



Photo: Water logging in ADB funded Khulna Jessore project in Bangladesh

Window Dressing for Business?

The Asian Development Bank
Safeguard Policy Implementation Review

Words:
Grace Mang
NGO-Forum on ADB

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NGO Forum on ADB,
85A, Masikap Extension, Central District, Quezon City, 1101, Philippines
email: secretariat@forum-adb.org

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I hope this report will contribute and assist those who are trying to 'safeguard' some of the most vulnerable communities and environments in the Asia-Pacific.

Grace Mang

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Glossary of Abbreviations

ADB	- Asian Development Bank
CSO	- Civil Society Organisation
DMC	- Developing Member Country
EIA	- Environmental Impact Assessment
IPDP	- Indigenous People Development Plan
NGO	- Non Governmental Organisation
TA	- Technical Assistance
RSDD	- Regional Sustainable Development Department

Abstract

This report aims to “jump the gun” on the ADB’s Safeguard Policy Implementation Review for civil society. In particular, it systematically identifies the implementation concerns of ADB staff and consultants, so that Civil Society Groups are aware of the voices within the Bank as they prepare contributions for the review process in 2006.

The implementation of the ADB’s Safeguard Policies since their inception (Involuntary Resettlement – 1995, Indigenous Peoples – 1998, Environment – 2002) has by no means been successful. This report discusses the fundamental problems arising during implementation.

It also considers these implementation concerns against the current environment, where International Financial Institutions are increasingly moving towards the adoption of a ‘country system’ approach. For Safeguards, this means the ADB would shift its focus on a country’s existing safeguard policies when those are “equivalent in intent, spirit and content to ADB policies.”

The report is based on existing studies, articles, regional workshops and interviews with ADB’s RSID Safeguard Specialists and has been supported by the staff and resources of NGO Forum on ADB’s Secretariat in Manila.

Hopefully, this report will inspire fruitful discussion and additional research to improve the quality of civil society’s contribution to the review process.

Window Dressing for Business?

The Asian Development Bank Safeguard Policy Implementation Review

Introduction: Safeguard Policy

The implementation of the ADB's Safeguard Policies (Involuntary Resettlement – 1995, Indigenous Peoples – 1998, Environment – 2002) has by no means been successful. This report discusses the fundamental problems arising during implementation and presents an analysis

It also considers these implementation concerns against the current environment, where International Financial Institutions are increasingly moving towards the adoption of a 'country system' approach to safeguards. That is, the ADB would shift its focus on a country's existing safeguard policies when those are "equivalent in intent, spirit and content to ADB policies."

Study Rationale, Objectives and Scope

As noted earlier, the aim of this report is to examine the ADB's progress on the implementation of its Safeguard Policy to provide civil society groups with a general understanding of the issues, context and concerns in preparation for the ADB's civil society consultations.

It is widely acknowledged that the ADB has so far failed to ensure that adverse environmental and social impacts of ADB projects have been

significantly "avoided, minimised or mitigated." The objective of this study is therefore to isolate specific areas for further study and case-study analysis.

The scope of this report has been generally limited to broad policy analysis, with the expectation that the NGO Forum and other NGOs will coordinate and encourage civil society groups to produce their own case studies or draw from their own insights of local ADB projects.

Methodology

This report has used a multiple method approach drawing on information provided by in

- Interviews: The report writer conducted interviews with RSDD staff and safeguard specialists
- Workshops: e.g. Capacity Building for Involuntary Resettlement Risk, ADB Regional Workshop (8-9th December, 2005)
- Existing research and reports (commissioned and/or conducted by ADB & NGOs)
- Country and project specific case studies e.g. Highway One Project, Cambodia

Part A

What is the Safeguard Policy?

Safeguard Policy are the policies that require the ADB to “avoid, minimise or mitigate adverse environmental and social impacts” that may result from development projects. The Safeguard Policies adopt a so called, “do no harm” approach.

The Safeguard Policy consists of three operational policies

- Involuntary Resettlement Policy (1995)
- Indigenous Peoples Policy (1998)
- Environment Policy (2002)

Each of these policies have corresponding Operational Manual Sections (F1, F2, F3) and guidelines (*Guidelines on Environment Assessment [2003]*), *Handbook on Resettlement and forthcoming Handbook on Indigenous Peoples Policy* aimed to aid the implementation of the ADB’s Safeguard Policy.

Key Components of the Safeguard Policy

The Safeguard policies apply to all ADB project components, regardless whether it is a private sector or public loan. The Policies also place the onus, (once the loan agreement is finalised) on meeting ADB safeguard requirements on the DMC regardless of whether the DMC has the capacity or resources to implement the policy. Whilst the ADB has the option of cancelling the loan if Safeguard requirements are not met, this rarely (if ever) occurs.

This section will briefly outline key provisions of each policy. (For more detail, please see the specific policy available at www.adb.org/safeguards)

Involuntary Resettlement (1995)

The main objective of the Involuntary Resettlement Policy “is to ensure that those affected [by ADB projects or loans] receive rehabilitation assistance to achieve at least the same level of well-being with the project as without it.”¹

The policy binds the ADB to several resettlement principles. They are:

- To avoid involuntary resettlement where possible
- To minimise involuntary resettlement where population displacement is unavoidable, and
- Ensure that displaced/affected people receive adequate assistance to restore their living conditions to at least the ‘pre-project’ level.

The policy indicates that for DMCs to comply to the Policy “fundamental structural changes in national land acquisition laws and payments of compensation for development-induced displacement.”

The fundamental implementation tool is the *Resettlement Plan*, which is the ADB drafts but implemented by the borrower. The borrower is also responsible for financing resettlement. In many cases this arrangement has led to the under funding of resettlement projects.²

¹ Operations Evaluation Department (2000) Special Evaluation Study on the Policy Impact of Involuntary Resettlement (September), pg. 1
² E.g. ‘Highway One’ Project, Cambodia

Indigenous People (1999)

The Indigenous People's Policy applies regardless of whether DMCs have a pre-existing policy framework for indigenous people or ethnic minorities. The Indigenous People's Policy seeks to address the vulnerability and disadvantage indigenous peoples may experience in ADB projects areas or as a result of its operation.

Definitional issues

The application of the policy is deceptively broad and wide due the pragmatic nature of its definition of Indigenous peoples. The Policy states, "Indigenous People should be regarded as those with a social or cultural identity distinct from the dominant mainstream society, which makes them vulnerable to being disadvantaged in the process of development"

Whilst the Policy might be applicable to almost any groups or people, the intent of the policy statement appears to try to avoid or 'cut-short' the endless discussion about "who was here first" and "who wants to be different" and "why?" Instead, it focuses on "who is the most vulnerable?" This has made implementing the Policy significantly difficult in some circumstances.

The Policy makes the Indigenous Peoples Development Plan (IPDP) the main operational instrument of implementation. However, the project-based approach is not always the most suitable way for addressing the very complex concerns of ethnicity and poverty reduction of DMCs.

Environment Policy (2002)

The ADB's Environmental Policy contains five broad statements and principal aims. They are:

- *Environmental intervention as a pre-requisite for poverty reduction:*

In the post Asian Financial Crisis period, there were concerns within the ADB that the 'Environment' had become a 'dead' issue. Therefore, the ADB's rationale behind the poverty reduction principal was to re-affirm to DMCs the importance of environmental improvement and investment in the sustainable management of natural resources.

- *Mainstreaming Environmental Considerations in Economic Growth:* The ADB should actively encourage DMCs to integrate the environment into national program formulation and policy-making.

- *Encouraging Regional Cooperation to address critical environmental issues* (e.g. regional biodiversity management plans): These activities have been largely concentrated in the Mekong and Central Asia region

- *Building Partnerships with Other Stakeholders around 'specific environmental themes in DMCs':* This has led the ADB to identify common environmental challenges facing DMCs and their respective advantage and capacity to address them. The ADB's RSDD department has identified solid waste management as one of these challenges and seeking to establish a knowledge institution on managing

- *Project Safeguards:* The Environment Policy requires that an *Environmental Assessment* on all project loans, program loans, sector loans, sector development program, financial intermediation loans and Private Sector investment operations. *Environment Policy* makes the borrower responsible for implementing all recommendations of the Environment Assessment.

Projects assessed to result in significant environmental impacts (Environment Category A or B sensitive) require an Environmental Impact Assessment conducted to recommend actions to mitigate any adverse impacts. The borrower is responsible for implementing the recommendations of the EIA.

In summary, the ADB's Environment Policy adopts both a pre-emptive and 'do no harm'/safeguard approach to achieve environmental sustainability in its operations.

Part B Why is the Implementation Review Occurring?

In October 2005, the ADB's Safeguard Review team released a discussion note.³ It provided an outline of the issues that the Safeguard Update might examine and a tentative timeframe for the review process. In examining the Discussion Note, it is important to note

³ ADB, *Safeguard Policy Update – A Discussion Note*, October 2005, <http://www.adb.org/Documents/Policies/Safeguards/discussion-note.pdf>

that the review is responding to the ADB's failure so far to ensure the effective implementation of its Safeguard policies, the recent World Bank report – "*Expanding the Use of Country Systems in Bank-Supported Operations: Issues and Proposals*" and pilot study of the country system currently underway.

The Discussion Note provides a clear indication of the ADB's intention and the outcome it desires from the review process. That is, approval to adopt a country-specific Safeguard approach, as well as to reduce the application of its Safeguard policies to increase the appeal of new lending modalities it has recently developed.

This section will present a critical discussion of selected objectives of the Safeguard Update.

1. Enhance effectiveness and results orientation of the existing ADB policies on Environment, Involuntary Resettlement and Indigenous People

The Discussion Note proposes this may be achieved by:

- "Balancing emphasis on procedural requirements during project implementation by adopting a framework approach to resettlement planning where key policy elements, institutional arrangement and process issues are embodied in a framework agreed with borrower/sponsor before Board approval."

And/ Or

- "Providing opportunities to tailor safeguard approaches to different clients with different

capacities, including allowing selective use of country safeguard systems in those countries (or sectors or regions within countries) where there is an appropriate policy and regulatory framework, adequate implementation capacity and established track record to deliver on safeguard requirements.”

In other words, the ADB is advocating for the adoption of a country safeguard system to improve the effectiveness and quality of safeguard implementation.

Explaining Country Safeguard Systems

The Country System⁴ envisages that ADB projects will utilise national safeguard frameworks assessed as ‘equivalent,’ rather than the ADB safeguard policy and procedures.

The ADB states that DMCs “consider the application of a safeguards system’s approach based on country-specific frameworks would not only reduce transaction costs in project processing and implementation but also enable the countries to build institutional capacity and responsiveness to external financing requirements across sectors, national and sub-national levels.”⁵

Interestingly, the ADB has suggested that it will consider the selective use of country safeguard systems. That is, whilst country overall might not have a developed safeguard framework or capacity, those sectors with that

⁴ Country systems has been defined by the World Bank, to mean a country’s legal and institutions, its national, sub national or sectoral implementing institutions and applicable procedures.

⁵ Safeguard Discussion Note paragraph. 11

capacity and regulations might qualify for the country safeguard system.⁶

The rationale for country safeguards according to the multi-lateral financial institutions is that it will reduce transaction costs for DMCs and enhance the development of quality safeguard frameworks. The ADB proposal is in line with an overall push by IFIs towards the country systems.⁷

Capacity Building

The ADB has recognised that DMC have varying levels of expertise and capacity to implement project safeguards. Theoretically, country system approach focuses attention on whether DMCs have the capacity to successfully implement and sustain implementation of safeguard practices.

Reduced Costs & Harmonisation

The ADB anticipates that the country system will allow the Bank to streamline and speed up procedures to improve investment-lending services to clients. In reality, without significant additional resources devoted to frequent monitoring and evaluation of DMC’s country safeguard systems, the ADB will be less focused on ‘policing’ each project by shifting that role onto the borrower their respective country safeguard system.

In order to implement the country system it highly likely that DMCs will incur additional costs associated with developing and implementation of legislation and regulations. Without appropriate resources and support, it is likely that inadequate safeguard frameworks are developed.

⁶ Safeguard Discussion Note, paragraph 30.

⁷ The World Bank is currently conducting a pilot of Country Safeguard Systems. This pilot will measure and test the country safeguard system in 8-12 countries over the next two years. The Philippines and People’s Republic of China is one such pilot country.

In order for the ADB to adopt a country safeguard system, they will need to develop an accurate and thorough methodology for measuring equivalency between ADB policy and DMCs existing safeguard systems. It is important to note that **RETA 39186: Technical Assistance for Strengthening Country Safeguard Systems** (approved in December 2005), aims to do exactly that. The TA report states, RETA 39186-01 will “develop a methodological framework for accessing country safeguard systems ... reflecting the varying capacities of DMCs in planning and implementing safeguards.”

2. Achieving a Clear, Coherent Safeguard Policy statement

- *[The] Adoption of a single safeguard policy statement “instead of three separate policies each with their own separate implementation procedure and processes”⁸*

Based on interviews with ADB staff, it is likely that the ADB has no intention to change the actual content of the three safeguard policies.

However, the proposal to combine ADB policies into one document or statement certainly attracts the perception that the ADB intends to weaken its safeguard policies in a subtle way, in response to the view held by DMCs that implementing safeguards takes too long and “costs too much.”⁹

⁸ Safeguard Discussion Note, paragraph 30

⁹ These arguments are examined in Lawrence, S., (2005) *Retreat From the Safeguard Policies: Recent Trends Undermining Social and Environmental Accountability at the World Bank*, Environmental Defence, www.edf.org/pdf.cfm?ContentID=4279&FileName=RetreatSafeguardPolicies_0105.pdf

Inevitably, this policy statement must reconcile the substantial different expectations of DMCs, developed country members and civil society. In doing so, this at least puts at risk the weakening of safeguard or fiduciary policies, with a deviation from agreed Bank policies.¹⁰

3. Ensure that the Safeguards Policy evolves to ‘serve’ lending Modalities¹¹

Under the ADB’s Innovation and Efficiency Initiative (IEI), a new series of lending instruments are being developed, that is not appropriately serviced by the Safeguard policies or which the ADB believes the Safeguard Policy should not apply to.

The NGO Forum believes that these instruments are likely to be financing facilities, debt banks or lending directly to state-level governments or local governments. It would be difficult for the ADB and make it difficult for business to borrow from these facilities should they have Safeguards attached to it. In particular, the ADB would find it cumbersome to access each transaction and address its specific implications. Furthermore, the transaction costs for state-level/local governments are too high hindering the ADB’s ability to attract business.

¹⁰ This issue was also realised in the World Bank’s *Expanding the Use of Country Systems* report, pg 37, Paragraph 71.

¹¹ Safeguard Discussion Note, paragraph 21

Part C

The Implementation

Issues of the Safeguard

Policies

Following the discussion in Part B on the ADB's proposal to adopt a country system approach; integrate Involuntary Resettlement, Indigenous Peoples and Environment Policy into one document and or policy statement and the adaptation of , this section will seek 'take a step back' to examine the specific implementation problems within each of the safeguard areas. This discussion is based on a series of interview with ADB staff, Workshops, Operational Evaluation Department Reports and NGO research.

Involuntary Resettlement (1995)

The ADB so far, has failed to satisfactorily implement its involuntary resettlement policy principles.¹² The major challenges to successful implementation have arisen from the (a) gap between ADB Policy and DMC implementing capacity, (b) insufficient monitoring and evaluation by ADB, (c) failure to adopt a 'rights-based approach to resettlement' and in some cases a (d) reluctance to disclose by DMC to affected communities.

A. Gap between ADB Policy and DMC executing agency capacity

In most DMCs, land-acquisition and resettlement laws are not compatible with ADB policy and furthermore, lack an overall national policy framework

¹² At the TA 6091 Regional Workshop – *Capacity Building for Involuntary Resettlement Risk* in ADB, Manila (8-9th December 2005), Ruwani Jayewardene (Senior Social Development Specialist, RSDD) noted that "We [ADB] have not even got to first base yet - that is, to pay people just compensation on time."

to implement policy requirements. This means that ad-hoc provisions to meet ADB policy requirements are created to form a double standard for involuntary resettlement. For example, in Cambodia - people displaced by ADB funded projects (e.g. Highway One, Cambodia) enjoy better compensation than privately funded projects, which give little or no compensation.

There are many reasons for the gap between ADB policy requirements and executing agencies. They include:

- Executing Agencies unfamiliarity with the ADB's policy requirements
- Executing Agencies are institutionally weak to implement and lack the capacity to manage involuntary resettlement plans.

This has had serious ramifications for the quality and effectiveness of the implementation of ADB resettlement plans.

B. Insufficient Monitoring and Evaluation

Implementation of involuntary resettlement policy has disproportionately focused on pre-project planning and preparation rather than on monitoring, supervision and evaluation.¹³ Poor ADB supervision

¹³ *Special Evaluation on the Policy Impact of Involuntary Resettlement* (2002), found that project supervision and monitoring had been the weakest aspects of resettlement implementation, para. 32, 82

and evaluation of resettlement implementation has led to poor safeguard results.

One of the recommendations from the *Capacity Building for Involuntary Resettlement Risk* identified that monitoring and evaluation of ADB projects under funded.¹⁴ Also, it was noted that bringing independent monitor ad-hoc into a project, that their contributions were unhelpful given the depth of the project issues was poor. As such, independent project monitors should be introduced much earlier in implementation and not when problems arise.

C. Inadequate Funding for Resettlement

The ADB policy states that,

“If individuals or a community must lose their land, means of livelihood, social support systems, or way of life in order that a project might proceed, they should be compensated and assisted so that their economic and social future will generally be at least as favourable with the project as without it...”

However, to date the ADB does not automatically finance resettlement and compensation costs. Rather, it is a cost expected to be shouldered by the borrower.

With the view that the “costs of resettlement are too high, avoid the cost and yes it will disappear from the book, the project cost and the budget, but the costs remain, as hidden social costs, they do not disappear, they are

¹⁴ This was also a finding in *Special Evaluation (2002)* ... para. 89 states that “ADB’s in house capacity to supervise and monitor projects with significant resettlement activities has been inadequate”

borne by those who can least afford it, the affected persons.”¹⁵

Hence, the failure of DMCs to recognise the importance of resettlement, as reflected by under funding of the implementation of resettlement plans has led to the impoverishment of affected people in numerous ADB projects.

D. DMC reluctance to disclose resettlement details

In interviews with ADB staff, consultants and implementing agencies, it became apparent that poor disclosure practices and a lack of transparency also hampered the implementation of resettlement plans.¹⁶ Whilst disclosure to affected people should be total and full, it was clear this did not always happen.

Poor disclosure practices are a by-product of the political culture within some DMCs, perception that disclosure is the ‘last step,’ reluctance to disclose due to fear of fraudulent resettlement claims and public opposition to the project. In such cases, affected people only become aware of the full extent of the project when the TA is complete and loan agreement is finalised.

Indigenous Peoples Policy(1998)

The implementation of the ADB’s Indigenous Peoples Policy faces significant political and identification challenges, as well as hampered by the lack of up to date data on Indigenous communities and additional resistance to recognise ethnic minority groups by some DMCs.

¹⁵ Ruwani Jayewardene (Senior Social Development Specialist, RSDD) – 2005, www.adb.org/documents/speeches/2005/sp2005068.asp

¹⁶ Interview, 12th December 2005

A. A Political Sensitive Issue

The implementation of the Indigenous Peoples policy has been complicated by the political sensitive nature of ethnic minorities and indigenous peoples. For example, some DMC are reluctant to recognise a certain group as indigenous peoples on the fear that this may lead to differentiated claims to undermine national unity.

In this sense, the Indigenous Peoples Policy faces the grave challenge of striking a balance “between respect[ing] indigenous cultures and mainstreaming process that combat social exclusion, break[ing] down the barriers of discrimination and seek improved access for marginalised groups to national economic benefits?”¹⁷

B. Difficulty in Identifying Indigenous Peoples

The ADB notes that failure to identify project impacts on indigenous groups maybe due to the difficulty in identifying indigenous peoples/ethnic minority groups. In part, this has been attributed to poor social impact assessments but also additional complex factors such as:

- *Resistance to be recognised as an Indigenous Person and Ethnic Minority Groups* - Some indigenous and ethnic minority groups can display strong resistance to assimilation by the dominant society due to social stigma associated with indigenous identity.
- External characteristics such as language or dress may not

¹⁷ Plant, R., (2002) Indigenous Peoples/Ethnic Minorities and Poverty Reduction Regional Report, Asian Development Bank.

identify persons or groups with a strongly felt indigenous identity.

Therefore, the Indigenous Peoples Policy adopts a widely applicable definition for an Indigenous Person due to these complex social, political and economic issues.

There have thus, been a significant number of ambiguities over how to identify an indigenous person and uncertainty within Executing Agencies over the practical implications of such definition for project preparation and safeguard implementation.

C. Insufficient Data on Indigenous / Ethnic Minority groups

Difficulties identifying indigenous people and formulating relevant and practical Indigenous Peoples Plan (IPP) is hampered by the significant lack of data.

The lack of data complicates the ability to monitor, evaluate and supervise the impact of ADB projects and interventions on indigenous communities and ethnic minority groups.

Clearly, profiles of indigenous peoples and ethnic minority groups need to be produced not only of their numbers, geographical location and ethnic grouping. It should also cover patterns of land use and forms of representation among other things.

D. Developing Policy Frameworks

Law and policy frameworks protecting Indigenous and ethnic minority groups are underdeveloped in most DMCs.

To date, the ADB has conducted focused TAs in Vietnam, Cambodia,

Indonesia and Philippines to understand and develop policy coherence and participation by indigenous people and ethnic minority representatives in policy formulation.¹⁸

The lack of policy harmonization across DMCs government and differing implementing capacities has led to a failure to transpose broad policy aspirations into real benefits and assistance for Indigenous Peoples. As the Regional Report

“For policies to be effective, they need to be coordinated, carefully among various agencies of government, and consultative mechanisms need to be established at different levels. “

This was a view re-enforced when speaking to Senior Social Development Specialists of RSDD, who stated that increased feeling by DMCs that they ‘own’ national Indigenous People policy frameworks who lead to increased capacity and results in the delivery of safeguard outcomes.¹⁹

The ADB has so far failed to consistently invest in programs for indigenous peoples’ capacity building, enabling them to participate in the process of law and policy reform, sponsoring seminars or workshops for this purpose.

Rather the Indigenous Policy has only been implemented in so far as preventing or mitigating adverse project impacts on vulnerable Indigenous groups.

¹⁸ RETA 5953 Capacity Building for Indigenous peoples/Ethnic Minority Issues and Poverty Reduction. The project was aimed at “strengthening national capacities to combat poverty and at improving the quality of ADB’s interventions as they affect indigenous peoples”

¹⁹ Interview, 30th January 2006

E. Moving beyond a purely project based or local approaches

As noted above, there is a desire within the Bank to bring the Indigenous Peoples Policy beyond the project level and address broader Indigenous/Ethnic Minority group poverty issues and programs, and second focus on development planning at the national level.

Environment Policy (2002)

The identification of implementation challenges of the ADB’s Environment Policy is difficult given that the policy was approved in November 2002. As such, the projects subject to the Environment Policy are still in the ‘pipeline’ and it is unclear whether it will prevent any further ADB environmental disasters.

A. Mainstreaming the Environmental issues

The Environment Policy consists of two sets of directions – a) pro-active agenda to encourage ‘mainstreaming of environment’ in ADB projects and Country Programming frameworks b) ‘do no harm’ via the traditional approach to safeguards

Whilst the mainstreaming of the ‘Environment’ is technically not a safeguard issue; it is interesting to note that while the ADB claims to have increased the percentage of Environmental loans of total loans, the majority of these have been for ‘brown issues’ responding to land degradation and urban pollution. In other words, responding to the environmental damage caused by economic development.

That said, there are some clear implementation difficulties and challenges when safeguarding the Environment.

B. Developing Environmental Assessment Capacities

Responsibility for completing the Environmental Analysis belongs to Borrower, according to the ADB's environmental assessment requirements and regardless of the capacity of borrowers to meet the ADB assessment standards.

Therefore, the efficacy of the environment assessment mechanisms has varied according to the implementation capacities of the borrower.

In an interview with an ADB senior social and environmentalist specialist,²⁰ he admitted that the capacity of DMCs ranged from very good to poor.

C. Poor Institutional Capacity

The implementation of the Environmental Impact Assessment (EIA) and Initial Environmental Examination (IEE) is also the responsibility of the borrower.

As such, the effectiveness of mitigation measures by the poor institutional capacity of borrowing countries. Common challenges²¹ include:

- Lack of interagency coordination due to overlapping and fragmented authority e.g. when multiple agencies/departments are responsible for implementing environmental safeguard laws.

²⁰ Interview, 8th February 2006.

²¹ For example, the "Evaluation of the Country Assistance Program for Vietnam" (2002) found that ADB assisted policy reform and programs did not have the expected impacts because of relatively poor implementation. The Report found that "this was primarily due to delays arising from coordination constraints – particularly when project activities crossed established departmental and provincial boundaries of responsibility – and cumbersome decision making process"

- Devolution of authority to local government levels means that implementation must coordinate across several levels of government.

These constraints will remain regardless of whether the country system is implemented and may be amplified by the adoption of country safeguard systems, if not addressed by the ADB.

Conclusion

This section has discussed and highlighted several implementation issues based on research, discussions and ADB staff interviews.

This section demonstrates that the ADB poor safeguard performance stems from many specific and broad policy issues. To summarise:

- Weak, poor and little monitoring and supervision of DMC implementation of ADB safeguards policy, after project preparation and planning stages. This is in part, due to inadequate ADB in-house staffing and resources.
- Poor institutional capacity due to unfamiliarity with safeguard requirements.
- Lack of pre-existing national safeguard frameworks.

Clearly, the low capacity of some executing agencies and lack of an adequate national policy provides some basis for proposing the country system as a way of promoting the development and improvement in the implementation of ADB Safeguards.

Part D: Conclusions

A Discussion & Analysis of the ADB and Safeguards

As discussed in Part C, the ADB's Safeguard Update has recognised that the DMCs implementing capacities and 'state' of national safeguard frameworks significantly affects the degree to which safeguard policies are effective in protecting and addressing the vulnerability of people and environment affected by ADB projects.

Is Country Systems²² an Appropriate Means For Improving Safeguard Implementation?

The *RETA 39186: Strengthening Country Systems Report* states:

"The basic rationale for adopting country systems includes (i) scaling up development impact beyond the confines of the individual 'ring-fenced' project (ii) increasing country ownership and sustainability (iii) facilitating harmonisation (iv) simplify and reduce transaction costs."²³

Certainly, there is credit in exploring the use of country systems as a tool to improving safeguard implementation by taking a broader policy approach to safeguarding affected communities, vulnerable ethnic minority groups and the environment. However, that experiment should not take place at the

²² Country system may be considered as those laws, policies, regulations and administrative structures that are used in a particular country for application to an ADB-financed development activity, and have been determined to have provisions similar to those specified in ADB policies and procedures.

²³ TA 39198 Report Pg. 2

expense of a slippage in the Banks social and environmental standards. To this end, the ADB has assured civil society groups that this will not happen.²⁴

Given that most DMCs are still "grappling" with the essential institutional and capacity constraints, lack sufficient legal instruments and affected communities are often not empowered to exercise their rights to sufficient hearing or engage with project authorities.²⁵ There is a real risk that the objectives of the country system might not be realised associated with a number of factors – some of which, are outside the control of the borrowers and/or Bank.

Danger of Putting all Bets on One Horse

The ADB must have contingency for the failure for failure of country safeguard system. It is possible that its objectives will not be realised and that the impact will be *less* than if existing ADB policies had been used.

To manage this risk, the ADB in adopting the country system should at least allow countries to 'opt' out and revert to the ADB policy standards.

Recognising the Value of Civil Society Organisations

²⁴ Safeguard Discussion Note pg. 18 (para 51.)

²⁵ Ruwani Jayewardene (Senior Social Development Specialist, RSDD) – 2005, www.adb.org/documents/speeches/2005/sp2005068.asp

Whilst, CSOs have largely been recognised by DMCs in the role of implementation units, the critical and advocate role of CSOs has also benefit for strengthening safeguard implementation.

In reference to involuntary resettlement – Dr Zamen²⁶ noted that in his experience, the participation of CSO improved and increased the quality of implementation of involuntary resettlement plans.

Similarly, Indira Simbolon²⁷ (A Senior Social Development Specialist) noted that NGOs often ameliorate the vulnerability of indigenous groups as they had the ability to strengthen the indigenous voice and advocate on behalf of affected communities.

However, this role can only with proper disclosure and consultation with stakeholders by implementing agencies.

Accountability Issues: Is the ADB simply passing the ‘Buck’?

For many affected communities, the ADB’s accountability mechanism is the last resort for addressing their problems and impoverishment caused by ADB projects. For example, communities affected by the Southern Transport Highway in Sri Lanka used the ADB’s accountability mechanism, even though there were available national grievance mechanisms.

However, if the ADB adopts the World Bank’s pre-requisite that all claimants, must first exhaust in-country remedies, the Accountability mechanism will become inaccessible for these groups.

²⁶ 12th December 2005, Interview

²⁷ 30th January, Interview

Taking a Step Back

In summary, the NGO Forum on ADB welcomes the ADB’s proposal to focus on mainstreaming safeguards through the Country Safeguard System. For this to be successful, the ADB must ensure that it has the necessary human resources and institutional capacity to ensure that national safeguard policies are vigorously implemented, evaluated and improved.

That said, the country system – within the context of improving the implementation of ADB safeguards – cannot solve all the implementation challenges of securing the livelihoods of resettled communities, delicate environments and already disadvantaged indigenous populations. On the other hand, the country system might potentially reduce loan-processing times, reduce duplicity between the ADB and DMC, as well as improve the attractiveness of ADB loans. So, is the ADB’s Safeguard Update really seeking to improve safeguard implements or just window dressing for more business?

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