

# **SUBMISSION ON THE ADB ENVIRONMENT POLICY WORKING PAPER, AUGUST 2001**

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## **General Comments**

For a long time serious concerns about the impact of ADB activities on the natural environment in developing member countries have been raised by affected local communities, people's movements, non-government organisations, researchers, scholars and citizen groups.

These concerns have been raised both in relation to the overall development approach and paradigm of the ADB - which has favoured rapid export-driven industrial development – and in relation to the impacts of specific ADB-funded projects, such as large-scale hydro-electric schemes, agro-industrial development, road-building etc.

Through its lending program, the ADB has not only promoted and financed many projects which have had serious detrimental environmental and social impacts, but has also used its lending leverage to impose far-reaching policy frameworks and institutional reforms on borrowing country governments which have contributed to accelerating environmental degradation and commercial exploitation of natural resources long utilised by local people and communities.

Of particular concern is the way in which many of these ADB processes – both at project and policy level – have ignored and undermined the rights and livelihoods of local people and communities, and have often bypassed – and indeed weakened - local and national democratic processes. In this context, the ADB's lack of accountability has been raised as a serious concern by civil society in many countries.

While the process of developing and 'improving' specific ADB policies relating to environmental and social issues is therefore of interest, we have reservations about the degree to which a process of sectoral policy discourse is likely to be able to address fundamental institutional and accountability issues that we believe are pivotal. Indeed, we believe that unless the ADB is able to demonstrate a serious commitment to fundamental institutional change, the policy reform process may simply be an irrelevant distraction.

Already the ADB has a wide range of comprehensive policies and guidelines in place including that for environmental assessment, poverty alleviation, public participation, information disclosure, corruption etc. Yet the problem faced by many affected communities is not the lack of relevant policies, but lack of policy compliance and the undermining of sustainable communities by the wider economic development paradigm.

The ADB is now seeking comments on a new Draft Environmental Policy (Aug 2001). Before making some specific comments on the content of the Policy (below), we would like to highlight some overall concerns and observations;

- **Overall Development Approach** – while the policy does contain some interesting and useful discussion about the conflict between environmental sustainability and the Bank's traditional economic development approach, this discussion is not coherent and contains contradictions and poorly substantiated assumptions. Complex political, social and cultural factors are ignored or superficially glossed over. One is left with the feeling that despite the claim of 'policy integration', this policy is being developed on top of (and separately from) the Bank's existing development model, with little evidence that the policy reflects a fundamental shift or rethink in how the Bank 'as a whole' approaches development.

The inclusion and development of the Preamble seen in the February 2001 draft of the environment policy would be a good first step. The discussion of the negative impacts of globalisation and 'The Causes of Environmental Degradation in DMCs' is a useful starting point. While globalisation has been occurring for centuries, its modern form consists of an increasingly deregulated, export oriented, industrial, fast track economic growth model of development. There is a need to move away from the present systematic race to the bottom and to start a process of re-regulation (global and national). The focus and priority of economic development needs to be shifted from a preoccupation with global integration to that of building strong national economic and social sectors as a first priority and where there are more direct national and local political links to environmental and social concerns that arise as a result of economic development.

- **Environment / Livelihood / Rights Issues** – It is widely recognised that the current direction of the dominant model of economic development is undermining the environmental and livelihood security for the vast majority of the Asia-Pacific's rural poor, whose livelihoods are closely dependent on natural resources and environmental well-being. Intensified resource development (much of it for export purposes), large-scale infrastructure projects, rapid market development and privatisation of whole resource sectors in the absence of well established resource tenure pose a direct threat to livelihood security of the poor, those least able to respond to or articulate their concerns. It is also eroding the diverse knowledge systems and local management regimes, which can play an essential role in ensuring socially and environmentally sustainable development. While the policy document does acknowledge the link between poverty and environmental degradation – it does not adequately recognise how the Bank's development model and projects are in many cases contributing to creating and exacerbating poverty. Nor does it clearly articulate the importance of recognising and protecting the rights of local communities to manage their natural resources as a key strategy for environmentally sustainable development.
- **Policy Compliance** – Compliance must be one of the most important elements of any credible process of policy development. This must include independent systems for monitoring and evaluating policy adherence, as well as effective complaints and inspection functions. The Environment Draft Policy does not adequately address the question of how compliance will be independently monitored – or what recourse is available in the case of non-compliance by the Bank. The current Inspection Function policy, currently being tested in the case of Samut Prakarn, is already proving to be slow, cumbersome and inadequate, and does not even provide for the suspension of loan disbursements and project construction while policy breaches are being investigated. The Policy needs to provide far more substantive detail on the proposed

mechanisms for monitoring policy compliance, and make explicit linkages to the process of strengthening and enhancing the Inspection Function policy.

- **Historical and Political Dimensions** – Environmental degradation and social dislocation in the Asia-Pacific is fundamentally the result of historical and political processes, and we believe that any credible policy response must recognise these. The environment and natural resources are not simply abstract quantities to be technically ‘managed’ by governments with assistance from the ADB. The control over natural resources, commercial exploitation, legal tenure systems, government regulation frameworks are all critical to environmental outcomes, and are also deeply political at a local and national level. It is disingenuous for the ADB to portray itself as ‘apolitical’. Given the significant political influence which the Bank exerts in developing member countries, the questions of the Bank’s democratic legitimacy and accountability are paramount when considering its role in environmental outcomes.

## **BROAD BASED COMMENTS ON SPECIFIC ITEMS IN THE DRAFT POLICY**

### **Missing Preamble**

The February 2001 Environmental Policy Working Paper (EP) preamble discussed the environmental and social impacts of globalisation. The August EP is without a preamble. Without such a preamble the EP is a reactive policy document, reacting to impacts created in other sectors. A proactive policy requires a clear understanding of the broad development paradigm, the driving forces under which development and its social and environmental impacts occur in order to intercept and advocate (ADB wishes EP to be a document for advocacy – para 8) for positive change. Although this preamble was not complete at the time, we would like to see this completed and to be able to comment on.

## **I. POLICY CONTEXT AND CHALLENGES**

**6. (i)** Sustainably managed by whom? The EP needs to advocate the importance of enhancing the rights of local communities to be involved in the management of livelihood-based resources.

**6. (iii)** Institutional change needs to be brought about by internal and democratic political processes and at a pace acceptable to the respective society. Too much structural and institutional change occurs without an appropriate level of internal debate and national political oversight, and with too much influence from unaccountable players such as corporations, consultants, the donor community and IFIs. The paradigm of fast track growth and global economic competitiveness drives the rapid pace of change that marginalises some groups ill-equipped (lack of social capital) to deal with fast-paced change. The checks and balances on unrepresentative political systems, where and when they do occur, should be broad-based consultative and participatory approaches that put the poor first.

## **II. PRINCIPLES UNDERLYING ADB’S ENVIRONMENT POLICY**

**22.1 (a)** Access to information should not be restricted to just environmental agencies. Certain social and environmental costs, in particular social costs, are not always within the jurisdiction of environmental agencies (refer to comments below on para. 22.2 (a)). This should be a broad principle advocating for access to information, whatever the agency may be.

**22.1 (b)** Under the broad principle of environmental good governance, the value of public participation must be considered beyond the project level wherever possible including programmatic areas and development planning. Operational guidelines for EIA and public participation at a project level must explicitly call for commencement of public participation at the scoping stage. Additionally, attention must be given to issues of appropriate communication with local communities including language, stipulation of adequate time for dissemination of information and consultations, and detail monitoring and complaint mechanisms. These requirements are presently not operationalised.

**22.1 (c)** Recourse for communities affected by Bank policy breaches must be strengthened. The Inspection Function presently appears to be cumbersome and problematic, and is creating considerable scepticism and distrust within civil society. Some key concerns are that the process is far too slow, provides far more rights to the Bank than to the complainant, and has no provision for suspending the project construction and disbursement of funds during the investigation of policy breaches (eg. Samut Prakarn). The fact that the Operational Guidelines for Disbursement does not allow for disbursements to be halted suggests a lack of policy coherence. Furthermore, if the inspection process is to be truly impartial and effective, all stakeholders need to be involved in the setting of the TORs for investigations.

**22.1 (e)** Rather than “Failures of compliance may result in penalties”, penalties must be mandatory. It is normal commercial practice (public and private sector) to build in non-compliance penalties for contracted goods and services. Without penalties, there is no compliance incentive. This general principle should be adopted in all ADB compliance policies. Samut Prakarn demonstrates that the incentives for compliance at present are non-existent leading to ineffectual policies and poor project implementation, and scepticism and distrust among communities and civil society.

**22.1 (f)** The precautionary principle is interpreted in the EP as: "This principle requires that if an action or policy entails a threat of serious environmental harm, lack of full scientific certainty should not block adoption of cost-effective measures to prevent the harm in question." This is a rather perverse interpretation of the precautionary principle. Rather, it should read something like, "This principle requires that if an action or policy entails a threat of serious environmental harm, lack of full scientific certainty should necessitate erring on the side of the highest conceivable impacts. So long as uncertainties persist, project decision-making and provisions for compensation or mitigation should be based around such worst-case scenarios. Further, such impacts must be fully internalised, given the past record of unpredicted impacts incurring costs either on the affected poor or on governments without the resources to deal with those impacts. This is particularly significant in the case of privatised projects, as commitments need to be fixed contractually at the time of project approval".

**22.2 (a)** Private sector operations can lead to reduced levels of access to project information because of commercial-in-confidence (CIC) principles. CIC can be used as a façade behind which the private sector can socialise environmental and social costs, and risks. An example of information not held by environmental authorities, which may lead to social costs, is contingent liabilities incurred in BOT projects. Experience in more developed economies demonstrates that institutional instruments such as Freedom of Information Acts are required to balance the CIC principles commonly found in private sector operations. Greater attention needs to be given to the regulatory and institutional development requirements necessary to regulate greater levels of private sector investment. It is not apparent that the ADB’s Private

Sector Development Strategy recognises the need for accompanying regulatory institutional development to private sector development.

It is unclear what an EA process involving environmental due diligence would consist of. This needs to be detailed.

**22.2 (d)** Access to critical natural resources and empowerment are essential for ‘the poor to be better off’. An associated but under recognised aspect of sustainable development is that of political sustainability. Recent events this year in Kalimantan and the Vietnamese Central Highlands show that lack of access and disempowerment of the poor leads to political instability which can undermine economic and social development.

**22.3** Economic efficiency and fairness do not necessarily correlate. In our view economic efficiency in purely neo-liberal terms can undermine notions of fairness, which are politically and culturally specific - eg. political contestation over water pricing in Thailand’s Agricultural Reform process. Fairness is a political determined value. Where economic efficiency is considered/recommended for implementation, caution must be exercised to ensure that a political determination through broad based consultation and participation involving all stakeholders has been reached before implementation.

### **III. ADB POLICY STATEMENT**

**29.** The February 2001 preamble gives an explanation of Sustainable Development but nowhere is there an explanation of the concept of Sustainable ‘Economic’ Growth and its social and environmental impacts in either the February or August draft EP. Again, we would argue that recognising the social and environmental impacts of the concept is a necessary first step to taking a proactive policy stance.

**34.** The excuse that a lack of time and data makes it difficult to conduct a full-scale impact assessment is a result of the underlying development paradigm which is oriented toward fast track growth. Lack of time is mentioned in several places throughout the policy (eg. paragraph 36) as a limiting factor towards more comprehensive assessments. We would add that this excuse is also a fundamental cause for a lack of effective broad-based consultation and participation, particularly with the poor who are difficult to reach for numerous reasons. This cannot be condoned.

**36.** Induced developments are an extremely important category of impact to be assessed and the lack of time and data cannot be used as an excuse for a limited assessment.

**40, 41, 43, 44, 45.** At present, ADB Public Participation policy focuses on the project level but has little to say on its use in institutional and structural change. If the ADB EP has the aim of being a document for advocacy, it should not retract from advocating for broad-based consultative and participatory approaches in all areas of ADB activities including programmatic areas and SEAs, even where there may be different national approaches. Only with such an approach will there be checks and balances on unrepresentative political processes, where and when they do occur, and to mitigate the development of client states.

The definition of public-participation is weak and is limited to a two-way communication process. It should go further to develop an understanding of how this might be used in decision-making beyond that which merely tinkers around with project design. Without such an understanding, recognition that empowerment of the poor as an objective in both the ADB

EP (eg. see 22.2 (d) – The Poor to be Better Off) and its Poverty Reduction strategy will just be rhetoric. Coherence between the use of the term Public Participation and Empowerment and an understanding of how these two terms are correlated is required. Presently the policy does not demonstrate an understanding of the links between these 2 terms.

**46.** There needs to be greater detail on how issues of governance and due process are dealt with in the monitoring process, for example how should conflicts of interest be dealt with, who has a role in monitoring, etc. We advocate that affected communities must have a central role in the process as a part of their broader participation in development.

**50.** It cannot be stressed enough that where conservation is to be implemented, livelihood issues must take precedence. Conservation for its own purpose can undermine the livelihoods of the poor. The focus of conservation including that for biological resources should be for sustainable livelihoods.

**51.** This item recognises that “Policy integration for international trade and investment implies an open trade and investment regime, but not an unregulated regime”. Yet our observation is that there is not yet any developed position or understanding in the ADB on the necessary regulatory regime to achieve policy integration where environments and the poor are not marginalised in an open trade and investment regime. The EP, or other related policies, should detail the ADB’s understanding of what sorts of regulation are required so as to mitigate the environmental and social impacts of open trade and investment regimes, and where such regulatory responsibility should lie.

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