



February 9, 2007

**Re. Concerns Regarding Safeguard Policy Update**

**Dear President Kuroda,**

We are writing to express our concerns regarding the ongoing Safeguard Policy Update (SPU) which we believe is lacking in transparency and does not allow space for sufficiently inclusive and substantive civil society consultation. We have been appreciative of the Bank's responsiveness to our earlier concerns about the SPU; however we are now aware of certain information which, if verified, would seriously compromise this review and the forthcoming consultation process.

Our concerns relate to the external process of consultation with stakeholders and to the internal process and approach within the Bank.

Concerning the external process, we were informed by the SPU Team that the "Consultation Draft Policy Statement" would be posted on ADB's website at least 30 days before the first consultation,<sup>1</sup> and that "translations will be provided in the major languages associated with the consultation workshops."<sup>2</sup> Currently, the first consultation is scheduled for March 5-6 in Bishkek but to date neither a draft of the policy statement nor its translation have been made public. This means the ADB has missed its 30 day prior release target and this does not inspire confidence in the ADB's ability to abide by its commitments.

Secondly, we are concerned about the opportunities provided to civil society to participate in the consultations. At a January 29, 2007 meeting with the ADB SPU Team, an NGO group<sup>3</sup> raised issues regarding the inclusiveness of the respective consultations. We were told that each consultation would contain a group of about 50 participants, with around 15 coming from the category of civil society, private sector, and academia. Given that the regional consultations are meant to be a forum for stakeholders from multiple countries, even if half of the 15 available slots are allotted to civil society representatives, this would not properly represent the diversity of voices in this sector. The ADB is compromising inclusive consultations by being too restrictive on the number of participants.

With respect to the internal process, it is difficult to assess precisely how the SPU developed internally due to a lack of transparency. In the absence of any officially shared information, we have received reports that, if substantiated, raise serious concerns about the integrity and credibility of the SPU. We pose the following issues as working questions, which we believe would be in the interest of the Bank to clarify,

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<sup>1</sup> Email communication from Kathryn Nelson, former Lead Facilitator, ADB SPU dated October 2, 2006.

<sup>2</sup> Letter from Albab Akanda, former Team Leader ADB SPU dated September 28, 2005.

<sup>3</sup> The NGOs that participated in this meeting were Mekong Watch, NGO Forum on ADB, NGO Forum on Cambodia, and Oxfam Australia.

thereby remedying any misunderstandings and addressing serious substantive concerns:

1. We understand that the SPU paper will consolidate the three major Safeguard policies (on Environmental Assessment, Involuntary Resettlement, and Indigenous Peoples) into a single framework document, and a number of internationally accepted good practice measures and benchmarks that were formerly required would be relegated to an optional, advisory manual. If so, we continue to be concerned that this would represent a huge step backward for the ADB as a public institution whose mandate is to alleviate poverty and support sustainable development.
2. Our understanding is that the SPU is an update designed to make the Safeguards more effective, rather than dilute them. This is clearly reflected in the findings, for example, of the ADB Operations Evaluation Department (OED) Special Evaluation Studies on Environment and Involuntary Resettlement Safeguards of September, 2006. We note that:<sup>4</sup>
  - The vast majority of 147 Appraisal Mission Leaders (AML) surveyed by OED support the Environmental Safeguards process, and feel that the Environmental Safeguard does not impose unreasonable costs or delays on project implementation and find that follow-through is inadequate to ensure proper mitigation of impacts.<sup>5</sup>
  - The OED's "internal desk study" on resettlement aspects of 15 projects found that "the resettlement processes and outcomes are almost uniformly unsatisfactory." Unfortunately, this desk study has not been released to the public.<sup>6</sup> We request the release of this study in its entirety at least 30 days prior to any consultations.
  - Staff identified significant concerns, including corruption and weak implementation, with the "country systems" approach.<sup>7</sup>
  - OED case studies found:
    - In India,<sup>8</sup> Environmental Impact Assessments (EIAs) (apparently by "domestic consultants") are of poor quality and do not meet acceptable standards. ADB staff's almost complete reliance on self-monitoring reports of project proponents is also noted and the "absence of regular [ADB] environmental safeguard personnel" is identified as an important issue.

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<sup>4</sup> The summary below is drawn from S. Fried, *Draft Summary of OED Data on Environment and Resettlement*, Environmental Defense, in process 2/07.

<sup>5</sup> *Inter alia*, ADB OED, Evaluation Study: Environmental Safeguards, September 2006, p. 19, para. 66.

<sup>6</sup> Findings of the desk study are tersely summarized in a table in "Supplementary Appendix G": Findings of a desk study conducted for the safeguard policy update, Table SAG1

<sup>7</sup> *Inter alia*, ADB OED, Evaluation Study: Environmental Safeguards, September 2006, Appendix 3, p. 86, para. 21.

<sup>8</sup> ADB OED, Evaluation Study: Environmental Safeguards, September 2006, pp 113 - 118

- In China,<sup>9</sup> ADB environmental consultants “were engaged primarily for translating and reformatting” official Chinese government EIA reports, including for projects with significant potential impacts in nature reserves and minority population areas and projects with “zero costs” budgeted for environmental protection measures.<sup>10</sup>

These OED findings underscore unequivocally the need for a strengthening of the existing Safeguards, particularly with respect to meeting current standards, monitoring and implementation.

3. We find it worrying that the Executive Summary and conclusion sections of the OED Safeguard Reports contradict the OED survey data and the results of case studies provided in the appendices of the reports. For example, the Executive Summary of the OED Report on Environment Safeguard cites “high transaction costs and limited benefits” of the existing safeguard system and recommends “a progressive shift in emphasis to reliance on national procedure.” This is in sharp contrast to the substance of the report itself which underscores the need for increased safeguard staffing, and more rigorous monitoring and implementation of safeguard policies.<sup>11</sup> The contradiction between the information in the body of the report and the Executive Summary is most perplexing; one hypothesis is that it may reflect overriding political or managerial priorities that conflict with empirical data.
4. We understand that ADB internal experts on the issues of environmental assessment, resettlement and Indigenous Peoples may have been substantially bypassed in the preparation of draft SPU documents and their concerns may have been ignored.
5. We have heard that initial drafts of the SPU have met with widespread criticism within the Bank on technical, substantive and legal grounds. This criticism appears to be consistent with the views of Appraisal Mission leaders and ADB professional staff articulated in the OED Safeguards Reports ; unfortunately these views too appear to have been ignored by elements of Bank management in the internal SPU process,

If the above is substantially correct, than important issues are raised, viz. the technical and professional credibility of the SPU drafts in the light of accepted international good practice and documented findings, for example, in the OED Safeguard Report.

We believe it would be beneficial for the Bank as an institution, for civil society stakeholders, and for the Bank's Executive Directors to receive clarifications on these questions. We raise these issues because we believe if they are substantively confirmed and not addressed, they would entail far reaching consequences for the countries in which the ADB operates and the communities impacted by ADB funded projects. Weak environmental and social protections will also damage the ADB's credibility as an agency for sustainable development and expose it to increased reputational risk.

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<sup>9</sup> ADB OED, Evaluation Study: Environmental Safeguards, September 2006,pg 118 - 125

<sup>10</sup> Ibid, pg 120

<sup>11</sup> Ibid, see pg. v for example.

Thank you very much for your kind attention to these issues and we look forward to your response.

Sincerely,

1. Manish Bapna, Executive Director, Bank Information Center, USA.
2. Bruce Rich, Environmental Defense, USA
3. Jessica Rosien, Oxfam Australia
4. Carl Middleton, Ph.D., Southeast Asia Program, International Rivers Network, Berkeley, USA
5. Titi Soentoro, NADI, Indonesia
6. Fabby Tumiwa , Working Group on Power Sector Reform, Indonesia
7. Don Marut, Executive Director, International NGO Forum on Indonesian Development (INFID), Indonesia,
8. Green Watershed, Academy of Social Sciences, Kunming, China
9. Sabrina Gyrovary, Earth Rights International – Asia, Chiang Mai, Thailand
10. Pianporn Deetes, Executive Director, Southeast Asia Rivers Network, Chiang Mai, Thailand
11. Premrudee Daurong, Co-Director, Towards Ecological Recovery and Regional Alliance (TERRA), Bangkok, Thailand
12. Rashid Khatri, Sahmakum Teang Tnaut, Phnom Penh, Cambodia
13. Peung Yok Hiep Director , Legal Aid of Cambodia ( LAC), Phnom Penh. Cambodia
14. Kim Sangha, Director, 3S Rivers Protection Network, Cambodia
15. Chith Sam Ath, Executive Director, The NGO Forum on Cambodia, Phnom Penh, Cambodia
16. Sochivanny Hoy, E.D of PCC, Vice Chair of Cambodia NGO Committee on CEDAW, Cambodia
17. Chris Wangkay, Coordinator, People's Alliance for Debt Cancellation (GARPU), , Jakarta Indonesia
18. Kay Leak, CDCam Advisor, CDCam, President of Graduate Student of Development Communication, of University of Los Banos, Philippines
19. Hemantha Withanage, Executive Director, NGO Forum on ADB, Philippines
20. Isagani Serrano, Vice President, Philippine Rural Reconstruction Movement, Philippines

21. Ana Maria, Nemenzo, President, Freedom from Debt Coalition, Philippines
22. Gururaja Budhya, Urban Research Centre, Karnataka, India
23. Dilena Pathragoda, Sri Lankan Working Group on Trade and IFIs, Sri Lanka
24. Ravindranath Dabare, Center for Environmental Justice, Sri Lanka
25. Suranjan Kodithuwakku, Green Movement Sri Lanka
26. Zakir Kibria, Bangla Praxis, Dhaka, Bangladesh
27. Barrister Raihan Khalid, Dhaka, Bangladesh
28. Razi Nurullayev, Co-chairman, Society of Democratic Reforms, Azerbaijan
29. M. Taufan Suranto, DPKLTS, Indonesia
30. Prof. Muatar Khaidarova, NGO "Society and Law", Tajikistan
31. Yuki Tanabe, Japan Center for a Sustainable Environment and Society, Japan
32. DOI Toshiyuki, Mekong Watch, Japan
33. Rustam Murzakhanov, NGO Environmental Law Center "Armon", Uzbekistan
34. Joanna Levitt, Director of Programs, International Accountability Project (IAP), Berkeley, USA
35. Ramananda Wangkheirakpam, North East Peoples Alliance on Trade, Finance and Development, NE India
36. Ashraf-ul-Alam Tutu Coastal Development Partnership, Bangladesh
37. Kalia Moldogazieva, Tree of Life, Kyrgyzstan
38. Zulfiqar Halepoto, Hyderabad, Sindh, Pakistan
39. Dana Sadykova, Karaganda Ecological Museum NGO, Kazakhstan
40. Prof Sanjai Bhatt , Social Work Department, University of Delhi

Cc:

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