



Lessons Learned?

The Implications of the ADB's Review of Safeguard Policy Implementation for the World Bank and the Asian Infrastructure Investment Bank

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The Asian Development Bank has long been known for supporting projects -- including those in the energy, transportation, water and natural resource sectors -- which have had substantial negative impacts on local communities and the environment. Communities which are likely to be harmed by ADB projects are, at times, able to lessen the harm, seek redress or prevent future negative impacts by, among other things, forcing the ADB to adhere to its own social and environmental safeguard policies. A number of the ADB's environmental and social safeguards are, at least on paper, stronger than those of other multilateral development banks and, if implemented, can provide tools that communities are able to use to prevent or reduce potential substantial harms.

For example, the ADB requires that potentially affected communities must be allowed 120 days prior to project approval by the ADB Board to comment on proposed ADB-funded public or private sector activities which may impact their lives and environment. This provides potentially affected communities, including those in isolated regions, enough time to obtain, read, discuss and formulate a response to often complex and multi-volume impact assessments of projects which may deeply impact their communities. It provides a way to make their input directly known to the ADB's Executive Directors and can strongly influence whether adjustments are made to a project in order to prevent harm, prior to the release of funds.

A project which is shown to have potentially significant negative impacts on communities or the environment may be modified based on community input or, if the project appears to do more harm than good, the Board may refuse to fund it. Preventing communities from having sufficient time to analyze and provide input on projects affecting their lives and livelihoods, ahead of the Board's vote on funding, would lead to a significant increase in negative outcomes for local communities and higher costs to borrowers left struggling to deal with the legacy of environmental destruction, social displacement and conflict associated with such projects.

At the ADB, and other multilateral institutions such as the World Bank, the post-disbursement monitoring of projects and the implementation of appropriate safeguards has long been problematic, underscoring the importance of robust implementation of safeguards and safeguard plans prior to the disbursement of funds. In this context, given the difficulty and poor track record of post-disbursement monitoring, any weakening of "up-front" safeguards requirements is likely to have a devastating impact on vulnerable and resource-dependent communities. Yet this is what the World Bank now proposes to do, something which may lead to a dangerous "race to the bottom" at other financial institutions.

This article examines the ADB's Safeguard Policy Statement, the current effort by the World Bank to vastly reduce its "up front" safeguard protections, replacing them with promises of post-disbursement monitoring and implementation, the findings of the ADB's Independent Evaluation Department review of the implementation of the ADB's safeguards, and reflects upon the implications of these findings for the World Bank, the ADB and new financial institutions such as the Asian Infrastructure Investment Bank.

The ADB's Safeguard Policy Statement (SPS)

In 2005, the Asian Development Bank launched a review of its environmental and social safeguard policies. The five years of review concluded with the ADB maintaining some of the strongest safeguards of any multilateral bank. Some of the areas where the ADB's safeguards are stronger than those of other multilateral finance institutions include:

- The mandatory disclosure to potentially affected communities of environmental assessments for projects and subprojects likely to have significant impacts 120 days prior to ADB Board vote on a project or ADB-sponsored activity and the ability of affected communities to make their concerns heard to the Board prior to the Board vote on the approval of funds;
- The requirement that environmental assessments be conducted for all components of all projects, regardless of funding source;
- The requirement that the ADB, itself, conducts due diligence and ensures client compliance with environmental and social requirements;
- ADB rules for Financial Intermediaries which necessitate ADB management approval of category A financial intermediary subprojects;
- Improved consultation procedures and detailed and widespread language pertaining to gender.

It should be noted, however, that by failing to require the use of core labor standards, the ADB safeguards for workers lag behind other institutions in terms of labor protections.

World Bank Safeguards Review

In 2010, after the ADB completed its Safeguard Policy Update, the World Bank announced that it would be conducting a "Safeguards Review." Despite the public commitment by the president of the World Bank to "no dilution" of protections for impoverished and vulnerable communities and the environment, the Bank's draft safeguards framework, released in mid-2014, proposes a devastating weakening of existing environmental and social protections, including by:

- weakening Bank mechanisms for transparency, oversight, and accountability;
- eliminating mandatory time-bound requirements for safeguard implementation;
- eliminating the right of communities to obtain information on and provide their assessment of projects likely to affect their lives and livelihoods prior to project appraisal (currently approximately 120 days prior to World Bank Board vote);
- reducing access by affected communities to the Bank's Inspection Panel; reducing the ability of the Inspection Panel to function;
- initiating an overreliance on the borrowers' national systems and even those of financial intermediaries, in place of World Bank safeguards, while reducing the due diligence currently required under the Bank's Country Systems Safeguard which ensures that the environmental and social protections of client countries are least as strong as those of the Bank if they are to be used instead of Bank safeguards.
- weakening protections for those forcibly displaced by Bank-funded operations;
- making safeguards for Indigenous Peoples optional;

- substantially weakening existing protections for biodiversity and forest-dependent peoples, including a reversal of the existing World Bank ban on the destruction of critical habitat, protected areas and nature reserves;
- removing clear and mandatory safeguards for projects with “substantial risk” of harm to communities and the environment. (In the World Bank’s draft, safeguards appear to apply primarily to projects with “high risks” and are quite vague regarding projects generating “substantial risk.”)
- reducing safeguards for opaque financial intermediaries, including those which may be domiciled “offshore” in secrecy jurisdictions such as the British Virgin Islands’
- introducing narrow labor standards, excluding third party contractors, collective bargaining, freedom of association.

The World Bank proposes to eliminate clear and mandatory “up front” safeguards requirements – potentially including oil spill clean-up plans, various environmental and social assessments – which would normally be presented to the Bank’s Board prior to project approval. The Bank claims that an increase in monitoring and supervision on a project-by-project basis, after the disbursement of funds, will make up for the lack of “up front” safeguards. No budget has been described for this enormous monitoring effort which would apparently be launched during a period when the Bank is facing significant staff cutbacks and budgetary retrenchment.

As both the World Bank’s Independent Evaluation Group (IEG) and the Asian Development Bank’s Independent Evaluation Department (IED) have found, post-disbursement monitoring and supervision of bank projects and investments has traditionally been weak. Various World Bank Vice Presidents have commented that the World Bank’s new draft safeguards make it appear that the Bank will be “lending more, lowering standards”, creating “more problem projects” and setting a “bad precedent.”¹

The ADB’s Evaluation of Safeguards Implementation²

The World Bank’s efforts to weaken environmental and social protections has led to a massive outcry from affected communities, peoples’ movements and NGOs. Interestingly enough, the World Bank’s efforts have also raised concerns at the ADB where the ADB’s Independent Evaluation Department (IED) has just completed a study on the implementation of the ADB’s new safeguards. The IED’s findings are relevant not only for the ADB, but also for the World Bank as it conducts its Safeguards Review, as well as the AIIB which has yet to develop safeguards.

The IED found that, “Safeguards are vital for redressing the collateral damage that can be caused by development projects, especially large-scale ones such as dams and roads. Yet safeguards are often inadequately implemented by governments and businesses, even as it makes economic sense to mitigate against spill-over damages.” According to the ADB’s IED, “the case for stronger enforcement and supervision of safeguards is compelling, especially in Asia where the push for high economic growth has taken a huge toll on the environment.”

The IED identified “serious gaps” in post-disbursement project implementation and supervision at the ADB, similar to the gaps found by the IEG at the World Bank. The IED findings raise significant concerns that any push – including by the World Bank -- to remove “up front” safeguards and replace them with a (theoretical) increase in monitoring and supervision could bring substantial harm to affected

¹ World Bank Vice President memoranda on proposed draft safeguards, May 2014, pg. 19; also cited in, Ulu Foundation, Friends of the Earth-US, “World Bank Safeguards Draft Proposes Elimination of Environmental and Social Protections,” July 2014.

² For summary of IED findings, see “ADB’s Social and Environmental Safeguards, with Improvements, can be a Benchmark”, ADB IED News Release, 11/11/14, www.adb.org. Citations below are from this site. See also: Safeguards Operational Review: ADB Processes, Portfolio, Country Systems, and Financial Intermediaries, 10/16/14, www.adb.org. Complete findings also available at www.adb.org.

communities and the environment, generate conflicts, and result in substantially increased costs to borrowers, given the traditional failure of post-disbursement monitoring and supervision efforts at multilateral financial institutions.

Raising additional concerns about “substantial risk” projects, the IED called for “greater attention to the implementation and supervision of not only high risk projects, but also those posing lesser albeit still substantial risks to communities and the environment”, something that the World Bank proposes to eliminate in the Bank’s new safeguards.

Based on its investigation, the IED called for improved monitoring of the safeguards that apply to financial intermediaries. The World Bank’s draft safeguard framework proposes to weaken safeguards for financial intermediaries.

Based on research, the IED urged that “First, there needs to be progress on the adequacy of country safeguard systems and their subsequent use.” Despite this, the World Bank proposes to eliminate the due diligence requirements of the Bank’s Country Systems Safeguard which ensures that the environmental and social protections of client countries are least as strong as those of the Bank if they are to be used instead of Bank safeguards.

If “national systems” are deemed to be adequately strong, that is that they provide protections for communities and the environment equivalent to those of the ADB, the IED recommends “legally binding indicators for social and environmental impacts, such as air and water pollution levels” as well as publicly disclosed monitoring and verification by a “reliable and independent third party.”

The IED concluded that, given the rising social risks and environmental threats, the “continued use of a requirements-based safeguards system as used by ADB, rather than a switch to an aspirational one of safeguards standards as is being proposed at the World Bank Group” would be of the utmost importance.

In addition, the IED raised concerns that a dilution of safeguards at the World Bank could have a ripple effect and lead to a push for weakened safeguards at other institutions. Such institutions could potentially include the ADB or the newly-founded Asian Infrastructure Investment Bank.

US Congress reacts to weakening World Bank safeguards

After months of global criticism of the World Bank’s proposal to weaken longstanding environmental and social safeguards, including case studies highlighting high-conflict and high-cost environmental and social problems with projects in ADB member countries in Asia, the US Congress weighed in forcefully through the 2015 Omnibus Appropriations Act and instructed the US Treasury department to oppose any World Bank policy that provides less protection than the Bank’s current safeguard requirements. This budget bill specifically requires the United States to vote against any new loans or grants if the World Bank weakens its safeguard policies.

In addition, the US now requires its representatives to push for ‘rigorous human rights due diligence’ at all multilateral financial institutions – including the ADB -- and including for projects likely to involve displacement of local communities. The law requires that the US call for the International Finance Corporation and other multilateral institutions to publish the identities of the “beneficial owners” of private companies receiving public funds, including the names of the shadowy owners of offshore funds supported by the IFC and other public financial institutions.

Given that this bill is now law, communities impacted by ADB or World Bank projects or proposed projects can make their objections known to the US Treasury Department which is now forced, by law, to

seek “rigorous human rights due diligence” and to seek the hidden names of owners of shadowy financial intermediaries. Since the US is the largest shareholder of the World Bank and one of the two largest at the ADB, this law may prove of benefit to affected communities and their allies who may be able to raise issues pertaining to harmful projects through this new channel.

Asian Infrastructure Investment Bank (AIIB)

In October 2014, representatives from 21 Asian nations met in Beijing and signed an agreement to establish the Asian Infrastructure Investment Bank, with an initial capitalization of \$50 billion, largely provided by China, and with a goal of a total capitalization of \$100 billion, making the Bank two-thirds the size of the \$175 billion Asian Development Bank. After China, India will be the second largest shareholder. Other countries that have signed the agreement include Thailand, Malaysia, Singapore, the Philippines, Pakistan, Bangladesh, Brunei, Cambodia, Kazakhstan, Kuwait, Laos, Myanmar, Mongolia, Nepal, Oman, Qatar, Sri Lanka, Uzbekistan, and Vietnam. The negotiation of the bank’s articles of agreement is expected to be completed by the end of 2015.

To date, no safeguards have been developed at the new institution which will focus on infrastructure investments, a sector with unusually high impacts on communities and the environment. Jim Liqun, a former Vice President of the ADB and also formerly with the Chinese Executive Director’s office at the World Bank, is expected to take a leading role in the AIIB. Despite concerns raised repeatedly that the AIIB may fail to require sufficient environmental and social safeguards for investments, Chinese officials have insisted that the AIIB will adopt the best practices of other international institutions. With the exception of safeguards for labor, many of the ADB’s environmental and social safeguards would be “best practices” compared to those at other institutions.

These developments demonstrate that the ADB does not exist in isolation. Those currently focused on the ADB or interested in ensuring appropriate safeguards for financial flows in order to protect the livelihoods, rights and environment of project-affected communities throughout the Asia-Pacific region would do well to work to ensure not only that the ADB’s safeguards remain strong and are increasingly well-implemented, but also that the World Bank strengthens its safeguards and does not lead a multilateral “race to the bottom” by radically weakening its safeguards, and that the development of safeguards at Asian Infrastructure Investment Bank is based on the strongest existing safeguards, including those of the Asian Development Bank as well as the ILO Core Labor Standards.