

Indigenous Peoples and the ADB

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In 2005, the ADB published a discussion note outlining their plans to review and update their three safeguard policies stating: “there is recognition of the need to enhance the effectiveness and outcome orientation of ADB’s safeguard policies, while at the same time streamlining procedures and reducing transactions costs.”¹ This statement has been met with some concern. The three safeguard policies together form the ADB’s commitment to protect the rights of the vulnerable and marginalized peoples of Asia and the Pacific from the detrimental effects of ill-planned development. Any streamlining or reduction in transaction costs must be made in a context where the fundamental principles of the policies are strengthened and improved.

Given that the policies are to be reviewed and updated, it is timely to look back at the existing *Indigenous Peoples Policy*. For in its short life, it has proven to have strengths and potential value for indigenous peoples, as well as severe and, at times, crippling implementation difficulties and other weaknesses regarding the rights of indigenous peoples. If this policy is to be reviewed and updated in a comprehensive and serious way, it is the view of the authors that full and effective participation of, and widespread open consultation with, indigenous peoples in Asia and the Pacific is a minimum requirement for initiating such a review. It is further the view of the authors that any revision of the existing policy must conform to emerging and existing international standards and good practices on the protection and promotion of the rights of indigenous peoples.

History of the IP Policy

In 1998, the Asian Development Bank formally recognized that some previous development initiatives had intensified the marginalization and poverty levels among indigenous peoples in Asia.² Specifically, the Bank noted that the loss of access to land and lack of participation in development had led to not only increased marginalization of indigenous peoples, but in some cases, physical oppression and disintegration or disappearance of distinct cultures.³

To protect against the continuation of such a destructive legacy of ‘development’ for indigenous peoples, and in recognition of the fact that indigenous peoples have distinct development aspirations, the Bank developed an Indigenous Peoples Policy. In the policy, the Bank recognizes that “...

initiatives should be compatible in substance and structure with the affected peoples’ culture and social and economic institutions, and commensurate with the needs, aspirations, and demands of affected peoples.”⁴ Further, to safeguard indigenous peoples’ rights to effective participation, the Bank stated that “Initiatives should be conceived, planned and implemented, to the maximum extent possible, with the informed consent of affected communities, and include respect for indigenous peoples’ dignity, human rights and cultural uniqueness.”⁵ Despite the potentially weak language of ‘should’ and ‘to the maximum extent possible’, this policy was ground-breaking for the ADB and indicated a willingness on behalf of the Bank to work actively to promote socially and environmentally positive development.

Key Safeguards

Although the ADB Indigenous Peoples Policy does not compare well with other international financial institutions’ safeguards for protection of the rights of indigenous peoples, the policy does contain some potentially useful safeguards and is mandatory for all loans and lending modalities for the Bank where indigenous peoples may be negatively affected.

The policy acknowledges, positively, the disadvantaged position of many indigenous peoples in national societies and provides useful references to international law pertaining to the rights of indigenous peoples.⁶ These references provide useful context to borrower governments of the wider availability of guidance on the legal requirements for protection of indigenous rights. The

references need to be updated to reflect recent changes in international law pertaining to indigenous peoples, in particular reference to the UN Declaration on the Rights of Indigenous Peoples passed by the Human Rights Council in September 2006.

The policy also provides that indigenous peoples' organizations and representative authorities should be involved and *strengthened* by involvement in ADB-funded projects.⁷ This provision can be read to ensure the involvement of indigenous peoples in projects in their areas, in such a way as to strengthen their own work and decision-making processes. These positive provisions have the potential to secure the rights and interests of indigenous peoples, at least in the limited circumstance where the Bank and the borrower government are in agreement.

Weaknesses in the Policy

However, there are two key weaknesses in the policy as it currently stands that threaten to ameliorate its value for indigenous peoples. One of the most serious gaps in the policy is the general treatment of the policy at par with other policies of the Bank, since the policy "applies in parallel with and does not replace or supersede other ADB policies and practices."⁸ In practice, this could mean that if there is a contradiction between the Bank's *Indigenous Peoples Policy* and another ADB policy or practice, the *Indigenous Peoples Policy* will not necessarily prevail, and this can work to the detriment of indigenous peoples.



Fish from the Xe Bang Fai, caught by a hinterlands' villager.

Photo by Sharon Lawrence/Inli Rivers Network

A second and potentially more serious weakness is revealed in the following statement: "each of the *elements of the policy* and practice addressing indigenous peoples *are considered within the context of national development policies and approaches*, and the fundamental relationship between the ADB and governments remains the basis for country-specific

operations (emphasis added)."⁹ In practice, this means that the application of the policy is dependent not only on the findings of the IPSA but additionally on 'national development policies and approaches' and on the relationship between ADB and borrower governments. Thus, the application of the policy could potentially differ from country to country, and in doing so, fail to uphold the international principles and standards of indigenous peoples' rights that are referred to in the policy itself.

Implementation difficulties

Notwithstanding these key weaknesses in the policy itself, there have been serious difficulties in the implementation of the policy's provisions. Initially it must be noted that research available on the impacts of ADB projects on indigenous peoples is neither comprehensive nor objective. The majority of research available is either funded by the Bank itself, or directly compiled by affected communities and support organizations. Despite these difficulties with available research, the Bank's own evaluation of the use of the Indigenous Peoples Policy, released as part of the review process, notes that implementation is marred by lack of staff understanding of the policy, lack of resources available to properly implement its provisions and lack of guidance on how staff should undertake required steps such as community consultations.¹⁰

Reviews conducted by indigenous peoples' and other organizations in affected areas also point to a range of difficulties in implementation. In Bangladesh, for example, the role of the Bank in the forestry sector (through loans and Technical Assistance grants) is regarded by indigenous peoples and environmentalists to have done more harm than good to the indigenous communities living in and around forest areas.¹¹

Need for the Policy

Support for the retention and improvement of the *Indigenous Peoples Policy* is strong within the ADB, and a thorough and effective review of the policy has been called for by indigenous organizations since its adoption. In the ADB Evaluation Study into the use of the *Indigenous Peoples Policy*, the OED noted that projects approved before the introduction of the Indigenous Peoples Policy paid “less attention” to IP issues “and consequently harmed IP interests” when compared with projects approved after the introduction of the policy.¹² Surveys of staff involved in projects, where the *Indigenous Peoples Policy* was triggered, overwhelmingly stated that the safeguards were effective in mitigating unfavorable impacts from projects (only eight percent stated that the safeguards were not effective, 25 percent did not answer the question).¹³

Concerns with the Safeguard Update Review Process

Since the Safeguard review process was initiated in 2005, there has been little effort expended by the ADB to engage effectively with indigenous peoples on the review process. One round of consultations is planned, with limited available places for attendees. Further, the documents made available to date seem to suggest that the review process may result in a weakening of the Safeguard framework. The conclusions and recommendations in the OED Evaluation Study are weighed towards a consolidation of the three existing policies into one safeguard policy, although no decision on this has yet been taken. The study states that “potential duplication of effort in mitigation measures” must be avoided, and that “the value added of risk mitigation measures in most Indigenous Peoples Development Plans was small.”¹⁴

There also appears to be a trend towards increasing reliance on country safeguard systems in the discussion documents provided to the public to date. In the early discussion note on the Safeguards update process, the ADB stated that multilateral development banks need to place “emphasis on the desirability for development partners to harmonize their practices and procedures around country systems, including country safeguard systems.”¹⁵

However, reviews show that the ADB lags well behind other multi-lateral development banks in its existing Safeguards, and country-led legal frameworks in Asia often do not provide adequate protections for indigenous peoples. Any weakening of the existing policy would further distance the ADB from existing international standards and best practice, and reliance on country systems would pose a series of risks and problems for indigenous peoples in the region. In countries where the ADB enjoys legal immunity, such as in Bangladesh, this could have severe implications for indigenous peoples’ rights. Even in countries where there is no such legal immunity, the generally disadvantaged situation of the vast majority of the indigenous population subjects them to getting the lowest common denominator standard, as between their national government and the ADB.

Recommendations

Opportunities can always be created to open the necessary space for indigenous perspectives, if the Bank’s high-level decision-makers can muster the will to do so. The ADB has formally consulted indigenous peoples and other “stakeholders” in the process of policy-formulation,¹⁶ and policy-review in the past.¹⁷ However, these processes are generally inadequate in terms of time and opportunity given to indigenous peoples and other *stakeholders* to provide their inputs,¹⁸ a trend which is being repeated in the current safeguard review process. Unless such trends are corrected, indigenous peoples will remain

substantively deprived of their rights in ADB-financed projects and interventions in their areas. To correct this, there must be a clear agreement on the modality for consultation with indigenous peoples prior to the continuation of the current review process and such modalities must be established and agreed with indigenous peoples.

It is essential that there is a concrete commitment from the Bank that any update or review of the existing standards will strengthen – not weaken – the safeguards concerned, and will seek to match or exceed international standards and good practice. The basic rights of indigenous peoples, including their right to self-determination, their

rights over their lands and territories, and their right to prior and informed consent¹⁹ concerning development interventions in their areas are now part of customary international law. These need to be unequivocally acknowledged as part of mandatory guidelines in any policy revision.

References:

Asian Development Bank, *Indigenous Peoples Policy*, 1998.

Asian Development Bank, Operations Evaluation Department Evaluation Study, *Indigenous Peoples Safeguards*, 2007.

Asian Development Bank, *Safeguard Policy Update: A Discussion Note*, October 2005.

Raja Devasish Roy, "Perspectives of Indigenous Peoples on the Review of the Asian Development Bank's Forest Policy", background paper presented as part of *indigenous peoples' perspectives* on the Asian Development Bank (ADB)'s Forestry Policy at the Regional Workshop on Review of the bank's Forestry Policy, at Manila, Philippines, on 14-15 February, 2002.

Raja Devasish Roy & Philip Gain, "Indigenous Peoples and Forests in Bangladesh" in Minority Rights Group (ed.), *Forests and Indigenous Peoples of Asia*, Report 98/4, London, 1999.

Endnotes

¹ Asian Development Bank, *Safeguard Policy Update: A Discussion Note*, October 2005. p. 4.

² Asian Development Bank, *Policy on Indigenous Peoples*, 1998. p. 1.

³ Ibid.

⁴ Asian Development Bank, *Policy on Indigenous Peoples*, 1998. p. 17.

⁵ Ibid.

⁶ Asian Development Bank, *Indigenous Peoples Policy*, pp. 13-15.

⁷ Ibid.

⁸ Asian Development Bank, *Indigenous Peoples Policy*, p. 25.

⁹ Ibid, p. 25. The same paragraph further provides the following (at p. 25): "The strategies and approaches employed by ADB in relation to indigenous peoples build on the existing strategic framework and operational experience. The policy addressing indigenous peoples complements and supports, and is complemented and supported by other ADB policies. Compliance with the policy on indigenous peoples does not obviate the requirement of compliance with other ADB policies."

¹⁰ Operations Evaluation Department, ADB Evaluation Study, *Indigenous Peoples Safeguards*, 2007.

¹¹ Raja Devasish Roy, "Perspectives of Indigenous Peoples on the Review of the Asian Development Bank's Forest Policy, " background paper presented as part of *indigenous peoples' perspectives* on the Asian Development Bank (ADB)'s Forestry Policy at the Regional Workshop on Review of the bank's Forestry Policy, at Manila, Philippines, on 14-15 February, 2002. See also, Raja Devasish Roy & Philip Gain, "Indigenous Peoples and Forests in Bangladesh" in Minority Rights Group (ed.), *Forests and Indigenous Peoples of Asia*, Report 98/4, London, 1999, pp. 21-22.

¹² Ibid, p. 61, para 165.

¹³ Ibid, Annex 14, p. 105.

¹⁴ Ibid, p. v

¹⁵ Asian Development Bank, *Safeguard Policy Update: A Discussion Note*, October 2005. p. 4

¹⁶ For example, the ADB held one formal consultation with indigenous peoples' representatives regarding its (then draft) *Indigenous Peoples Policy* in Punta Baluarte, Philippines in 1995. This was not regarded as *adequate consultation by indigenous peoples' representatives*.

¹⁷ For example, the *Regional Workshop on Review of the Asian Development Bank's Forestry Policy* held in Manila, Philippines, on 14-15 February, 2002

¹⁸ For example, in the case of the draft *Indigenous Peoples' policy meeting* held in Punta Baluarte, Philippines, 1995

¹⁹ The ADB Evaluation Study states unequivocally that the "ADB endorses the principle of free, prior and informed consent for the project from the side of IP". ADB OED Evaluation Study. P. ix