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ADB'S NEW SPS: WILL IT GO BEYOND ASPIRATIONAL COMMITMENTS?

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A major topic discussed in the Annual Meeting of the Asian Development Bank (ADB) held in Incheon first week of May is the Bank's Safeguards Policy Statement (SPS). A new SPS, updating the 2009 SPS, is due for release third quarter of this year.

As Asia's biggest source of financing for infrastructure projects such as dams and power plants and social development programs such as health and education, the Bank is able to influence the economic and social development directions of over three dozen Asian Member States. At the national and community levels, the implementation of these Bank-funded projects and programs have direct environmental, social and economic consequences—some positive, some negative and a few even disastrous. In the old or 2009 SPS, the Bank declared that their projects and programs are not meant to inflict harm on the environment, disrupt the lives of indigenous peoples and create “involuntary resettlement” of people.

And yet, the NGO Forum on ADB, in a documentation of around 50 big ADB projects across Asia, found the Bank and its partner private sector developers non-compliant with the Bank's SPS mantra not to do harm to the environment, community and IPs (see NGO Forum on ADB, 55 Years and Counting: Stories of Community Struggle for a Binding ADB Safeguards, 2023). In particular, there is a failure to observe the internationally-

accepted requirement that infra projects in IP areas should involve the IP communities and should secure the “free, prior and informed consent” (FPIC) of these communities.

In the Incheon Meeting, a number of CSOs led by the Asian People's Movement on Debt and Development held a rally decrying the failure of the ADB to go green or greener despite the Bank's declaration that it is supporting the goal of the Paris Agreement of 2015 to cool the Planet. Officially, the Bank has stopped financing the building of coal-fired power plants; and yet, the Bank has been doubling its support in the establishment of power plants using LNG, which emits the destructive methane that contributes to global warming just like the GHG produced by coal. Hence, the obvious solution is for the Bank to focus its resources on the renewables, not on coal and not on LNG or natural gas.

Now back to the new SPS. CSOs like the NGO Forum on ADB have been engaging the ADB, particularly the Bank's Sustainable Development and Climate Change Department, on how to come up with a more comprehensive and stronger SPS that can guarantee the observance of environmental, social and economic safeguards in the implementation of each and every ADB-supported project. To this writer, the following are critical guiding principles in making such an SPS.



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First, the new SPS should go beyond the aspirational. Yes, positive declarations by the Bank and other regional “financial development” agencies on their commitments to the UN’s Sustainable Development Goals (SDGs) and the Paris Agreement on climate mitigation are important. But translating these commitments into concrete doable actions is another matter.

When Covid struck Asia in 2020, the ADB quickly launched its CARES program to help some Member Countries cover immediate budgetary shortfalls. The CARES program was a good opportunity for ADB to nudge and remind borrowing countries on the need to align social spending with their own SDG commitments. And yet, no clear alignment was made as reflected in some weaknesses in social spending. For example, the “targeting” approach used in providing social amelioration excluded so many poor such as the rural migrants, street vendors and mobile informal construction workers who are not in official government lists of social amelioration beneficiaries. A review by this author of the terms for the CARES loans shows that the ADB still has not developed a concrete system of aligning lending with SDG fulfilment, meaning going beyond a mere general declaration that the loan will help alleviate poverty.

Second, on labor standards, some of the findings of the ADB’s Independent Evaluation (2020) highlighted the lack of clarity on the

inclusion of labor safeguards in the SPS and the consequent failure of many projects to address related issues of occupational and community health and safety, gender, climate change, etc. Although the ADB has an existing handbook on core labor standards published as early as 2006, the said handbook has no provisions on monitoring and reporting of labor compliance, and is silent on internationally-recognized labor rights such as hours of work, overtime pay, minimum wage, OSH and access to institutions for the redress and remediation of labor violations. The SPS should cover these basic labor rights and link them with the intertwining community, environmental and socio-cultural rights and concerns of the working people.

Third, the SPS should go beyond the mechanical checklist approach in the monitoring and evaluation of labor and other standards. In the case of environmental and labor standards, monitors and evaluators usually have a checklist of questions that are answerable through boxes of yes and no. But what really happens in most projects? The Bank, governments, private contractors and their compliance officers are unable to look into the environmental and labor impact of the labyrinthian system of business and labor contracting and sub-contracting that characterize most of these projects. The ADB and its partner government usually ask a private principal contractor to be conscientious in observing environmental and labor standards by providing him a folder of what to



observe or not in relation to the treatment of the environment and the project workers.

And yet, in the case of labor, the reality on the ground shows that a principal or consortium of contractors in infra development can have a hundred or more suppliers and sub-contractors, each of whom have their own respective work brigades. These work brigades are overlooked by the checklist method. They are often “invisible” to the government’s labor inspectors and are usually treated badly by their bosses, e.g., long hours of work and below minimum wage compensation. Hence, there is a need to emphasize in the SPS the importance of strict observance of labor standards by all parties involved in an infra project, which means commitment by all these parties to a common understanding of their responsibility to their respective work brigades.

Fourth, there is a need to incorporate in the SPS the principle of Just Transition. The UN Environmental Program, together with the ILO and other UN agencies, has been advocating for a “just transitioning” in fulfilling or achieving a “green transformation” in a given country. Making the environment, economy and social life sustainable for all requires a Just Transformation and Just Transition programs. The transitioning should be fair and just to all, specifically to the workers of existing facilities and the communities hosting them. The general guide in realizing Just Transition is to ensure that “no harm” is inflicted by any project to the workers,

communities and society. This means not only preventing violations of their human, labor, cultural and environmental rights but also engaging them on how to do things right.

This brings us then to the fifth guiding principle: the importance of having frank and sustained social dialogue with all concerned—before, during and after—the conceptualization and implementation of a project. Since projects of the ADB are justified in the name of the people and societal development, workers, communities, local governments and other concerned sectors should be acknowledged and treated as “Development Partners,” not as mere objects of development. This consultation-dialogue process may be time-consuming but the benefits to the ADB and the government and society are irreplaceable—minimization of moral hazards, avoidance of abuses and violations by contractors, avoidance of social conflicts, development of better ways of doing things, and people’s unified support to a project that is envisioned to benefit all.

To conclude, the ADB and its SPS framers need to go beyond the aspirational, beyond the mechanical checklist mentality, beyond the narrow idea that a project is simply an agreement between the ADB, government and a contractor.

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WHY ADB MUST STEP UP ITS GAME ON CLIMATE CHANGE

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The Asian Development Bank (ADB) has rebranded itself as [“Asia and the Pacific’s Climate Bank”](#) and has set 1 July 2023 as a deadline to align most of its operations with the Paris Agreement on climate change. To prove its credentials, it is developing its first [Climate Change Action Plan](#) (CCAP) and its revised [safeguard policy statement](#) (SPS), soon to be disclosed for public

consultation, will include a new climate safeguard.

Progress on climate change in Asia matters. A recent ADB report, [‘Asia in the global transition to net zero’](#), spells out this challenge clearly: “Achieving global climate goals depends on Asia’s development path”. The report acknowledges that Asia is extremely vulnerable to climate change. For example, the majority of the world’s population threatened by rising sea levels is in Asia. The report also identifies the Asian region as part of the problem. Asia now accounts for almost half of global greenhouse gas (GHG) emissions, its contribution having doubled between 1990 to 2019.

Multilateral development banks (MDBs), like the ADB, have played a crucial part in enabling this destructive and inequitable development pathway. They must now urgently help to reverse this trend – importantly they need to phase out investments in all fossil fuels and ensure funds are diverted to more sustainable options, in a just, rights-based and equitable way.

The ADB has made progress on addressing climate change. Significantly, after years of campaigning by civil society



organisations, such as [NGO Forum on ADB](#), the ADB finally [banned financing for coal](#) under most circumstances in its new Energy Policy, approved in 2021. The new policy also took steps towards phasing out other fossil fuels; importantly it introduced a set of restrictions for financing fossil gas.

But despite these steps forward, the ADB is far from a 'climate bank'. Recourse's analysis of the ADB's energy portfolio investment since the new policy came into effect until end of March this year reveals that the ADB's financing for fossil fuels continues. Gas projects represent almost a fifth of approvals, including funding for two gas power plants. This is an increase over the preceding couple of years, where fossil fuel projects accounted for just over 5% of financing approvals. This trend puts the effectiveness of the new Energy Policy restrictions on gas into serious question. It also throws into doubt the robustness of the ADB's efforts to become Paris aligned. Moreover, neither the Paris Alignment Guidance Note or Gas Guidance Note have been shared for public consultation to date.

Gas is sometimes described as a 'transition' or 'bridge' fuel to help countries move away from coal dependency. But this is a dangerous assumption. The International Energy Agency concludes "there is no need for investments in new fossil fuel supply" - not just coal but also "no new oil and natural gas". There are a number of reasons why investments in gas are not viable for the transition to a 1.5°C world and therefore cannot be considered Paris aligned. Gas emits methane as well as carbon dioxide (CO₂). The global warming potential of methane is [over 80 times worse than CO₂](#) in the short term. The process of creating and regasifying Liquified Natural Gas (LNG) is particularly energy intensive and is driving growth in emissions. In fact since 2013, gas has been the main driver of the [global increase in CO₂ emissions](#). The majority of gas consumption is associated

with uses that already have [cost-competitive clean alternatives](#), so gas is not a 'transition fuel' - it has become a blocker for the shift to renewable energy alternatives.

Another concerning issue is loopholes for fossil fuels through investments in financial intermediaries (FIs), such as private equity funds and banks, that then on lend to sub-projects. This is a controversial issue at other development finance institutions, such as the International Finance Corporation (IFC), the World Bank's private sector lending arm. Civil society has tracked coal projects being financed through FIs that the IFC has invested in, despite this being in conflict with the World Bank Group's commitment to not fund coal projects in most circumstances.

From January 2010, when the current SPS came into effect, up until March 2023, the ADB's FI lending comprised almost a third of its non-sovereign operations, worth approximately \$10.9 billion. Lack of transparency is a significant problem. Too often there is little to no information about where the money ends up. Publish What You Fund (PWYF) scored the ADB [1.25 out of 10 in disclosing information on sub-investments](#) through FIs. Research by Recourse confirms PWYF's findings. An overwhelming 98% of the FI projects analysed did not have their sub-projects disclosed on the ADB's website. Concerningly, this opaqueness makes it impossible for the general public to know if FI money, which is ultimately public funds, is going to coal or other fossil fuels.

For example, in 2020 the ADB made a \$95 million equity investment in Clifford Capital Pte. Limited (CCPL) through the project [Asian Sustainable Infrastructure Mobilization Project \[53397-001\]](#). However, digging into the details it turns out that CCPL were [supporting fossil fuel projects](#), such as oil drilling and gas power plants, even before the approval of the ADB's investment.





This includes support for Summit Gazipur II and Sirajganj 4 IPP in Bangladesh and the Myingyan IPP in Myanmar. CCPL has also continued to support companies in the oil and gas industry after the approval of the ADB's equity investment, such as [Peacock Container](#) and [Floatel](#).

If the ADB is serious about addressing climate change, it must step up its game. This means excluding both direct and indirect financing for all fossil fuels, including coal, oil and gas, as well as for associated facilities and infrastructure, such as transmission lines, roads, and ports. Transparency reforms are a key part of this. As part of its policy reforms, it should introduce a requirement to publish the name, sector and location of all high and medium risk projects it supports through FIs, including any fossil fuel exposure. This would enable monitoring of the ADB's climate commitments, as well as help affected communities approach the ADB's accountability mechanism for redress by being made aware of the links between sub-projects and FIs funded by the Bank.

The ADB could use FIs more proactively, too. FI lending could bundle and promote smaller, hard to finance projects, with a genuine climate impact. The ADB recognises this in the new Energy Policy: "Financial intermediation loans can be used for rural electrification, clean cooking, island energy supply, demand-side energy efficiency programs, and other programs that are not amenable to project loans or other investment modalities." But to date there is little evidence that the ADB is putting any of this into practice. It is important that the ADB chooses the right financial partners, that have substantial local ownership and experience in meeting the needs and priorities of vulnerable and marginalised communities, and who comply with the ADB's development mandate. This should be a top priority for the ADB and be front and centre in its new and revised policies.



SAFEGUARDING ADB'S ACCOUNTABILITY MECHANISM POLICY REVIEW

RADHIKA GOYAL, ACCOUNTABILITY COUNSEL

The Asian Development Bank (ADB) has been reviewing its environmental and social safeguards policy since 2020 and is finally launching a review of its Accountability Mechanism's policy. As the ADB prepares for its accountability mechanism review it must recognize that project-affected communities are most impacted by environmental and social failures and risk their land, livelihoods, and health and safety when ADB does not get accountability right. Project-affected communities are therefore the most important voices in the process, and the Accountability Mechanism policy review

should, first and foremost, safeguard their demands.

Why A Good Process Matters

The Asian Development Bank is a publicly funded institution that invests in development projects that aim to improve the lives of the most marginalized communities throughout the region. When investments lead to environmental and human rights harm, ADB is accountable to affected communities through its independent accountability mechanism. On a complaint from communities, ADB's Accountability Mechanism can investigate

whether the bank complied with its standards and can mediate disputes between impacted people and bank clients. As a public institution, impacted communities should be able to shape the processes through which ADB is held accountable and have a say in the design of the Accountability Mechanism. An open and public process increases both the legitimacy of the review and the trust affected communities have in the mechanism.

Not only is a transparent and inclusive review process principally important, but it also results in better outcomes. We know from [past experience](#) that powerful interests can oppose strong and effective accountability mechanisms and that hearing from and designing mechanisms for project-affected communities serve as safeguards against regression. For the ADB, having a good process is especially important as the Accountability Mechanism lags behind [peer institutions](#) and needs to result in substantial improvements.

What a Good Process Looks Like

ADB's review process must be independent, transparent, and consult with project-impacted communities and civil society. This requires more than simply seeking comments on draft procedures, which are often heavily negotiated internally before they undergo public scrutiny. Instead, ADB must be guided by project-affected community experiences even as they start the review process and be open to changing course based on community expertise. This means learning from communities who have already approached the ADB's Accountability Mechanism, and incorporating lessons from their experiences, including [Indigenous Magar and Dalit communities from Nepal](#) who are threatened with displacement due to the Tanahu Hydropower Project and have been fighting for fair land valuation and land-based compensation since at least 2018; [fishing and coastal communities in](#)

[and around Mundra](#) whose livelihoods were destroyed by the Mundra Ultra Mega Power Project; and [communities living around the site of the Visayas Base-Load Power Project](#) in Philippines who suffered from severe negative health consequences.

Recommended Next Steps for the ADB Accountability Mechanism Policy Review:

At minimum, the review process for the ADB's Accountability Mechanism should include the following steps:

- ADB should disclose all documents that will inform the Accountability Mechanism policy review, including any approach papers, terms of reference, and internal and external assessments.
- The Accountability Mechanism should seek guidance from project-affected communities and civil society on what changes are needed for the mechanism's mandate and procedures.
- The Accountability Mechanism staff should take the lead in the drafting of the new policy. As an independent institution within the Bank, the Mechanism staff is best placed to safeguard the Mechanism's effectiveness.

The Board also has an important role to play in safeguarding the review process. The Board should set:

- A principle of no regression to ensure that the review does not risk a worse outcome; and
- A minimum mandate of improvement on particular issues including reducing eligibility barriers, enshrining community agency, and facilitating remedy.

Accountability Counsel's advice for the review process and its outcomes, which we have shared with ADB board members, staff, and Accountability Mechanism representatives, is also available [here](#).

FIGHTING FOR HUMAN RIGHTS: WHY WE NEED A STRONG SAFEGUARDS POLICY AT THE ADB

JEN DERILLO, NGO FORUM ON ADB

As the Asia-Pacific region continues to pursue economic development, it is essential to prioritize the protection and well-being of communities and individuals. The Asian Development Bank (ADB), a major player in financing and implementing development projects in the region, must play its part in upholding human rights and promoting sustainable development. Unfortunately, concerns have been raised about the potential negative impacts of ADB-funded projects on local communities, especially vulnerable and marginalized groups.

A [joint civil society statement](#) has been released to address these concerns, calling for a robust rights-based and safeguards policy at the ADB. This policy would ensure that the ADB's projects respect human rights, protect the environment, and benefit local communities. It would also prioritize protecting the rights and interests of marginalized and vulnerable groups, including indigenous peoples, women, and children.

The statement highlights ten essential points that should be considered in developing a robust safeguards policy, including the need for effective implementation, respect for community rights and participation, and contributions towards the Sustainable Development Goals.

ADB's Safeguards Policy

The ADB's safeguards policy is a step towards addressing concerns about the

potential negative impacts of its projects on local communities. The policy includes guidelines and procedures for identifying, assessing, and managing potential adverse impacts, intending to safeguard affected people's rights, interests, and well-being. It covers various areas, including involuntary resettlement, indigenous peoples, environment, and gender, among others, and sets out requirements for conducting social and environmental assessments, consultations with affected communities, and monitoring and reporting on project impacts.

However, despite the existence of this safeguards policy, criticisms about its effectiveness and implementation persist. Civil society organizations, human rights advocates, and grassroots groups have raised concerns about the need for more accountability, transparency, inclusivity, and a rights-based approach in the ADB's operations. Numerous cases have been cited where communities have been displaced, livelihoods have been lost, and environmental degradation has occurred due to ADB-funded projects without proper consultation or compensation.

To ensure that the ADB's development projects are socially and environmentally responsible, we must recognize the limitations of their current safeguards policy and advocate for its strengthening. It's crucial to prioritize protecting human rights, the environment, and local communities. To achieve this, we need to address the

gaps in policy implementation, enhance accountability mechanisms, increase transparency, and ensure the participation of affected communities in decision-making processes.

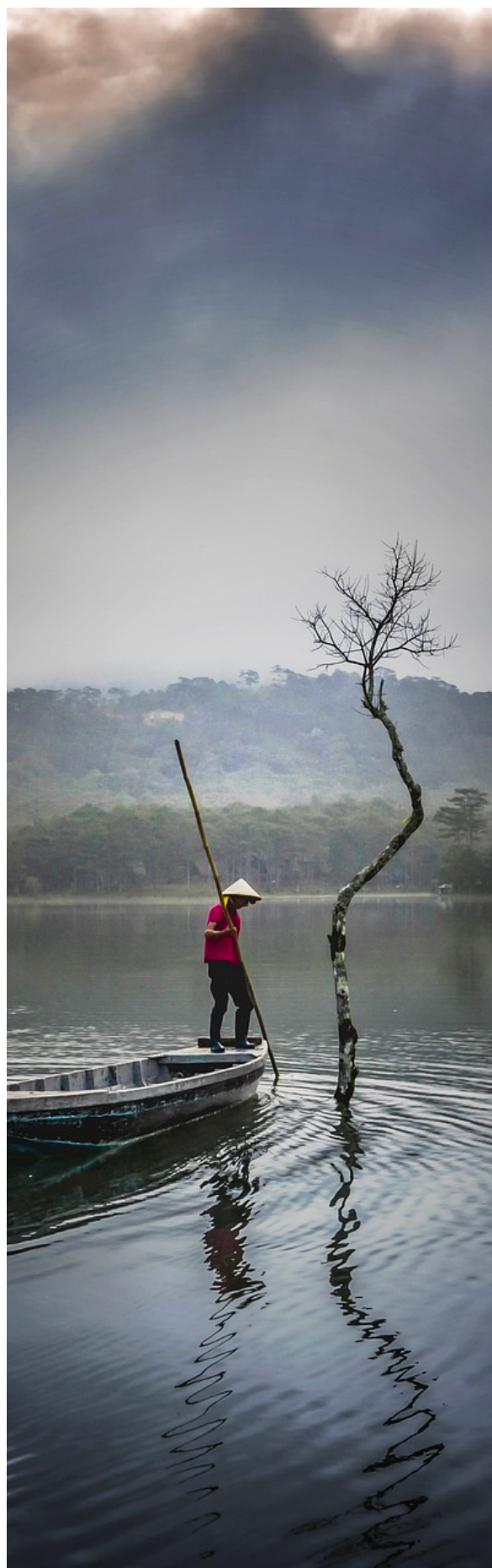
A robust safeguards policy that upholds human rights and promotes sustainable development is necessary for the ADB to fulfil its mandate and contribute to a just and equitable future. As a major player in financing and implementing development projects in the Asia-Pacific region, the ADB must ensure that its operations respect human rights, protect the environment, and benefit local communities. By advocating for a stronger safeguards policy, we can create positive impacts and contribute to sustainable development for all.

A call for better safeguards

A joint statement from the NGO Forum on ADB, supported by organizations worldwide, recently highlighted the critical need for a solid rights-based and just-safeguarded policy at the ADB. This statement prioritizes accountability, transparency, inclusivity, and a rights-based approach in all of the Bank's operations and is endorsed by human rights advocates, environmental groups, and grassroots organizations throughout the Asia-Pacific region.

A strong safeguards policy at the ADB is essential for several reasons. Firstly, protecting the rights of affected communities is necessary, which often bear the brunt of development projects. A robust policy can help to mitigate these risks and ensure that the voices of affected communities are heard and respected.

Secondly, a strong safeguards policy promotes accountability and transparency, ensuring that the ADB is held responsible for any breaches or violations arising from its projects. It also provides a comprehensive framework for monitoring and evaluating the impacts of projects.



Thirdly, a robust safeguards policy at the ADB promotes inclusivity, ensuring that vulnerable and marginalized groups are not excluded from decision-making processes.

A strong safeguards policy is not an option but a necessity for promoting sustainable development and protecting human rights in the Asia-Pacific region. We must hold the ADB accountable and push to protect human rights in all development projects. Additionally, transparency and inclusivity are vital in promoting a strong safeguards policy. This ensures that communities have access to relevant information, enabling them to participate in decision-making processes and ensuring that their perspectives and traditional practices are considered.

The ADB can ensure that development projects align with international human rights standards by prioritizing a rights-based approach. This includes addressing gender-related issues in involuntary resettlement and protecting women and cultural groups who may not have recognized rights to own land under customary law.

A Call to Action

We must be bold when protecting human rights and promoting sustainable

development in the Asia-Pacific region. We must push for a robust safeguards policy at the ADB that upholds fundamental principles of accountability, transparency, inclusivity, and a rights-based approach.

We must continue to hold the ADB accountable for the impacts of its operations on local communities and the environment. This includes advocating for the participation of affected communities in project decision-making processes, ensuring access to relevant information, and providing avenues for raising concerns and grievances.

The Bank should address the gaps in its safeguards policy implementation, enhance accountability mechanisms, and increase transparency. A strong safeguards policy that upholds human rights and promotes sustainable development is necessary for the ADB to fulfill its mandate and contribute to a just and equitable future for all.

Let us stand in solidarity with the affected communities and demand that the ADB respects their rights and dignity.

Sign the [petition](#) for a robust, rights-based, and safeguards policy!





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