JOINT CIVIL SOCIETY STATEMENT FOR A ROBUST, RIGHTS-BASED AND JUST SAFEGUARDS POLICY AT THE ASIAN DEVELOPMENT BANK (ADB)

The Covid-19 pandemic coupled with the increasingly are widening inequality and reversing decades of poverty alleviation. We are witnessing the catastrophic impacts of non-inclusive disaster response and market-oriented planning which undermines environmental, economic and social well-being. The demand for stronger accountability and binding respect for international rights-based frameworks from public institutions in improving social and environmental governance while simultaneously achieving growth objectives should be at the heart of the development agenda.

The Asian Development Bank’s (ADB) safeguards policy remains critical at a time when international public financing is required across the region to support community resilience and inclusive, just transition. Since the adoption of the Safeguards Policy Statement (SPS) 2011, civil society organizations (CSOs) and trade unions have engaged the Bank in achieving the policy objectives of avoiding harm, mitigating or redressing risks from ADB’s development projects by supporting project-affected communities in seeking redress and compensation, providing context-specific expert views on environmental and social risks, and in forwarding analysis on policy and operational gaps in the implementation of the SPS.

As such, CSOs and trade unions around the world hold this review process with utmost importance and attention. While the Bank’s approach presents promising reforms, we are alarmed that the key directions stated in its approach papers could lead to the dilution of important safeguard commitments.

Collectively, we raise these points before the process leads to an SPS with tremendous substantial and procedural problems when the current demand is to reform toward international laws, standards and norms. In pursuit of the shared objective of reforming the safeguard system, we forward our key recommendations:

1. Improve the safeguard system toward a review process strongly informed by the costly and grave adverse impacts from policy gaps, and poor or noncompliance of SPS implementation. The approach papers dismiss reports from the Accountability Mechanism, other non-Bank sanctioned independent evaluations, and views from civil society supporting project-affected communities as bases for policy development. The Bank is obliged to shift from “avoiding harm” to “preventing harm” under progressing international norms and laws when undertaking development projects. Moving forward to meeting the new demands must be informed by the history of damaging conflict between private sector, government, and community interests particularly in a region of significant challenges in addressing human rights, transparency, and climate change risks and vulnerabilities. We believe the lessons from project-affected communities should be the primary considerations for shaping a new...
And thus, the approach should strongly include equity as a key objective above, effectiveness and efficiency.

2. **Maintain the current risk categorization assessment for environment, indigenous peoples (IPs) and involuntary resettlement and create binding requirements for each category.** The current categorization system has been a relatively useful instrument for identifying and planning for the contextual severities of potential harm to various key sectors at risk. Integrating the categories for the different issues currently addressed by the SPS will be a major step-back in avoiding harm to the environment and communities. A project in an Indigenous Peoples’ community categorized as high risk (category A) for IPs with possibly moderate impact on environment (category B) can downgrade the severity of the risk faced by Indigenous Peoples. Indigenous Peoples have been facing the devastating outcomes of development aggression socially, culturally and economically. The adoption of an integrated categorization risks exacerbating the marginalization of local communities.

Moreover, IED’s evaluation and research show problems of **under-categorization of high risk projects to moderate risks** through inadequate risk scoping, deliberate alterations of data on affected communities, over-reliance on third-party consultants, and the lack of meaningful consultations with communities, to allow them to input in the definition of the severities of risks and vulnerabilities.

In other cases, arbitrary applications of the risk categories and reluctance of clients to conduct thorough considerations of alternatives have been problematic in designing mitigation plans. These cases show that the exercise of due diligence in risk categorization and poor client monitoring are more important issues which need to be addressed in this update process, especially on financial intermediary (FI) projects, than changing the current risk categorization system. Integrating the categories only addresses the demands of the private sector and borrowing-governments for faster and lower lending costs at the risk of current and future generations.

3. **Maintain front-loaded requirements or quality of entry reports such as EIA and SIAs prior to board project approval and the time-bound release of documents.** In paras 18-21 of the Policy Architecture study, the Bank outlines the rationale to moving to a Performance Standards Model. This rationale contains relatively little detail on the Bank’s supervision responsibilities compared with its existing safeguards, notwithstanding the current shortcomings in oversight and accountability documented and analysed by the Independent Evaluation Department (IED) in their recent 2020 evaluation.¹ The IED study underscored the importance of spelling out clear and precise due diligence responsibilities to the Bank and the borrower/client to improve on safeguard outcomes.

For instance, under its Performance Standards, the International Finance Corporation relies mainly on client self-reporting for policy compliance. In the case of the Tata Mundra Coal Power Plant, the Office of the Compliance Advisor Ombudsman (CAO), the accountability

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mechanism for projects supported by IFC, found that the environmental and social reports
which came from the borrower have indicated no potential adverse harm to local populations
and fisheries. In fact, CAO found that a number of IFC’s standard requirements including
on land acquisition and biodiversity conservation were not applied, and due diligence
was disregarded despite the adverse physical, economic and environmental harm
caused by the Tata Mundra Coal Power Plant to the community and the environment.

Furthermore, the identification of risk for Gender, Climate, Land Acquisition, and Cultural
heritage should be made in the concept stage of a project and the disclosure of information
to stakeholders should be made within a time-bound frame (e.g. 60-120 days for Category A
projects) **Include transparency clauses in loans and contract agreements with FIs and
enforce public disclosure & reporting requirements.** MDBs such as the ADB have cited
their increased focus on promoting transparency in development financing. However, decades
of CSO monitoring of private sector & FI operations have shown these lack transparency.
The TA on Strengthening ADB’s Safeguards Policy Provisions and Procedures launched by
the Bank showed a weakness in client safeguards capacities in private sector financing. This
has resulted in more complex social and environmental risks. As the Bank’s private sector
lending portfolio doubles, there is a growing need for unambiguous and specific transparency
clauses in contract agreements which includes timely, open, and accessible reporting similar
to those seen in sovereign loan and projects agreements

4. **Maintain the use of equivalency and acceptability baseline for the use of the country
safeguards system (CSS).** The principle of country ownership is not a justification for
allowing human rights violations and putting populations at risk. Based on the IED evaluation,
only a few high-income member-countries have the capacity to meet SPS requirements
despite more than 40 million USD in TAs to improve CSS. The revised SPS should set a
higher standard for borrowing governments with poor national environmental and social laws
and regulations. In some countries where they have adequate policies, budgeting and
implementation for safeguards requirements are often subjected to the political landscape.
The IED recommendation that "the approach followed under the SPS to adopt CSS in ADB-supported
projects through equivalence and acceptability assessments needs to be replaced" should be adopted.

5. **Strengthen the binding requirements for both sovereign and non-sovereign lending
and avoid the IFC open-ended approach to compliance.** In para 20 the Bank outlines an
“approach to compliance .... achieved over agreed time frames provide an opportunity to
borrowers to demonstrate their ownership “. This statement does not offer any clarity on
how the objectives of country ownership do not override the Safeguards’s risk management
objectives. The World Bank’s Independent Evaluation Group’s learning review “Managing
Environmental and Social Risks in Development Policy Financing" (2015) cautioned on how
policy ambiguities can lead to inconsistent policy compliance. This delegation of safeguard

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responsibility to weaker safeguard systems can have disproportionately damaging and irrevocable social and environmental impacts on the poor.

For instance, under the Oyu Tolgoi copper mining complex in Mongolia which was financed by the IFC, Rio Tinto have poorly assessed the risks culminated by the mine and the power plant on the environment and analyses from Bank Information Center show that communities’ pastureland were adversely impacted by the project and they were severely undercompensated. While the IFC’s own performance standards require clients to produce an ESIA for projects with large-scale adverse impact, these ESIA’s are not required to be completed before approval. The ESIA’s role is to prevent and mitigate harm BEFORE not AFTER it happens. Rio Tinto refused to acknowledge the project’s cumulative impact and take corrective action.

6. **Strengthened guidance for involuntary resettlement safeguard to include gender, economic and climate-induced displacements and cultural issues.** While the current IR safeguard recognizes both physical and economic displacements, most IRR plans only compensate for physical displacement in the project area without having clear plans or compensation schemes for communities, economic sectors and households that will be marginalized as a result of the shift in land use due to ADB’s project. The SPS should also integrate IR issues in countries where rights to own land for women and other cultural groups are not recognized by customary law, yet they depend and cultivate the land marked for ADB projects. Furthermore as global temperatures continue to rise, large infrastructure projects funded by the ADB can exacerbate climate-induced impacts on communities. This can lead to further displacement and resettlement. The update of the Safeguards policy should therefore improve its guidance for IR based on these experiences and contexts.

7. **Meaningful inclusion of more and urgent safeguards issues supported by a coherent umbrella of safeguards systems and tools.** We welcome the broadening of the themes to include labor, persons with disabilities, child rights and sexual abuse and harassment in the safeguards as a response to the progressing international laws, standards and norms.


The inclusion of these themes should be cohesively and coherently integrated in the umbrella policy of the safeguard system which include the SPS, the sector policies, operations manual, technical notes and guidance notes to staff. The stakeholder engagement policy and the grievance redress mechanisms should then be revised to include the contextual needs of labor, peoples with disabilities, women, children, LGBTQ+, indigenous peoples, involuntary displaced populations, the elderly, and other marginalized groups to participate meaningfully in policy and project-level decision making processes.

b) The 2030 Agenda for Sustainable Development, including the Sustainable Development Goals, advances an integrated environment, social and economic planning. This is an opportunity for introducing SPS reforms which avoid and mitigate social and environmental harm from its sectoral assistance through its different lending modalities and instruments, including technical assistance projects that lead to long-term inequities, climate change risks, biodiversity damage, and loss of cultural heritage. The safeguard system should include baselines and risk assessments that aid in identifying the most critical hazards of assistance for biodiversity, public health, cultural heritage both intangible and tangible, climate change, and economic resilience on privatization schemes, identify the severity of these risks to at-risk populations, identify actions to address the needs of at-risk populations into planning, and specifically account for hazards that require prolonged recovery. This upstream assessment of risks systematically linked with the downstream supervision and monitoring of mitigation plans should be a key part of the Bank’s safeguard reform.

c) **Introduction of a climate safeguard and inclusion of high-GHG emitting activities in the Bank’s list of prohibited investment list.** In response to the climate crisis, we welcome the Bank’s intention to include climate safeguarding. To make this meaningful and contributory to the Paris Agreement, the Bank should establish its overall cap on emissions by 2030 with specific goals for fragile island states and countries with high vulnerabilities to climate change and develop a transparent plan to achieve a net-zero emissions by 2050. These climate targets should then be the basis of priorities for partnerships on climate and green financing with member-countries and the private sector.

Specifically, the SPS must:

a. State divestment in countries adopting high-carbon development pathways and sectors unless transparent, low-cost, low-carbon, pro-poor, and sustainable Nationally Determined Contribution plans are established in a transparent and participatory manner with at-risk populations to climate change. It should also explicitly include
fossil-fuel, gas, oil, big hydro and waste-to-energy investments in ADB’s prohibited investment activities list.

b. Require baselines on direct and indirect GHG emissions for all of its current approved projects and those for approval including energy, electronics, regional production centers, transportation, waste and landfill facilities and agriculture as key GHG emitting sectors and its associated facilities; and set mandatory annual reporting for private and public sectors on GHG emissions. Further, the SPS must have a strong focus on improving the capacities of member-countries in regulating and monitoring GHG emissions.

d) **Ensuring better protection of cultural heritage through recognition of the importance of both tangible and intangible cultural heritage for present and future generations.** It is widely recognized that tangible and intangible cultural heritage are important assets and are an integral part of the continuity of cultural identity and practices (including traditional skills, knowledge, beliefs and/or minor dialects and language). With that regard, ADB’s Safeguard policy statement 2009 does not include even the minimum requirements set out under international legislation and conventions. The Bank’s safeguards evaluation (2020) acknowledges that even the required physical cultural resources safeguards have been infrequently applied by the Bank in its projects.

Therefore, SPS should aim to:

i. Protect Cultural Heritage from damage, inappropriate alteration, disruption, removal, or misuse and adopt the mitigation hierarchy approach from adverse impacts arising from the project

ii. preserve and safeguard both tangible and intangible Cultural Heritage

iii. promote of the equitable sharing of benefits from the use of Cultural Heritage and

iv. ensuring meaningful consultation with stakeholders regarding preservation, protection, utilization and management of Cultural Heritage

The new policy should ensure that Cultural Heritage is preserved, protected, and promoted in project activities in a manner consistent with UNESCO Cultural Heritage conventions or any other national or international legal instruments that might have a bearing on the use of Cultural Heritage. To achieve its goal, SPS should ensure assessment of potential direct, indirect, irreversible and cumulative risks and impacts to

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Cultural Heritage from project activities and carry out Heritage Impact Assessment. The detailed procedures in line with best international standards should be provided for legally protected cultural areas, archaeological sites, built and movable heritage, landscapes and natural features with cultural significance.

Meaningful public participation of concerned parties in case of risks and impacts to their tangible and intangible Cultural Heritage should be undertaken. The risks and impacts should also include threats of decontextualization, commodification and misrepresentation along with physical ones, appropriate mitigation and safeguarding plans should be prepared and implemented under the Bank’s detailed scrutiny.

e) **Ensure biodiversity is protected.** Full-scale environmental impact assessment (EIA) should also be required. Element IV of the EIA report should include assessing the cumulative impacts with other projects or plans adversely affecting the area: (iv) anticipated environmental impacts, cumulative impacts and mitigation measures.

Point 28 of the Biodiversity Conservation and Sustainable Natural Resource Management should be modified “No project activities whose residual impacts on critical habitats remain significant should be implemented”. The reason is that compensatory (offset) measures have proven to be weak. There is no scientific way to prove “no net loss” of biodiversity or “no significant net degradation”. Additionally, authors of EIA reports and environmental management plans (EMP) tend to underestimate the actual impacts by taking the best-case scenario in case of scientific uncertainty, thus violating the precautionary principle.

Critical habitat should include not only habitat of Endangered and Critically Endangered, but also habitat of Vulnerable species as defined by the IUCN Red List of Threatened Species or as defined in any national legislation. Vulnerable species are likely to become endangered unless the circumstances that are threatening their survival and reproduction improve.

Critical habitat should also include intact primary forests and vulnerable, secondary forest ecosystems, including but not limited to boreal, temperate, and tropical forest landscapes; free-flowing rivers, defined as bodies of water whose flow and connectivity remain largely unaffected by human activities; protected or at-risk marine or coastland ecosystems, including mangrove forests, wetlands, reef systems; any Indigenous Peoples and Community Conserved Territories and Areas (ICCAs), community-based conservation areas, formally, informally, traditionally, customarily held resources or areas, Indigenous

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6 For example, see the ICOMOS Guidance on Heritage Impact Assessments for Cultural World Heritage Properties. Where supported activities may affect natural World Heritage sites, see IUCN World Heritage Advice Note on Environmental Assessment.


8 see point 94 of the review as an example https://www.adb.org/sites/default/files/evaluation-document/448901/files/safeguards-evaluation2020.pdf
Territories, sacred sites and/or land with ancestral significance to traditional and Indigenous communities’ areas where the free, prior, informed consent of Indigenous and Traditional Communities have not been obtained.9

Point 30 of Biodiversity Conservation and Sustainable Natural Resource Management should be modified to nationally and internationally recognized protected areas, and include not only legally protected according to national law, but also areas recognized by international conventions and agreements including but not limited to the Bonn Convention, Ramsar Convention, World Heritage Convention and Convention on Biological Diversity, or other international bodies such as UNESCO (Biosphere Reserves, UNESCO Global Geoparks, etc) or Food and Agricultural Organization (vulnerable marine ecosystems), International Maritime Organization (particularly sensitive areas), IUCN Designated Areas (Categories IA – VI).

f) Expansion of safeguards coverage to emergency assistance, recovery and disaster risk loans, technical assistance, and associated facilities. The Bank and the borrower must apply the rule of law, including safeguards due diligence, information disclosure, meaningful public participation, non-retaliation and access to grievance mechanisms in these loans. Our monitoring of the Typhoon Yolanda and COVID-19 loans indicate disbursement without safeguards due diligence requirements in the name of efficiency and flexibility yet the projects address outputs including policies, roads, and assistance that bear long-term impacts for communities. Additionally, lack of information disclosure has paved the way for massive corruption and delays of recovery assistance to at-risk populations.

Instruments such as Technical Assistance (TA) and associated facilities also comprise a growing proportion of the Bank’s portfolio. The deployment of these instruments often leads to policy reforms. Yet, TAs and associated facilities are not covered by Safeguards which are meant to protect against harms to communities, who are not also often not consulted during these non-investment lending activities. In Nepal, we note that the ADB lends for technical assistance for feasibility studies, EIAs, project preparation, etc. which are later transformed into projects.10 Yet, safeguards are not applied in such technical assistance projects which are categorized low on risks. When the actual construction happens in line with the feasibility or EIA supported by the ADB, there is displacement and other impacts on indigenous and other affected communities. Given their potential to cause harm, the new Safeguard policy should extend its application to TAs and associated facilities.

g) Extended period for filing a complaint from two years after project closure to five years. Weak SPS due diligence exacts long-term repercussions for communities, sectors, 

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9 see here https://banksandbiodiversity.org/the-banks-and-biodiversity-no-go-policy/
biodiversity and climate and the environmental and social consequences may take longer to be analyzed by affected communities. A sector reform intervention will take years beyond the project life before retrenchments are completed and or consequences are made tangible. Adding three more years from the current two years after closure of the project as the prescribed period for filing a complaint should be part of the SPS reform.

h) **Due diligence on meaningful consultation and participation for all types of assistance.** ADB must undertake a study as part of its SPS approach of its transparency and its stakeholder engagement operationalization at the policy, program and project levels especially in the context of shrinking spaces for civil society. Given the power imbalance experienced by communities, we recommend that the SPS integrate a proactive approach, especially for private sector and FI projects to ensure that risks and mitigation plans are meaningfully consulted, project assessment terms of reference and when a full assessment draft is available, in accordance with Bank safeguards for consultation and participation in a timely, manner free of fear, coercion and retaliation, with prior provision of information in a language and manner accessible to affected communities; and local communities and affected people have knowledge about and access to an effective and independent complaints mechanism. The past years of implementation have shown that social conflicts from poor safeguards implementation are costly for society at large.

i) **Application of Free, Prior and Informed Consent (FPIC) for all communities affected by ADB projects and not only for indigenous peoples.** New laws and safeguards mechanisms have recognized that inadequate consultations with communities could seriously compromise the delivery of both local and global benefits and the long-term sustainability of development projects. For instance, the UN REDD includes the application of the FPIC to forest-dependent communities. Humanitarian interventions also apply this to internally displaced communities. In data governance, FPIC has been pivotal in protecting privacy issues. FPIC can support the Bank and its borrowers in ensuring that they have obtained an accurate situational analysis and help them manage operational, legal, financial, compliance and reputational risks.

j) **Introducing protections for human rights defenders.** In accordance to the OHCHR and historical cases of disputes against borrowers and affected communities, the SPS must include a principle on zero-tolerance to retaliations and a detailed approach integrating contextual and project-related assessment of reprisal risks, addressing risks as they arise, proactive engagement to prevent reprisals, and a response protocol so that

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12 FPIC is already operationalized by IFAD, through its policies on Improving Access to Land and Tenure Security (2008) and Engagement with Indigenous Peoples (2009). The principle is also mentioned in the IFAD Policy on Environment and Natural Resource Management (2011) and in IFAD’s Social, Environmental and Climate Assessment Procedures (2014). IFAD is the first international financial institution to adopt FPIC as an operational principle in its policy documents.
when threats and reprisals materialize the Bank is positioned to respond in a timely and
effective manner to minimize and remedy harm, and to prevent future attack.

k) **Human rights due diligence.** A sound system of human rights due diligence at project
level all through the project cycle, via dedicated ex-ante screening and Human Rights risk
assessments conducted by the bank, and with participatory Human Rights impact
assessment to be required from the client when risks are identified. This sound system
also commands continuous monitoring of the situation on the ground in order to ensure
that projects respect the international standards on human rights.

**Finally, it is imperative that a meaningful consultation is ensured throughout the review
process.** With these concerns, we move these critical points as the spaces provided for the
stakeholder engagement have been dismissive of the requirements of what meaningful
consultations are in the SPS. The kind of stakeholder engagement we are currently witnessing is
reinforcing the shrinking civic space which inhibits critical debates on necessary reforms.
Development financing plays important roles yet we come to a shared understanding that weak
accountability has long-term and devastating impacts that can have long-term impacts on
economies, communities, sectors, biodiversity, and the climate. A robust, green, and just
safeguards is not a cost but an investment for ADB’s development investments, for social equity
and sustainable development in which underspending and poor governance pose huge risks for
all stakeholders but most especially the poor and the environment.
Endorsed by the following organizations:

350.org, Asia
Aksi! for gender, social and ecological justice, Indonesia
Asian Peoples’ Movement on Debt and Development (APMDD), Regional
Building and Wood Workers International, Philippines
BWGED (Bangladesh Working Group on External Debt), Bangladesh
Bank Information Center, USA
Center for Energy, Ecology, and Development, Philippines
Center for Environmental Justice, Sri Lanka
Change Initiative, Bangladesh
CLEAN (Coastal Livelihood and Environmental Action Network), Bangladesh
COMPPART Foundation for Justice and Peacebuilding, Nigeria
Community Empowerment and Social Justice Network (CEMSOJ)
Environics Trust, India
Environmental Public Society, Armenia
Equitable Cambodia, Cambodia
Growthwatch, India
Indian Social Action Forum (INSAF), India
Indigenous Perspectives, India
Nash Vek, Kyrgyzstan
Oil Workers’ Rights Protection Organization Public Union, Azerbaijan
Oyu Tolgoi Watch, Mongolia
Pakistan Fisherfolk Forum, Pakistan
Recourse, Netherlands
Rivers without Boundaries Coalition, Mongolia
Sri Lanka Nature Group / FIAN Sri Lanka, Sri Lanka
Urgewald, Germany
Youth Group on Protection of Environment, Tajikistan