

## **Preliminary Notes on the ADB's October 2007 Consultation Draft Safeguard Policy Statement with a Focus on Environmental Safeguards**

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Please note that these are preliminary draft notes which cover some aspects of the Consultation Draft Safeguard Policy Statement. Further analysis is needed.

### **Context**

In May 2007, Asian Development Bank President Haruhiko Kuroda announced at the Annual General Meeting in Kyoto that the Asia-Pacific region will require over US\$3 trillion worth of infrastructure development over the next decade, at a rate of US\$300 billion per year. Calling for an increased role for the private sector, Kuroda described the ADB's willingness to play a large role in bringing investment partners together. No mention was made, however, about the funding necessary to implement environmental and social safeguards to ensure that the planned massive infrastructure development will not negatively impact the lives of the poor and the natural resources upon which they depend.

The ADB is currently undertaking a "review" of policies on Indigenous Peoples, forced resettlement, and the environment. This Safeguard Policy Update (SPU) could offer the Bank a critical opportunity to enhance its environment, resettlement and Indigenous Peoples policies in accordance with international standards. The review process presents a substantial opportunity to incorporate lessons from past failures and to fully fund dramatically improved safeguard systems for protecting the people that the ADB claims to help through its projects. Unfortunately, however, the draft Safeguard Policy Statement dated October 2007 reflects a clear and unambiguous move to lower the Bank's social and environmental standards, to move away from internationally accepted norms, and to bow to pressure from borrowers seeking support for mega-infrastructure projects with no strings attached.

### **Significant concerns regarding the Consultation Draft Safeguard Policy Statement include:**

#### **1) Concerns regarding the extraordinary weakening of environmental standards and implementation requirements ("delivery mechanisms") in all sectors of ADB operations, including:**

- project loans
- program loans
- sector loans
- corporate investments
- financial intermediaries
- co-financing

#### **and a weakening of:**

- the ADB's role and responsibilities
- borrower obligations
- public consultation and participation requirements
- information disclosure requirements
- monitoring, reporting, due diligence requirements
- requirements pertaining to changes in project scope, etc.

For more details, see accompanying analysis of problems with the proposed Environmental Safeguards, titled “Draft Comments on the ADB’s Safeguard Policy Statement of October 2007: The Substantial Weakening of Environmental Safeguards and Implementation Measures.”

**Essentially, the October 2007 Draft Safeguards Policy Statement eviscerates the ADB’s detailed and currently mandatory environmental safeguards and replaces them with one page of mandatory general “policy principles,” much weaker than existing requirements and subject to wide interpretation.** The detailed pages of implementation measures which are currently mandatory have been replaced with “General Requirements” which are **(1) far weaker, for the most part, than existing safeguard requirements and (2) are no longer mandatory.** As is the case with “General Requirements” for Environmental Safeguards, the “General Requirements” for Involuntary Resettlement and Indigenous Peoples’ Safeguards (i.e. the policy delivery mechanisms) are no longer mandatory. Strong language pertaining to compliance from the July 07 Draft SPS (“**If compliance with the safeguard policies still is not met after these remedies, ADB will suspend financing until noncompliance is rectified or cancel the project.**”) has been removed and replaced with language assuring borrowers that “**Resorting to legal remedies in the event of noncompliance is not automatic or mandatory when a borrower fails to comply.**”

2) **There are is no detailed language in the environment safeguard policy regarding the rights of project-affected peoples who are not Indigenous Peoples and who are not forcibly resettled. There is no commitment to respecting and safeguarding the human rights, livelihoods, habitats, and practices of project-affected peoples, other than Indigenous Peoples.** The July 07 version of the SPS was written in a manner that appeared to have allowed some consideration of the rights of non-Indigenous project affected peoples under the Involuntary Resettlement Safeguard, but language changes made in the October 2007 draft SPS have significantly narrowed the scope of the IR Safeguard so that it is no longer likely to apply to the full range of project-affected peoples who find their access to natural resources reduced or eliminated as a result of ADB projects. This leaves non-Indigenous project-affected communities in an extremely vulnerable position. For Indigenous Peoples, (and we note that the IP language is still considered quite problematic) the October 2007 SPS Draft states that a plan must be developed, based on a “social assessment” done by “qualified professionals”, drawing on indigenous knowledge and “the participation of affected communities”; “Screen early to determine (a) whether IPs are present, or have collective attachment to, the project area and (b) whether there are likely project impacts on IPs.” The Social Assessment must “give full consideration to options preferred by the affected Indigenous Peoples in the provision of project benefits and in the designing of mitigation measures” and measures must be developed to “avoid, minimize and/or mitigate adverse impacts on IPs.” “Free, prior and informed consultations” with “affected communities to solicit their participation in (a) designing, implementing, and monitoring measures to avoid adverse impacts, or, when avoidance is not feasible, to minimize, mitigate, or compensate for such effects”; “In deciding whether to proceed with the project, ascertain that the affected IP communities provide their broad support to the project, on the basis of free, prior, and informed consultation.” “Avoid, to the maximum extent possible, any restricted access to and relocation from protected areas and natural resources. ”Adopt a participatory monitoring approach.” There is no such language pertaining to project-affected peoples who are not Indigenous or forcibly resettled. There are **no clear, detailed requirements for the manner in which assessments of social impacts of environmentally sensitive projects will be carried out** nor requirements for full participation in decision-making by affected peoples;

3) **The existing 120 day public comment period has been eliminated. There is no minimum specified period of public comment at all.** . Policy principles make **no detailed requirements for the timing of consultations** with project-affected peoples;

4)There is **no requirement to obtain free, prior, informed consent from project affected peoples.** (“Broad community support” and “good faith negotiations” are required for Indigenous Peoples but not for other project-affected local peoples. See comments by H. Leake regarding the lack of clear guidance on “consultation”, “BCS” and “good faith negotiation” in IP policy.)

- 5) There are no **clear requirements for the type of “grievance mechanism”** available to project-affected communities;
- 6) The requirement to document project alternatives has been replaced with requirement to document “technically and financially feasible alternatives”;
- 8) The overall policy continues to be based on the utilization of a flawed analysis and misinterpretation of OED data regarding alleged high “transaction costs” of safeguard policies, the so-called “need” to move away from a “project focus”, and the “necessity” for reconsideration of the current required 120-day disclosure period for environmental and social impact assessment documents prior to project approval; The raw data from the OED do not support these interpretations or approaches.
- 9) There is an alarming move towards a “Framework” Approach and Multi-tranche Finance Facilities which involve approval *en masse* of multiple tranches at once. These approaches appear to be an end-run around the public consultation process and careful assessment of environmental and social impacts *prior to release of project finance*. This approach would greatly reduce the ability for leveraged implementation of safeguards at each stage of project finance.
- 10) Weakening of requirements for financial intermediaries – Elimination of ADB review of subprojects, “self-reporting” by financial intermediaries;
- 11) Elimination of language pertaining to ADB requirements and ADB oversight from “General Requirements: Environmental Assessment”;
- 12) Lack of data rendering meaningful comment difficult:
  - \* No information provided regarding proposed safeguard implementation budget costs; This is a core part of the documentations necessary for meaningful consultation. It is difficult to comment in a meaningful manner on the new proposed framework without seeing proposed budget numbers.
  - \* Missing documents included documents referenced in various Consultation drafts (July, October) but not provided for public scrutiny: “relevant operational manuals”; “Annex I” which is stated to contain further details regarding the elements of an EIA report
- 13) Concerns regarding “Country Systems”;
- 14) Concern regarding elimination water, fisheries, energy and forestry safeguard policies;

## General Information:

### 1) **Concerns regarding the weakening of environmental standards and requirements.**

According to the Consultation Draft, the scope of the Safeguard Policy Update (SPU) consists of five areas including “balancing a front-loaded procedural approach with one more focused on results”, “tailor[ing] safeguard approaches to different clients with different capacities”, “making policy implementation more adaptable”. There are substantial concerns that the goal of “balancing a front-loaded approach” may be an attempt to reduce or eliminate clear requirements which are currently necessary prior to project approval/implementation; the “tailoring” of safeguard approaches to “client capacity” and increasing “adaptability” of implementation, may represent a significant move away from recognized international standards.<sup>1</sup>

### 2) **Continued utilization of flawed analysis, misinterpretation of OED data regarding alleged high “transaction costs” of safeguard policies,** the so-called “need” to move away from a “project focus”, and the necessity for reconsideration of the current required 120-day disclosure period for environmental and social impact assessment documents prior to project approval.

The July 2007 Consultation Draft Environment Policy appears to be based on flawed analyses and misinterpretations put forth in the Executive Summary of the data found in the 2006 OED Evaluation Study on Environmental Safeguards<sup>2</sup> and Involuntary Resettlement Safeguards.<sup>3</sup> The OED conducted a survey of 147 Appraisal Mission Leaders (AML) regarding environmental safeguards and, in an Appendix, provided summaries of 16 brief case studies in China, Vietnam, Philippines and India.

The Executive Summary of the OED report, however, differs markedly from the actual data upon which the report was based (found in the report’s appendices). For example, the Executive Summary concluded that “the efficiency and sustainability of ADB’s current procedures are questionable due to the high transaction costs and limited benefits, that – as a result of information from staff surveys and case studies -- there was a need for revising the Environment Policy in “recognition of the need for alignment with national systems, “a shift to an emphasis on capacity building rather than project focus”<sup>4</sup> and a move away from the “negative emphasis” of safeguards towards “avoiding environmental harm.”<sup>5</sup>

The actual data collected by the OED and provided in appendices to their report, however, show the opposite results. A significant majority of the 147 staff interviewed supported the Environmental Safeguards process, and did not feel that it “causes unacceptable project delays” or imposes unreasonable costs project implementation. A majority identified follow-through as inadequate to

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<sup>1</sup> ADB, Consultation Draft of Safeguard Policy Statement, July 2007, pg 1 para 2

<sup>2</sup> See pg 4 of Safeguard Consultation Draft (July 2007), “Experience with ADB’s Safeguard Policies, Environment” for claims that “transaction costs have decreased efficiency of project processing”, etc. For details re original OED data, see S. Fried, Summary of OED Data on Environment and Resettlement, Feb. 2007. Environmental Defense provided documentation of these flaws and misinterpretations to ADB management in February 2007.

<sup>3</sup> OED Evaluation Study on Involuntary Resettlement Safeguards, 2006

<sup>4</sup> Ibid, pg viii (underlining not in original)

<sup>5</sup> Ibid, pg vi

ensure proper mitigation of impacts.<sup>6</sup> Only a small minority of staff felt that safeguard criteria were “too rigid” or that “environmental requirements cost too much for Executing Agencies.” Almost 60% of those surveyed felt that subprojects, including those associated with financial intermediaries, should be subjected to environmental assessments.

The Consultation Draft summary (p.5, para 16) of the OED Special Evaluation Study (SES) on Involuntary Resettlement Safeguards describes the existing resettlement policy as “broadly effective in achieving outcomes for affected persons and creating resettlement capacity in many DMCs.” The Draft fails to mention, however, the “internal desk study” described in the OED SES consisting of a review of 15 projects, which found that “the resettlement processes and outcomes are almost uniformly unsatisfactory.” A brief summary of this study is tucked away in an appendix to the OED report and has not been made public despite requests by civil society organizations.<sup>7</sup>

It is disturbing that the Consultation Draft uncritically promotes – and appears based on -- the OED Executive Summaries of Environmental and Resettlement Policy reviews which stand in sharp contrast to the data actually gathered by the OED and presented in the reports’ appendices. We note that the striking inconsistencies between the summaries and the OED actual data were brought to the attention of Bank management by Environmental Defense in March 2007.

### **3) Elimination of commitment to 120 day public comment period.**

Currently, a 120 day public comment period is required for Category A (and “B-Sensitive”) projects. The Consultation Draft makes no such commitment and simply states that “the ADB will make the relevant safeguard documents publicly available before project appraisal”<sup>8</sup>...”The draft environmental assessment report will be made available in a timely manner before appraisal, in an accessible place and in a form and language understandable to affected communities and key stakeholders.”<sup>9</sup>

Even with the existing 120 day requirement, documents are still not properly provided to affected people. For example, in the case of the newly approved ADB-financed Lafarge Cement plant (Semen Andalas) in Aceh, Indonesia, documents were provided in English under the 120 day rule, despite the fact that the environmental assessment was originally written in Indonesian, the local population could not read English, and local NGOs repeatedly requested materials in Indonesian. It was only after a formal complaint regarding the lack of compliance with the 120 day rule by Environmental Defense (made after repeated written petitions and oral requests for Indonesian language documents by Indonesian organizations produced no meaningful response), that the massive Indonesian language Environmental Assessment was rushed to groups in Aceh just prior to the ADB Board approval vote, with insufficient time for proper analysis and comment by local communities and organizations.

We note that, as per our recommendation to ADB, the Consultation Draft now requires documents to be made available to affected communities in an accessible place, form and language. This is an important improvement, one that will, unfortunately, be undermined or negated by the elimination of the 120 day comment period rule.

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6. ADB OED, Evaluation Study: Environmental Safeguards, September 2006, Table A3.26. Perception of ADB’s Environmental Safeguard Procedures, pg 106, Appendix 3; Table A3.23. Assessment of the Need for and Cost of Preparing SEIA/SIEE at the Subproject Level, pg. 103, Appendix 3

<sup>7</sup> OED Evaluation Study on Involuntary Resettlement Safeguards, 2006, “Findings of a desk study conducted for the safeguard policy update”, Table SAG1, Supplementary Appendix G

<sup>8</sup> Safeguard Consultation Draft, pg 17, para 45

<sup>9</sup> Ibid, pg 25, para 12.

The new Consultation Draft cites an “OED recommendation” (i.e. from the OED Executive Summary) that the 120-day disclosure rule for Category A projects be ‘reviewed.’ The OED case study report, however, reveals that it is Chinese officials who “stressed that the EIA procedures in the PRC are stringent, and the laws and regulations are in place” who have indicated that the 120 day rule for Category A projects “may have caused delays in loan approval, especially considering that the domestic EIA process already included consultation with project-affected people and local civil society.”<sup>10</sup> The Chinese projects examined by the OED all used official Chinese environmental assessments – and often had significant impacts on minority populations yet claims were made, for example, that “public consultations indicated that between 86% and 90% of the people supported the projects.” The OED admits that these results may have been “skewed.”<sup>11</sup>

The elimination of the 120 day public review requirement is a deeply problematic aspect of the Consultation Draft Safeguard Policy.

#### **4) Replacement of requirement to document project alternatives with requirement to document “technically and financially feasible alternatives”**

ADB’s current environmental assessment requirements include examining alternatives” to the proposed project.<sup>12</sup> The examination of alternatives is a normal part of environmental impact assessment. The consultation draft has altered and weakened this language.

For example, the “Biodiversity Conservation and Sustainable Natural Resource Management” section of the Consultation Draft states that a project may “not significantly convert or degrade” critical habitat or a legally protected area unless “there are no technically and financially feasible alternatives”, the “overall benefits from the project substantially outweigh the environmental costs”, and “any conversion or degradation is appropriately mitigated” through habitat restoration, offset of losses and/or compensation to direct users of biodiversity.<sup>13</sup> This is a troubling weakening of language which appears to indicate that if a project proponent found alternatives “too expensive” and the project to have “great benefits”(no specification regarding to whom the benefits must accrue), ecosystem destruction could occur as long as some effort at restoration or perhaps no effort at restoration, but an “offset” or compensation would be provided.

An implementing agency and a private sector partner, for example, may decide not to consider alternatives that may be “too expensive” or not “technically feasible” for the particular private sector actor or agency but which could be feasible financially or technically for another actor. It could be considered “not financially feasible” from a project proponent’s point of view to protect a certain ecosystem which, if not protected, could have a devastating impact on the communities dependent on the ecosystem. From the point of view of the communities, it would not be “financially feasible” for the project to go ahead if it destroyed their livelihood. The language as written, however, appears to define “financially feasible” (and project benefit) primarily from the viewpoint of project proponents, who will be the ones carrying out the assessment.

#### **5) Move towards a “Framework” Approach, Multi-tranche Finance Facilities**

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<sup>10</sup> ADB OED, Evaluation Study: Environmental Safeguards, September 2006, pg 122

<sup>11</sup> Ibid, pg 119 The OED notes (in the Appendix) that “the samples may have been skewed, and the people who did not show support could have been those who were adversely affected.”

<sup>12</sup> ADB Operations Manual, OM Section F1/OP pg 2, para 4, 2006

<sup>13</sup> Consultation Draft, pg 26, para 19

The Consultation Draft states that “there is potential for wider use of the frameworks in the context of new lending modalities (in particular for the M[ulti-tranche] F[inance] F[acility]) and for projects where detailed design of specific project components takes place during project implementation.”<sup>14</sup> There are deep concerns about the “design of project components that take place during implementation” because such projects would not be subject to the same kind of scrutiny regarding impacts *prior to the commitment of public funds for their support*. The proposed MFF approach (approval *en masse* of multiple tranches at once) appears to be an end-run around the need for public consultation and careful assessment of environmental and social impacts *prior to release of project finance*. This approach would greatly reduce the ability for leveraged implementation of safeguards at each stage of project finance. As many analyses of ADB projects, including internal audits, have found, there are often significant problems in the implementation of projects involving environmentally sensitive areas or issues, resettlement, and Indigenous Peoples. The MFF and framework approaches – which can include “projects delivered through sector lending” or “other modalities where subprojects are prepared after Board approval,”<sup>15</sup> could greatly reduce, if not eliminate, the possibility of requiring improvements, mitigation measures for, or, if necessary, cancellation of damaging projects, vastly decreasing the ability of affected peoples to ensure that their lives and livelihoods are not threatened by poorly designed or poorly implemented projects.

The Consultation Draft proposes allowing the use of framework approach for “non-sensitive components” of sensitive projects and indicates that “impact assessment and specific mitigation measures (such as the environmental assessment and environmental management plan, involuntary resettlement plan, and indigenous peoples plan) will be prepared *during project implementation, in conformity with the safeguard frameworks agreed by ADB and the borrower*. ... It is expected that frameworks could be agreed upstream with borrowers for sectors at sub-national and national levels, and then tailored to the specificities of individual projects.”[emphasis not in original]<sup>16</sup> Safeguard frameworks shall “fully reflect the objectives and policy principles of the relevant safeguard policy”.<sup>17</sup> No mention is made of meeting the Operational Requirements (i.e. actual implementation requirements) for safeguards.

This approach is alarming for multiple reasons:

1) The framework approach appears to create a giant loophole wherein the ADB could – prior to any environment, resettlement or Indigenous Peoples’ plan – commit to financing an entire sector or multiple tranches of a large project at a “national level”, with potential significant moral hazard implications;

2) After finance approval, the safeguard requirements would apparently only be those implemented under broad frameworks which had been “agreed upon by the ADB and the borrower.” This is a move away from a clear, unambiguous set of environmental, resettlement and IP implementation requirements to a general “framework” determined through a process of negotiation between ADB and the borrower. It appears that the actual implementation commitments would be developed, apparently by the borrower, during project implementation after the finance has already been approved. It would seem that this would lead to a tremendous reduction in leverage by ADB and project-affected peoples over project outcome and impacts, given the prior disbursement of finance.

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<sup>14</sup> ADB Consultation Draft, pg 9, para 32

<sup>15</sup> Ibid, pg 19, para 51

<sup>16</sup> Ibid, pg 19, para 51, 52

<sup>17</sup> Ibid, pg 19, para 52

3) Using this approach to fund “non-sensitive components of sensitive projects” is a dangerous move away from the ADB’s commitment to take into account the entirety of a project, whether funded by the ADB or not, in terms of safeguard assessments.

For recommendations regarding sector and program loan safeguards see SPU Environmental Policy Analysis Matrix (S. Fried, March 2007, Environmental Defense, pg 7,8).

## **6) Financial intermediaries – Elimination of ADB review of subprojects, “self-reporting” by financial intermediaries**

The ADB’s growing portfolio of projects with financial intermediaries presents similar problems “because subprojects are often unknown when an FI project is appraised and funds are dispersed widely to many subprojects.” The history of environmental, social and moral hazard risks associated with ADB FI projects and sub-projects is an unfortunate one.<sup>18</sup> The current Consultation Draft significantly weakens requirements for financial intermediaries. Concerns are similar to those with framework approach and MFF. When the OED interviewed 147 Appraisal Mission Leaders during their assessment for the SPU, they found that almost 60% of those surveyed felt that subprojects must be subject to environmental assessments. The ADB currently requires that

“for category-A and environmentally sensitive category-B subprojects above the free limit [a monetary limit above which subloans require ADB’s prior approval], the EIA or IEE must be cleared by the ADB before subproject approval. The SEIA or SIEE must be disclosed to the public at least 120 days before the subproject is approved. For these subprojects, ADB reviews compliance with its environmental assessment requirements, including those related to consultation and information disclosure. For subprojects below the free limit, ADB reserves the right to review the subproject proposal and it’s EIA or IEE.”

The Consultation Draft states that “the ADB’s safeguard requirements for the FI client will be tailored to suit the FI’s specific structure” as well as level of risk.<sup>19</sup> There are no requirements for Category C projects. For “all other projects, if there are significant environmental or social risks, “FIs will require their clients to ... apply ADBs safeguard requirements.” The specific language regarding ADB review of safeguard requirement compliance for Category A and B subprojects has been eliminated from the FI section. It appears that the ADB is devolving oversight of environmental, social, disclosure, and consultation practices to the borrower, a most troubling development.

For specific recommendations regarding FI safeguard language please see the Environmental Defense ADB Environmental Policy Analysis Matrix, pg. 10.

## **7) Apparent elimination of language pertaining to ADB requirements and ADB oversight from “General Requirements: Environmental Assessment”**

The existing “General Requirements: Environmental Assessment” section of ADB policy states that “the borrower is responsible for doing the environmental assessment in accordance with its own and the ADB’s environmental assessment requirements.”[emphasis not in original]<sup>20</sup>

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<sup>18</sup> For details see, for example, Fried and Lawrence, The ADB in Its Own Words: An Analysis of Project Audit Reports for Indonesia, Pakistan, and Sri Lanka, 2003, Environmental Defense.

<sup>19</sup> Ibid, pg 19, para54

<sup>20</sup> ADB Operations Manual, Operational Procedures, OM Section F1/OP, 25 September, 2006, pg 2 of 12, paragraphs 4, 5

The new language proposed in the Consultation draft under “General Requirements: Environmental Assessment” mentions “applicable laws and regulations of the jurisdictions in which the project operates” but does not contain language requiring that the borrower conduct the environmental assessment in accordance with the ADB’s environmental requirements.

**8) Lack of information on safeguard implementation costs.** To date, no information has been provided by the ADB regarding costs for (1) properly implementing current safeguards (2) costs necessary to implement planned new safeguards (3) costs necessary to implement monitoring of proposed Multi-tranche Finance Facility loans and implementation of “Country Systems”. For example, during an NGO panel held in May 2007, at the ADB’s AGM in Kyoto, Bank SPU representative Nessim Ahmad was unable to respond to questions regarding the amount of funding foreseen as necessary to properly implement and monitor current safeguards, given the existing safeguard failures. Nor could he provide information on the planned level of funding proposed for the implementation and monitoring of the new safeguards or needed to support the determination of “equivalency” of national systems to internationally recognized standards and monitoring of their implementation. The current Consultation Draft provides no data regarding funding requirements.

Given the clear projection of US\$300 billion in proposed infrastructure costs, the lack of any analysis - including in the Consultation Draft - of funding necessary to provide the increased staffing to monitor safeguard implementation is deeply alarming. There are significant concerns regarding the extent to which promises made regarding safeguard commitments, meaningful consultation, and sufficient resource allocation to safeguard processes would actually occur, given the ADB’s track record. **It is our opinion that, the lack of a detailed budget plan makes it impossible to provide meaningful comment on the Consultation Draft. We strongly urge that a budget must be specified prior to the release of this document for consultation meetings.**

## **9) Concerns regarding “Country Systems”**

There are substantial concerns regarding the proposed implementation of a “country systems” approach as recommended in the Consultation Draft. An examination of the OED review of Environmental Safeguard Policy implementation conducted for the Safeguard Policy Update finds that in the case of India and China, it appears that there is already de facto implementation of “Country Systems” where environmental assessment, project implementation, and monitoring are carried out by the borrower with little input from the ADB. We note that both China and India are countries identified by the OED for the early initiation of an official “Country Systems” approach, if approved by the Board.

What is of deep concern, however, is that the de facto operation of a Country Systems approach in these countries has proven problematic and riddled with irregularities and does not present a promising approach to efforts to guarantee compliance or “equivalence” with ADB safeguard standards.

In the case of India, the OED found that the ADB is “almost completely relying on the semi-annual self-monitoring reports” of project proponents and that “the ADB has never sent an environment-related mission.” They found that the road rehabilitation and construction projects had been routinely declared as Category B projects despite “potentially serious significant environmental impacts.” The OED expressed concerns about the quality of environmental assessments: they were “vague on details of potential impact”, had no “quantitative assessment of type, magnitude, location of possible adverse impact”, were “without site-specific assessment.” The OED found that the IEE reports for all of the case studies “show a close resemblance in content” and featured a “relatively weak” analysis of alternatives and prediction and assessment of impacts. They found a “failure to initiate the EIA at the earliest stage of project design. In some cases, EIAs were undertaken when most of the crucial aspects of the project design had already

been decided.”<sup>21</sup> In addition, “prediction and assessment of impacts is found to be generic”, appropriate analytical tools were not used and “little attention was paid to induced, secondary, and offsite impacts.” The “absence of regular environmental safeguard personnel” in the ADB’s India Resident Mission was cited as a key factor in the observed failures and irregularities. It would seem to be the height of irresponsibility to further decrease ADB involvement in Indian projects under a planned “country systems” approach.

In their survey of projects in China, the OED found that the ADB’s environmental consultants “were engaged primarily for translating and reformatting the EIA report” produced by project proponents – i.e. a de facto country systems approach.

The Chinese projects cited by the OED all used environmental assessments conducted by various Chinese government agencies. Projects cited often had significant impacts on minority populations yet claims were made, for example, that “public consultations indicated that between 86% and 90% of the people supported the projects.”<sup>22</sup>

The OED found that projects included those which had chosen routes which “while minimizing project costs, meant more flat land used and more resettlement required”<sup>23</sup>; projects with “zero costs” budgeted for environmental protection measures;<sup>24</sup> a project in the “experimental part” of a National Nature Reserve where the original EIA (which was “missing”) had failed to assess the impacts caused by hydropower development and transmission lines. The SEIA failed “to address the impact of the access road on the fragile local ecosystem due to improved access to areas previously inaccessible.” There was a sewer project with an environmental assessment that “is quite vague about how to deal with one of the main pollutants from wastewater treatment, viz., sludge.”

The OED did not visit the site of a Category A railway project “located between several major natural reserves and inhabited by a number of ethnic minorities, rich in cultural and archaeological artifacts” but were informed by officials that “since the 1990s, the Ministry of Railways has accumulated substantial experience in environmental management... and its environmental awareness and practices have improved significantly.”<sup>25</sup>

The OED reported that Chinese officials “stressed that the EIA procedures in the PRC are stringent, and the laws and regulations are in place” but indicated that the 120 day rule for Category A projects “may have caused delays in loan approval, especially considering that the domestic EIA process already included consultation with project-affected people and local civil society.”<sup>26</sup>

When interviewed, ADB staff expressed concerns regarding the potential use of “country systems” – i.e. adopting the environmental safeguard system of client countries – such as is apparently already occurring in China and India.

*“When asked about the risks that ADB would face in adopting the country system for the project in various countries [specified by country] 22% indicated that ‘the country environmental*

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<sup>21</sup> ADB OED, Evaluation Study: Environmental Safeguards, September 2006, pg 117

<sup>22</sup> Ibid, pg 119 The OED notes (in the Appendix) that “the samples may have been skewed, and the people who did not show support could have been those who were adversely affected.”

<sup>23</sup> Ibid, pg 120

<sup>24</sup> Ibid, pg 120

<sup>25</sup> Ibid, pg 122

<sup>26</sup> Ibid, pg 122

*safeguard system was either non-existent or inadequate,' 61% indicated that 'the country system looked good on paper but implementation was weak.'*<sup>27</sup>

**10) Concern regarding elimination water, fisheries, energy and forestry safeguard policies.** The ADB has indicated that the new Safeguard Policy will not only replace the Environment, Involuntary Resettlement, and Indigenous Peoples Safeguards, but also the Forestry, Water, Fisheries and Energy Safeguards. We have not had time to assess the content of the water, fisheries, energy and forestry safeguard policies and are concerned that the protective measures of these safeguards will be eliminated. There is a need for further analysis of these policies.

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<sup>27</sup> Ibid, pg 86,