been resettlement caused by altering of the road's route.

These communities and their NGO supporters worked within the ADB policy framework to hold the ADB accountable, developing strong cases about policy compliance failures at various times during the project. Local communities originally filed their complaints under the ADB's old Inspection Function. Despite these initial requests being rejected, the communities took their case to the new Accountability

Mechanism in 2004, where it was found to have merit. The 'problem solving' phase was undertaken during late 2004, and summarily halted in February 2005. After this unexpected interruption, the complainants focused on the ADB's Compliance Review Panel process, which was given Board authorisation to proceed in January 2005. Issues raised with the Panel included the environmental and social impact assessments, compensation and resettlement, however the fundamental issue was changes to the road trace made subsequent to Board approval of the loan.²⁶

The Compliance Review Panel declared the request eligible, and in their final report of June 2005 concluded that "there have been, at some time during the Project, from project processing to its implementation, lapses of compliance with...applicable ADB policies and operational procedures".²⁷ It recommended a number of remedial measures, and the ADB South Asia Regional Department prepared a Course of Action listing steps to bring the project back into compliance, to be monitored quarterly. This was provided to the Panel on 31 August, but since being approved has been considerably delayed. Nearly one year after Board approval, many of the Panel's recommendations have yet to be implemented.²⁸



House demolished for the STDP. Photo Hemantha Withanage/NGO Forum on ADB.

The Panel's *Annual Monitoring Report* of June 2006 found that the issue of compensation had not yet been settled and that, contrary to their earlier recommendation, ADB management had not ensured that affected persons were fully compensated before being relocated.²⁹ The Panel noted that this was contrary to the ADB's *Handbook on Resettlement: A Guide to Good Practice*, which states that projects should "ensure that relocation sites are completed with all amenities before relocation takes place".³⁰

The Panel also found that those resettled had a number of other grievances including: incomplete payment and no provision of a detailed certificate of compensation payment; delays in providing new land titles; lack of information about investing the compensation proceeds wisely; refusal to recognise specific claims on items such as trees and other crops; and invidious comparisons between compensation rates given for apparently same plots of land.³¹

The **Phnom Penh to Ho Chi Minh City Highway Project (Cambodia Component), or Highway 1 Project in Cambodia (case study 2)** also demonstrates the inadequacy of resettlement plans. As with the STDP, a resettlement plan was developed for this road expansion project. Yet in this case the ADB mistakenly approved a resettlement plan which did not adhere to its *Involuntary Resettlement Policy*, failing to recognise this for more than two years.

Resettlement of people affected by the Highway 1 Project has caused myriad problems, including landlessness. Many who had to completely relocate were given neither substitute land nor compensation to purchase new land. Their only

choice was to move onto land owned by others.³² A key reason for landlessness in this case is the Cambodian Government's discrimination between "legal" and "illegal" project-affected people, in terms of providing compensation. In contrast, the ADB *Involuntary Resettlement Policy* states that the absence of formal title is not a bar to entitlements.

Of those people compensated, many did not receive fair and sufficient compensation, nor compensation at replacement cost for lost structures, including their houses. This is because "depreciation" was applied, whereby the value of the affected structures was reduced in proportion to their level of damage. Compensation was also lowered where people could salvage materials from their homes. In addition, although special allowances were prepared for vulnerable groups and severely affected peoples, these were often forgotten and not actually provided.³³ As a result, vulnerable groups – such as female-headed families, heads of households with physical disabilities, and those with monthly incomes of USD \$10 or less – have been particularly affected.

As a result of not receiving sufficient compensation, some people have been forced to borrow money. In addition to increased indebtedness, people have experienced food insecurity, as well as increased morbidity and mortality.³⁴ As with the STDP and contrary to ADB Policy, there have also been delays in receiving compensation. Approximately 450 people had to wait at least five years for full compensation.³⁵ As of November 2006, it remains unclear whether all the project-affected people have received fair compensation.³⁶

In some ADB projects, no resettlement implementation plans have been prepared when they

Case Study 2: The Highway 1 Project, Cambodia

In December 1998, the ADB approved a USD \$40 million loan to support Cambodia's Highway 1 rehabilitation project.³⁷ The project involves the repairing and upgrading of a 105.5 kilometre section of road linking Cambodia's capital Phnom Penh with Vietnam's commercial centre, Ho Chi Minh City. In addition to reducing transport costs and improving road safety with construction of a road shoulder, the renovation was expected to elevate both inter- and intra-regional transportation of goods, services and people, leading to domestic and regional economic growth.³⁸ The Project was expected

to be completed by 31 December 2002, but was considerably delayed.

The ADB was required to ensure that the negative impacts of involuntary resettlement from the project were mitigated. The Technical Assistance Social Impact Study envisaged it would require only "minor resettlement and displacement of people as the Project road generally follows the existing alignment".³⁹ However, poor management of the resettlement aspects of the project caused a number of related problems, including inadequate compensation and landlessness.



People affected by the Highway 1 Project being harassed by a bulldozer.
Photo NGO Forum on Cambodia.

In 2002, two NGOs – Legal Aid of Cambodia (LAC) and NGO Forum on Cambodia – submitted a report to the Inter-ministerial Resettlement Committee and the ADB on outstanding resettlement issues. It pointed out that the project's Resettlement Implementation Plan was not in compliance with ADB *Involuntary Resettlement Policy*, and claimed that 99 families had not received fair and just compensation for their land and structures, nor other services to which they were entitled.⁴⁰

Representatives of the two organisations met with ADB Management and the Board of Directors, requesting immediate action. In June 2002 the ADB responded with a mission to Cambodia. They visited three communities documented in the NGO report and found project-affected people who had not received compensation for land, and that compensation received had not been made at replacement cost.

The ADB team proposed a Resettlement Audit, which finally commenced in November 2004. In March 2005, a draft audit report was submitted to the Cambodian government, which confirmed the findings of the 2002 NGO report.

It called for immediate actions including:

- Establishment of an audit working group, involving the Ministry of Economy and

Finance, the Inter-ministerial Resettlement Committee, the ADB and NGO representatives;

- Reconciling audit findings with the Cambodian government;
- Holding public meetings with project-affected people to explain the findings; and
- Delivering compensation to project-affected people.⁴¹

Despite establishment of the working group, outstanding issues remain. After a number of independent field visits, in March 2006 the NGO Forum submitted a list of 303 names of project-affected people whose resettlement issues remained unresolved. In July 2006, the ADB responded that most had already been contracted and/or paid. As of November 2006, NGO Forum is still attempting to confirm whether people have been appropriately compensated.

A second issue relates to land title for “illegal” project-affected people: NGOs have consistently argued that “illegal” land occupiers should receive land title to their resettled location at no cost (based on a statement in the project *Report and Recommendations of the President*) and that repayment and compensation should be calculated at the 2004 market rate. However, no progress has been made on this issue.⁴²

Case Study 3: The Chashma Right Bank Irrigation Project Stage III, Pakistan



Mrs Khalid and her family are amongst the local people affected by the Chashma project. Photo Bank Information Center.

The ADB-funded Chashma Right Bank Irrigation Project Stage III (Chashma) consists of construction of a 274-kilometre canal along the Indus River, ostensibly to provide residents better access to water through a canal-based irrigation system. It is the third phase of a project commenced in 1978, intended to irrigate 230,000 hectares of semi-arid land in the North West Frontier and Punjab provinces of Pakistan. Work on the third stage commenced in September 1993. The project includes the construction of 72 distribution canals, 68 cross-drainage structures and 91 bridges.

There have been a number of problems, including that villagers on the west and east sides of the canal have had land taken without compensation. Design failures have resulted in construction of a number of defective flood carrier channels. These are intended to carry water from more than 150 natural hill-torrents from the mountain range into the main canal. However, the channels actually block safe and timely passage of the hill-torrent flows, causing serious flooding in monsoon season. In addition, communities have experienced the loss of drinking water schemes, crops, cultivable land

and access to health facilities. No environmental management plan or resettlement plan was developed for the project.⁴³

As with the Sri Lankan STDP, villagers requested an independent project inspection, alleging that the ADB had failed to comply with its own environment and social policies. In April 2003 the Board of Directors authorised an inspection. However, it then voted to delay the inspection until December 2003 to allow a Grievance Redress and Settlement Committee – a domestic problem-solving process established by the ADB – to address some of the project's problems. Its terms of reference stated that it would document and settle issues, including land acquisition, resettlement and compensation. However, local community representatives rejected the Committee as being unbalanced, unaccountable and illegitimate.⁴⁴ Local NGOs highlighted a number of serious problems with the Committee, including that its recommendations were to be based on Pakistani law, which is inconsistent with ADB policy. Pakistani law does not include adequate provisions for resettlement and protection of Indigenous Peoples' rights in accordance with the ADB's social and environmental Safeguards.

In its 1999 audit report the ADB Operations Evaluation Department admits to many failures in the project, including the failure to conduct any comprehensive analysis of socio-economic and socio-cultural conditions during the project's nearly 30-year implementation.⁴⁵

The *Final Report of the Grievance Redress Process* was submitted by Management to the Board Inspection Committee on 16 February 2004.⁴⁶ It showed that many crucial matters remained unresolved at the end of the Grievance Redress and Settlement Committee's tenure. The Board Inspection Committee

recommended that the Board authorise a project inspection, which was completed on 10 June 2004 using the previous inspection mechanism.⁴⁷

In its 2006 monitoring report the Compliance Review Panel noted that the Panel "views Management's implementation of, and compliance with, the general remedial actions as unsatisfactory on the whole. Management's efforts in ensuring compliance with the general remedial actions have been carried out with a 'business as usual' approach and are spartan in terms of providing concrete steps taken to address these matters".⁴⁸

clearly should have been. For example, more than 20 villages were expected to be resettled because of the **Chashma Right Bank Irrigation Project in Pakistan (case study 3)**. According to organisations working with communities in the project area, more than 50,000 people have been or will be negatively impacted by this extensive irrigation project.⁴⁹ Yet no participatory resettlement plan was prepared for those who were moved to make way for the construction of a canal or considered to be endangered by flooding.⁵⁰ More than 19,000 acres were acquired for the project, but compensation has still not been paid to the majority of people affected.⁵¹ A recent Inspection Panel report found that farmers who lost their land have waited up to seven or eight years for compensation.⁵² Affected people had not been properly informed and consulted, and the villagers' preferred resettlement option had been disregarded in the decision-making process. As a consequence, villagers have had to accept unsatisfactory flood protection measures or inadequate cash compensation.⁵³ The Inspection Panel concluded that the ADB Operations Manual on resettlement had clearly been violated as no resettlement plan had ever been prepared.⁵⁴

In various other cases, ADB-funded projects have indirectly contributed to involuntary resettlement. The ADB did not even take resettlement issues into consideration for the Basic Girls Education Project in Laos. Co-financed with the Australian Government, the project was designed to build schools and provide educational support to ethnic minorities in remote areas. ADB preparatory documents claimed that the "project will not involve any issues related to resettlement" and that it "will particularly benefit girls of ethnic minorities since they will be located close to their schools".⁵⁵

Despite these claims, ADB funds for this project were systematically used by the Government of Laos to support its internal resettlement agenda.⁵⁶ Many of the 450 schools were not built in remote villages, but elsewhere, and used by the Government to entice villagers to relocate to the lowlands. In Vieng Xay District, a school was built 90 kilometres from the village for which it was intended. In another, a school was built at a new relocation site, and used to entice 47 ethnic Brao families to move from the mountains. When they arrived they found that the land allocated to them was not suitable for agriculture, however the government would not allow them to move closer to better land, because the school had already been built.⁵⁷ This misuse of funds was able to continue due to the lack of oversight by project contractors. A lack of resources meant that project contractors could not visit all schools or villages, often finding out about these issues indirectly.⁵⁸

The Basic Girls Education Project demonstrates that a failure to take a country's broader policy context into consideration can have serious ramifications for both communities and project objectives. The Lao Government has pursued a policy of resettling upland communities for a number of years. Initially justified by security concerns, more recently internal resettlement has been described in terms of environmental preservation and poverty alleviation, including the need to eradicate shifting agriculture.

A range of recent studies by UN agencies, bilateral aid agencies, NGOs and the ADB itself have identified that resettlement of upland communities in Laos is occurring largely through coercive measures rather than being voluntary. It is causing a range of hardships for communities, including

Case Study 4: Urban Infrastructure Development Projects in Karnataka, India

The ADB has funded a number of projects in Karnataka aiming to provide and upgrade essential urban infrastructure and services, and develop slum areas. The Karnataka Urban Infrastructure Development Project (KUIDP) was approved in December 1995. Its focus has been on formulating an integrated urban development strategy for the Bangalore subregion and developing four urban locations/growth centres to reduce pressures on Bangalore. The project has two main objectives. The first is to promote decentralisation of population and economic activity in Bangalore by improving infrastructure and related environmental issues in selected urban areas. The second is to build the capacities of urban local governments and provide financial assistance for housing to low-income groups.⁵⁹ A second project, the Karnataka Urban Development and Coastal Environment Management Project, (KUDCEMP) was approved in October 1999 and focuses on improving living conditions in ten urban areas along the west coast of Karnataka. The objective

is to promote social and economic development by supporting both investments in urban infrastructure and services, and policy reforms in urban management.

Both projects aim to increase services to improve the quality of people's lives. Yet local CSOs have criticised the adverse environmental and social impacts of both, including pollution and contamination due to poor waste management, and overcrowding due to the increased inflow of labourers for construction activities.⁶⁰ They also argue that loan conditions have pressured the Karnataka Government to tax open lands, forcing people to sell their lands to pay taxes. The 'slum improvement packages' of both projects have also been criticised for their non-participatory approach, including a lack of debate on key issues including water supply, sanitation and land tenure. CSOs have also criticised the fact that farmers' water rights have not been adequately considered, nor has the need to conserve watershed catchment areas.⁶¹

lower rice production and longer periods of food shortage due to the transition from upland production to lowland paddy rice.⁶² Other issues identified include increased mortality and morbidity, drug abuse and social and cultural breakdown.⁶³ A key issue is that communities are often resettled without government assistance, leaving them with insufficient suitable land or support to establish viable livelihoods, leading to a risk of malnutrition, food insecurity and poverty. According to a recent report by Committee de Cooperation avec le Lao, "average income in resettled roadside villages is half of that in unresettled upland villages".⁶⁴

Resettled upland communities also face serious health problems. In the first few years following resettlement, communities experience epidemics, greatly increased disease rates and high infant mortality. UNDP/UNESCO notes that some villages have "literally been decimated (with up to 30 per cent dying) mostly due to malaria".⁶⁵ Many of these health impacts are long term, shown by continued high infant mortality rates.⁶⁶ Population pressure in resettled sites also leads to land, resource and cultural conflict. Due to scarce resources,

resettlement increases pressure on land and resources, leading to conflict between newcomers and established communities.⁶⁷

Resettlement-related conflicts have also been identified in Papua New Guinea, where the government has also pursued a policy of resettling upland communities for some years. A land settlement program has aimed to open up 'alienated land' for voluntary resettlement of people from over-populated to 'under-populated' rural areas.

International donors including the World Bank and ADB have supported a number of oil palm schemes in these areas, which have contributed to some complex and costly social problems. One is the population increase in oil palm areas, diminishing land available for food production. A recent ADB Country Assistance Evaluation noted that in some areas the population increases through settlements have increased pressure on land resources, and are perceived by communities as having contributed to divisions and disputes between settler communities and customary landholders.⁶⁸

2.2 Environmental degradation

Despite its *Environment Policy*, ADB-funded projects – particularly large infrastructure projects – continue to cause significant environmental harm. The Sri Lankan STDP caused serious soil erosion and other negative impacts on local ecology and wetlands. The expressway was constructed through hills, creating risks of landslides and floods. The Pakistani Chashma project has caused deforestation, loss of biodiversity, flooding, changes in flood hydrology, water-logging and salinisation, land degradation and soil erosion. In Papua New Guinea, a series of ADB-funded agro-industries and oil palm plantations have contaminated rivers. Environmental groups are also concerned about the excessive nutrient run-off from the residues of fertilisers used in oil palm plantations that are corrosive to fragile and sensitive reef systems.⁶⁹

The **Karnataka Urban Infrastructure Development Project (KUIDP)** and the **Karnataka Urban Development and Coastal Environment Management Project, (KUDCEMP) in India (case study 4)** have also been criticised for causing environmental harm, in particular due to poor management of urban solid wastes.⁷⁰ Pollution from the burning of wastes from the KUIDP at a solid waste management site in the city of Ramnagaram

is causing health concerns for a neighbouring poor urban settlement. In Chenpatna, waste has been dumped into a pond rather than treated, creating pollution problems for nearby families and contaminating ground water resources.

The KUDCEMP's environmental impacts include pollution of local water resources through construction of latrine pits and water supply lines in Mangalore. As both projects were only classified as Environment Category 'B' in terms of their likely environmental impact, only an Initial Environmental Examination (IEE) was conducted, not a full Environmental Impact Assessment (EIA).

One problem with implementing the ADB *Environment Policy* is that changes in project scope do not always lead to new EIAs. The final route of the STDP expressway differed significantly from the original plan, yet there was no new assessment done. In its recent monitoring report, the Compliance Review Panel noted that "the environmental Safeguards were weakened with the changes of trace and stakeholders at each project stage until the Final Trace".⁷¹ This issue also arose with the **Samut Prakarn Wastewater Management Project in Thailand (case study 7)**, which was shifted from one proposed site to another, yet no EIA was done at the second site. When EIAs are



Klong Dan fisherfolks loading bamboo sticks for mussel cultivation. Photo Yu Terashima/Fukuoka NGO Forum on ADB

Case Study 5: Chong Kneas Environmental Improvement Project, Cambodia



Floating village in Chong Kneas in rainy season. The CKEIP proposed moving communities from these floating villages onto the land. Photo Mekong Watch

In November 2002, the ADB approved the Technical Assistance to prepare the Chong Kneas Environmental Improvement Project (CKEIP). The objective was to prepare an investment project to “improve the social and natural environment at Chong Kneas” in Siem Reap Province, Cambodia. Yet central to the project design was construction of a modern harbour on Tonle Sap Lake, which could exacerbate problems the project aims to

address. The project's main components are the construction of the harbour, two navigation channels connecting it to the Lake's low water edge, and a resettlement site for approximately 1,200 households, mostly from the floating communities of Chong Kneas. This project specifically sought to mitigate impacts on ethnic minority communities, as there is a high proportion of ethnic Vietnamese in these floating villages.



Women are a key part of the fisheries workforce. Photo Mekong Watch.

While some local communities were supportive of the project, the ADB provided only limited options, and no ‘no harbour’ option. Communities outside the immediate project area concerned about fish depletion were not consulted. A number of local and international NGOs expressed concerns about a harbour being constructed in the name of environmental improvement, and that it would cause serious environmental impacts that would counter the objectives it set out to address.

In January 2005 the ADB still had the project in their assistance program, but later that year it was withdrawn from the ADB's pipeline for project preparation and funding support by the Cambodian Government. To date this situation remains, yet it is highly likely that the Government will proceed with the ‘model’ for a major harbour on the Tonle Sap, whether at Chong Kneas or other, less controversial sites.

conducted, they are not always adequate. For example, the Compliance Review Panel's final report on the STDP project to the Board of Directors found that the initial 1999 EIA was not sufficient.⁷⁶ Similarly, the Inspection Panel identified a number of failures in the case of Chashma, including no EIA for Stage III of the project, and a failure in 1999 – at the time of supplementary financing – to require a full project assessment, or to include a covenant in the new Loan Agreement for implementation of identified mitigating measures.⁷⁷ The Panel noted that “by not making a full appraisal of the probable impact of the project, the ADB failed to identify the project's environmental impacts and neglected to incorporate provisions in the loan agreement warranting the implementation of mitigating measures against adverse environmental impact”.⁷⁸

In the case of the **Chong Kneas Environmental Improvement Project, or CKEIP (case study 5)** there were concerns that the EIA did not sufficiently assess potential negative impacts of harbour construction. Indeed, an independent analysis by Mekong Watch showed that the original EIA was lacking.⁷⁹ In direct response, the Finnish government – which had funded technical assistance to conduct the EIA – raised concerns about it with ADB management. NGOs were concerned that the new harbour would cause increased boat traffic and other activities in the floodplain, increased natural resource extraction and large-scale fishing operations, risking an over-exploitation of fish resources and increased pollution. Despite these potential impacts, all options offered by the ADB for the CKEIP included the harbour as a central component: there was no ‘no harbour’ option.

One reason that projects may not receive an adequate EIA is a lack of clarity in the ADB environmental classification process. For example, the STDP was only classified as Environment Category ‘B’ in terms of the severity of its likely environmental impact. Category ‘B’ projects may not require an EIA (see Appendix B for more information about classification). In its Final Report to the Board of Directors, the Compliance Review Panel found the classification “puzzling”, given that the project involved significant environmental impacts.⁸⁰ The Panel also found the Chashma project's classification – and resulting lack of a full assessment – erroneous, given it is a large-scale irrigation and water management project.⁸¹ Similarly, the Samut Prakarn Project was only classified ‘B’, despite its significant environmental implications.

Local community organisations were also critical of the KUDCEMP's ‘B’ classification. The initial examination concluded that an EIA was not needed as the project aimed to improve environmental quality and sustain the urban environment.⁸² However, CSOs argue that this failed to address the project's broader environmental impacts – pressure on watersheds, pollution due to leaching wastes and deterioration of natural resources beyond the project level – and that the project requires a full EIA.

2.3 Loss of livelihoods

Where communities are heavily dependent on the environment for their livelihoods, environmental impacts of projects can have significant economic consequences. Environmental destruction and resource depletion can undermine food security, and pollution can cause serious health problems.

Road construction for the STDP has involved soil dumping into nearby paddy fields, making farming difficult and threatening people's livelihoods. The Chashma project is also likely to affect livelihoods. Local residents have long used a traditional irrigation system known as *rowed-kohi*, based on the natural flood flows or numerous hill torrents from the mountains to the west. The project's main canal cuts through the paths of many hill torrents, but it is very expensive for small farmers living within the canal area to convert from *rowed-kohi* to canal irrigation. In addition, a number of communities outside the main canal area no longer have access to the traditional floodwater. The project has also impacted on access to drinking water. In a village at the southern end of the project area, the canals were supposed to replace tube wells used for drinking water. However, because the water supply from the canal is inconsistent and unreliable, villagers must travel five to six kilometres to obtain water. The burden of water collection generally falls on women, as acknowledged by a report of the Grievance Redress and Settlement Committee: “Women often have to walk considerable distances to a distributary and then to a watercourse to water their livestock because the bridges are too far apart”.⁸³

The **Melamchi Water Supply Project, or MSWP (case study 6)** in Nepal has also damaged local livelihoods. This inter-basin river project failed to take account of the amount of water required by people in the Melamchi Valley for their livelihoods. It is likely to result in a significant reduction in flow

to local people, leading to the closure of hundreds of existing irrigation canals and *ghattas* (traditional water mills). Road construction through the most fertile land has also seriously affected the Melamchi's agricultural system and food security. Downstream impacts of the river diversion on Indigenous People and others in the Melamchi Valley have been inadequately investigated.⁸⁴

This is despite the project's Social Uplift component, supposed to promote the socio-economic wellbeing of people in the Melamchi Valley. This component has itself been criticised by local communities for failing to address local needs and priorities, including those of economically and socially marginalised people.⁸⁵

Case Study 6: Melamchi Water Supply Project, Nepal



Fishermen likely to be affected due to water diversion for the Melamchi project. Photo JACES.

Six years after inception, the Melamchi Water Supply Project (MWSP) in Sindhupalchowk District remains mired in controversy. Three of the original funding agencies – the World Bank, Swedish International Development Agency (SIDA) and Norwegian Agency for Development (NORAD) – have pulled out in the past three years due to a number of fundamental problems.

The inter-basin river project will divert 170 million litres of water per day from Melamchi River to Kathmandu through a 26.5 kilometre tunnel. It was envisioned as a way to solve the Kathmandu Valley's chronic water shortage and improve the health and wellbeing of its two million inhabitants. The project included a Social Uplift program designed to promote the socio-economic well-being of people covered by 14 Village Development Committees in Melamchi

Valley. A pre-condition of funding is privatisation of the Nepal Water Supply Corporation.

In 2004, the ADB's Special Project Facilitator received a complaint from the Water and Energy User's Federation–Nepal and three affected individuals alleging the Project's non-compliance in various areas: access to information, environmental impact assessment, land acquisition, compensation and resettlement, the rights of Indigenous people, the social uplift project and agriculture and forestry.⁸⁶ After investigation, the Facilitator concluded that there was no evidence of serious or systematic non-compliance with ADB policies in terms of project design and implementation. Yet Nepali community organisations working with affected families in the area remain concerned about the project's environmental and social impacts and have asked that it be stopped.⁸⁷

The Samut Prakarn Wastewater Management Project in Thailand also raises a number of livelihoods issues. The project involves construction of a wastewater treatment plant – to treat wastewater from some distance away – on a site subject to flooding and erosion. The main concern is heavy metal discharge into the sea. Locals, many of whom are shrimp and mussel farmers, fear that the treated wastewater will damage the coastal ecosystem and destroy the rich natural resources on which they depend.

The Chong Kneas Environmental Improvement Project is another case that illustrates the inseparability of environmental, social and livelihoods issues. In this case, CSOs are cautioning that construction of a harbour and increasing commercialisation of the Tonle Sap Lake may lead to greater competition for small scale fishers, resulting in damage, rather than improvement, to their livelihoods.⁸⁸ There are concerns that increased commercialisation of fisheries may exacerbate inequality and conflict over resources, further marginalising small-scale fishers and increasing food insecurity. Fish is the main source of animal protein for up to 80 per cent of Cambodians, but may become increasingly inaccessible to farmers and the poor if prices rise. CSOs have also cautioned that the project may conflict with the ADB's Tonle Sap Initiative, the main aims of which are conservation and sustainable development. They are also concerned that the Tonle Sap Initiative may itself be in conflict with the ADB's broader agenda for regional economic growth throughout the Greater Mekong Subregion (GMS). Upstream development of hydropower, for example – part of the GMS program – presents significant risks to the environmental, social and economic sustainability of the ADB's projects in the Tonle Sap area.⁸⁹

Even ADB projects specifically aiming to improve livelihoods have not always succeeded. In Laos, the Industrial Tree Plantations Project actually pushed communities deeper into poverty, demonstrating that focusing on economic development alone may not reduce poverty and improve livelihoods unless social, cultural and environmental issues are also considered.⁹⁰ The controversial project was based on industrial forestry, particularly eucalyptus planting, damaging land and replacing forests important to local livelihoods, and increasing poverty amongst the affected villages. Rather than acknowledge communities' dependence on forest resources held in common, the ADB replaced the forests with foreign-owned industrial tree farms. A key issue identified in the ADB's own evaluation is

the ongoing fundamental difference between ADB, Lao Government and communities' perceptions of the use and value of land. Although the ADB claimed that lands used by the project had been degraded, an Operations Evaluation Department report acknowledged that they had traditionally been used by villagers for shifting cultivation.⁹¹

The Urban Infrastructure Development Projects in Karnataka, India aimed to improve livelihoods by expanding existing infrastructure to bring more water into the cities. Yet they have created conflict because water rights and management issues have not been adequately considered. Conflicts have arisen because industrial interests now compete with farmers for access to water. Some water users and farmers associations have been ordered not to collect water during summer months, threatening farmers' livelihoods.⁹²

The **Mae Moh Coal-Fired Power Plant (case study 8) in Thailand** demonstrates that projects can affect people's health and livelihoods long after completion. The ADB's technical completion report was written in 2002, but the highly toxic coal-fired power plant continues to cause pollution. The Thai Government installed pollution control devices, but they did not destroy toxic particles released in gaseous form, which remain at high levels in the environment. The only way to end the plant's social and environmental impacts to completely stop its operations, and provide affected people with medical treatment and just compensation.⁹³

2.4 Consultation and participation

Consultation with affected communities, including Indigenous Peoples, is a requirement of ADB Safeguard Policies.⁹⁴ Yet consultation can mean different things to different people. In a number of projects, consultation has involved information dissemination rather than real, substantive participation. In others, information has been provided in inappropriate formats, for example in English only, or as written materials to communities with high levels of illiteracy. In other cases, social benefits are contingent on agreement to projects, but communities are insufficiently informed of potential negative impacts. In no case has consultation included the option of vetoing a project.

The Sri Lankan STDP raises significant consultation issues. A recent visit by the Bank Information Center and the NGO Forum on the ADB found most of the affected people interviewed remained

Case Study 7: Samut Prakarn Wastewater Management Project, Thailand



Klong Dan Village, rich in natural resources and united against the Samut Prakarn Wastewater Treatment Plant.
Photo Yu Terashima/Fukuoka NGO Forum on ADB

The Samut Prakarn Wastewater Management Project aimed to provide wastewater treatment for the Samut Prakarn province, southeast of Bangkok. The original design included construction of two plants, either side of the Chao Praya River. However, the project became controversial when construction began in a different site – Klong Dan, a fishing village 20 kilometres from the original sites identified in the studies and approved by the Board of Directors. No environmental impact assessment was undertaken of the Klong Dan site, nor were villagers consulted. They are strongly opposed to the plant's construction, arguing that the project's design and location will have adverse environmental and social impacts that will disproportionately affect the 60,000 villagers living in the area. Locals are particularly concerned that treated wastewater released into the sea would dilute salinity levels, jeopardising the local mussel farming economy.

Affected communities filed an Inspection Request with the ADB Inspection Committee in April 2001, which was authorised by the Board of Directors in July 2001. This was the first case to be fully investigated by the ADB's original 1995 Inspection Function. In December

2001, the Panel released a damning report stating that the ADB had failed to follow its own policies in six key areas, including its involuntary resettlement and environment policies. However the report did not recommend cancellation of the loan. Despite the non-compliance findings, the ADB's response was weak and did not address the villagers' concerns. The Board Inspection Committee (a sub-committee of the Board responsible for Inspection) required management to complete semi-annual reports on the status of remedial measures. In 2004 the ADB closed its loan (a remaining USD \$20 million) for the Samut Prakarn Project as the Thai Government was not requesting further disbursements – the project had essentially stalled.

Construction was mainly halted due to developments in Thailand. In 2003, the then Thai Natural Resources and Environment Minister decided to stop construction due to a breach of contract by the joint venture company. Processes in the Thai courts outlined extensive vested interests and corruption issues regarding land purchase arrangements, turnkey contracting within the construction process and other irregularities. The Thai Government's

Executing Agency, the Thailand Pollution Control Department (PCD), filed a suit against the project's turnkey contractor. In 2005, the ADB reported that the PCD's civil suit was rejected by the court. After two years of investigations and following loan closure, no progress has been made on the following:

- fraud charges against several individuals associated with acquisition of the land for the treatment plant;
- implementation of the resettlement plan;
- implementation of the monitoring systems;
- community involvement initiatives; and
- odour and effluent management.

The ADB has stated that “no further action will be taken with respect to these issues until the contractual dispute between PCD and the turnkey contractor is resolved”.⁹⁵



Dawan Chantarassadee, Klong Dan community leader, speaks up for the thorough investigation of the corruption-tainted wastewater management project. Photo Mekong Watch.

unaware of the details of the project's execution, resettlement implementation plan, Compliance Review Panel/Board recommendations or the independent monitoring agency. Similarly, affected communities in the Klong Dan area had no knowledge of the Samut Prakarn Wastewater Management Project, although it was approved in 1995, until after construction began.

The Pakistani Chashma project has also been plagued by a lack of transparency and participation. Affected communities claimed that canal construction began before they were even informed, even though the project involved the destruction of farms and crops. Although more than 19,000 acres of land was acquired for project construction there was no effective public participation in the process of land acquisition or property valuation. Locals were simply asked to leave their land. There was no consultation by the Pakistani Government on the issue of compensation for lost land and livelihoods. The Compliance Review Panel report found “no indication in the documentation that the local communities were consulted in the preparatory stages of the Project”.⁹⁶

They noted that “the isolated efforts to engage affected communities and civil society organisations in a dialogue have suffered from a lack of continuity and clearly defined frameworks. None of the efforts

has resulted in any processes or structures that would allow representatives to affected peoples or civil society organisations to participate in the execution and follow-up of agreed measures...”, The Panel concluded that the ADB failed on several accounts to comply with consultation and participation requirements.⁹⁷

In a number of cases, consultation has been limited to options decided on by the ADB, not including a ‘no project’ option. For example, when the ADB conducted a consultation process for the Chong Kneas project with local fishers and residents, many did not oppose the harbour. Yet it is likely that this was because all social benefits of the project were contingent on the harbour's construction. Nor were communities informed of potential negative impacts of harbour construction. Consultation was limited to a pre-determined range of options, not including a ‘no harbour’ option. Moreover, communities outside the immediate project area were not included in the consultations. Many were opposed to the project, concerned about fish depletion. There was also a ‘minority’ issue as no information was available in Vietnamese, the language of the village of Chong Kneas Commune.⁹⁸

Nor was a ‘no project’ option offered for the Melamchi Water Supply Project, despite the fact

Case Study 8: The Mae Moh Coal Power Plant, Thailand



Khun Siributr, 70, once a prosperous merchant, has had to sell off parts of his home and property to pay for medicine for his respiratory ailments. Environmental activists and villagers believe that emissions from the Mae Moh power plant are the principal cause of respiratory disease in this area. Photo Greenpeace/Yvan Cohen.

The largest coal-fired power plant in Southeast Asia, the Mae Moh Coal Power Plant, is located in the mountains of Lampang province in northern Thailand. The Electricity Generating Authority of Thailand constructed the plant in four phases between 1978 and 1996, with support from a series of ADB loans amounting to more than USD \$352 million. The plant and mine aimed to meet growing electricity demand in metropolitan Bangkok and rural areas, and the ADB considers it highly successful.

However, NGOs have been critical of its social and environmental impacts. The ADB has now ceased its funding, but the project's negative impacts continue.⁹⁹

According to Greenpeace, the plant releases approximately four million (US) tons of carbon dioxide into the atmosphere annually. In addition, it releases around 1.6 million tons of sulphur gas every day, causing severe health problems and damaging the environment. More than 200 people have died from respiratory diseases and lung cancer since operations began.¹⁰⁰ Greenpeace estimates that more than 30,000

people have been displaced and thousands have suffered respiratory problems due to exposure to sulphur dioxide emitted by the mine. Fly ash has also affected local village crops.¹⁰¹

In 2002, a Greenpeace Research Laboratories study showed the plant released around 4.3 million tons of fly ash powders and 39 tons of neurotoxin annually. Fly ash samples contained elements highly toxic to the environment, animals and humans, including high concentrations of arsenic, mercury, lead and chromium.

In October 2003, the State Natural Resources and Environmental Policy and Planning Office found high levels of arsenic, chromium and manganese in almost all water sources in the plant's vicinity. In May 2004, the Thai Provincial court awarded USD \$142,500 to the villagers for crop damages caused by the plant.

In its technical assistance completion report, the ADB admitted that "the Mae Moh power station, including the Mae Moh mine, has caused environmental and social problems, in particular, local air pollution causing public health problems".¹⁰²

that a number of studies (including by the World Bank) showed that it was not the best option for utilising the valley's water resources. Moreover, communities were not given access to critical information and documents – the EIA, feasibility studies, options assessments, cost-benefit analysis or lending conditionalities – in their language before the project design was finalised.

Ongoing community grievances regarding the Chashma project led the ADB and Pakistani Government to create a specific Grievance Redress and Settlement Committee (the Grievance Committee) to “address and resolve expeditiously all pending claims for compensation and other assistance which may result from the Project, where legally possible”. According to its Terms of Reference, the Grievance Committee was to be guided by transparency and participation. It was to develop an ‘entitlement matrix’ and recommendations in consultation with local communities.

However when the ADB Information Center and Environmental Defense conducted a monitoring visit with local NGOs in March 2004, no one with whom they met had a full understanding of the Grievance Committee, the status of their complaint, the Entitlement Matrix or the final recommendations. Yet at that time the recommendations were supposed to have been implemented. It seems that, in this case, the Grievance Committee's communication and consultation strategy was very much a one-way process of information dissemination (eg newspaper advertising and handbills) rather than genuine consultation.

Another problem was that the Committee was set up after community concerns had repeatedly been raised; too late an attempt to rectify past lack of participation. Partly as a result (and due to the Committee's composition, which communities felt lacked local legitimacy), communities viewed it with suspicion, rather than as a genuine attempt to listen to and resolve concerns.

Inadequate participation has also been a key issue in the Highway 1 Project. One problem was that the ADB and Cambodian government negotiated the Corridor of Impact – identifying those required to relocate – very late in the project, and people were not given accurate and timely information about who would need to move, or their resettlement options. As a result some people moved who ultimately did not need to do so. Just one booklet – which did not cover compensation rates or allowances – was distributed to affected people in

an attempt to explain the project, of whom an estimated 35 per cent cannot read and write.¹⁰³

The Urban Infrastructure Development Projects have also been criticised for their lack of community participation. The Bangalore Urban Research Centre noted that the approach taken to participation was the expectation that people attend meetings whenever invited. The lack of slum dwellers' participation has resulted in little debate on issues such as water supply, sanitation and land tenure. While both projects included “slum improvement packages”, their effectiveness has been limited. A recent Water Aid study of ADB involvement in the Indian water and sanitation sector found that such packages reach only around 28 per cent of a city's slums, partly because selection of slum areas has been based on governments' list of notified or ‘authorised’ slums, which leaves out many newer areas.¹⁰⁴

The case of the Small Hydropower Projects in Uttaranchal, North India raises issues of ADB responsibility for monitoring and supervising consultation processes conducted by Executing Agencies. This project, approved in March 2006, involves a USD \$45 million component for small hydropower projects. Concerns of local CSOs have included the lack of consultation with local communities and potential environmental impacts.¹⁰⁵ They have raised concerns that key documents – including the project report, EIA or environment management plan – were initially provided to local people in English only.

In response to a letter from affected people outlining their concerns, the ADB effectively wiped their hands of responsibility for consultation, stating that the primary responsibility for additional consultation rests with the Executing Agency, the Uttaranchal Energy Department.¹⁰⁶

2.5 Indigenous Peoples

Indigenous communities often live culturally distinct lives and may be particularly dependent on forests, waterways and other natural resources for their livelihoods. Land, forests and common lands can have significant social and cultural value to Indigenous communities. Particular sensitivity is required to identify possible negative project impacts on Indigenous Peoples, to ensure their free and informed consent and participation, and to devise culturally appropriate development strategies. Despite its *Policy on Indigenous*

Peoples, the ADB has funded projects that have contributed to a range of problems for Indigenous communities including dislocation, deprivation of livelihood and disruption of local culture and traditions. These impacts can be seen in projects such as the Basic Girls Education Project, the Chittagong Hill Tracts Rural Development Project and the Chashma Project. It appears that the ADB rarely considers Indigenous issues in project preparation – therefore not activating its *Policy on Indigenous Peoples* – except insofar as the project will positively improve Indigenous communities. Also, the *Policy on Indigenous Peoples* is considered only at project level, rather than within a country's broader policy framework, thereby not engaging with the politically sensitive nature of Indigenous issues in many Asian countries.

In the Chashma project, those who filed the Inspection Panel request claimed that the lack of independent, comprehensive socio-economic and cultural surveys resulted in vulnerable groups such as the Siraiki-speaking minority and Baloch tribal groups becoming victims of the project.¹⁰⁷ They argued that the failure to analyse and develop mitigation strategies for the disruption of the Indigenous *rod-kohi* system and the potential immigration of tribal Pashtuns – potentially creating conflict in the area – violated ADB *Policy on*

Indigenous Peoples. In its Inspection Report the Compliance Review Panel found that the ADB's appraisal document had not considered the impact that population increases may have on Indigenous/tribal peoples. The document contained only a brief outline of the pattern of landholding in relation to the main tribes and peoples, and no discussion of how the project would likely affect it.¹⁰⁸ In considering the Claim, the Panel found no evidence that the ADB had attempted to identify which groups or communities should be considered Indigenous Peoples, nor to address differences between its policies and Pakistan's national legislative frameworks.¹⁰⁹ In other words, the ADB had made no attempt to apply its own *Policy on Indigenous Peoples*.

The Laos Basic Girls Education Project also has implications for ethnic minorities that were given insufficient consideration during project preparation. As in Chashma, although the ADB referred to "ethnic minority" issues in its preparatory documents, it appears that no Indigenous Peoples' development plan was prepared. The documents refer to the project's positive impacts for ethnic minorities, but do not consider possible negative consequences – there appears to have been an assumption made that there would be none.¹¹⁰ As discussed earlier, it was not the project itself, but the broader policy context – a government policy



After several years of struggles, Stung Slot community people forcibly relocated due to the Highway 1 Project settled in a relocation site. They still have a long way to go before the complete restoration of their life. Photo Mekong Watch.



Mushtaq Gaadi (centre), Sungi Foundation, talks with villagers in the Chashma area. Photo Bank Information Center.

of eradicating shifting agriculture and bringing minority groups into the 'mainstream' – that was problematic, undermining the worthy objective of educating ethnic minority girls.

The Bangladesh Chittagong Hill Tracts Rural Development project was based on similar assumptions of improving the lives of Indigenous communities, and also implemented within a broader policy context of the eradication of shifting agriculture. The project's stated aim was to improve the quality of life of poor, isolated tribal communities by increasing access to employment-generating opportunities and social services. It was also expected to upgrade existing rural communication infrastructure – feeder roads, trails, bridges and culverts – and provide microfinance, training and other services to improve people's income-generating capacity. Yet many of these activities were not appropriate to the lifestyle of these communities, and therefore unlikely to improve livelihoods. For example, the project emphasised technical training and access to markets, which could well improve livelihoods, but may also require major changes to people's lifestyles. Such decisions should be made by Indigenous Peoples themselves, rather than the ADB.

Additional concerns about this project are based on previous ADB interventions in the area, which established a trend towards deforestation and negative impacts on Indigenous communities.

The ADB assisted the Bangladesh government to create a Forestry Master Plan and amend forestry laws, leading to growth of commercial plantations and the rapid extraction of timber and other forest resources. The *Forestry Act* also proposes changes to the land tenure system to encourage private sector investment in forestry, the net effect of which is blurring of the distinction between forests and plantations. Deforestation is contributing to the impoverishment of Indigenous Koch and Garos peoples, who depend on them for their livelihoods. Women – most often involved in gathering firewood, medicinal herbs and food plants – are particularly affected.¹¹² The longer-term likely effect is erosion of these communities' social, cultural and political life. In this case it appears that the provisions of the ADB's Forestry Policy took precedence over its *Policy on Indigenous Peoples*.¹¹³

Indigenous Peoples may also live in urban communities, as the Urban Infrastructure Projects in Karnataka demonstrate. In this case the ADB's *Policy on Indigenous Peoples* was also not activated. Although project documents identified that 30 per cent of beneficiaries were urban poor, local NGOs have consistently pointed out that India's urban poor comprises a high percentage of scheduled castes, scheduled tribes and other Indigenous groups, whose specific needs were not recognised in project planning.¹¹⁴



Part 3. Limitations of the Safeguard Policies and recommendations

A common thread running through this analysis is that despite the Safeguards' existence, ADB-funded projects continue to have a range of interrelated environmental and social impacts. Drawing on issues previously identified, this section discusses some of the Safeguards' key limitations, identifying various issues related to poor implementation and gaps in the policies themselves – what is not covered by the Safeguards.

It raises serious questions about ADB capacity to implement and monitor its Safeguard Policies, the level at which decisions are being made about their implementation, resources available and accountability for compliance with these policies. It offers a number of recommendations to the ADB to strengthen the Safeguards in the light of the current Update process. It also discusses a number of dangers and difficulties inherent in any shift towards a greater reliance on governments' own

policy and legal frameworks, or 'country systems,' for implementing Safeguards.

3.1 General Issues

3.1.1 Retaining and strengthening the Safeguard Policies

Despite their weaknesses and implementation problems, the Safeguard Policies are critical to a framework for respecting and protecting communities' rights, alleviating poverty and protecting the environment. In evaluating the Safeguards' effectiveness, the ADB must ensure that it respects the rights of vulnerable groups and protects the environment – essential elements of sustainable poverty alleviation.



Overview of Chong Kneas during the rainy season. The CKEIP proposed construction of a large-scale modern port here. Photo Mekong Watch.



People living alongside construction for the STDP.
Photo Hemantha Withanage/NGO Forum on ADB.

Strengthening the Safeguards will also help to ensure real sustainability of ADB-funded projects. Inadequately addressing Safeguards issues – as the case studies demonstrate – dramatically increases costs later in a project, when social unrest, increased poverty and environmental damage may need to be mitigated. The ADB should maintain its policies on involuntary resettlement, Indigenous Peoples and the environment, and strengthen them in accordance with international best practice on human rights and the environment.

Strengthening the Safeguards requires strengthening and clarifying the Operations Manuals. These are intended to provide practical guidance to staff on implementing Safeguards, yet their language can be broad and aspirational, making it difficult for staff to apply them in practice. The recent Operations Evaluation Department (OED) Special Evaluation Studies recognise that staff find the Manuals confusing. For example, in the study of the *Involuntary Resettlement Policy* only 11 per cent of staff interviewed thought the Manuals usable to resolve all their issues.¹¹⁵ For the Operations Manuals to be effective, they need to be clearly worded, and outline specific processes to be followed in project implementation, as well as mandatory requirements and responsibilities of ADB staff and implementing agencies.

Recommendation 1:

The ADB should retain and strengthen each of its three Safeguard Policies with reference to international standards on human rights, environmental protection, Indigenous Peoples' rights, resettlement and participation.

Recommendation 2:

The wording of the Safeguard Policies and Operations Manuals should be revised and clarified, emphasising mandatory requirements for ADB staff and implementing agencies regarding project appraisal, planning and implementation. Operations Manuals should outline specific processes to be followed in policy implementation.

3.1.2 Developing an improved policy framework

A key weakness of the Safeguard Policies relates to their project-specific nature. Resettlement plans, Indigenous Peoples' development plans and environmental impact assessments are all carried out at individual project level, without necessarily taking account of systemic issues and the broader policy context. This limitation has been acknowledged by ADB staff, who have noted that "a project based approach is often not the

most suitable one for addressing very complex concerns of ethnicity and poverty reduction”.¹¹⁶ More attention to ‘country level’ dialogue is needed, including country sector programming.

The project-specific nature of ADB Safeguards also ignores the possible cumulative impacts of projects and that policies may conflict with each other.¹¹⁷ CSOs have raised concerns about project impacts beyond the project ‘zone’ for many years, particularly in relation to large infrastructure projects, including hydro-electric schemes. As the Chong Kneas project and others in the Tonle Sap area demonstrate, ADB strategies for environmental sustainability and pro-poor development were effectively undermined by its broader agenda for regional economic growth. Unless the ADB considers the interconnectivity of its projects, large infrastructure projects can cause environmental and social damage that exacerbates poverty rather than reducing it.¹¹⁸

Recommendation 3:

Given the interrelated nature of many Safeguards issues – including links between environmental and social impacts – the Safeguard Policy Update should consider development of an overarching framework for social and environmental protection. There is still a need to retain the individual Safeguard Policies, which would fall within this overarching framework.

Recommendation 4:

For each project where the Safeguard Policies are applied, the ADB should develop an integrated social and environmental action plan based on mandatory requirements outlined in the Operations Manuals, stating clear responsibilities of the different actors.

Recommendation 5:

Safeguards assessments should look beyond each project to address its cumulative and potential broader impacts.

Recommendation 6:

The ADB should consider social and environmental issues beyond the individual project level when conducting country-level planning. The ADB’s Environment Policy includes a stronger requirement for Country Environmental Analyses than other multilateral development institutions. This should be maintained, and adequate institutional resources provided to ensure its effective implementation.

3.1.3 Compliance and accountability

A key issue highlighted throughout this report is the lack of ADB staff accountability for implementing the Safeguard Policies. In many cases Safeguards



Showing the flooding high water mark. Flash flooding attributed to changes in natural hill torrents due to the Chashma project caused problems for local villagers. Photo Bank Information Center.



Community members discuss the Chashma project. Photo JACES.

have not been implemented where they clearly should have been. One problem is the internal ADB culture and lack of incentives to comply. The ADB, like the World Bank, has been criticised for its internal incentive structure, which rewards staff more for 'results' in terms of projects approved and loans disbursed than for environmentally and socially sustainable outcomes.¹¹⁹ The OED's Special Evaluation Study on the Environmental Safeguards notes that this 'approval culture' and the fear of projects being subjected to the Accountability Mechanism leads to a focus on 'front-end' loan processing.¹²⁰

There appear to be few consequences for staff or Executing Agencies for not applying the Safeguards. It is very rare for the ADB to halt or suspend a loan based on a lender's non-compliance. Staff do not seem to be either rewarded or disciplined in relation to Safeguards compliance; the emphasis rather is on mitigation and compensation. While this is essential when needed, there should also be positive incentives for staff to apply Safeguards, including at later stages of the project when project changes are made and/or new information is available. Along with

individual accountability, the ADB should increase institutional accountability for projects' environmental and social impacts, which as the Mae Moh plant demonstrates, can continue long after a project has ended.

Options for holding the ADB to account for policy violations are limited by its supposed immunity to international law. While its new Accountability Mechanism is an important step, the mechanism of inspection or compliance review unfortunately remains primarily focussed on internal governance and accountability rather than accountability to project-affected people.¹²¹ The Compliance Review Panel's substantive jurisdiction is limited to reviewing ADB compliance with its own policies. It can take remedial action, but its competence and mandate does not extend to compensation for material harm, nor to overseeing implementation of remedial measures. The Panel lacks real 'teeth', reflected in the fact that despite critical findings on projects including the STDP and the monitoring of Chasma, its recommendations have often been ignored or too slowly adopted. The forthcoming review presents an important opportunity to strengthen the Accountability Mechanism.

Recommendation 7:

The ADB should address its internal ‘culture of approval’ of projects. Clearer mechanisms to hold staff accountable for Safeguards compliance are needed. Staff performance assessments should consider Safeguard implementation, with sanctions for failure to comply and rewards for successful implementation.

Recommendation 8:

The ADB should be held accountable for projects’ environmental and social impacts, including after project completion. The Accountability Mechanism review should consider these issues, along with ways to strengthen the Mechanism based on lessons learned from previous cases.

3.1.4 Monitoring and implementation

Executing Agencies – often developing country agencies – are required to implement Safeguard Policies. Yet, as the case studies above demonstrate, implementation is when Safeguards so often go awry. Greater attention must be paid to Safeguard implementation, monitoring and supervision.¹²²

A key stumbling block is the lack of appropriate legislation, and limited capacity and resources in developing countries, as identified by the recent OED Special Evaluation Studies. In relation to environmental Safeguards the OED notes that “there is a significant diversity among Developing Member Countries in terms of the comprehensiveness and effectiveness of national environmental systems and in their ability to deliver results on the ground. While most developing countries have an established legal framework, there remain fundamental differences in terms of resources and capacity but, perhaps most importantly, also in the enforcement and application of environmental regulations.”¹²³

As the Studies point out, these issues should be central to any consideration of progressive reliance on ‘country systems’ for Safeguard implementation. Such a shift would raise a number of fundamental concerns:¹²⁴

- Given the diversity of capacity, how would a country systems approach ensure policy coherence?

- How would a government’s policy framework be independently assessed to ensure that its standards match the Safeguards?
- How would their capacity for implementation be assessed?
- Who would be accountable for implementation?
- Such a shift should not be seen as cost-cutting, but would require significant investment in equivalence assessment and capacity building.
- Finally, how would such a shift actually improve development impacts?

One area of confusion is how ADB Safeguards apply to projects co-financed with donors with different safeguard requirements. For example, the STDP had two parallel financiers, and confusion arose as to which standards applied in which sections of the road. In its annual monitoring report, the Compliance Review Panel pointed out that donors were effectively treating the STDP as two separate projects.

The lack of effective monitoring and supervision is another issue highlighted by many of the case studies, and acknowledged by the OED’s studies. The OED study on Involuntary Resettlement found that the ADB does not monitor resettlement in much detail, nor systematically report on it.¹²⁵ Time is spent on project preparation rather than implementation, for example delegating implementation of resettlement plans to Executing Agencies without significant supervision. With regard to the environment, the ADB focuses on initial assessments of Safeguard provisions, making far less demonstrable effort towards implementation, and post-project monitoring is extremely rare.¹²⁶ As the OED points out, these issues are very important to effective development; the ADB is investing much time and resources into planning and preparation without achieving the desired outcomes on the ground.

One contributing factor is the lack of resources dedicated to Safeguards within the ADB. The recent OED study on Involuntary Resettlement notes that the World Bank has a “considerably larger” pool of social (and environmental) Safeguards specialists available to help with project administration, both at headquarters and at regional and national level.¹²⁷ In practice this means that the World Bank can devote more time to capacity building, resolution of differences and monitoring.

Similarly, the OED study on the Environment Safeguards notes that the paucity of resources for environmental assessments means the ADB undertakes little more than reviewing, editing and reformatting of nationally-produced environmental assessments, executed studies and assessments to fit ADB templates.¹²⁸

The OED studies suggest that 'third party' monitoring involving NGOs be introduced to improve monitoring itself and its legitimacy, including requiring the establishment of independent monitoring mechanisms. Oxfam Australia believes it is preferable that monitoring teams include local people and CSOs to represent local interests, and critically, that the interests of women and ethnic minority are represented. Teams should be established at the outset of project design, with concerned stakeholders agreeing on a mechanism for close monitoring of Safeguard implementation. External monitors must have access to all relevant information and their reports should be publicly disclosed. Independent and transparent project monitoring would help build trust with local communities and advise the ADB when social and environmental problems arise.

Recommendation 9:

The ADB should focus greater attention on monitoring the Safeguards. As a minimum, it should require establishment of independent monitoring mechanisms involving local communities for all projects where the Safeguards are applied. The monitoring process should be participatory, including affected peoples, local CSOs, independent analysts and Executing Agencies. An independent monitoring team should be established in the project design phase with the agreement of concerned stakeholders, and their reports publicly disclosed in relevant local languages.

Recommendation 10:

In order to assess possible impacts (positive and negative) of projects on local communities and the environment, the ADB should ensure the production of independent social and environmental baseline studies, incorporated directly into the Environmental and Social Impact Assessments. These should accurately depict the state of the environment (including water and air quality) and communities' health, employment and other development-related indicators prior to commencement.



People from the Stueng Slot community affected by the Highway 1 Project in Cambodia had to move temporarily to land which was prone to seasonal flooding. Photo Mekong Watch.

They should be developed with strong participation by local communities, especially women and vulnerable groups.

Recommendation 11:

The ADB should ensure that developing member countries are able to play a more effective role in implementation and monitoring of the Safeguards, by building a participatory assessment of governments' capacity to do so at the project inception phase. This should then form the basis for decisions about project viability and/or resources required for capacity building.

Recommendation 12:

There should be careful consideration of the enormous risks involved in any shift towards greater reliance on 'country systems' for Safeguards implementation. Such consideration should:

- a. be based on a comprehensive risk assessment, involving independent analysis and high levels of transparency and participation;
- b. maintain strong, mandatory, internationally-recognised social and environmental policies that ensure ADB accountability for the impacts of their projects;
- c. not be viewed by the ADB as a means of cost-cutting; and
- d. ensure that any agreement maintains communities' right to file complaints to the Accountability Mechanism on issues of compliance and/or project impact.

Recommendation 13:

The ADB should act on the results of monitoring by establishing mechanisms to ensure that feedback from affected parties leads to meaningful revisions to the project.

Recommendation 14:

The ADB should increase internal resources dedicated to Safeguards implementation, to increase effectiveness of project implementation and monitoring. This will reduce long-term costs associated with project failure and policy non-compliance.

Recommendation 15:

Co-financed projects present particular difficulties for the application of Safeguard Policies. In such cases, the ADB should ensure its policies apply to the whole project, not only ADB-funded aspects.

3.1.5 Participation and consultation

The ADB's idea of participation and consultation can vary considerably from project to project, as demonstrated by several of the case studies. At times participation can mean little more than information dissemination. In some cases, the ADB has attempted to remedy the lack of participation at a later stage, by creating consultative or grievance redress bodies. Yet they often suffer from a lack of legitimacy in the eyes of local communities, which may undermine the entire project. Anecdotal experience suggests that when the ADB is challenged on issues of participation, it is prone to point to the Executing Agencies as responsible and therefore the 'weak link'. This 'buck-passing' leaves the ADB open to ongoing criticism. Differing national approaches to participation and consultation is also a key factor in the potential effectiveness or otherwise of a country systems approach to Safeguards implementation.

Projects that are not seen as legitimate by local communities are liable to be fraught with conflict. The ADB must get its participation model right at the early stages. It is not sufficient to inform people of what is about to happen, to hold consultative meetings, nor to create grievance redress bodies long after grievances have arisen.

Effective and meaningful participation requires transparency, information provision before project appraisal and in languages communities can understand, and giving stakeholders real power to affect decision-making. Communities should have the right to veto a project or demand changes to project design. Current Safeguards do not require that project sponsors obtain the free, prior and informed consent of affected communities before commencing a project.

A starting point for revising ADB participation provisions could be the World Commission on Dams (WCD) participation framework, which includes Indigenous communities' right to free, prior and informed consent.¹²⁹ This principle has also been recognised by the United Nations Development Program, the *Declaration on the Rights of Indigenous Peoples* and the report of



Overview of the Chong Kneas project site during the dry season. Photo Mekong Watch.

the Extractive Industries Review launched by the World Bank.¹³⁰ In addition, the WCD emphasises the importance of a negotiation-centred approach, suggesting that projects are more effective when project sponsors and affected people negotiate project-specific agreements, for example on benefit sharing, resettlement or compensation.¹³¹

The ADB's participation framework also needs to give more attention to comprehensively exploring project options, including the 'no project' alternative. Other multilateral banks including the World Bank, the Inter-American Development Bank, and the African Development Bank require examination of the 'no project' scenario as part of environmental assessment.¹³²

In addition, participation must be ongoing, not just a one off event early in the process, and should be incorporated at the country program level, not just project level. Affected communities and local CSOs should participate in decision-making and monitoring, as suggested in the above monitoring discussion, throughout the project cycle.

Recommendation 16:

The ADB should ensure meaningful project participation by local communities, including both access to relevant information – in the most accessible and appropriate forms and languages – early in the project cycle, and the

power to affect decision-making. Participation should be ongoing, and specifically require the negotiation of project-specific agreements with affected people.

Recommendation 17:

Key to an effective participation framework should be the comprehensive exploration of options, including a 'no project' alternative. Where participation results in communities saying 'no', all agreements reached and fundamental design changes should be placed on the public record. The ADB should only proceed with a project with the free, prior and informed consent of affected communities.

3.1.6 Gender and vulnerable groups

ADB projects often have gender-specific impacts, as the case studies demonstrate. For example, canal construction for the Chasma Right Bank Irrigation Project has forced women to walk further to collect water. The impacts of involuntary resettlement on women, and on female-headed households, have also sometimes been neglected. Many women affected by the Cambodian Highway 1 project had lost their spouses during the Khmer Rouge and civil war periods, yet special allowances that were prepared for such vulnerable groups were not implemented.



Women processing fish on the Tonle Sap Lake. Photo: Living Rivers Siam (SEARIN).

The gender-specific impacts of issues such as resettlement have been well documented,¹³³ yet references to gender in the Safeguard Policies are vague and sketchy. The ADB does have a gender and development policy,¹³⁴ and a section on ‘Safeguarding Women’s Interests in Resettlement’ in its *Handbook on Resettlement*, and has produced a *Gender Checklist* for resettlement.¹³⁵ These documents recognise the need to separately monitor and evaluate women’s socio-economic conditions, needs and priorities, to include both spouses in land titles, and to involve women’s groups in resettlement planning, management and operations, and in job creation and income generation. Unfortunately, these principles are not being effectively implemented within the Safeguards. The Safeguards Update is a clear opportunity to strengthen gender policies, including mandatory staff requirements in each of the Safeguards.

The ADB should also strengthen protections – including planning for mitigating project risks – for other vulnerable groups in each of the Safeguards. The ADB’s involuntary resettlement policy currently falls short of its peer institutions, including those of the AfDB, which explicitly states that “[The] needs of disadvantaged groups (landless, female headed households, children, elderly, minority ethnic, religious and linguistic groups, etc) must be at the centre of the development approach”.¹³⁶

Recommendation 18:

The Safeguards Update should result in increased analysis of gender-specific impacts in each of the Safeguard Policies, including mandatory requirements that Safeguards assessments include gender-disaggregated data.

Recommendation 19:

The Safeguards Update should result in enhanced provisions for the protection of vulnerable groups in each of its Safeguard Policies.

3.2 Policy-specific issues

In addition to general policy implementation issues, there are a number of issues and preliminary recommendations related to each Safeguard Policy, which are discussed below.¹³⁷

3.2.1 Involuntary Resettlement Policy

Implementation and monitoring of the *Involuntary Resettlement Policy* has been problematic, as demonstrated by the case studies and acknowledged by the OED, which found that “compliance with the *Involuntary Resettlement Policy* has been variable”.¹³⁸

Its study identified a number of issues, including a lack of clear guidelines for interpreting the compatibility of national and ADB procedures. In some cases resettlement plans that should have been updated were not; compensation was not provided in a timely manner, nor using the best method for determining the replacement cost of lost assets; affected people were not properly consulted about the resettlement sites; external monitoring arrangements were made late; or grievance redress mechanisms were not well organised.¹³⁹ The study also found frequent underestimation of the numbers of people needing to be resettled, noting that “the actual number of affected peoples recorded was 65% higher than estimated in the [Resettlement Plans]”.¹⁴⁰

A key problem is that the Policy does not contain adequate provisions for ensuring supervision of resettlement. Although it states that the borrowing agency has primary responsibility for planning, implementation and monitoring of resettlement issues, it lacks the requirement common to World Bank and African Development Bank policies that “borrower commitment to, and capacity for, undertaking successful resettlement is a key determinant of Bank involvement in a project”.¹⁴¹ Implementation, monitoring and supervision clearly need to be a major focus for improving the ADB’s *Involuntary Resettlement Policy*.

The case studies demonstrate that the Policy’s principle of avoiding involuntary displacement whenever feasible should be taken more seriously, given its severe risks. Case studies like the STDP and Highway 1 show that much time and energy is required to correct mismanagement of a resettlement program; more attention should be paid to recognising the risks of resettlement and avoiding it where possible.

Like the World Bank, International Finance Corporation, African Development Bank and Inter-American Bank, the ADB should preface its *Involuntary Resettlement Policy* with a statement about the grave impoverishment risks associated with involuntary resettlement. It should also include a provision that the alternative to carrying out a project (the ‘non action’ alternative) should be seriously considered, particularly if the negative impacts on affected people will be severe. This is the case for the IDB, African Development Bank, Organisation for Economic Cooperation and Development (OECD) and the WCD.

Although the ADB policy requires that affected people are consulted on compensation and rehabilitation, it is relatively weak in creating genuine opportunities for them to participate in and shape project design. World Bank policies are much stronger, requiring that “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”.¹⁴² Nor does ADB policy contain sufficient provisions for ensuring meaningful participation by vulnerable and disadvantaged groups.

ADB policy focuses on “livelihood restoration” where resettlement is unavoidable; this should be strengthened to “livelihood improvement”. As the case studies show, it is not possible to fully compensate people for the range of negative cultural and social impacts of involuntary resettlement. In addition, pre-project baseline studies tend to systematically underestimate people’s incomes and undervalue their non-income livelihoods and support systems. Resettlement should be planned and implemented as a development project in its own right, to offset these costs by helping resettlers to actually improve their living standards.

Another key issue raised by the case studies concerns compensation. There have often been delays in payment, sometimes for many years. The recent OED study found the ADB Policy weak in requiring time-bound actions, noting that there is no indication over what period rehabilitation is expected to take place, making it difficult to assess how much should be done over what period.¹⁴³ Clear timelines and time-bound outcomes are fundamental for the effective rehabilitation of affected people.¹⁴⁴ Most importantly, compensation, relocation and rehabilitation measures must be completed prior to people being resettled. The ADB should not allow project components that will cause displacement to go ahead until all compensation, relocation and rehabilitation activities are successfully completed.

ADB policy is also weak regarding resettlement issues beyond project level, including the issue of transmigration. As the Laos Basic Education case study demonstrates, resettlement of ethnic minorities may be far from voluntary, and is often part of a broader political agenda. Yet transmigration is referred to only briefly in the ADB’s policy as one aspect of voluntary resettlement, and its more coercive elements are not considered.



Children in a rowing boat on the Tonle Sap. Photo Living Rivers Siam (SEARIN).

Recommendations on the *Involuntary Resettlement Policy*

Recommendation 20:

Avoid resettlement where feasible: The ADB should take its provision to “avoid resettlement where feasible” as the single most important resettlement principle. As the recent OED Special Evaluation Study suggests, the ADB needs clearer guidelines regarding the identification of resettlement options, such as the consideration of project alternatives.¹⁴⁵ There should be a provision stating that the alternative to carrying out a project (the ‘non action’ alternative) should always be seriously considered.

Recommendation 21:

Time-bound actions: The updated policy should include clearer requirements for time-bound actions in relation to rehabilitation and compensation. There should be clearer guidelines and procedures regarding compensation and assistance with resettlement, including definition of the period after which economic rehabilitation should be achieved.

Recommendation 22:

Improving rather than restoring livelihoods: The ADB should strengthen its policy to require that resettlement results in improved, not only restored livelihoods. Resettlement should be conceived as a development project in its own right, responding to affected people’s own development needs and priorities, and ensuring that those most affected by the project also benefit from it.

Recommendation 23:

Strengthening implementation and monitoring: The ADB needs to strengthen supervision of its resettlement policy and include a provision requiring borrower commitment to, and capacity for, undertaking successful resettlement as a key determinant of ADB involvement.

Recommendation 24:

Strengthen participation of affected people: Where resettlement is unavoidable, the ADB should strengthen its policies relating to affected people participating in designing resettlement programs. The ADB also needs to

strengthen provisions relating to the identification and meaningful participation of women and other vulnerable and disadvantaged groups.

Recommendation 25:

Rethink the definition of ‘voluntary resettlement’: The ADB should fundamentally rethink its definition of voluntary resettlement, in particular transmigration. The ADB must recognise that resettlement through transmigration programs is not a ‘natural’ or inevitable process of economic change, but is often forced on communities through a combination of specific political, social and environmental policies. The ADB should reconsider its support for governments’ transmigration programs and develop a more considered policy position and statement on this issue.

4.2.2 Policy on Indigenous Peoples

At face value, the ADB *Policy on Indigenous Peoples* appears strong. It acknowledges that Indigenous Peoples play an important role in society, calls for their consultation and consent before undertaking projects, and recognises their rights as spelled out in international conventions, including to self-determination. It requires preparation of an Indigenous Peoples’ development plan where significant impacts on Indigenous Peoples are anticipated.

However, a closer inspection reveals a number of weaknesses in implementation, most seriously the broad and unspecific language of the Policy and the Operations Manual, which makes it difficult to know which provisions are binding. Many are recommended rather than mandatory, so that communities find it difficult to hold the ADB to account for lack of compliance.¹⁴⁶ There are also indications that staff find it difficult to know how to apply the Policy.

Another key issue is that the Policy applies in parallel with, rather than replacing, other ADB policies and practices, making it difficult in practice to know which takes precedence.¹⁴⁷ In the case of forestry sector support to the Bangladesh government, it appears that the ADB Forestry Policy took precedence over its *Policy on Indigenous Peoples*.¹⁴⁸ How the *Policy on Indigenous Peoples* is balanced with others is unclear.

Another problem is that the *Policy on Indigenous Peoples* is considered within the context of “national development policies and approaches”.¹⁴⁹ The issue of Indigenous Peoples’ rights is often politically sensitive, and national development policies may actually counter the rights of Indigenous Peoples. Moreover, the definition of Indigenous Peoples differs by country, with some governments (eg Indonesia) refusing to acknowledge the existence and rights of Indigenous Peoples. In many other countries, laws and policy frameworks remain underdeveloped, which may result in Indigenous Peoples not being acknowledged as an affected group in a particular project.

The ADB Policy “recognises and respects the national laws and policies of the Developing Member Countries”, yet at the same time “recognises the responsibility for ensuring equality of opportunity for Indigenous Peoples and that its operations in Developing Member Countries do not negatively affect the welfare and interests of Indigenous Peoples”.¹⁵⁰ The ADB is supposed to assist countries to formulate appropriate development strategies to overcome inconsistencies through policy dialogue, advisory or preparatory technical assistance. Yet how these fundamental inconsistencies are supposed to be overcome is very unclear.

Recommendations on the Policy on Indigenous Peoples

Recommendation 26:

Clarify the Policy: The ADB should revise its *Policy on Indigenous Peoples*, in particular clarify which aspects are binding. In doing so the ADB should harmonise its principles with those in the *Declaration on the Rights on Indigenous Peoples* – recently adopted by the United Nations Human Rights Council – which reflects international standards and the views and aspirations of Indigenous Peoples themselves.

Recommendation 27:

Establishing a broader framework for protection: The ADB should recognise the limitations of the project-specific nature of the *Policy on Indigenous Peoples*. The ADB should develop a broader framework for protection of Indigenous Peoples in each country through country-level discussions and in coordination with other donors.

Recommendation 28:

Self-identification: Given the politicised nature of Indigenous Peoples' issues, the ADB should not base its policy on government definitions of who is Indigenous. The ADB should revise its policy to allow self-identification by Indigenous groups as the fundamental criterion for determining when the Policy applies.

Recommendation 29:

Participation: Free, prior and informed consent must be obtained by the borrower prior to the approval and inception of any project located on the lands and territories of Indigenous Peoples or which involves their resources, or which significantly affects their lands, territories, resources or human rights. The principle of free, prior and informed consent – a precise term increasingly recognised in international law – recognises that Indigenous communities have the right to say 'no' to projects, and be involved in shaping project design from inception. The Policy must require ADB staff to secure the full and effective community participation throughout the project cycle.

Recommendation 30:

Land rights: The Policy should recognise and take special measures to protect Indigenous Peoples' rights to ownership, control and management of lands, territories and natural resources they have traditionally owned, or occupied. It should also recognise the spiritual and cultural significance of those lands. Indigenous Peoples should not be removed from their lands or territories without their free, prior and informed consent and agreement on just compensation, in accordance with the newly-adopted *UN Declaration on the Rights of Indigenous Peoples*.

Recommendation 31:

Indigenous Peoples development plans: The development of Indigenous Peoples development plans should take place following a mandatory baseline study, with full consultations to determine Indigenous people's priorities and concerns.



Flooding due to the Chashma project. Photo JACES.

3.2.3 Environment Policy

Some aspects of ADB *Environment Policy* are relatively strong. For example, its requirement for the conduct of Country Environmental Analyses is stronger than that of other MDBs, although more attention to consultation and information disclosure is needed.¹⁵¹ Other areas are problematic. For example, responsibility for the environmental analysis rests with the borrower, regardless of their capacity to meet ADB assessment standards. The implementation of the EIA and Initial Environmental Examination is also the borrower's responsibility, so that the quality of assessment mechanisms has varied. Overlapping and fragmented authority undermines interagency coordination, for example, when multiple agencies are responsible for implementing environmental Safeguards.

Several case studies demonstrate inconsistent environmental classification of projects as 'A', 'B', or 'C', suggesting that the classification system is problematic and open to interpretation. There should be a more transparent definition of these categories.

Environmental Defense has made key recommendations about ADB Environmental Safeguards. For example, the World Bank requires that all projects with ‘sensitive’ impacts be considered category ‘A’, subject to a full Environmental Impact Assessment. The ADB created a ‘B-sensitive’ category, allowing ‘sensitive’ projects that include deforestation, biodiversity loss, hazardous waste and involuntary resettlement to be categorised ‘B’, avoiding the scrutiny of a full EIA. Elimination of the ‘B-sensitive’ Category and recategorisation of these projects as ‘A’ is strongly recommended.

Given the sensitivity of Category ‘A’ projects, their EIAs should be conducted by internationally-recognised independent experts, and their reports be made publicly available. This requirement parallels the World Bank requirement for Category ‘A’ projects that the “borrower retains independent EA (Environmental Assessment) experts not affiliated with the project to carry out the EA”.¹⁵²

For high-risk projects with complex and multidimensional environmental issues, an independent advisory panel should be established to advise the ADB and the borrower during project preparation and implementation.

Projects that have site-specific impacts that may be significant should also be classified ‘A’. The ADB’s environmental assessment process, like the World Bank, IDB and AfDB, should require examination of the ‘no project’ scenario as part of environmental assessment.

The ADB emphasis on mitigation over prevention is of concern, in contrast with the World Bank, which stipulates a preference for prevention over mitigation or compensation wherever feasible. The ADB should commit not to ‘lowest cost mitigation’ but, as per World Bank language, to preventing and minimising impacts and placing mitigation within a ‘do no harm’ framework.¹⁵³

Another issue regarding environmental assessment relates to changes in a project’s scope after it has been approved, as in the STDP and Samut Prakarn projects; no additional EIA was conducted for either. As the recent OED study on the Environment states, the ADB must urgently differentiate between minor and major changes in project scope, to clarify when new EIAs are required.

Category ‘A’ and environmentally sensitive Category ‘B’ projects now require, as part of environmental assessment, development of environmental management plans that outline specific mitigation measures, monitoring requirements and related institutional arrangements. There should be third party monitoring of environmental management plans, particularly for Category ‘A’ projects and other ‘sensitive’ projects.¹⁵⁴ This is consistent with the IFC’s requirement that the client obtain qualified external experts to validate its monitoring information for projects with “diverse, irreversible or unprecedented impacts”.¹⁵⁵

The ADB public disclosure policies are extremely important to meaningful consultation. They require that summary EIAs for Category ‘A’ projects and summary initial environmental examinations for Category ‘B sensitive’ projects be placed on the ADB website 120 days before the Board’s consideration of project approval. Given the difficulties in achieving effective consultation under these timelines, this minimum period should be maintained and not reduced.

Greater attention should be paid to cumulative environmental impacts, as projects – in particular large infrastructure projects – may have impacts far beyond their boundaries. The Mae Moh case demonstrates that a project’s environmental and social impacts can continue long after it is completed. The ADB should require a Strategic Environmental Assessment for large high-risk projects and all program and sector loans, to address environmental vulnerabilities, measure the cumulative impacts of multiple projects and develop a long-term environmental strategy.

Recommendations on the Environment Policy

The ADB *Environment Policy* mandates consideration of the environment in all aspects of ADB operations. The Safeguards Update process should ensure that environmental issues are mainstreamed into all aspects of ADB work.

Recommendation 32:

Categorisation: The ADB should develop a more transparent system for environmental categorisation. All projects with ‘sensitive’ impacts should be considered Category ‘A’, subject to a full EIA.

The ADB should eliminate the 'B-sensitive' Category 'A' and classify these projects Category 'A'.¹⁵⁶ EIAs for Category 'A' projects should be conducted by independent experts with site-specific expertise, in consultation with local CSOs, and their reports be made publicly available.

For high-risk projects with complex and multi-dimensional environmental issues, an independent, internationally-recognised advisory panel should be established to advise the ADB and the borrower during project preparation and implementation. Projects with 'site-specific' and 'reversible' impacts that may also have significant adverse impacts should also be classified Category 'A'.

Recommendation 33:

Environmental Assessment: The ADB requirement for Country Environmental Analyses is stronger than that of other MDBs. However the ADB should include additional requirements regarding consultation and information disclosure, including that



Ms Maliwan Narkwiroj, an activist and a patient herself from Mae Moh Patients Right Network, Lam Pang Province, speaking in front of an international workshop on health impact assessment. Photo Mekong Watch.

documentation be provided in a form and language understandable and accessible to the groups being consulted. Evaluation of a 'no project' alternative should be part of the environmental assessment process, and adequate institutional resources provided to ensure its effective implementation.

Recommendation 34:

Strategic Environmental Assessment: The ADB should require a Strategic Environmental Assessment for large high-risk projects and all program and sector loans, to address environmental vulnerabilities, measure the cumulative impacts of multiple projects and develop a long-term environmental strategy.

Recommendation 35:

Change in project scope: The ADB must urgently differentiate between minor and major changes in project scope, to clarify when new EIAs are required, as noted by the Compliance Review Panel in its report on the STDP. Changes in scope should also mandate consideration of a project's cumulative impact.

Recommendation 36:

Environmental management plans: There should be independent internationally-recognised third party expert monitoring of environmental management plans, in consultation with affected communities and CSOs, particularly for Category 'A' projects.

Recommendation 37:

Public Disclosure Policies: The 120 day public disclosure period for summary environmental impact assessments of Category 'A' projects and summary initial environmental examinations of Category 'B sensitive' projects should be maintained as a minimum.



Part 4. Conclusion

When the ADB violates its own Safeguard Policies, it is men, women and children in project-affected communities and the environment that bear the consequences. If poorly implemented and monitored, projects can undermine livelihoods, increase poverty, contribute to pollution and environmental destruction and impact on communities' lifestyles, in particular on the culture and traditions of Indigenous Peoples. The current Safeguards Update provides a valuable opportunity to both clarify and strengthen the Safeguards' language in line with international human rights and environmental best practice.

The ADB Accountability Mechanism is a welcome development in improving accountability, however avenues for redress for affected communities remain slow and limited. As an institution claiming to be serious about poverty reduction and sustainable development, the ADB must get its Safeguard Policies and Inspection Process right.

The current problems of Safeguard implementation and monitoring, and the lack of capacity and diverse policy frameworks of developing member countries also raise serious concerns about any shift towards a Safeguards approach that is reliant on 'country systems'. It is very clear that such a reliance would not improve the quality of Safeguards implementation, nor the quality of public consultation. The Safeguards should rather be strengthened and clarified, with mandatory requirements that are clear and understandable to ADB staff.

Finally, ADB accountability for Policy implementation, increased participation of local communities and ensuring redress for affected people should be central to any process of updating the Safeguards.



Appendix A

Policy on Indigenous Peoples – key elements

Scope

The ADB *Policy on Indigenous Peoples* was approved in 1998. It is to be applied when significant negative impacts of an ADB-supported project are anticipated.

The Policy applies in parallel with other policies and does not replace or supersede them. In addition, each of the elements of the policy and practice addressing Indigenous Peoples are considered within the context of national development policies and approaches.¹⁵⁷

Definitions

The Policy acknowledges the difficulty of developing a single, specific definition for Indigenous Peoples, instead adopting a broad definition that considers two significant characteristics: descent from population groups present in a given area before modern states and territories were created, and maintenance of cultural and social identities separate from mainstream or dominant societies or cultures.¹⁵⁸

International standards and national laws

The Policy acknowledges a number of international conventions and declarations that provide a broad framework for the protection of Indigenous Peoples.¹⁵⁹ Whilst acknowledging international standards, its approach is to respect the will of governments, including government legislation and policy.¹⁶⁰

Policy objectives

The main objective of the Policy is to ensure that “...affected populations and persons are at least as well-off as they would have been in the absence of the intervention, or that adequate support and appropriate compensation be provided”.¹⁶¹ In addition, the Policy must ensure that ADB interventions affecting Indigenous Peoples are:

- consistent with their needs and aspirations;
- compatible in substance and structure with their culture and social and economic institutions;
- conceived, planned and implemented with the informed participation of affected communities;
- equitable in terms of development efforts and impact; and
- do not impose the negative effects of development on Indigenous Peoples without appropriate and acceptable compensation.¹⁶²

Operational framework

The ADB’s Operations Manual requires an initial social assessment be conducted to achieve its Policy objectives.¹⁶³ An Indigenous Peoples development plan must be prepared for projects that affect Indigenous Peoples significantly.¹⁶⁴ This Plan forms the basis for project implementation, monitoring and evaluation, and should take full account of people’s desires and preferred options, as well as local patterns of social organisation and resource use, to avoid creating dependency of Indigenous Peoples on project entities. The government or other project sponsors are responsible for planning and implementation of the Plan.¹⁶⁵

The policy requires that Indigenous Peoples’ concerns should be integrated into each stage of ADB programming, project processing, and policy development cycles.¹⁶⁶ Furthermore, the Policy requires consultation and participation by affected Indigenous Peoples in formulating development interventions to ensure their needs, priorities, and preferences are adequately dealt with. When serious differences between project sponsors and affected Indigenous Peoples are evident, the Policy suggests that adequate time be allowed to resolve these differences before the ADB commits its support to the project.¹⁶⁷



Appendix B

Involuntary Resettlement Policy – key elements

The ADB *Involuntary Resettlement Policy* was approved in 1995. The objectives of the Policy are first to avoid involuntary resettlement where feasible, and second to minimise resettlement where population displacement is unavoidable, and ensure that displaced people receive assistance so that they are at least as well-off as they would have been without the project.¹⁶⁹

There are three important elements:

- a. compensation for lost assets and loss of livelihood and income;
- b. assistance for relocation, including provision of relocation sites with appropriate facilities and services; and
- c. assistance for rehabilitation to achieve at least the same level of well-being.¹⁷⁰

If resettlement is unavoidable, those who lose assets or livelihood should receive assistance from the project for relocation and resettlement, and be provided with appropriate land, housing infrastructure and other compensation.¹⁷¹

Importantly, the absence of formal legal title to land should not be a bar to compensation.¹⁷² Those affected should be fully informed and consulted on resettlement and compensation options.

Implementation Procedures

Implementation requires an initial social assessment (ISA) to identify those who may be beneficially and adversely affected by the project. If the ISA identifies that resettlement is likely to be involved, a resettlement plan should be prepared,¹⁷³ which should outline the:

- organisational responsibilities;
- community participation and integration with host populations;
- socioeconomic survey;

- legal framework;
- identification of alternative sites and selection;
- valuation of and compensation for lost assets;
- land ownership, tenure, acquisition, and transfer;
- access to training, employment and credit;
- shelter, infrastructure, and social services;
- environmental protection and management; and
- implementation schedule, monitoring and evaluation.¹⁷⁴

Responsibility for planning and implementing resettlement rests with the government and other project sponsors, although the ADB should provide technical assistance.¹⁷⁵

The Operations Manual Section OP/F2, issued in October 2003, provides further guidance on the development of resettlement plans. It assigns a Category 'A' to projects involving significant resettlement impacts, ie that 200 or more people will experience major impacts.¹⁷⁶ These projects require a full resettlement plan.

Category 'B' refers to projects involving impacts that are not deemed significant and require a short resettlement plan. Some of these projects may require a resettlement framework prior to the short resettlement plan.

Category 'C' involves projects with no expected resettlement impacts, for which a resettlement plan is not required.



Appendix C

Environment Policy – key elements

The ADB *Environment Policy* was approved in November 2002 and contains five main elements:

- promoting environment and natural resource management interventions that directly reduce poverty;
- assisting developing member countries to incorporate environmental considerations in economic growth;
- helping maintain global and regional life support systems that underpin future development prospects;
- building partnerships to maximise the impact of ADB lending and non-lending activities; and
- integrating environmental considerations across all ADB operations.¹⁷⁷

Operational Framework

A country environmental analysis is prepared for input to the country sector program, and directed to policy, program, and sectoral levels.¹⁷⁸ Proposed projects are divided into four broad categories:¹⁷⁹

- Category ‘A’ projects could have potentially significant environmental impacts, and require an environmental impact assessment (EIA);
- Category ‘B’ projects could have some adverse environmental impacts, and require an initial environmental examination to determine whether impacts warranting an EIA are likely.¹⁸⁰
- Category ‘C’ projects are unlikely to have significant environmental impacts, and require no impact assessments or initial environmental examinations, although environmental implications are still reviewed.
- Category ‘F1’ is used for projects that involve a credit line through a financial intermediary or an equity investment in a financial intermediary. The intermediary must apply an environmental

management system, unless all sub-projects are likely to have insignificant impacts.¹⁸¹

The process of determining a project’s category is initiated by the regional department sector division, which prepares an environment screening checklist, taking into account a proposed project’s type, size, and location.¹⁸² Responsibility for the environmental assessment rests with the borrower, and is reviewed by the ADB to ensure that it meets ADB requirements.¹⁸³ Environmental assessments require public consultation.

The process starts as soon as potential projects for ADB financing are identified, and covers all project components, whether financed by ADB, co-financiers, or the borrowers. Important considerations include:

- examining alternatives;
- identifying potential environmental impacts – including direct and cumulative impacts – and assessing their significance;
- achieving environmental standards;
- designing mitigation measures;
- developing relevant environmental management plans and monitoring requirements;
- formulating institutional arrangements; and
- ensuring information disclosure, meaningful public consultation, and appropriate reporting.¹⁸⁴

The Policy also requires implementation of mitigation measures, and monitoring and evaluation of environmental aspects. For environmentally sensitive projects, the ADB requires that “borrowers or executing agencies submit semi-annual reports on implementation of the Environmental management plans” and that “the review missions from ADB regional departments conduct an annual review of environmental aspects of the project”.¹⁸⁵



Notes

- 1 See www.adb.org/Documents/Policies/Safeguards/discussion-note.pdf
- 2 Following World Bank trends, the ADB is considering a new approach to Safeguards implementation reliant on developing member countries' own policy and legal frameworks – a 'country systems approach'.
- 3 See NGO Forum on ADB, *Development Debacles: A Look into ADB's Involvement in Environmental Degradation, Involuntary Resettlement and Violation of Indigenous Peoples Rights*, September 2006; NGO Forum on ADB, *Untold Realities: How ADB Safeguards have been violated in Bangladesh, Lao PDR and Pakistan*, October 2006.
- 4 Drafts of these analyses have been utilised as inputs into this paper. See International Accountability Project, *Comparative Analysis of the ADB Involuntary Resettlement Policy: Policy Matrix*, November 2006, www.accountabilityproject.org and S. Fried and B. Granados, *ADB Safeguard Policy Update, Environmental Analysis Review*, Environmental Defense, forthcoming, 2007; and Tom Griffiths, *Comparative Analysis of the ADB Policy on Indigenous Peoples: Policy Matrix*, forthcoming, 2007.
- 5 ADB *Operational Manual Bank Policies: Involuntary Resettlement*, OM Section F2/BP, October 2003, p.1, para 1 and ADB *Operational Manual Bank Policies: Environmental Considerations in ADB Operations*, Operations Manual (OM) Section F1/BP, October 2003, p1, para 1.
- 6 See: www.adb.org/Accountability-Mechanism. The ADB's accountability mechanism was approved in 2003 by its Board of Directors following extensive consultations with civil society and other stakeholders. It replaced the earlier Inspection Function, which had serious flaws. The previous Inspection Function was established in 1995 and was fully applied for the first time in the case of the Samut Prakarn Project, which resulted in a review of the inspection function's effectiveness. The review resulted in changes to the Inspection Function to improve access to information, to improve processes, to widen the scope of its application and to increase the transparency and accountability of its operations. The new Accountability Mechanism is permanent, with separate offices for problem-solving and compliance.
- 7 For a more full description of how to access the Accountability Mechanism see www.bicusa.org/bicusa/issues/Policy_Framework_Accountability.pdf and compliance.adb.org/
- 8 The scope of the compliance review is 'ADB's operational policies and procedures' as they relate to the formulation, processing, or implementation of an ADB-assisted project. See OM Section L1/BP, issued on 29 October 2003.
- 9 For more information on the *Policy on Indigenous Peoples*, see Appendix A.
- 10 For more information on the *Involuntary Resettlement Policy*, see Appendix B.
- 11 For more information on the *Environment Policy*, see Appendix C.
- 12 ADB *Policy on Indigenous Peoples*, April 1998, www.adb.org/Documents/Policies/Indigenous_Peoples/IPPP/pdf
- 13 ADB *Involuntary Resettlement Policy*, August 1995, para 33, www.adb.org/Documents/Policies/Involuntary_Resettlement/involuntary_resettlement.pdf
- 14 ADB *Environment Policy*, November 2002, *Environment Policy Statement*, para 24, www.adb.org/Documents/Policies/Environment/environment_policy.pdf
- 15 ADB Operations Evaluation Department, 'Involuntary Resettlement Safeguards', *Special Evaluation Study*, September 2006, p.17
- 16 *ibid*, p.17
- 17 Miloon Kothari, *Basic Principles and Guidelines on Development-based Evictions and Displacement*, E/CN.4/2006/41. www.ohchr.org/english/issues/housing/annual/htm
- 18 W. Courtland Robinson, 'The Causes, Consequences, and Challenges of Development-Induced Displacement', *The Brookings Institution – SAIS Project on Internal Displacement, Risks and Rights Occasional Paper*, May 2003
- 19 BIC and NGO Forum on ADB, *A Fact-finding Report on Implementation of the Resettlement Implementation Plan*, May 18-20, 2006, p.19, www.bicusa.org
- 20 *ibid* p.11

- 21 *ibid* p.9-10
- 22 ADB *Resettlement Implementation Plan for the Southern Transport Development Project*, October 2002, www.adb.org/Documents/Resettlement_Plans/SRI/Southern_Transport/default.asp
- 23 *ibid*
- 24 See Bank Information Centre and NGO Forum, *A Fact Finding Report on Implementation of the Resettlement Implementation Plan*, May 18-20, 2006.
- 25 See Sri Lankan Working Group on Trade and IFIs *Unresolved dispute and broken promises of the ADB: the story of the Southern Expressway*, Update No 006, January 2005
- 26 ADB Accountability Mechanism, Compliance Review Panel, *Final Report to the Board of Directors on CRP Request No. 2004/1 on the Southern Transport Development Project in Sri Lanka*, 22 June 2005, Appendix 1, www.compliance.adb.org
- 27 *ibid*, Part VIII, Conclusions
- 28 NGO Forum on ADB 'The Saga of Disrupting Social and Environmental Safeguards in the Southern Transport Development Project (Sri Lanka)', in *Development Debacles*, September 2006. See also Letter from Oxfam to ADB, April 26, 2006 and Letter from ADB to Oxfam Australia, April 28 2006, www.oxfam.org.au/campaigns/adb/docs/letter_preskuroda_260406.pdf
- 29 ADB Compliance Review Panel, *Annual Monitoring Report 2005-2006 to the Board of Directors on the Southern Transport Development Project in Sri Lanka*, 11 July 2006 p.13
- 30 ADB: *Handbook on Resettlement: A Guide to Good Practice*, p.59, www.adb.org/Documents/Handbooks/Resettlement/foreword.asp
- 31 ADB Compliance Review Panel, *op cit* n.29, p.12
- 32 *ibid*
- 33 Toshiyuki Doi, *The Road Taken: Outstanding Issues and Policy Implications of the ADB-funded Highway 1 Project in Cambodia*, forthcoming 2007
- 34 Chea Sarin and Remeo Cleto, Asian Development Bank RETA 6091 *Cambodia Capacity Building for Resettlement Risk Country Report Regional Workshop, 8-9 December 2005*, prepared for Ministry of Economy and Finance-Interministerial Resettlement Committee, December 2005, (draft for discussion). See also Chea Sarin Cambodia Country Team Powerpoint Presentation, p.22, www.adb.org/Documents/Events/2005/RETA-6091/default.asp
- 35 Toshiyuki Doi, *op cit*, n.33
- 36 *ibid*
- 37 ADB, *Report and Recommendations of the President to the Board of Directors on Proposed Loans to the Kingdom of Cambodia and to the Socialist Republic of Vietnam for the Greater Mekong Subregion: Phnom Penh to Ho Chi Minh City Highway Project*, November 1998
- 38 *ibid*, p.83–84; p.27
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- 40 Legal Aid of Cambodia and NGO Forum on Cambodia. *Report on Compensation for Three Groups of People Affected by National Highway 1 Improvement Project – Neak Leung to Bavet*, February 14, 2002
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- 43 Bank Information Center and Environmental Defense, *NGO visit to the Asian Development Bank's Chasma Rights Bank Irrigation Project (CRBIP) in Pakistan Trip Report*, December 2003, www.environmentaldefense.org/documents/3614_ChasmaTripReportComplete/1/pdf
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- 45 Asian Development Bank Post-Evaluation Office, *Project Performance Audit report on the Chasma Command Area Development Project in Pakistan*. December 1999, p.1
- 46 ADB, *Final Report of Inspection Panel on Chasma Right Bank Irrigation Project Stage III*, *op cit* n.52, p.19
- 47 *ibid*, p.8
- 48 ADB Compliance Review Panel *Annual Monitoring Report 2005-2006 to the Board of Directors on the Implementation of Remedial Actions on the Inspection Request on the Chasma Right Bank Irrigation Project (Stage III) in Pakistan*, August 2006, p.21, www.compliance.adb.org
- 49 See Japan Center for a Sustainable Environment and Society (JACSES), 'Report on Facts and Concerns regarding Chasma right Bank Irrigation Project-Stage III and Grievance Redress and Settlement Committee (GRSC)', 7 May 2003, p.13, cited in Stephanie Fried, Shannon Lawrence and Regina Gregory *The Asian Development Bank: In its Own Words: An Analysis of Project Audit Reports for Indonesia, Pakistan and Sri Lanka*, in Focus Asien No. 16
- 50 See 'NGO Visit to the Asian Development Bank's Chasma Right Bank Irrigation Project (CRBIP) in Pakistan' *Trip Report*, December 2002

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- 52 ADB, *Final Report of the Inspection Panel on the Chasma Right Bank Irrigation Project Stage III*, 10 June 2004, p.54, www.asiandevbank.org/Inspection/projects/chashma_right.asp#inspection
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- 55 ADB *Project Document Profile*, available at www.adb.org/Documents/Profiles/LOAN/old-profiles/lao015.asp
- 56 Special Case Study Writer, 'ADB and Internal Resettlement in Lao PDR', in *Untold Realities*, op cit n.3
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- 60 *ibid*
- 61 *ibid*
- 62 See for example UNESCO/UNDP, *Resettlement and Social Characteristics of New Villages: Basic Needs of Resettled Communities*, 1997; Laurent Romagny and Steve Daviau *Synthesis of Reports on Resettlement in Long District, Luang Namtha Province, Lao PDR*, report for Action Contre La Faim, June 2003; ADB, *Participatory Poverty Assessment: Lao PDR*, 2001; SIDA, *Poverty Alleviation for All, Potentials and Options for People in the Uplands*, 2002; UNDP/ECHO, *Service Delivery and Resettlement: Options for Development Planning*, 2004; Baird and Shoemaker, *Aiding and Abetting: Internal Resettlement and International Aid Agencies in the Lao PDR*, 2005; Committee de Cooperation avec le Lao (CCL), *Shifting Cultivation and Poverty Eradication: A Complex Issue*, 2004
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- 67 See for example Laurent Romagny and Steve Daviau, op cit n.62, at 3.6
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- 69 NGO Forum on ADB, 'Liquid Gold: The Palm Oil Palm and Disregard of Social and Environmental Norms' in *Development Debacles*, op cit, n.3
- 70 Guruaja Budhaya, op cit, n.59, p.32
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- 72 ADB, *Technical Assistance to the Kingdom of Cambodia for Preparing the Chong Kneas Environmental Improvement Project*, November 2002
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- 74 Mekong Watch, op cit, n.79
- 75 Letter to Mekong Watch from C.R Rajendran, Mekong Department, ADB, 7 January 2005.
- 76 ADB Compliance Review Panel, *Final Report to the Board of Directors*, op cit n.26, VIII. Conclusions (i)
- 77 ADB *Final Report of the Inspection Panel*, op cit n.52, p.37
- 78 *ibid*
- 79 Mekong Watch, *Comments regarding the draft Environmental Impact Assessment for the Chong Kneas Environmental Improvement Project*, Cambodia, 28 June 2004
- 80 ADB, *Final Report to the Board of Directors on the Southern Transport Development Project*, op cit n.26, Part VIII. Findings and Assessments
- 81 NB – Categorisation occurred under previous ADB Policy 8 February 1988, in which Category 'C' is a project with significant adverse environmental impacts requiring detailed environmental assessment.
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- 83 ADB, *Final Report of the Inspection Panel on the Chasma Right Bank Irrigation Project Stage III*, op cit n.52, p.54
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- 92 Guruaja Budhaya, *op cit*, n.70
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- 94 In addition, according to the ADB's OM 47 on the 'Incorporation of Social Dimensions in Bank Operations' the ADB is required to set up participatory processes in which stakeholders are provided opportunities 'to actively influence and share control over the project and decisions that affect them at all stages of the project cycle'.
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- 108 *ibid* p.75
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- 114 Guruaja Budhaya, *op cit*, n.70

- 115 OED, op cit n.15, p.30
- 116 Roger Plant, *Indigenous Peoples/Ethnic Minorities and Poverty Reduction Regional Report, Report for ADB*, 2002, Chapter 6.
- 117 Under the recently developed *Paris Declaration on Harmonisation and Country Systems*, donors commit to 'harmonise' their activities. According to the declaration, this should focus on upstream analysis, joint assessments, joint strategies, co-ordination of political engagement, and practical initiatives such as the establishment of joint donor offices. Donors should align to the maximum extent possible behind central government-led strategies or, if that is not possible, donors should make maximum use of country, regional, sector or non-government systems. Donors should promote a harmonised approach to environmental assessments. Donors and partner countries jointly commit to: strengthen the application of EIAs and deepen common procedures for projects, including consultations with stakeholders; and develop and apply common approaches for 'strategic environmental assessment' at the sector and national levels. While harmonisation amongst donors is positive, it should be noted that harmonisation in the form of 'country systems' would increase transaction costs for the ADB and borrower, as resources would be required for 'equivalence testing'.
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- 123 ADB Operations Evaluation Department, op cit n.120, Executive Summary
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- 125 ADB Operations Evaluation Department, op cit n.15, p.21
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- 136 African Development Bank, *Involuntary Resettlement Policy*, para 8
- 137 More detailed analysis of each policy can be found in the comparative analyses matrices prepared by the International Accountability Project, S. Fried and B. Gramados, and Tom Griffiths, op cit, n.4
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- 139 *ibid*, Executive Summary
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- 148 Raja Devisish Roy, op cit n.113
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- 150 See the ADB's 'frequently asked questions' page: www.adb.org/IndigenousPeoples/faqs.asp
- 151 For specific recommendations regarding language changes on these issues see S. Fried and B. Granados, op cit, n.4
- 152 World Bank Environmental Assessment, OP 4.01
- 153 For details, see S. Fried and B. Granados, op cit, n.4
- 154 As stated above, we recommend the elimination of the B-sensitive category.
- 155 Performance standards 1, p.6
- 156 The World Bank defines a project as sensitive 'if it may be irreversible (eg lead to a loss of a major natural habitat), or raises issues involving Indigenous Peoples, natural habitats, management of cultural property or involuntary resettlement. See S. Fried and B. Granados, op cit, n.4
- 157 ADB *Policy on Indigenous Peoples* 1998, para 58
- 158 *ibid*, Section II, para 8
- 159 This includes: the *Universal Declaration of Human Rights* (1948); the *International Covenant on Civil and Political Rights* (1966); the *International Labour Organisation Convention* Nos. 107 (1957) and 169 (1989); *Agenda 21 of the United Nations Conference on Environment and Development* (1992); the *Vienna Declaration and Programme of Action* (1993); the *United Nations Declaration of the Rights of Indigenous Peoples* (1993).
- 160 ADB *Policy on Indigenous Peoples*, Section IV, para 21
- 161 *ibid*, section VII, para 58
- 162 *ibid*, section VII, para 58
- 163 The Initial social assessment should address peoples' needs, demands, as well as the key social dimension that a project must address, such as involuntary resettlement, policy reduction, human development, gender and development, and vulnerable groups'. *ibid*, Section V, para 34
- 164 The circumstances where an intervention is considered to have a significant or adverse effect on indigenous peoples include (i) affects on their customary rights of use and access to land and natural resources; (ii) changes of their socioeconomic and/or cultural integrity; (iii) affect on their health, education, livelihood, and social security status; and (iv) impacts that may alter or undermine the recognition of indigenous knowledge they possess. ADB Operations Manual Section 53 on Indigenous Peoples
- 165 ADB *Policy on Indigenous Peoples*, section V, para 37. The Indigenous Peoples Development Plan is for Category 'A' projects that have significant impacts on Indigenous Peoples. See Operations Manual (OM), para 9.
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- 170 *ibid*, para 34
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The Mae Moh coal power plant spewing thick smoke. Every year, the plant emits over 4 million tons of climate change-inducing carbon dioxide. In addition, approximately 1.6 million tons of acidic sulfur gas is released into the air by the plant, resulting in severe health problems for local people and irreversible damage to the natural environment. Photo Greenpeace/T. Buakamsri