



Advocacy Guide to ADB EIA Requirement



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by
Hemantha Withanage



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PREFACE

The proper governance of a country's environment and natural resources relative to development projects, as typified by the Environment Impact Assessment (EIA), is key to its sustainable development. Development decision makers cannot and must not avoid this principle because the EIA is an intrinsic part of good environmental governance.

While local environmental governance process is most important to project advocacy, we should bear in mind that international financial institutions (IFIs) such as the World Bank, Asian Development Bank (ADB), European Bank for Reconstruction and Development (EBRD), and co-financiers like the Japan Bank for International Cooperation (JBIC) give paramount importance to EIA requirements. This process impacts heavily on the development decisions of these multilateral banks at present.

Ideally, local communities should have the freedom to decide what should be contained and required in the development process. In reality, however, they are only allowed to participate in top-down processes that major development actors bring to their territories. We refer to bureaucrats, politicians or the private sector with the full backing of IFIs who have taken the free ride to decide (for better or for worse) on behalf of affected communities, families and/or individuals.

Public participation and consultation in the context of development decision-making process are the universal rights of all relevant stakeholders. For example, affected individuals who live in the vicinity of a site-specific project are principally the right group that should be involved in the formulation of major decisions. But these people get unfortunately marginalized along the way.

Further, participation is rendered meaningless and insignificant unless the right kind of information is made available to concerned stakeholders. Thus, a proper EIA process must ensure the participation of all relevant actors. Their access to correct and reliable information should likewise be guaranteed.

Projects with potential adverse environmental impacts can be changed at or halted at the design stage, if the civil society is able to effectively tap available advocacy tools and opportunities at their disposal. In most cases, though, local communities do not have any knowledge of the existence and use of the EIA. Therefore, civil society organizations, advocacy groups in particular, face the twin challenges of how to fully harness the EIA to their monitoring and lobbying advantage, as well as how to educate/inform the local communities about the EIA to protect their best interests.

The EIA is one powerful tool to ensure proper public participation in the development decision-making process. It can be used to change a project to make it acceptable to the public. We have to be very clear, though, that the EIA cannot be used for the automatic rejection of projects. However, when harnessed properly, the EIA process can lead to the stoppage of projects that are found to be detrimental to the society and environment. Ergo, it is imperative that we ought to have a full knowledge of what the EIA is for, before we decide to participate in any development decision-making process.

This guidebook is a small initiative to encourage the civil society movement for greater involvement in development decisions. It is also for the beginners if the EIA advocacy in both national level and international levels. Those who require better understanding of the EIA process may refer to some documents in the reference page.

I hope this will provide some guidance towards encouraging public to use these tools and improve their participation in the development decision-making process.

Hemantha Withanage
Quezon City, Philippines
18th September 2006

ABBREVIATIONS

ADB	Asian Development Bank
ADF	Asian Development Fund
CAREC	Central Asian Region Economic Cooperation
CEA	Country Environmental Analysis
CSOs	Civil Society Organizations
CSP	Country Strategy Papers
DMCs	Developing Member Countries
EBRD	European Bank for Reconstruction and Development
EIA	Environmental Impact Assessment
ELAW	Environmental Law Alliance World-wide
EMP	Environmental Management Plan
EU	European Union
IEE	Initial Environmental Examination
IFC	International Finance Corporation
IFIs	International Financial Institutions
IPs	Indigenous Peoples
JBIC	Japan Bank for International Corporation
PAA	Project Approving Agency
PP	Project Proponent
MOU	Memorandum of Understanding
NGO	Non- Governmental Organizations
OCR	Ordinarily Capital Resources
ODA	Overseas Development Assistance
OM	Operation Manual
RSDD	Regional Sustainable Development Department
REA	Rapid Environmental Appraisal
SEA	Strategic Environmental Assessments
SIA	Sectoral Impact Assessment
SIEE	Summary Initial Environmental Examination
SEIA	Summary Environmental Impact Assessment
TEC	Technical Evaluation Committee
TOR	Terms of Reference
WB	World Bank

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Chapter 1

EIA across Asia and the Pacific

The Environmental Impact Assessments (EIA) can be a powerful tool to ensure that development projects do not destroy the environment. Since the late 1970s this tool has been implemented mostly in developed countries. It has been widely used in development decision-making processes in the past three decades.

A number of reports and studies, on the other hand, have shown that the EIA process in developing countries has failed to meet the parameters of good environmental management and sustainable development. Public consultation, in particular, has not been satisfactory in most developing countries.

Impact assessments can vary depending on the prevailing situation. The EIA or Initial Environmental Examination (IEE) is carried out to assess the impacts of a specific project. Meanwhile, the Strategic Environmental Assessment (SEA) or Sectoral Impacts Assessments (SIA) is employed for policy or program implementation.

The EIA is a public document hence it is a very important tool for IFI project advocacy. It is the first information that the public receives about IFI-financed project. Other documents such as feasibility studies are not made public most of the time.

More importantly, the EIA is produced at the project design stage. It also provides for a public consultation process. Therefore, this is the best opportunity for affected communities and relevant stakeholders to launch an advocacy campaign against development projects that have negative environmental impacts.

1.1 National legislations with EIA requirement

Many countries in Asia-Pacific have already incorporated EIA requirements to their respective national environmental regulations since early 70's.

However, Strategic Environmental Assessment (SEA) is not being practiced in most countries in the region.

Most countries require EIAs for highly sensitive projects and IEEs for less sensitive projects. However, many countries lack the needed criteria in order to assess whether a project would need an EIA or an IEE. Obviously, this particular decision rests on government bureaucrats.

The key common features of EIA regulations in all the countries are as follows:

- Setting up an administrative framework for conducting the EIA process;
- Analysis of alternatives;
- Setting up a criteria for public consultation;
- Ensuring public disclosure of information;

Table 1 EIA laws and regulations in the region

Country	Law/ regulation	Year
Armenia	Law on the Expert Review of Impacts on the Environment	1995
Australia	Antarctic Treaty (Environment Protection) (Environmental Impact Assessment) Regulations	1993
Azerbaijan	Law on Amendments and Supplements to Some Legislative Acts Concerning the Application of Law on Environmental Protection	May 2000
Bangladesh	EIA regulations	1992
Bhutan		
Burma		
Cambodia	EIA Decree	1999
China	EIA Law	2002
Fiji	Sustainable Development Bill	1999
Hong Kong	EIA Ordinance	1998
India	EIA Notification (as amended in 2006)	1994
Indonesia	EIA Law	2001
Japan	EIA Law	1998
Kazakhstan	Law on Environmental Expert Review	1997
Kiribati	Environment Act	1999
Korea	EIA Act	1999
Kyrgyzstan	Law on Environmental Expert Review ¹ (1999)	May 2000
Lao PDR	EIA Decree	2000

¹ "Environmental Expert Review" is the translation of Russian term "Ekologicheskaya Ekspertisa". Other commonly used translations in the Central Asian region are "Ecological Expertise", "Ecological Examination" or "Environmental Assessment."

Malaysia	Environmental Quality Act	1974
Maldives	Environmental Protection and Preservation Act	1993
Mongolia	EIA Law	1997
Nepal	Environment Protection Act and Regulations	1997
North Korea		
Pakistan	Environmental Protection Agency Review of Initial Environmental Examination and Environmental Impact Assessment Regulations,	2000
Papua New Guinea	Environment Act	2000
Philippines	EIA Regulations	2003
Samoa	Regulations under Lands, Survey and Environment Act	1989
Singapore	Environmental Protection Act	2000
Sri Lanka	EIA Regulations	1993
Tajikistan	Regulation on State Environmental Expert Review No. 156	1994
Thailand	National Environmental Quality Act	1992
Turkmenistan	Law on State Environmental Expert Review	1995
Uzbekistan	Law on the State Environmental Expert Review	2000
Vanuatu	Environmental Management and Conservation Act No. 12 of 2002	2002
Vietnam	Government Decree No.175/CP,	1994

- Fixing a time frame for decision making; and
- Provisions for producing an environmental monitoring plan.

1.2 EIA Requirement of International Financial Institutions

IFIs in the region have also adopted the EIA requirement in their lending since the early 1990s. World Bank adopted its first EIA requirement in 1989 and revised in 1991.

ADB also introduced EIA requirement in 1992. Para. 23 of Operations Manual Section 21, issued on December 1, 1992, provided for the release of SEIA/EIA or SIEE/IEE to ADB's Board of Directors, NGOs, and the public as soon as the borrowing country allows to release the report. But this was in the context of getting feedback on the environmental assessment report prepared for a project that was in process then.

The World Bank adopted its current EIA requirement under its strategy entitled: "Making Sustainable Commitments: An Environment Strategy for the World Bank" in July 17, 2001. Meantime, the ADB adopted its current

EIA requirements under its new Environment Policy that took effect on November 8, 2002.

Meanwhile, JBIC adopted the EIA requirements under its new “Guidelines for the Confirmation of Environmental and Social Considerations” in 2004. JBIC now requires all its Official Development Assistance (ODA) loans for projects classified as Category A (with a significant adverse impact on the environment, to follow the practice of multilateral financial institutions and disclose information the screening results within 120 days before deciding to approve the loan or not.

The European Bank for Reconstruction and Development (EBRD) adopted EIA regulations in February 1992 based on its first Environmental Policy that was approved in 1991. The policy was later revised in April 2003. In addition to EIAs on specific projects, WB, ADB and EBRD carry out Strategic Environmental Assessments (SEAs) on the anticipated environmental consequences of proposed sector or country/regional plans or programs.

1.3 Harmonization of the EIA Requirement

Since the processes for meeting the EIA requirements of different IFIs are somewhat cumbersome for the countries, IFIs are now moving towards harmonization of environmental policies and EIA requirements. This has been already discussed in certain countries such as Sri Lanka, Cambodia, India and China. Vietnam is a pilot case in the region under the Paris Declaration endorsed on 2 March 2005.

Under this process, IFIs are planning to adopt (1) common process, (2) areas of coverage, and (3) an effective system for quality assurance and monitoring. Under this approach some countries are already working on streamlining the functions of Project Approval Agencies; modifying public consultation, as well as disclosure requirements and procedures; and clarifying the decision making process for EIA under the other local ordinance.

* * *

Chapter 2

ADB EIA requirement

The Asian Development Bank is a regional multilateral financial institution established in 1966. Currently it has 66 member countries, 48 of which are Developing Member Countries (DMCs) and 18 non-regional donor countries. The Bank provides loans and grants through its two mechanisms: (1) low interest money from Asian Development Fund (ADF), and (2) high interest money through the Ordinary Capital Resources (OCR). The latter is ADB's private window that provides loans to the private sector. In 2005 its fund release amounted to \$7.4 billion, including \$5.8 billion for 72 loans covering 64 projects.

The ADB is headquartered in Manila, Philippines and has 26 offices around the world. Currently, it employs more than 2000 employees from 50 countries.

2.1 ADB Policies and projects

Since 1994, the ADB has approved a number of policies to guide its project and policy cycles as well as to ensure accountability of borrowing countries, project proponents, and the Bank itself. The policies can be categorized into three: safeguards, sector and others. Under the Safeguard Policies, which are presently undergoing a consolidated review, are the Environment (2002) Indigenous Peoples (1998) and Involuntary Resettlement (1995). Sector Policies include Energy (2000) Fisheries (1997) Forestry (1995), Water (2001), etc. Among the other important policies are the Public Communications Policy (2005) and ADB Accountability Mechanism (2004) which are tools for project advocacy.

The ADB involves in financing projects, programmes and structural adjustments in the region and individual DMCs. For example ADB has promoted and supported regional economic cooperation among countries such as the Greater Mekong Sub-region or GMS (Thailand, China, Cambodia, Myanmar, Vietnam and Lao Peoples Democratic Republic); and the Central Asian Region Economic Cooperation or CAREC (Uzbekistan, Tajikistan, Kyrgyz Republic, Kazakhstan, Turkmenistan, Azerbaijan, Mongolia, China and Afghanistan).

ADB financing involves road construction, dam building, coal power plants and energy production, agriculture and irrigation projects, forest plantations, oil palm cultivation and other projects that are highly sensitive to the environment.

The Safeguard Policies play a major role in protecting the rights of the local communities in ADB-funded projects and ensure social and environmental concerns are included in the project decisions. In particular, the Environment Policy provides a major opportunity for affected people to get involved in the ADB decision-making process through the Environmental Impact Assessment.

2.2 ADB project Cycle²

Most ADB projects stems from the request of the national governments. They are identified during the preparation of Country Strategy Program (CSP). ADB provides Technical Assistance grant for the project preparation.



Fig. 1: The Project Cycle

The project preparation and appraisal stage includes the preparation of Environmental Impact Assessment for selected projects. Under this ADB requires borrowing countries to produce EIA documents.

² ADB Project Cycle Source: ADB

2.3 ADB Environmental Policy

The Environment Policy addresses five main challenges. According to the ADB, the Environment Policy is grounded on its Poverty Reduction Strategy and Long-Term Strategic Framework.

The policy endeavors to reduce poverty through environmentally sustainable development. Specifically, it contains five main elements: (1) promoting environment and natural resource management interventions to reduce poverty directly, (2i) assisting DMCs to mainstream environmental considerations in economic growth, (3) helping maintain global and regional life support systems that underpin future development prospects, (4) building partnerships to maximize the impact of ADB lending and non-lending activities, and (5) integrating environmental considerations across all ADB operations.³

2.4 Operation Manual (OM) on EIA Requirements

The OM deals with the main requirements under each policy. It clearly identifies sections of each policy that are subject to the Bank's Accountability Mechanism.

The Environment Policy recognizes the differences in the capacity and required resources of each country in order to fulfill the EIA requirements. However, the OM states that the "fifth policy element on integrating environmental considerations across all ADB operations must be applied uniformly by ADB to all ADB operations in all DMCs."

According to the fifth policy provision: "ADB addresses the environmental aspects of its operations through systematic application of procedures for (i) environmental analysis for country strategy and programming; (ii) environmental assessment of project loans, program loans, sector loans, sector development program loans, loans involving financial intermediaries, and private sector loans; (iii) monitoring and evaluation of compliance with environmental requirements of loans; and (iv) implementation of procedures for environmentally responsible procurement. In the context of policy-based lending and policy dialogue, ADB identifies opportunities to introduce policy reforms that provide incentives to improve environmental quality and enhance the sustainability of natural resource management. ⁴

³ Environment Policy(2002).

⁴ OM Section F1/BP Issued on 29 October 2003.

Compliance under the Accountability Mechanism: Further, this fifth policy provision is subject to compliance review. However, the OM section issued in October 29, 2003 supersedes OM Section No. 20 issued on February 23, 2003.

2.5 Salient Features of OM Section F1/OP Issued on 29 October 2003

This section is based on the EIA requirements under the OM regarding environmental considerations in ADB operations. *(For the exact text please refer to the actual section in the Operation Manual.)*

Country Environmental Analysis: A Country Environmental Analysis (CEA) is prepared as an input to the country strategy and program (CSP) exercise. In addition to enhancing the consideration given to environmental factors in formulating policies, plans, and programs, the information and analysis contained in the CEAs support and facilitate the downstream environmental assessment of individual ADB-financed projects.

Environmental Assessment: Environmental assessment referred in the Environment Policy is a generic term to describe a process of environmental analysis, management, and planning to address environmental impacts of development policies, strategies, programs, and projects. ADB requires environmental assessment in all project loans, program loans, sector loans, sector development program loans, financial intermediation loans, and private sector investment operations.

When the process starts: ADB's environmental assessment 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 borrower.

Timing for the EIA: Ideally, environmental assessment is ideally carried out simultaneously with the pre-feasibility and feasibility studies of the project. Environmental assessment, however, is a process rather than a one-time report, and includes necessary environmental analyses and environmental management planning that take place throughout the project cycle.

What should be in an EIA: Important considerations in undertaking environmental assessment include (i) *examining alternatives*; (ii) *identifying potential environmental impacts, including indirect and cumulative impacts and assessing their significance*; *achieving environmental standards*; (iii) *designing least-cost mitigation measures*; (iv) *developing appropriate environmental management plans and monitoring requirements*; (v) *formulating institutional arrangements*; and (vi) *ensuring information disclosure, meaningful public consultation, and appropriate reporting of results*.

EIA responsibility: The borrower is responsible for (i) doing the environmental assessment in accordance with its own and ADB's environmental assessment requirements, and (ii) for implementing the recommendations of the environmental assessment.

Review and Monitoring: ADB reviews the environmental assessment report to ensure that it meets ADB requirements, and that it provides a sound basis for project processing and implementation. ADB monitors the implementation of agreed environmental mitigation measures by the borrower.

Within ADB, the project teams are responsible for the environmental assessment process. Environment specialists in regional departments review the environment assessment reports. Quality assurance of projects and programs is undertaken by the project teams, with formal peer review of category "A" projects through ADB's environment committee.

Monitoring compliance: Internal and external environment networks facilitate sharing and disseminating of lessons. The chief compliance officer, supported by the Environment and Social Safeguards Division (RSES), is responsible for monitoring compliance of regional departments with ADB's environment assessment requirements and advising Management on compliance.

Classification

The environmental assessment requirements for projects depend on the significance of environmental impacts. Each proposed project is scrutinized as to its type; location; the sensitivity, scale, nature, and magnitude of its potential environmental impacts; and availability of cost-effective mitigation measures. Projects thus screened for their

expected environmental impact are assigned to one of the following four categories.

- (i) **Category A:** Projects are categorized as “A” if they would have significant adverse environmental impacts. Thus, an EIA is required to address significant impacts.
- (ii) **Category B:** Projects are categorized as “B” if they would have some adverse environmental impacts, but of lesser degree or significance than those of category “A” projects. An initial environmental examination (IEE) is required to determine whether significant environmental impacts warranting an EIA are likely. If an EIA is not needed, the IEE is regarded as the final environmental assessment report.
- (iii) **Category C:** Projects are categorized as “C” if they are unlikely to have adverse environmental impacts. No EIA or IEE is required, although environmental implications are still reviewed.
- (iv) **Category FI:** Projects are classified as category “FI” if they involve a credit line through a financial intermediary or an equity investment in a financial intermediary. The financial intermediary must apply an environmental management system, unless all subprojects will result in insignificant impacts.

Environmental Assessment Reports: The borrower prepares EIA reports for category “A” projects and IEE reports for category “B” projects. The borrower also prepares the summary EIA (SEIA) or summary IEE (SIEE) reports highlighting the main findings of the IEE or EIA.

The **Summary Environmental Assessment (SEA)** report is the executive summary of the environmental impact assessment or initial environmental examination report prepared for a project in accordance with the requirements of ADB’s Environment Policy. It describes the project, its environmental setting, the alternatives considered and selected, where relevant, the public consultation and disclosure undertaken, and the environmental management plan to be implemented by the borrower.

Public Consultation: ADB requires public consultation in the environmental assessment process. For category “A” and “B” projects, the borrower must consult with groups affected by the proposed project and local non-government organizations (NGOs). *For category “A” projects, ADB ensures that the borrower carries out public consultation at least twice: (i) once during the early stages of EIA field work; and (ii) once when the draft EIA report is available, and prior to loan appraisal by ADB. The public consultation process needs to be described in the EIA and SEIA reports.*

Information Disclosure: Environmental assessment reports for ADB projects are accessible to interested parties and the general public. The SIEE and SEIA reports are required to be circulated worldwide, through the depository library system and on the ADB web site. The full EIA or IEE reports are also made available to interested parties on request.

120-Day Rule: ADB’s “120-day rule” requires that the SEIA, or in the case of category “B” projects that are deemed environmentally sensitive, the SIEE, is available to the general public at least 120 days before ADB’s Board considers the loan, or in relevant cases, before approval of significant changes in project scope or subprojects. *The 120-day rule applies to all public and private sector category “A” projects and to those category “B” projects deemed to be environmentally sensitive.* To facilitate the required consultations with project-affected groups and local NGOs, ADB ensures that the borrower provides information on the project’s environmental issues in a form and language(s) accessible to those being consulted.

Environmental Assessment of Program Loans: ADB requires that the environmental impacts of policy actions associated with program loans be evaluated, and that appropriate mitigation measures be identified and incorporated as loan covenants. **Strategic environmental assessment**, which facilitates systematic evaluation of the environmental impacts of a policy, plan, or program, and its alternatives, may be usefully applied in the preparation of program loans. While IEEs and SIEEs or EIAs and SEIAs do not have to be prepared for program loans, a matrix of potential environmental impacts of each policy action need to be prepared.

Environmental Assessment of Sector Loans: Under the sector lending modality, ADB finances the capital investment needs of a given sector

(i) in a specified geographical area, (ii) over a specified period of time, or (iii) both. Policy and institutional changes introduced as conditions under a sector loan may have an impact on the environment, directly or indirectly. Accordingly, policy and institutional changes proposed in a sector loan need also to be examined to determine their environmental implications, and appropriate environmental interventions need to be introduced. To establish the broad criteria (including environmental parameters) for selecting subprojects to be financed under the loan, a few subprojects are identified and appraised prior to loan approval. For environmentally sensitive sample subprojects, the SEIA or SIEE is submitted to the Board at least 120 days before it considers the sector loan.

Environmental Assessment of Sector Development Program Loans: In addition to the general requirements, the sector development loan component follows the procedures as in sector loans.

Environmental Assessment of Financial Intermediation Loans and Equity Investments: Under the FI category, ADB's involvement may be in the form of either equity investment in, or, a credit line, through a financial intermediary. If ADB involvement is by an equity investment, where ADB funds do not finance specific subprojects but where the financial intermediary may have operations with adverse environmental impacts, the financial intermediary must adopt an appropriate environmental management system, comprising policy, procedures, and capacity, to comply with all relevant government environmental regulations and requirements in its operations.

Where ADB involvement is a credit line for subprojects, the financial institution must adopt an appropriate environmental management system that will cover the environmental assessment process of all subprojects to be financed with ADB funds. Any need to strengthen the environment agency and/or the financial institution in the DMC should be addressed. For category "A" and environmentally sensitive "B" subprojects above the "free limit," the EIA or IEE must be cleared by ADB before subproject approval including public disclosure and consultation process.

Environmental Assessment of Private Sector Operations: Private sector entities and implementing institutions are a diverse group with varying environmental awareness and capabilities, and ADB generally adopts a flexible procedure in dealing with private sector loans and investments, to tailor environmental requirements to the investment

vehicle, project and expected subprojects. Nevertheless, the substance of ADB's environmental assessment requirements for private sector investments is the same as the requirements that apply to the public sector.

Co-financing: ADB's environment assessment process covers all components of projects, whether financed by ADB or co-financiers.

Environmental Management Plans and Loan Covenants: *Category "A" and environmentally sensitive category "B" projects require, as part of the environmental assessment process, the development of environmental management plans (EMPs) that outline specific mitigation measures, environmental monitoring requirements, and related institutional arrangements, including budget requirements.* Loan agreements include specific environmental covenants that describe environmental requirements, including the EMPs.

Changes in Scope: A major change is one that materially alters or fundamentally affects the project's purpose (immediate objectives), components, costs, benefits, procurement, or other implementation arrangements as approved by the Board. All major changes in scope must be screened for environmental significance, and classified in accordance with paragraphs 6 and 7. All proposed changes that are classified as category "A" requires an EIA and those classified as "B" require an IEE. In the case of environmentally sensitive changes, the SEIA or SIEE must be made available to the general public, as well as the Board, at least 120 days before the change in scope is approved.

Unanticipated Environmental Impacts: Where unanticipated environmental impacts become apparent during project implementation or after project completion, ADB assists executing agencies and other relevant government authorities to assess the significance of the impacts, evaluate the options, and estimate the costs of mitigation. ADB also helps DMCs find the resources needed to mitigate the damage.

Departmental Responsibilities: The regional departments and the Private Sector Operations Department, supported by the Regional and Sustainable Development Department (RSDD), are responsible for policy implementation. The regional departments are responsible for proposing the categorization of all loans in consultation with RSDD. Final categorization is approved by the chief compliance officer. The project teams are responsible for ADB's environmental assessment process, and environment specialists in regional departments review

environment assessment reports. Quality assurance of projects and programs is undertaken by the project teams, with formal peer review of category "A" projects being done through the environment committee. Internal and external environment networks facilitate cross-fertilization, knowledge sharing, and dissemination of lessons.

Compliance: The regional departments are responsible for complying with the policy. *ADB's chief compliance officer, supported by the Environment and Social Safeguard Division (RSES), is responsible for monitoring compliance with ADB's safeguard policies, and advising and assisting operations units.* The chief compliance officer advises Management on safeguard policy issues and reviews projects' compliance with ADB's safeguard policies.

This OM section is based on OM Section F1/BP and the documents cited therein. This OM section is subject to compliance review. This supersedes OM Section No. 20 issued on 28 February 2003 prepared by the Regional and Sustainable Development Department and issued by the Strategy and Policy Department with the approval of the President.

* * *

Chapter 3

Strategic Environmental Assessment

3.1 Types of Impact Assessments

Apart from the EIA, there are several other assessments for project development impacts. These are the strategic environmental assessment (SEA), sectoral environmental impact assessment (SEIA), social impact assessment (SIA) and cost benefit assessment.

3.2 What is SEA?

The SEA and EIA are two different documents. The EIA is for project specific cases while the SEA is for programs or group of projects. For example, the SEA can be done for a power generation program for the next 10 years. Or it can forecast the environmental impacts of a fisheries policy. But still an EIA is needed for specific sub-projects under a policy or program. The SEA is regarded as a process rather than a single activity or output.

According to the Definition in the European Union (EU) legislations, SEA is a similar technique to environmental impact assessment (EIA) but normally applied to policies, plans, programmes and groups of projects. Strategic environmental assessment (SEA) provides the potential opportunity to avoid the preparation and implementation of inappropriate plans, programmes and projects and assists in the identification and evaluation of project alternatives and identification of cumulative effects.

SEA comprises two main types: sectoral SEA (applied when many new projects fall within one sector) and regional SEA (applied when broad economic development is planned within one region).

Impact-centered SEA focuses mainly on impact assessment and its goal is predicting environmental impacts to establish prevention, mitigation and control measures to protect the environment. On the other hand, institutions-centered SEA can be a tool to assess the institutional and

governance conditions needed to effectively deal with environmental and social effects of policies, plans or programs.

Strategic environmental assessment is helpful in identifying better and more responsive environmental criteria for selecting subprojects and policies for implementing a broader program. Strategic environmental assessment is especially useful for assessing the cumulative environmental impacts of a series of projects.

There are number of countries in Asia-Pacific that provide legal provisions to produce SEAs in the development decision-making process.

Japan, Australia, Hong Kong, China, Vietnam and Korea have well developed SEA process. In these countries it is mandatory to attach the SEA to policy documents for policy approval or funding approval.

Sri Lanka decided to include SEA only in 2006. The Philippines, Indonesia, Cambodia, Lao PRD, and Thailand are also in the process of developing SEA process.

3.3 Public consultation in SEA process

Similar to the EIA, the typical SEA process requires public consultation at all stages. According to the SEA Protocol of the United Nations Economic Commission for Europe Article 8 requires timely and effective opportunities for public participation, when all options are open, in the SEA of plans and programmes. The timely public availability of the draft plan or programme and the environmental report is mandated. The **public concerned**, including relevant NGOs), has to be identified. It is the public concerned (not the public in general) that must have the opportunity to express its opinion on the draft plan or programme and the environmental report within a reasonable time frame.

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Chapter 4

Environmental Impact Assessment

The ADB environmental strategy requires EIA documents for its environmental category “A” projects with potentially significant environmental impacts. IEE is required for ADB category B projects with potentially less significant environmental impacts.

For category A and B projects, the borrower prepares environmental assessment reports. The borrower also prepares the summary initial environmental examination (SIEE) and summary EIA reports.

4.1 What is in an EIA?

While the EIA is a comprehensive environmental assessment, the IEE is a simple checklist of possible environmental and social implications that may arise due to a project.

The EIA is an internationally-accepted open learning procedure that identifies and predicts the environmental impacts of an environmentally sensitive new development project. This is a productive exercise for achieving sustainable development.

This is the only document which is publicly available relative to a development project. Other documents such as feasibility studies are not available to the public. Furthermore, no other project-related document is translated into simple language which the lay people, especially local communities can understand.

4.2 Project Categorization

The decision whether a project needs an IEE or an EIA is made at the screening stage of the EIA process and is based on the significance of the project.

Project significance is dependent on the following factors: (i) size and magnitude of the project magnitude, (ii) environmental and social sensitivity due to locations, (iv) type of activities, (v) level of public concern,

(vi) scientific & professional judgment, (vii) degree of negative impact on social values & quality of life, (viii) direct or indirect impacts, (ix) cumulative impacts, (x) extent, timing, & reversibility.

The Bank has a fairly developed criterion for categorizing projects. Staff members from the Operation Department Project Team (PT) and RSDD are involved in the project classification.

However, some DMCs do not have a set of approved criteria that will determine if an EIA or an IEE should be conducted. This means that entire decision-making power rests on the bureaucrats/government officials. Ergo, the public has neither say nor control over such decision.

Most of the time, government authorities agree to a prescribed list of projects that ought to be studied for environmental impacts.

For example, under the Sri Lankan EIA regulations, the following projects need an EIA: (1) establishment of a thermal power plant with more than 25 MW generation capacity, (2) a hydropower plant with 50 MW generation capacity, displacement of more than 100 families, and (3) clear felling of more than 1 hectare of forest or filling of more than 4 hectare of wetlands. The prescribed list of projects is also based on its environmental sensitivity. In other words, how the ADB project would negatively affect the local environment, natural resources and the community in the vicinity.

4.3 Basic Principles

An EIA requirement is based on number of basic principles. They are:

- Protect environment for future generations.
- Assure safe, healthful, productive, aesthetically and culturally pleasing surrounding.
- Attain widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable unintended consequences.
- Preserve important historic, cultural and natural aspects of national heritage: maintain environmental diversity, and variety of individual choices.
- Enhance quality of renewable sources, recycle delectable resources.
- Identify critical environmental problems and potential solutions.
- Balance environmental conservation and development needs.
- Obtain public participation in environmental decision-making.
- Monitor future impacts.

- Forecast or predict the future impacts and needs.
- Assess the cumulative effects.
- Analyze the cost and benefits.
- Mitigate the negative impacts.
- Make a collective decision.

International Financial Agencies have different requirements for the evaluation and management of significant impacts which may be identified during the EIA process. This section summarizes some of the common features.

Natural habitats: Development projects should be designed to avoid adverse impacts on natural habitats and biodiversity, and to conserve, maintain and enhance them where feasible. Projects should avoid degrading legally protected areas and should minimize the conversion of important natural habitats. They should be designed to conserve or sustainably use biological diversity.

Directly affected communities: These projects must ensure that communities directly affected by development projects are benefited and provided the same living conditions prior to their displacement. Direct adverse impacts should be minimized and mitigated as much as possible.

Land acquisition and resettlement: *Project financiers and proponents ought to avoid or minimize involuntary resettlement as much as possible.* Otherwise, it is imperative for them to make certain that affected people are fairly compensated for the loss of land as well as other valuable assets that were unwittingly taken away from them for development purposes. They should also be able to restore their previous levels of income and standards of living or better yet, improve them.

Pollution Control: Risks to human health and ecosystem functions should be prevented by eliminating or minimizing the output and/or impact of air, land, and water pollution. Project requirements should be established in conjunction with the national standards and international guidelines. Cleaner technologies in pollution control should be encouraged.

Toxic and hazardous substances: Projects should protect human health and safety as well as the environment from the production and use of toxic and hazardous materials and substances due to the proposed project. This is very important in the case of development of industrial estates, etc.

Physical cultural property: Projects should avoid adverse impacts on physical and cultural resources by encouraging their conservation and enhancement. Further, these should avoid damaging significant cultural property and beliefs, at the same time develop appropriate mitigating measures and management plans where necessary.

Vulnerable groups: The development process should avoid adverse impacts on groups that may be disadvantaged by virtue of their gender, age (children and the old), ethnicity, religion, culture, or way of life. Adverse impacts from the location or design of projects should not fall disproportionately on disadvantaged or vulnerable groups.

Indigenous People: Projects must also respect and protect the rights of the indigenous peoples in development-related decisions.

Worker health and safety: Projects implementors must see to it that those employed are fairly treated and have a safe working environment. Employment practices should be consistent with existing national legislations.

Stakeholder/Public Consultation: Giving stakeholders the opportunities to influence and improve project selection, design, benefits and mitigation measures is an accepted practice. Likewise, transparent, efficient and effective public involvement is a must in the development process. Relevant information on the proposed project including a mechanism for comment and feedback should be made publicly available. It is important that stakeholders be consulted early in the process, so that important issues are made clear to decision makers and other parties.

4.4 EIA for Whom

The EIA is not a document for rejecting projects. It is an important tool to improve the projects in terms of giving better benefits to the affected people or promoting sustainable development. Therefore, the EIA is for different stakeholders groups (from the decision-making bodies to the societies concerned).

In principle, local communities are the most important stakeholders. But in practice, they are usually given the least attention, consideration and importance. Although public consultation is mandatory under the typical EIA process, it is not satisfactory in most developing countries. Therefore it creates serious misunderstanding among the project proponents and the local communities.

The EIA is a tool for decision to change the project designs in order to mitigate the negative impacts.

Meanwhile, it also provides the opportunity for the civil society to intervene in the development decision-making process. Local communities, environment advocates, social activists, subject experts, and advocacy groups can also use the EIA in correcting problems in the project process. Or to stop these problematic projects when necessary.

Although public consultations are open to all, in practice it is the concerned public and NGOs who use this opportunity.

4.5 Contents of an EIA Report

An EIA document contains several important chapters for the evaluators to understand the project and to learn the anticipated social and environmental impacts and their corresponding mitigation.

Table 2: Elements of an EIA and IEE

Elements of a typical EIA	Elements of a typical IEE
<ul style="list-style-type: none"> • description of the project, • description of the environment, • anticipated environmental impacts and mitigation measures, • alternatives, • cost/benefit assessment, • an environmental management plan that includes institutional requirements and environmental monitoring program, • public consultation and disclosure, and • Findings, recommendations and conclusion. 	<ul style="list-style-type: none"> • description of the project, • description of the environment, • potential environmental impacts and mitigation measures, • ----- • ----- • description of institutional requirements and environmental monitoring program, • public consultation and disclosure and • Findings, recommendations and conclusion.

4.6 Outline of a typical EIA report

- Cover Page
- Table of Contents
- Executive Summary
- Chapter 1 Introduction
- Chapter 2 Comparison and evaluation of reasonable alternatives
- Chapter 3 Description of the Selected Development Activity

- Chapter 4 Description of existing environmental setting
- Chapter 5 Description of anticipated potential impacts
- Chapter 6 Proposed Mitigatory measures
- Chapter 7 Proposed Monitoring Programme
- Chapter 8 Conclusion/s and Recommendation
- Annex
 - a. References
 - b. Lists of persons responsible for the study including there work allocations
 - c. Comments made by the public, NGOs and other agencies during the scoping meetings done by the EIA study team

The **cover page** should clearly show and identify the title of the development activity, project proponent/developer, national project-approving body/ permit-issuing agency, date of the EIA and the EIA consultants.

The **executive summary** is a concise non-technical description of the salient features of the proposal, alternatives; existing environment anticipated impacts and the mitigatory measures adequately and accurately covered. It also includes public responses in brief.

The EIA document starts with the **introductory chapter** which gives information about the proposed project. The type, size, main features, and project layout is included in this chapter. It also details the project's aims, scope, and justification, background information, extent and scope of the EIA, and the study methodology.

The next chapter normally deals with the **comparison and evaluation of REASONABLE ALTERNATIVES** which should be considered during the conceptual stage. This includes the approaches to the selection of alternatives, NO ACTION alternative, and evaluation and comparison of alternatives in relation to social and environmental problems, costs and benefits.

The succeeding section provides **description/s of the selected project**. This includes the construction methodology, work site, work force, human resources, and available financial commitments.

The chapter on the **existing geographical and environmental situation** in the project area deals with the following: area of influence, physical environment, and quality of water, air, etc. It also determines whether the project is in an archeologically sensitive or important area. It also shows

the biological environment, social environment and other social activities such as tourism in the area.

The section on **anticipated environmental impacts** covers impacts during the construction stage, operational impacts and the long term impacts of the project.

Proposed mitigatory measures during the construction and after construction stages is another integral section/part of the EIA report. Equally important is the **monitoring of the project** chapter that tackles effective conformation and compliance monitoring during the pre-construction, construction and the operational phases.

Under the **conformation monitoring** subject, details of the effectiveness of proposed mitigation measures predicted in the EIA are illustrated. The chapter shows the validity of hypothesis formulated in the EIA and the anticipated effects of the planned mitigation measures. Other topics covered are: effective reporting procedure, suitable safety and contingency plan to ensure the safety of the community, availability of funds, and expertise and facilities.

Another chapter highlights **compliance monitoring**, which is a major part of this monitoring plan. This part talks about how to confirm implementation of mitigation measures upon approval of the EIAR (that covers both construction and after construction).

The final chapter deals with the **recommendations and conclusion**, which justifies the acceptability of the proposed project in relation to the proposed mitigatory measures. For example, recommendations may further call for the conduct of an environmental cost-benefit analysis when necessary.

4.7 Annexes

Normally, the EIA documents can have many annexes. These could be reference documents; relevant laws, regulations and international conventions; other research work done for the project such as archeological impact assessment; biodiversity assessments; air, water and noise quality; rainfall and other weather condition data; lists and tables of biological, physical and social parameters; social survey results and relevant questionnaires; maps and figures; detail monitoring program; Terms of Reference for the EIA consultant including expected EIA chapters; and the qualification of the EIA consultants.

4.8 Size of the EIA

Ideally, an EIA report should be a short document containing 50-60 pages. The executive summary should be limited to 4-5 pages. All other supporting data can go as annexes. In certain cases, it comes as two bulky documents (part one covers the EIA while part two covers the data, maps, etc.).

However, the ADB requires a summary EIA or IEE. Though the summary EIA or IEE does not have any page limit, it has to follow the basic requirements of the report.

4.9 Language

The language should be for the lay people to best understand a development project. In most countries, the EIA is written in English. Translation is also provided for but oftentimes they are not in good quality.

The ADB clearly states: “that the borrower provides information on the project’s environmental issues in a form and language(s) accessible to those being consulted in order facilitate the required consultations with project-affected groups and local NGOs.”

There were cases in Sri Lanka that warranted EIA reports translated into the local language.

Case 1: Colombo Katunayake Expressway in Sri Lanka

The EIA for this 28-kilometer long highway connecting Katunayake Airport and the city of Colombo in Sri Lanka was conducted in 1993. However, no Sinhala translation was provided that resulted in the filing of a case against a government agency. As a result of the case “Amarasinghe and Others v. The Attorney-General and Others (Colombo - Katunayake Expressway Case) [1993]” the concerned parties agreed to provide a Sinhala translation and to give further opportunity for all interested persons to raise issues about the said project.

* * *

Chapter 5

EIA/IEE Process

The EIA process includes the following: (i) screening, (ii) scoping, (iii) examination of alternatives, (iv) impact analysis, (v) impact mitigation and management, (vi) preparation of EIA report, (vii) information dissemination & public consultation, and (viii) EIA review.

5.1 EIA/IEE Process

The process starts with the **screening stage**, which determines whether or not a proposal should be subjected to a full EIA or whether additional inquiry is needed to determine this. Many agencies categorize projects at this stage to reflect the significance of potential impacts or risks that it might present.

The identification of issues and impacts that are likely to be important as well as the terms of reference (TOR) for EIA in consultation with key stakeholders are done at the **scoping stage**. To achieve a transparent and democratic decision-making process, scoping meeting should always include the concerned public, civil society groups and NGOs.

According to the Sri Lankan EIA regulations: *“as part of the scoping process, the appropriate PAA should Invite the formal and informal participation of all concerned agencies, the proponent of the action, and other interested persons (including representatives of the affected public and others who might not be in accord with the action on environmental grounds) should be invited.”*

Scoping determines whether the project proponent should prepare an IEE or EIA, and the significant issues to be analyzed in depth in the IEE/EIA. In case an EIA is deemed needed for a project, reasonable alternatives should be at the scoping phase. Hence, a set the Terms of Reference (TOR) for the IEE/EIA will be prepared.

Terms of Reference is a list of guidelines to assess the impact and prepare the EIA for each and every project. It (i) describes the impacts that should be addressed, (ii) provides a work plan, (iii) directs the EIA to comply with

existing laws, regulations, policies, and administrative processes, and (iv) provides a time frame and describe the specific actions needed.

The next stage of the EIA process is the **examination of alternatives** that are based on preferred or most economically, environmentally and socially sound option for achieving project objectives.

The **impact analysis stage** identifies and predicts the likely environmental, social and other effects of a proposed project. It also evaluates its scale and significance, taking into account both technical information and stakeholder views. Impact mitigation and management determines the measures necessary to avoid, minimize or offset significant adverse impacts and, (where appropriate) incorporate these into a management plan or management system.

The next stage is the **preparation of EIA report**. Documents ought to clearly and impartially report the impacts of the proposed project, recommended measures for mitigation, the significance of residual effects, and the concerns of communities affected and other interested parties.

Information dissemination and public consultation is the next phase. This means make the EIA results available in a timely manner and in location(s), format(s) and language(s) that allow relevant stakeholders to form an opinion and comment on the proposed course of action. The document will be open for **mandatory public commenting period** during this stage. **Oral public hearings** will also be held during this stage.

The **EIA review** is the final stage. The appropriate authorities determine whether the report provides a satisfactory assessment of the proposed development activity and contains the information required for decision-making. Project Approving Authorities normally appoint a **Technical Evaluation Committees (TEC)** to provide expert review report at this stage.

The **decision** will be given immediately after the review stage. If the project is approved it will be notified to the public through national newspapers.

Regulations normally set up an **appeal process**. In case the project is not approved, regulations identify a senior level government officer to hear the appeal made by the project proponent. In Sri Lanka, the Secretary to the Ministry of Environment has this authority. The public may have the opportunity to participate the appeal hearing.

On the other hand, once the project gets approval, the public is not given the opportunity to appeal against the decision. In such situations, concerned individuals and groups can go to the courts.

Case 2: Upper Kotmale Hydro Power Project- Sri Lanka

The Upper Kotmale Hydro Power project, which negatively impacted on seven of Sri Lanka's scenic waterfalls was twice rejected by the Central Environmental Authority (CEA) and the Secretary to the Ministry of Transport, Environment and Women's Affairs. However, it was thereafter approved by the Secretary of the Ministry of Forestry and Environment in August 1998. EFL, a local environmental organization, appealed the Secretary's decision and subsequently challenged his decision denying an appeal's hearing. The NGO also charged that the Secretary had no authority to hear two appeals on the same project when the NEA had no provision for such. The case was settled when the Ministry agreed to grant EFL a hearing and later appointed as part of a monitoring committee.

5.2 Timing of Each Step

The local EIA process normally sets time limits for each step. In the case of Sri Lanka, the time limits are as follows.

Table 3: Timing of each step in an EIA Process

Step	EIA	IEE
Acknowledgement of the preliminary information	6 days	6 days
Producing the TOR	30 days	14 days
Preparation of the EIA/IEE	no time limit	no time limit
Public commenting	30 days	no commenting period
Sending comments to the project proponents (PP)	6 days	6 days
Approval	30 days after receiving the comments of the PP	6 days after receiving the comments of the PP

If the PP fails to implement the project in two (2) years, they should obtain fresh approval. Likewise, In the case of any major changes in the project, the PP should also obtain fresh approval.

* * *

Fig. 3: Diagram of EIA Process in Sri Lanka

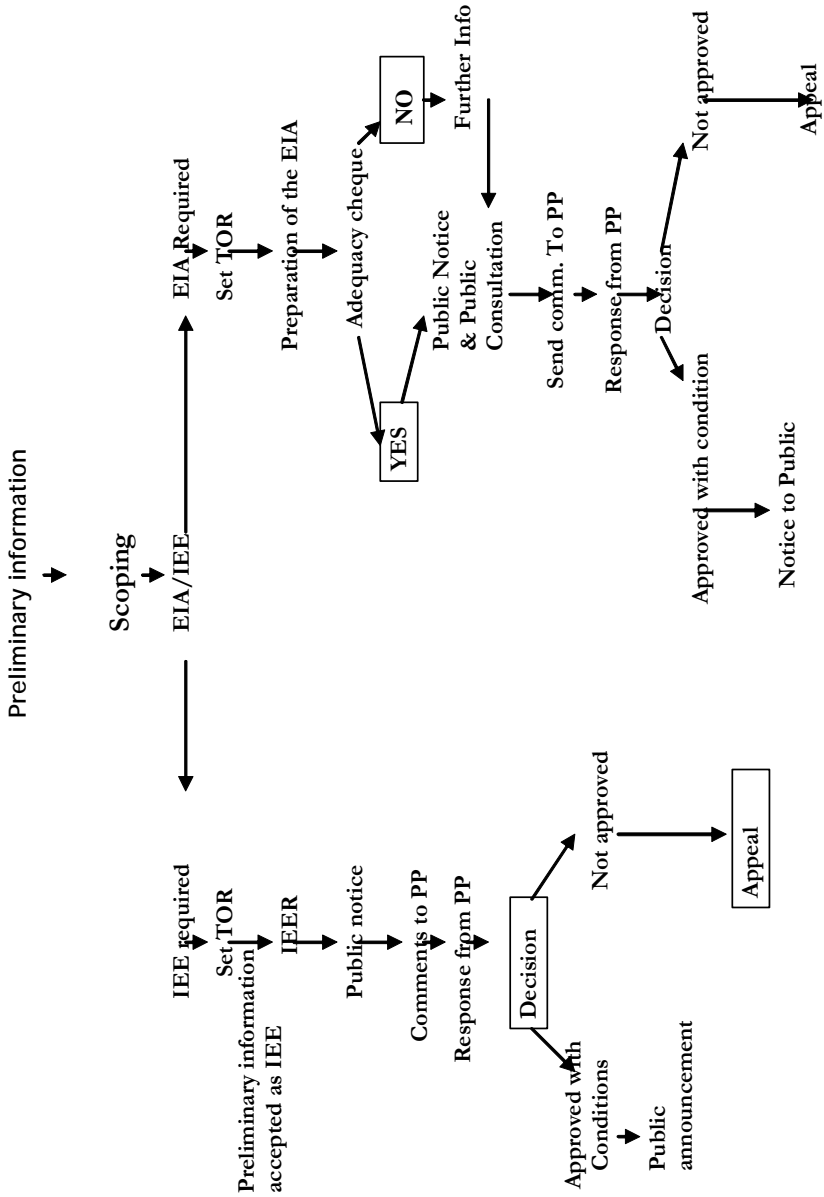
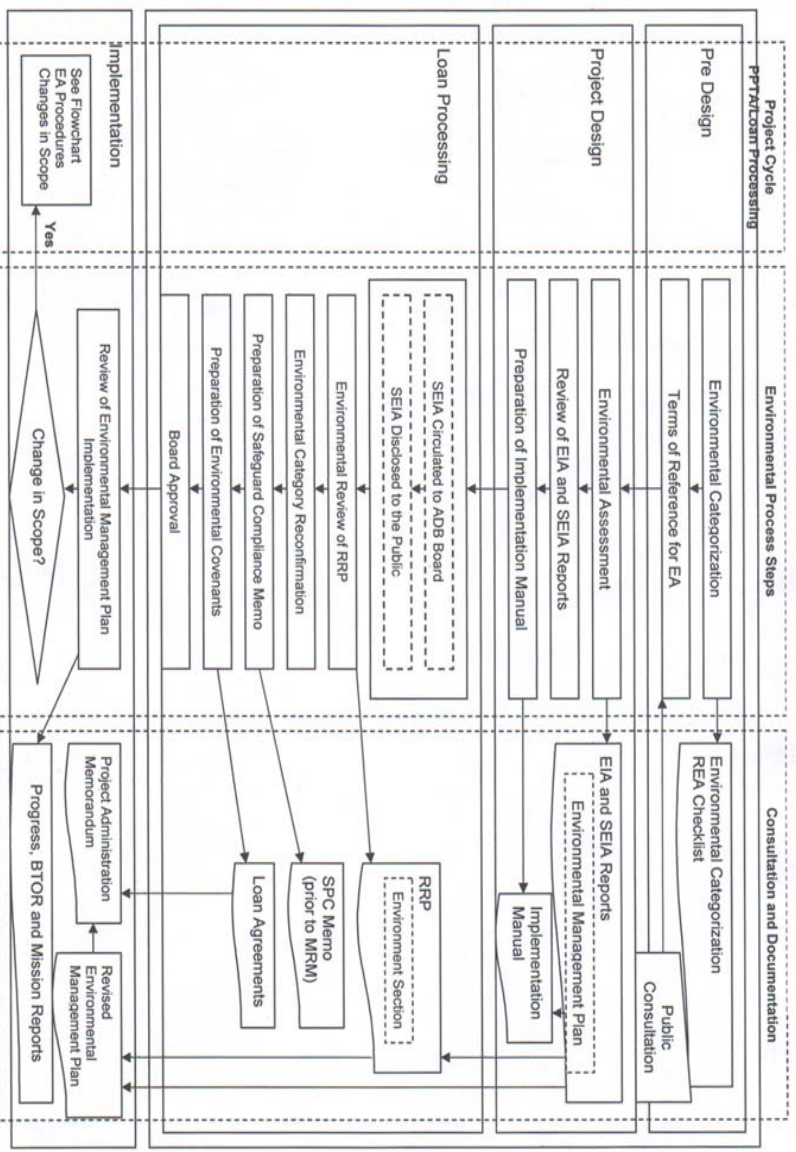


Figure 3: Environmental Assessment and Review of Category A Projects



ADB = Asian Development Bank, BTOR = back-to-office report, EIA = environmental impact assessment, EA = executing agency, MRM = Management Review Meeting, PPTA = project preparatory technical assistance, REA = rapid environment assessment, RRR = report and recommendations of the President, SEIA = summary environmental impact assessment, SPC = safeguard policy compliance.

Source: ADB Operational Evaluation Department, *Special Evaluation Study: Environmental Safeguards*, September 2006.

Chapter 6

Public Consultation

Obtaining public opinion and participation in the development decision-making process is the most important feature of the EIA process. Local EIA regulations provide that development decisions should be collective and participatory.

Public consultations can occur in two stages of the EIA on ADB-funded projects. These happen under local legislations, and/or under the ADB requirements.

The ADB EIA requirements states: “The ADB requires public consultation and access to information in the environment assessment process. For category “A” and “B” projects, the borrower must consult with groups affected by the proposed project and local NGOs. The consultation should be carried out as early as possible in the project cycle so that the views of the groups that will be affected by the project are taken into account adequately in the design of the project and environment mitigation measures.”

6.1 Under local legislations

There are a number of ADB DMCs that follow the national EIA regulations which normally comes under the national environmental legislations. The EIA regulations set the time line for the various stages of the EIA process. Public consultation can happen in four stages: scoping, written public commenting period, oral public hearings and at the appeal hearings if any.

6.1.1 Scoping: The public can be invited to the scoping meetings organized during the screening stage. These public consultations can happen in the project site or in a place decided by the project approving agency (PAA). They are organized by the PAA in a central place or by the EIA team in the project site.

6.1.2 Public Notice for written comments: The Sri Lankan EIA regulations say: "on receipt of the IEE/EIA the PAA should make a preliminary assessment of its adequacy as expected in the TOR. If found adequate on prima facie review, the document should be open for public scrutiny for a period of 30 working days and must be so announced in the gazette and one newspaper each in English, Sinhala and Tamil."

The 30-day comment period will begin on the day in which a notice under subsection (2) is published. Thirty days exclude/do not count public holidays and Sundays.

The commenting period varies in different countries. It could be even 60 days in some countries.

This period is important for the public as well as governmental bodies that has jurisdiction over the resources in the project site. The agencies with jurisdiction by law or special expertise with respect to any IEE/EIA, and agencies are authorized to develop and enforce environmental standards. They should give comments on assessments done within their jurisdiction, expertise or authority and within the time period specified for comment.

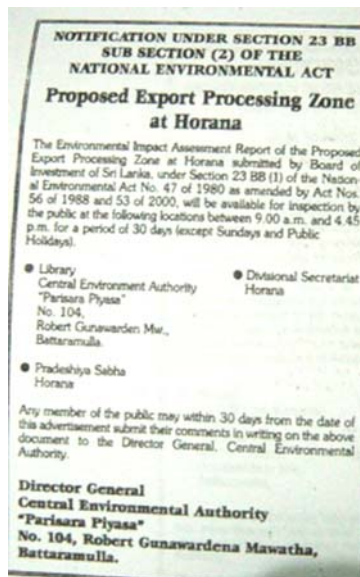


Figure 4: Notification on the proposed export processing zone at Horana

6.1.3 The public disclosure feature of the EIA is a salient aspect of this public consultation process. PAAs should establish procedures in making IEEs/EIAs readily available to the public for reading in the capital, district or division in which the project is proposed.

According to common legislations, PAAs should establish an efficient process that will allow copies of IEE/EIAs to be made available upon request and payment of the full reproduction of requesting party or parties.

6.1.4 Oral Public Hearings can also be held during the public consultation phase. The NEA states that a public hearing may be held at the discretion of the PAA should it believes/thinks that it would be in the public interest to do so. A variety of situations may fall within the meaning of “public interest” and these cannot be exhaustively defined. The main factors for the PAA to consider in the Sri Lankan regulations are:

- whether a proposed prescribed project is highly controversial;
- whether more expression of public views are essential to make a decision;
- Whether the prescribed project might cause unusual national or regional impacts;
- whether it might threaten a nationally-important environmentally-sensitive area;
- whether a formal request for a public hearing has been requested by an interested party.

If there will be a public hearing, it should be held immediately after the expiration of the 30-day public commenting period and before the PP is asked formally to comment on public and agency comments.

6.1.5 Appeal hearing: If the proposed development project is rejected as a result of this EIA process, the project proponent can appeal to a higher authority. Those who have participated in the public consultation in earlier stages will automatically qualify to participate in this appeal hearing. However, the invitation can be at the discretion of the responsible officer.

Interested parties that would like to intervene needs to be vigilant on the EIA process, public notices and reference libraries. They should also have better links/access to state agencies.

Case in Sri Lanka

Sri Lankan environmental regulations require environmental impact assessment (EIA) for prescribed projects. Section 23AA of the National Environmental Act states that "...all prescribed projects that are being undertaken in Sri Lanka by any government department, corporation, statutory board, local authority, company, firm, or an individual will be required to obtain approval under this Act for the implementation of such prescribed projects. This document is open for public comment for a 30-day period.

Public consultation will happen in four stages: during the EIA scoping stage(initial data collections stage), during the mandatory 30 day public commenting period, during the oral public hearing stage and if there is any appeal hearing in the case of rejected projects.

Once the EIA is ready, a notice will be placed in the newspapers in three languages; Sinhala, Tamil and English. It will notify the public on the EIA, project proponent, PAA and the places that EIA document is available for the public."

6.2 Public disclosure under the ADB EIA requirement

Environmental assessment reports for ADB projects are intended to be accessible to interested parties, and the general public. "The summary IEE/EIA reports are required to be circulated worldwide, through the depository library system, and are placed on the ADB website. The full EIA or IEE reports are also made available to interested parties upon request. ADB's "120-day rule" requires that the summary EIA, or in relevant cases the summary IEE, is made available to the general public at least 120 days before Board consideration of the loan, or in relevant cases, before approval of significant changes in project scope.

The 120-day rule applies to all public and private sector category "A" and selected category "B" projects deemed to be environmentally sensitive. To facilitate the required consultations with project affected groups and local NGOs, the borrower will provide relevant information on the project's environmental issue in a form and language(s) accessible to those being consulted.⁵

⁵ ADB Environment Policy 2002

Chapter 7

EIA Commenting

The EIA is the first set of information that the public receives about an environmentally sensitive development project. Reading the EIA report is the best way to learn about it. This is among the most important aspects of project advocacy.

By producing your viewpoints about the impacts of the project on the society and environment, and sharing your thoughts with the relevant decision making bodies during the public consultation are crucial components of the public commenting process.

As you voice out your opinions, views, position and feedback to relevant decision-making bodies, you become an active participant in future advocacy efforts both in the national and international levels.

7.1 Who can comment?

Once the EIA is open for public commenting under the national legislation, every citizen has the right to give his/her reaction and feedback on the EIA. It can be local affected communities, local government agencies, academics with environmental expertise or CSOs and NGOs who are interested on the impacts of the proposed development activity. Although the EIA report is available for the general public, it is obvious that only the concerned individuals, communities and stakeholders participate in the EIA process.

It is not necessary to provide negative comments all the time. If you are convinced about the project and its benefits you may provide positive comments, too. But you have to keep a critical and analytical eye on the entire EIA report in terms of credibility/reliability of its contents. This is because PPs can actually manipulate the report by citing affirmative comments and supporting statements from individuals/groups with vested interests. For example, some proponents may entice or persuade people/organizations in giving full support to a project by offering them “monetary rewards.”

In the case of ADB's EIA process, the Summary EIA or IEE is distributed worldwide under its public disclosure policy. Therefore, the report is open to all concerned parties and sectors for commenting within a 120-day period.

7.2 How to comment?

The EIA contains technical and non-technical information. Commenting on the report does not necessarily require technical expertise but is mostly dependent on your capacity as a relevant actor. Local communities can voice out their views based on their knowledge of the project site, local environment, availability of resources, culture, etc. Academics or NGOs with subject expertise can give their feedback regarding biodiversity, archeology, and environment, economics etc.

EIA comments can be sent on an individual basis. Meanwhile, local communities can join forces with NGOs, academics, subject experts and other allies in drafting a joint or collective position on the EIA report.

7.3 Who receives comments?

Normally, the PAA or the agency responsible for the EIA receives the comments of concerned stakeholders. In the case of ADB, it is the project staff based in the Bank's headquarters in Manila. Or you can send them to the ADB resident mission.

7.4 Reading an EIA

What should you look out for when reading an EIA or IEE? It is advisable that you give extra attention to the following topics: (i) comparison of alternatives, (ii) anticipated environmental and social impacts, (iii) extended cost benefit analysis or environmental cost benefit analysis, (iv) proposed mitigatory measures and the (v) recommendations. A focused reading and careful understanding of the data/information contained in the EIA or IEE is must. This would enable you to contradict/refute or validate arguments, recommendations and conclusion presented in the report relative to your own experience on the ground.

By virtue of being a local person or subject expert with enough ground experience, you may actually have a better grasp and knowledge of the potential impacts of a development project than an EIA team. Likewise, you may even have greater access to crucial pieces of information that an EIA team might not likely get or find. By basing your arguments on this new information that is backed up with experience, you will be able to improve

the quality of your comments and, thus, make a case against the EIA. Moreover, you can give a more in-depth analysis of the report's proposed mitigation measures and environmental management plan.

7.5 Quality of the EIA

The over-all quality of the EIA would highly depend on the expertise of the EIA consultants and the reliability and credibility of the data used. In principle, EIA consultants are supposed to be independent. The problem lies with the fact that they receive financing from project proponents, thereby putting the integrity of the entire process at stake. It comes as no surprise that a number of previous EIA processes have shown that some consultants are biased towards these development projects. While consultants may correctly identify impacts that are detrimental to the society and environment, they may still be predisposed to justify projects and make recommendations to go ahead with the projects.

7.6 Pre-decided projects

In most cases, projects, regardless of their potential impacts to the environment and communities, are already pre-identified and pre-determined by government authorities and politicians. In this situation, EIA consultants become susceptible to their "pressure" and thus produce reports/documents in support of the pre-decided projects.

7.7 Alternative analysis

It is imperative that you also focus on alternatives, which are among the most important contents of an EIA report. Alternatives can vary from "No Action" to "Environmentally and Socially Unfeasible Project". It is very important to analyze the no action alternatives, which is against any development undertakings that will harm the environment. Alternative solutions could range from (i) alternatives to the site, (ii) construction method, (iii) materials used, and (iv) engineering designs.

Likewise, there can also be direct alternatives to a new development project. For example, a direct alternative to a construction of a new expressway could be the expansion of existing roads to achieve the same end result. Or, it can be changes in some components of a project as in the case of a Sri Lankan project. The Kukule Ganga Hydropower project was analyzed in 300 MW hydropower project with high dam as against 70 MW hydropower project with run-off river diversion which has minor impacts.

Alternatives can also include slight changes in the road site in order to protect a wetland or reduce damage to a human settlement. This depends on a case-to-case basis. For example, changing the route to protect some important wetlands was incorporated in the Southern Expressway project in Sri Lanka. However, there was no addendum or supplementary EIA to this change which was a major violation of the ADB EIA requirement.

7.8 Anticipated Environmental and Social impacts

For project-related advocacy, you need to look out for the anticipated environmental and social impacts. These impacts vary from the critical/negative to the positive. For example a project may destroy wetlands, natural habitat of an endemic endangered species or block the natural waterways which create possible flooding. On the other hand, it can improve the social environment and income level of families, which will then reduce social pressure over the remaining natural resources.

You should be able to make a comparative analysis of your own data with the given information in the EIA report and make comments if you disagree. The impacts in the pre-construction, construction and operation stages can vary. While you may not have a comprehensive idea about every possible impact during the three stages, you may refer to the EIA report to formulate your own predictions about other possible impacts.

7.9 Possible checklist of issues/impacts.

It is not easy to lump all anticipated issues into one general check list since project impacts vary depending on the case. However, for the benefit of lay readers we shall include a basic checklist guideline.

There are three types of project impacts: Physical, Biological and Socio-economic. Certain large scale project can have microclimatic impacts too. It may affect the local weather pattern or even contribute to the climate change. It is advisable that you should fully articulate your thoughts as when present/predict these impacts.

7.11 Commenting on the Environmental/Extended Cost benefit analysis

Cost/benefit analysis is an integral part of the EIA. However, there is no value assessment for the environmental impacts in typical cost/benefit analysis. Therefore the extended cost/benefit analysis of environmental costs is crucial to environmentally-sensitive project. On this basis, cost/benefits analysis consider environmental impacts as off-site, non-marketed items.

An extended cost/benefit analysis identifies the environmental impacts, its quantification and its corresponding values. It is important to include environmental assessment to the economic analysis of the project. An environmentally sensitive project can be justified as good under a conventional cost/benefit analysis. However, when you factor in the environmental costs, the project may rendered not be feasible anymore. You should be find adequate information to analyze the EIA on this basis. If you require further support, you may identify suitable experts to provide these comments.

7.12 Reference to the requirements under other local legislations

There may be other requirements that an EIA or an IEE need to follow at the national level. For example, an Archeological Impact Assessment will be required in case a project site is located within or near an archeological site. You may need to check what other national legislations are available in your country.

Other requirements may refer to national policies such as environment policy, wetland policy, sand policy, water policy, wildlife policy or, in some cases, pollution control standards.

7.13 Reference to the International conventions

Most countries have signed and ratified many international conventions. Typical donor references are the following:

- The Rio Declaration and Agenda 21
- United Nations Framework Convention on Climate Change Convention(UNFCCC) 1002 and Kyoto Protocol(1997)
- Convention on Biological Diversity(1992)

- Ramsar Convention on Wetland(1971)
- The Convention on Combat Desertification
- EU Directive on Conservation of Natural Habitats and Wild Fauna and Flora
- ADB/World Bank/EBRD Operational Policies on Natural Habitats and other Safeguard Policies.
- WHO Guidelines on Health or WHO Pesticide Classification
- Pollution Prevention and Abatement Handbook
- Basel, Rotterdam and Stockholm Conventions
- Donor Policies on Pesticides and on Integrated Pest Management
- UNESCO Convention on World Cultural and Natural Heritage
- Donor sector policies such as Gender, Water, Energy Policies
- IFC Interim Guidance on Harmful Child Labor
- ADB/ World Bank/EBRD Public Information Policy/ Disclosure Policies

7.14 Safeguards Policies concerns

ADB has three safeguard policies, namely:

- Indigenous People's (IP) Policy
- Environment Policy
- Involuntary Resettlement (IR) Policy.

These policies set important provisions to make sure that development projects are not detrimental or harmful to the society and the environment. These policies, in principle, sets guideline on how to ensure the observance of the rights of vulnerable groups and protection of the environment.

For example, the Involuntary Resettlement Policy requires project proponents to produce a resettlement plan in cases where relocation of settlers cannot be avoided. You need to familiarize yourself with the IR policy provisions to see to it that your advocacy work is in the right direction.

7.15 Gender concerns: The inclusion of gender concerns is also important in the EIA document. You may refer to the respective gender policies of relevant IFIs when you think its right to link gender concerns to the donor agencies.

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Chapter 8

Environmental Management Plan Requirement

Another vital section of the EIA is the Environmental Management Plan (EMP). This document describes the processes that an organization will follow to maximize its compliance to safeguard measures and minimize harm to the environment.

8.1 Why EMP?

The EMP helps in signaling the potential problems that may result from a proposed project. This will allow the prompt implementation of effective corrective measures. Under the plan, environmental monitoring will be required during the construction and operational phases. The main objectives of environmental monitoring are:

- To assess the changes in environmental conditions,
- To monitor the effective implementation of mitigation measures,
- Warn significant deteriorations in environmental quality for further prevention action.

According to the Operation Manual issued October 2003, category “A” and environmentally sensitive category “B” projects require, as part of the environmental assessment process, the development of EMPs that outline specific mitigation measures, environmental monitoring requirements, and related institutional arrangements, including budget requirements. Loan agreements include specific environmental covenants that describe environmental requirements, including EMPs. The provisions for EMPs must also be fully reflected in the project administration memorandums.”

“To ensure proper and timely implementation of the EMPs and adherence to the agreed environmental covenants, ADB requires, for all category “A” projects and all environmentally sensitive category “B” projects, that (i) borrowers or executing agencies submit semiannual reports on implementation of EMPs, and this requirement is reflected in the loan agreements; and (ii) review missions from ADB regional departments

conduct an annual review of environmental aspects of the project. The purpose is to ensure that the borrower and executing agency are implementing the EMPs and fulfilling the environmental covenants. The outcome of such reviews must be reflected in the aide memoire of the review mission.”

8.2 What is an Environmental Management Plan?

EMPs provide a plan of action to implement the proposed mitigatory measures. This includes measures during the project and the operation period. EMPs’ mitigatory measures and the conditions for approval should be under local legislations.

8.3 Environmental Monitoring:

The monitoring of environmentally sensitive project would make certain that no harm is posed to the environment. In effect, this also dissuades the violation of environmental policies and legislations at the national level and of the ADB. Further, it also important to monitor the proper implementation of the proposed EMP mitigatory measures. In this regard, environmental monitoring is vital to the environmental management document.

There are three basic environmental monitoring tasks to assess the success of mitigation and identifying residual impacts. These are:

- Pre-construction monitoring to determine baseline conditions such as noise, air and water quality impacts, mitigation measures, and the costs to respond to the conditions in the local legislations and conditions in the environmental approval;
- Construction compliance monitoring; and
- Post-construction monitoring of maintenance and operations, including air, noise, and water quality baseline conditions.

As a pre-condition under the Environmental Policy and the Operation Manual of the ADB, you have to make sure that a functioning EMP is in place, and is complemented by an ACTIVE monitoring committee to ensure that the plan’s provisions are properly implemented.

* * *

Chapter 9

Using the ADB Accountability Mechanism

Any violation of the ADB EIA requirements and other policies mentioned in the Operational Manual Section F1/OP issued on October 2003 (refer to pp. 20-26) can be subjected to the Bank's Accountability Mechanism, which was approved in May 2003. According to the Bank, the mechanism was established to address complaints that are raised by people who may be adversely affected by an ADB-assisted project.

Under this mechanism, every affected person, group of people, or duly authorized CSO/NGO can file a complaint to the Office of the Special Project Facilitator (OSPF). It is the problem-solving arm of the Accountability Mechanism that handles the consultation phase. After considering and determining the eligibility of the complaint, the OSPF can facilitate agreement on solutions between all parties involved. If an agreement is reached, OSPF recommends actions directly to the ADB President. OSPF will also involve in monitoring of agreement.

If claimants are not satisfied with the outcome, they can refer or elevate their complaint to the Compliance Review Panel (CRP). Should the CRP find the complaint eligible, a compliance investigation follows. The findings are then contained in a draft report, which will be available for commenting by both the affected parties and the ADB management. It is important to note that no facilitation will be done at this stage. After receiving the comments, the CRP finalizes its report, including the recommendations for remedial measures. The report will then be submitted to the ADB Board for approval. Once agreed, remedial actions will be monitored by the CRP panel, which is comprised by three members.

Seven projects have been received by the ADB under the mechanism. These are the Melamchi Water Supply Project in Nepal, Southern Transport Development Project in Sri Lanka, Sixth Road Project in the Philippines, Community Empowerment for Rural Development Project in Indonesia, Khulna-Jessore Rehabilitation Project in Bangladesh, and Rural Electrification, Distribution and Transmission Project in Nepal. One classic case is the STDP Project in Sri Lanka. So far, only the STDP was found eligible for compliance review. Following Board approval of CRP

recommendations, the panel began monitoring the Management’s implementation of the remedial actions – both general and STDP-specific.⁶

The EIA and IEE should be made available to the public. Under the Public Communication Policy, failure to do so by the implementing or executing agency can be subject to a compliance review.

Table 4: Comparison of the OSPF and CRP

Problem-solving arm	Compliance Review arm
<p><u>Special Project Facilitator (SPF)</u></p> <ul style="list-style-type: none"> ▪ Purpose is to assist project-affected people to find solutions caused by ADB projects ▪ SPF determine eligibility of complaint and if accepted, undertakes assessment/fact-finding ▪ SPF uses mostly informal methods to facilitate agreement on solutions between all parties involved (affected people, ADB, government, executing agency/private sector) ▪ If agreement reached, SPF will recommend actions to deal with complaint directly to ADB President ▪ if claimants not satisfied with outcome, option to continue to the Compliance Review Panel ▪ Monitoring of implementation of agreements 	<p><u>Compliance Review Panel (CRP)</u></p> <ul style="list-style-type: none"> ▪ Determines whether a project has caused direct, material harm to project affected people due to ADB policy violation ▪ CRP determines eligibility and if accepted, conducts compliance review, drafts report on its findings ▪ ADB Management responds to report ▪ CRP finalizes the report including recommendations for remedial measures ▪ Report submitted to Board of Directors for approval ▪ Monitoring of implementation of remedial actions approved by the Board of Directors

More information can be found in the following web links:

Asian Development Bank
<http://compliance.adb.org/>
<http://www.adb.org/SPF/registry.asp>

NGO Forum on ADB
<http://www.forum-adb.org/Policy-Accountability%20Mechanism.html>

⁶ Annual Monitoring Report 2005-2006 to the Board of Directors on CRP Request No. 2004/1 on Southern Transport Development Project in Sri Lanka, July 11, 2006.

Chapter 10

Selected Case Studies

Case I: Southern Transport Development Project (STDP) - Sri Lanka

The controversial STDP involves a construction of a 128-kilometer, six-lane expressway that connects the southern city of Matara to the capital city of Colombo. The project is jointly financed by the ADB and the Japan Bank for International Corporation (JBIC). The implementing agency is the Road Development Authority (RDA). A highly-problematic project since 1992, it became under the ADB in 1996. The EIA was approved in 1999. However, implementation was delayed due to strong opposition from both affected people and national/international environmental advocacy groups due to safeguard violations.

Consider the following grim statistics. The road traverses four river basins and over hundreds of wetlands. Over 1,300 houses have been demolished to give way to STDP. Around 8,745 lots are expected to be crossed by the highway. Current estimates show that 5,683 households of all categories will be affected. The project has already destroyed thousands of hectares of paddy fields and home gardens. It has blocked waterways leading to flooding in the region. The project has pushed affected families to depend on the market by destroying their sustainable livelihood.

The original EIA was changed at the approval stage. About 40 percent of the approved project was not subjected to the EIA. This was a serious violation of the EIA requirements of Sri Lanka and the ADB. Although the Supreme Court agreed on the fact that EIA regulations were violated, the proponents still did not modify the project. Therefore, affected communities filed a complaint with the ADB using the Bank's accountability mechanism policy. The Compliance Review Panel report published in July 2005 accepted to investigate the violations contained in the formal complaint.

According to the affected communities, the compensation issue has not been resolved even though the project was approved seven years ago. They allege that the RDA has not conducted proper asset and land evaluation. This has pushed many of them into further economic vulnerability. Affected

people have spent most of the compensation money to construct new houses, thus leaving little resources for sustenance. Further compounding the problem is the fact that many of them have not been compensated for trees and crops lost to the project in their original home sites. For some of them these were a major source of earning. In resettlement sites or in new areas where the affected people have relocated voluntarily, this major loss in earnings has forced them to spend their compensation money received for homesteads. The situation is further aggravated by the fact that the resettlement sites provided by the RDA is lacking in basic social amenities.

In terms of environmental impacts, the cutting or clearing of very steep hills, rock blasting and soil dumping into paddy lands have created serious soil erosion along the road trace. The filling of paddy fields with this loose soil has threatened livelihoods since it has made farming difficult. The filling of wetlands without adequate drainage system has posed environmental threats as this could lead to flooding problems in the future, especially during the rainy season. Dust pollution has become unbearable in some areas. Rock blasting and heavy vehicle movement has caused noise pollution, thereby negatively affecting the lives of the people near to the construction site. While ADB claims that additional environmental studies have been undertaken to address these issues, no change in the situation.

Case II: Oil Palm cultivation in Papua New Guinea

In 2000, the Government of PNG requested assistance from the Asian Development Bank (ADB) for the preparation of an agro-industry development project to generate income-earning opportunities for the rural population. A project preparatory technical assistance (PPTA) was approved in November 2000.⁷ The Nucleus Agro-Enterprises Project (NE) was approved for lending by the ADB to the Independent State of Papua New Guinea in December 2001.

Since 2001 more than 16,000 hectares were converted to oil palm. In August 2001 the governor of Morobe province presented a pre-feasibility study on a 30,000-hectare oil palm project on the border of the Morobe and Gulf provinces.

⁷ TA 3545-PNG: *Agro-Industry Development* for \$500,000, approved on 14 November 2000.

ADB provided its first loan for oil palm development to PNG in 1986. The project completion report rated the project as partly successful. At appraisal, the project cost was estimated at \$49.9 million. The output from the Project was about 70,000 tons fresh fruit bunches in 1998. ADB expected that these enterprises will in turn provide employment to subsistence farmers, shifting them away from the informal subsistence economy.

However, the project was criticized for promoting export-driven approach to development rather than respect and build on PNG's wise constitutional principles of culturally sensitive and ecologically sustainable development.

In Oro Province, oil palm plantations have encroached upon habitat of the world's largest and endangered Queen Alexander Birdwing butterfly endemic to the area. There were concerns that in East New Britain, the Open Bay oil palm proposal will threaten one of the most spectacular cave systems on Earth - known generally as the Caves of Pomio.

The rivers drained from inland areas where the oil palms have been planted. The downstream effects of the operation affect the livelihood of the people has become a major impact. Villagers complain of reduced food supplies from the river and coastal region, contaminated water and skin irritation after the introduction of oil palm in their area.

Oil palm processing mills are usually located close to urban centers for ease of transportation and access to infrastructures. In Popondetta in the Oro province, the entire town and surrounding area has been infested with flies which are a health hazard. The stench of rotting waste from the mill can be smelt for kilometers and the smoke from the Higaturu palm oil processing mill can be felt from as far as the Managalas plateau.⁸

The oil palm cultivators has not respected the customary land rights. It created many problems. The sub-projects were not subjected to the EIA process. Some information related to the environment was contained in the RFA of the first batch of the potential projects but they were mostly very brief and have not included many of the components outlined in the guideline.

It appears that the Rapid Environmental Appraisal (REA) checklists have not been used contrary to the provision in the MOU. Only 1 out of the 6

⁸ NGO Forum on ADB Briefing Paper- Prepared by Lee Tan, Australian Conservation Foundation/Friends of the Earth Australia- 2003

projects which have been through the RRA process had been categorized in environmental categories. However, the categorization was not in accordance with the ADB environmental guidelines.

The project did not assess the environmental and social impacts of the main project as well as its sub projects. The project did not properly follow the ADB environmental guidelines. The public participation was not adequate or was not exist at all. Further, the project did not produce a social program to educate people parallel to the increasing income.

It created social tension in the local communities as their customary land rights was not properly considered during the design and implementation.

Chapter 11

Suggestions for the ADB Advocates

It is important to learn how to best use the EIAs for local and international advocacy. Prepared at very early stage of the project, advocates can take advantage of this in changing the project or intervene in the decision-making process. Therefore we would like to make the following suggestion for the ADB campaigners/lobbyists as well as local and international environmental advocates.

11.1 National level

- Be vigilant in monitoring the release of EIA documents, including public announcements.
- Gather and collect your own information, statistics and data to countercheck if the EIA provides the correct information.
- Interact with the local communities, which have the superior knowledge and understanding of the local natural environment, project sites and project sensitivity.
- Prepare your comments based on the facts and participate in the EIA commenting period/public consultation process.
- Take advantage of the two public participatory stages of the EIA process: scoping and mandatory commenting period.
- Be prepared for the oral hearing.
- Organize your own consultations with the other relevant actors and stakeholders during the public consultation period. Consolidate then your input and comments to be able to submit a collective feedback to the concerned decision-making body. You may also invite local decision makers to these hearings.
- Make sure that the selected project alternatives are properly presented, explained and justified.
- Make certain that your records regarding the anticipated environmental impacts are properly documented and supported by credible data or hard facts.
- Make sure that you support or agree with an extended cost benefit analysis of an environmentally-sensitive development project.
- Read and understand carefully the recommendations and proposed mitigations. This section is sometime biased in favor of the project proponents.

- Learn how the local judiciary systems deal with the EIA requirements.
- If the affected people/communities that you represent agree, you may look for groups that are engaged in public interest litigation.
- Be prepared for the appeal hearing.
- Look for national/international groups and experts who can assist you in commenting EIA

11.2 ADB level

ADB take the EIA process onward after borrowing country submit the Summary EIA/IEE.

- Be vigilant in finding out when the Summary EIA will become available to public under the ADB disclosure policy.
- Be aware about the 120-day rule.
- Make sure that the communities have relevant documents that are translated in their local languages.
- Encourage people to send their comments to the ADB if they are against the local project approval or if there was no public consultation process
- If you have concerns, direct them to the ADB Regional Sustainable Development Department and the Project Team.
- Check with the compliance officer whether you have the right information.
- Be active in informing the ADB if you disagree with the contents and the recommendations of the EIA or IEE.
- Be aware of the OM requirements and the ADB Environment Policy.
- Keep your documents ready if in case you want to make a claim to the ADB Accountability Mechanism.
- Find allies in the local and international advocacy groups who may assist you in producing comments and providing campaign support. They would help be of great help in getting in touch with relevant ADB staff and officials regarding the concerns you want to raise.
- Contact the ADB Resident Mission if there is one in your country and ask for more details regarding a project.
- You may use the ADB Public Communication Policy to request more information from the ADB.

* * *

Resource people and organization with EIA analyzing and legal capacity

There are number of public interest organizations and networks that can provide you assistance for analyzing EIA/IEE and related advocacy support. Following are few groups.

International

Environmental Law Alliance Worldwide (E-Law) www.elaw.org

NGO Forum on ADB - Philippines www.forum-adb.org

Bank Information Center-USA www.bicusa.org

Friends of the Earth International www.foei.org

International Rivers Network www.irn.org

Oxfam Australia www.oxfam.org.au

National

Centre for Environmental Justice- Sri Lanka www.ejustice.lk

Legal Rights Center/Kasama-sa-Kalikasan (LRC/KSK) - The Philippines
www.lrcksk.org

Tangol Kalikasan - the Philippines www.tanggal.org

Japan Center for a Sustainable Environment and Society (JACSES)
www.jacses.org

Friends of the Earth-Japan www.foejapan.org/en

Bangladesh Environmental Lawyers Association (BELA)-Bangladesh
www.belabanla.org

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The NGO Forum on ADB is an Asian-led network of Civil Society Organizations (CSOs) that support each other to amplify their positions on the Asian Development Bank's policies and projects affecting the environment, natural resources and local communities.

The Forum neither accepts money from the ADB nor is it in any way part of it.

Since 1992, it has promoted community involvement in the ADB decision-making through advocacy. The Forum is involved in information sharing, capacity building and the sharpening of public debate on the ADB.



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