

July 22, 2005

President Haruhiko Kuroda
Asian Development Bank
P.O. Box 789
0980 Manila, Philippines

Re: Review of ADB Safeguard Policies

Dear President Kuroda,

It is our understanding that the Asian Development Bank (ADB) intends to review its three (3) Safeguard Policies. We are writing to put forward recommendations that we believe will help to ensure meaningful civil society participation in the review process. We sincerely hope that this exercise will contribute to the strengthening of the Policies and their implementation, and will not in any way weaken existing safeguard standards. As we approach this review, it is important to also note that many borrower governments still do not have the institutional capacity or legal framework to provide adequate protection to project-affected communities. This reality is confirmed by many ADB reports and on-going projects aimed at assisting borrowers to address this situation.

Hence, **there remains the need for enhanced and mandatory safeguard policies.** Only after the review process, when ADB safeguard rules and requirements have been improved, should any approach towards the possible use of DMCs' country systems begin to be discussed.

The consultations surrounding the ADB's Inspection Function (2002-2003) and Public Communications Policy (2003-2005) provide useful precedents to draw lessons from for the forthcoming Safeguard Policy review. We hope the approach to policy development undertaken in the above mentioned Reviews will serve as a minimum benchmark for the Safeguard Policy review.

We would also like to caution against extremely rapid and selective plans for engaging external stakeholders on these critical policy revisions. Safeguard Policies play a crucial role in ensuring that persons likely to be impacted by ADB-funded projects emerge as project beneficiaries and not project affectees. These Policies are crucial to the relationships that ADB forges with project affected persons (PAPs), with civil society organizations, with social movements, and with citizens in member countries as they afford certain minimum social, environmental and livelihood related protections. It is thus essential that the informed participation and voice of PAPs and the organizations working closely with them is given utmost attention throughout the review.

We believe that the adoption of the following recommendations, which are largely consistent with the approach taken during the disclosure policy review, will lay the foundation for meaningful participation in the review of the Safeguard Policies.

I. Independent Assessment of Safeguard Policy Implementation

The ADB should, at the outset, commission an independent and participatory assessment of the implementation of its Safeguard Policies.¹ To our knowledge, aside from the highly critical Inspection Panel reports to date, no such independent assessment has ever been carried out by the institution. Such an assessment would enhance overall understanding of the strengths and weaknesses of the existing policies and their implementation. The findings of this independent assessment would be a crucial input into the Policies Review and should be shared at the Initial Consultation mentioned below.

II. Notice of Consultation, “Issues/Discussion Paper”, and Provisional Work plan:

The ADB should disclose a notice informing outside actors of its intention to review its Safeguard Policies. This notice should invite comment on current safeguard policies along with an Issues/Discussion Paper (prepared by the ADB outlining the rationale and objectives of the Review, initial thinking inside the Bank about the Review, and any other relevant background information) for a period of 90 days and should be accompanied by a provisional work plan outlining the proposed timetable, procedures, and consultation plan for the entire review process.

The current notice posted by the ADB, we feel, is inadequate in many respects; it talks of a “Safeguard Policy Update” and it is unclear as to what is meant by an “Update”. It would be most helpful if a clear Terms of Reference of the Review process are disclosed as well as details of the ADB Team (and any external parties/consultants) that will be responsible for carrying out the Review.

To ensure full stakeholder participation, the ADB should post the notice, Issues/Discussion Paper, and Provisional Work plan on a specially created, dedicated space on its website. This space should be utilized throughout the review process to update interested parties on the status of the review and the timing of next steps. This dedicated space can also provide links to relevant policy documents and public comments.

The Bank should also send announcement letters and emails to external contacts by making use of the contacts gathered by Department of External Relations, RSDD, and resident missions. The ADB should also utilize local media and NGO communication channels to inform interested parties of its intent to review the policies. Notices of the review should be posted in ADB project areas, especially for those projects that have been brought to the inspection mechanism.

The announcement of the review, issues paper, and provisional work plan should be translated into major languages of the region.

III. Initial Consultation:

During the above mentioned 90-day comment period, the ADB should hold an initial face-to-face “diagnostic” consultation to solicit comments on the existing Safeguard Policies, the Issues/Discussion Paper, as well as expectations for the review process. The findings of the independent Safeguards Assessment review (mentioned above) should also be shared at this event. Much like the Manila consultation during the ADB’s Inspection Function Review, the ADB should bring together participants from all over the region. This would include representatives from member governments, interested members of civil society, including

¹ This, and other suggestions, were given to the ADB RSDD Team in a meeting held in Manila on May 20th.

academia and non-governmental organizations, and members of the general public. Resources should be made available to help ensure broad participation.

IV. First Draft of New Policies:

Based on written comments received, the findings of the independent assessment, and the outcome of the initial face-to-face consultation, the ADB should prepare and disclose first drafts of the new Environment Policy, Resettlement Policy, and Indigenous Peoples Policy. These drafts should be accompanied by a summary of key recommendations received during the initial consultation period as well as specific responses from the ADB to those recommendations.

The ADB should then announce a second 90-day comment period, this time to allow interested parties to comment on the new draft Policies. This announcement, which should be proactively disseminated in a manner similar to the initial notice, should reiterate the work plan, procedures and timeline to be applied to the remainder of the review and consultation process.

V. Consultations on the draft Policies & Quality of Consultations:

In addition to the initial “diagnostic” consultation, the ADB should hold a minimum of eight face-to-face country consultations and five regional consultations² on the draft policies in a cross-section of both borrowing and donor member countries (the ADB held a total of 14 country consultations during the disclosure policy review). Adequate resources should be made available for groups and affected persons to travel to the consultations. Documents used during the consultations should be translated into appropriate languages, especially the languages of the persons participating in a consultation, and be available at the same time as the original English versions. Provision should also be made for simultaneous translations during consultations.

With consultations comes an expectation that revisions to the policies will be informed by the views of all stakeholders - including project affected peoples and communities - through **participatory processes**. If people are to be informed and engaged, a reasonable expectation and responsibility would be that the ADB will ‘hear and act’ on the voice of those who have rights to be involved through their status as stakeholders and affected peoples. In other words, consultations should not be one way flows of information between stakeholders and ADB; they should be deliberative and not simply held to ratify pre-conceived plans and ideas. Put simply, “*How* we decide and *who* gets to decide often determines *what* we decide.”³

Consultations, whether in person or using other suitable means, should be held on any and all future iterations of the draft policies, including W-papers. We expect the ADB to release at least two (2) additional iterations of the draft policies after the 1st draft, as was done during the ADB’s review of its disclosure policy.

VI. Policy Approval:

Based on the comments received, the ADB should revise its new draft Policies and send a final draft Policy (R-paper) to the Board of Executive Directors for discussion and approval. This final draft (R-paper) should be disclosed to the public at the same time it is distributed to the Board

² It is proposed that country consultations be held on 1st drafts of the revised policies so as to provide more opportunity to national groups & PAPs to comment based on their practical experience with ADB safeguards; regional consultations can be held on 2nd drafts of the revised policies.

³ Introductory statement from *World Resources, 2002-2004: Decisions for the Earth: Balance, Voice and Power* (Washington D.C.: World Resources Institute, 2003), United Nations Development Programme, United Nations Environment Programme, World Bank, and World Resources Institute

and be posted on the website. This will give stakeholders an opportunity to understand how their input was used and to contact their representatives to provide final comments on the text.

The ADB should provide the Board of Executive Directors with both a summary and a complete copy of the comments received during the consultations, including a list of key recommendations and a clear response to each recommendation. These documents should be posted on the website and be publicly disclosed at the same time they are presented to the Board. This should be as early as, and no later than, when the final policy draft (R-paper) is sent to the Board.

The past year has seen other IFIs, in particular the World Bank, International Finance Corporation, and Inter-American Development Bank (IDB), undertake reviews of their safeguard policies. Lessons should be taken from these review processes in order to help facilitate an informed and productive review at the ADB. The World Bank Group and IDB safeguard policy reviews have been criticized by civil society organizations for, among other things: failing to clearly outline a review process and solicit comments on the consultation plan; not responding adequately to external recommendations; failing to provide information for consultations in a timely manner; and not allowing adequate time for public comment or an opportunity to comment on multiple iterations of the draft policies.

We hope that the above recommendations will help the ADB design and implement a thorough and participatory review process. We look forward to discussing these recommendations with the ADB in the near future.

Sincerely,

Signed

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BanglaPraxis,
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