

Letter from 111 Non-Governmental Organizations in 31 Countries and Regions to Asian Development Bank Shareholders, Management and Related International Financial Institutions

Regarding

Civil Society Concerns and Rejection of the Asian Development Bank's Dangerously Flawed Assessment of Indonesia's Energy Sector (PLN), Lack of Meaningful Consultations, and Proposed use of Country Systems for Indonesia's Energy Sector

January 12, 2018

The Indonesian Legal Resource Center (ILRC); The Ecological Justice; Eksekutif Nasional WALHI; WALHI Jawa Barat; WALHI Sulawesi Selatan; Lembaga Studi dan Advokasi Masyarakat (ELSAM); debtWATCH Indonesia; Solidaritas Perempuan; Yayasan PUSAKA; TuK Indonesia; LinkAR Borneo; Kesatuan Nelayan Tradisional Indonesia (KNTI); Jaringan Kerja Rakyat Papua (JERAT Papua); Konfederasi Pergerakan Rakyat Indonesia (KPRI); Partai Rakyat Pekerja (PRP); Konfederasi Serikat Nasional (KSN); Yayasan CAPP Keadilan Ekologi; AURIGA; WALHI Kalimantan Tengah; JPIC Kalimantan Barat; PROGRESS Kalimantan Tengah; Serikat Petani Pasundan (SPP); WALHI Jambi; WALHI Sumatera Barat; WALHI Kalimantan Barat; WALHI Sumatera Selatan; WALHI Nusa Tenggara Barat; Institute for National and Democracy Studies (INDIES); Aliansi Gerakan Reforma Agraria (AGRA); P3I (Persatuan Pergerakan Petani Indonesia); LPM Equator Kalbar; WALHI Kalimantan Selatan; WALHI Papua; WALHI Aceh; WALHI Jawa Tengah; WALHI Sulawesi Tengah; Sentra Advokasi Untuk Hak Pendidikan Rakyat (Sahdar); WALHI Maluku Utara; KRUA; Trade Union Rights Center (TURC); WALHI Sulawesi Tenggara; WALHI Bali; Sawit Watch; Pusat Kajian dan Perlindungan Anak (PKPA); Rimbawan Muda Indonesia (RMI); WALHI Bangka Belitung; WALHI Sumatera Utara; WALHI Bengkulu; WALHI Sulawesi Utara; 350 Indonesia, Jaringan Masyarakat Gambut – Jambi, Indonesia
Asia Pacific Forum on Women, Law and Development (Asia-Pacific),
Oil Workers' Rights Protection Organization Public Union (Azerbaijan), Ekomed, Public Union Organization (Azerbaijan), Center for Participatory Research and Development-CPRD (Bangladesh), CNCD-11.11.11 (Belgium), 11.11.11 (Belgium / Philippines), Social Justice Collective (Canada), Collectif Camerounais des Organisations des Droits de l'Homme et de la Démocratie (COCODHD) (Cameroun), The Observatoire d'Etudes et d'Appui à la Responsabilité Sociale et Environnementale (OEARSE) (Democratic Republic of Congo), International Workgroup for Indigenous Affairs (Denmark), CEE Bankwatch Network (Europe), Worldview (The Gambia), Green Alternative (Georgia), Urgewald (Germany), Abibiman Foundation (Ghana), Greener Impact International (Ghana), International Rivers (Global), National Society of Conservationists - Friends of the Earth Hungary, Indigenous Perspectives (India), Rivers without Boundaries International Coalition (International), Friends of the Earth Japan, Japan Center for a Sustainable Environment and Society (JACES), Center for Introduction of New Environmentally Safe Technologies (Kazakhstan), IP Hub Africa (Kenya), Jamaa Resource Initiatives (Kenya), Nash Vek PF (Kyrgyzstan), Oyu Tolgoi Watch (Mongolia), Rivers without Boundaries Coalition (Mongolia), Centre for Human Rights and Development (Mongolia), People's Coalition for Food Sovereignty (Mongolia), Development Observer (Mongolia), Community Empowerment and Social Justice Foundation (CEmSoJ) (Nepal), All Nepal Peasants' Federation, Balkhu, Kathmandu (Nepal), National Women Peasants Association (Nepal), Nepal Youth Peasants Organization (Nepal), Landless Farmers and Dalit Peasants Association (Nepal), Nepal Agriculture Labour Association (Nepal), National Alliance for Right to Food Networks (Nepal), National Alliance for Tax and Fiscal Justice (Nepal), South Asia Peasants Coalition, HQ, Kathmandu (Nepal), South Asia Food Sovereignty Network, HQ, Kathmandu (Nepal), Both ENDS (Netherlands), BIC Europe (Netherlands), Derecho, Ambiente y Recursos Naturales (Peru), NGO Forum on ADB (Philippines), Sri Lanka Nature Group (Sri Lanka), Centre for Environmental Justice/FoE Sri Lanka, Friends with Environment (Uganda), Buliisa Initiative for Rural Development Organisation (BIRUDO) (Uganda), The Corner House (UK), Forest Peoples Programme (UK), The Bretton Woods Project (UK), Ulu Foundation (US), Friends of the Earth U.S., International Accountability Project (US), Bank Information Center (US), Center for International Environmental Law (CIEL) (US), Inclusive Development International (US), Gender Action (US), Crude Accountability (US)

Dear,
Executive Directors and Shareholders of the ADB
Management of the ADB
Shareholders of other International Financial Institutions
In Manila, The Philippines
And Shareholder Countries

With respect,

The undersigned are 111 civil society organizations from 31 countries and regions, including a wide range of Indonesian organizations working with communities to encourage and ensure that Indonesia's development process embodies ecological justice, social justice, gender equality and respect for human rights for all Indonesians, as well as their international supporters.

The Indonesian Constitution states that "the earth, the water and all the riches in it are used for the greatest good of the life of the people". Therefore, we believe that the management of the earth, water and all the wealth must use the highest standards in environmental management so that the country's wealth continues to be sustainable and the results bring benefits to the majority of Indonesian people, including by paying special attention to vulnerable groups, women, the elderly, the poor, indigenous peoples, and those without title to land.

We are writing with deep concerns over the ADB's efforts to replace ADB environmental and social safeguard requirements, developed with significant public input on the use of these international public funds, with those of a borrower system which does not provide protections equivalent to those required by the ADB, including the requirement for 120 day public notice and meaningful consultation on projects with significant environmental and social impacts, the requirement to pay special attention to impacts on the vulnerable, women, those without title to land, to avoid forced resettlement wherever possible, to ensure that, should compensation be needed, land for land compensation is prioritized and all compensation is received directly by those impacted prior to any form of resettlement and to ensure that all safeguards apply to financial intermediaries.

We are writing to urge you to consider and ensure a meaningful response to the deep concerns expressed in the enclosed documents over the ADB's efforts to replace ADB environmental and social safeguard requirements, developed with significant public input over years of consultations on the use of these international public funds, with those of Indonesia's borrower system which does not provide protections equivalent to those required by the ADB,

We raise concerns specifically in the case of Indonesia's notorious National Energy Company (PLN), which long known for a track record of environmental destruction, human rights violations and with plans to develop more than 40 coal-fired power plants.

The ADB's entire CSS assessment process in Indonesia – involving multiple violations of ADB safeguards – is also of concern given that the outcome of this flawed process is likely to be used by other international institutions such as the World Bank, the Asian Infrastructure Investment Bank, and others, leading to a "race to the bottom" and a failure to protect affected communities and the environment from the impacts of such internationally funded projects.

The enclosed documents detail numerous violations of ADB Safeguard requirements and provide a detailed analysis of Indonesia's legal system (country system), calling into serious question the ADB's conclusion of using CSS in Indonesia's entire energy sector (and proposed for the water sector). Indonesian groups previously submitted detailed analyses in Bahasa Indonesia to the Jakarta Resident Mission in April 2017 but no meaningful response was received.

In March 2017, the ADB, through its Resident Mission in Jakarta failed¹ to conduct meaningful consultations on a deeply flawed and inaccurate draft assessment of Indonesia's CSS that incorrectly claimed that Indonesia's Energy and Water sectors met ADB's Equivalency and Acceptability requirements for the use of national systems and were almost ready for use of CSS instead of ADB Safeguards for projects financed by the ADB. (For details, see enclosed documentation). NGOs submitted close to 100 pages of detailed documentation to the Resident Mission (enclosed) showing that the ADB's draft analysis of Indonesia's country system of laws and regulations was incorrect and filled with inaccuracies. The ADB claimed that NGO input would be used in a new draft CSS assessment but no updated draft has been circulated and there has been no meaningful response to NGO input.

Instead, the ADB moved on to produce another "assessment" which, based on the deeply flawed error-riddled draft March 2017 CSS assessment which was produced in violation of information disclosure and consultation requirements, claimed that Indonesia's Energy Sector - via PLN, the National Electrical Company - was ready for the use of national laws (CSS) instead of ADB's Safeguards which require, among other things, avoidance of forced resettlement wherever possible and meaningful consultation, free of intimidation and coercion, with special focus on the poor, the vulnerable, women and those without title to land – all of which PLN routinely fails to do.

We write this letter also regarding the so-called "Stakeholder Consultations" on the Use of the National Environmental and Social Safeguard System for the Energy Sector held in December, 2017. The ADB CSS assessment developed for the energy sector in Indonesia perpetrated a continuing violation of the requirements meaningful consultation and disclosure of ADB information that had been initiated with the ADB's so-called "consultation" on Indonesia's CSS in March 2017. As was the case for the March 2017 ADB so-called consultation, the December 2017 meetings violated ADB mandatory requirements for meaningful consultation as well as information disclosure (none of the 18 desk and field studies upon which the analysis is supposedly based have yet been made public). Thus the activities held in December 2017 can not be called meaningful public consultation. The ADB has arranged another "meeting" on January 12 2018 that was announced during the holiday season and for which the 18 desk and field studies have still not been made public, therefore this is not a meaningful consultation.

As a result of the provision of consultation documents only 3 and 4 working days prior to the December ADB socialization meeting on the use of CSS, the comments we provide are initial and will continue to grow in accordance with our analysis.

¹ For details, see Brief Overview of the ADB's Assessment of Environmental and Resettlement Safeguards in Indonesia's Country System. Lack of meaningful consultation or fake consultation: 3 to 6 work days of public notice; over 250 pages of documents; inaccurate Bahasa Indonesia version for Indonesian language consultation; agenda featuring repeated lengthy powerpoint presentations by government officials and little time for public comment; failure to disclose 100 pages of detailed field studies proving lack of equivalence between CSS and ADB requirements prior to the so-called "consultation".

We note that a Borrower's Country System may only be used for an ADB project if it can be proven that the Country System is Equivalent to the ADB's Environmental and Social Safeguard requirements and that the Borrower has an acceptable track record of implementation of environmental and resettlement safeguards.

The ADB's own November 2017 assessment admits that Indonesia's Country System is **only fully equivalent with a mere 25% of ADB's crucial resettlement policies and is fully equivalent to less than half of all ADB Environment and Resettlement requirements combined.**

The ADB also documents the extraordinarily poor and unacceptable track record of Indonesia's national energy company, PLN – including the fact that not only does PLN have a clear and lengthy track record of a complete lack of monitoring the impacts of its projects on those who are resettled, and a complete failure to ascertain the impacts on their lives and livelihoods, the ADB's assessment also states repeatedly that PLN pays no attention whatsoever to the vulnerable, women, the poor and those without title to land. This track record of running roughshod over the lives and livelihoods of project-affected communities, leading to impoverishment, violence against local communities, devastation of livelihoods and environmental harm, clearly disqualifies PLN from the use of "country systems" instead of ADB Safeguard requirements.

It is astonishing that the ADB's "assessment" concludes otherwise and recommends the use of "country systems" for PLN.

The ADB's conclusion to support the use of CSS in the Energy Sector is clearly not based on the ADB's own field results, nor on the substantial publicly available data on environmental, resettlement, and human rights violations by Indonesia's notorious PLN.

Despite decades of track record of failure to implement the most fundamental aspects of environmental protection (leading, among other things, to Indonesia having the highest deforestation rate on earth and tremendous urban environmental pollution, including in Jakarta) and failure to require or enforce core aspects of social protection, the extraordinary structural lack of attention to needs and rights of women, the vulnerable, those without title to land (leading to thousands of conflicts where the threat of violence is routinely used to force the poor from their lands), this flawed draft study claims that all of these failures represent "minor gaps" in equivalence with mandatory ADB requirements which can be easily "filled".

In addition to the outrageous assertion that failing to involve, monitor impacts upon, and prevent harm to the poor, the vulnerable (ostensible "beneficiaries" of development), women (50% of the affected), and those without land title (the vast majority of Indonesia's poor) are "minor gaps" as is failing to ensure that livelihoods of those resettled are improved and not destroyed by PLN projects, the ADB's draft analysis claims that no legislative changes are needed to overcome these "minor" problems but that the use of PLN's "Corporate Social Responsibility" program and internal PLN rules will suffice to overcome these extraordinary, devastating routine impacts which have been part of PLN's track record for decades.

Based on the documents provided, we submit that, like the ADB's deeply flawed March 2017 review of Indonesia's Country System, the ADB's latest and deeply flawed November review of CSS for PLN must be rejected and, in addition any PLAN TO USE "COUNTRY SYSTEMS" for foreign financed projects such as those of the ADB MUST BE REJECTED. The highest standard of safeguards must be used and, clearly, the ADB SPS has higher standards of environmental and social protection than does Indonesia's country system. This is based on the following reasons which are described in further detail in the Appendices:

1. Violation of the ADB Requirements for Meaningful Consultation and Disclosure of Information
2. Absence of Equivalence between Indonesia's CSS and ADB SPS requirements.
3. Fatal Flaws in CSS: No Meaningful Consultation, No Attention to women, the poor, the vulnerable and those without title to land.
4. No credibility for ADB Claims that these Major Issues are merely "Small / Minor Gaps", which are easy to "fill";
5. So-called "gap-filling" measures which are not credible. Nonsensical Gap-filling measures under conditions of the routine failure of the rule of law. "Gap-filling" becomes a violation of the principle of the rule of law;
6. ADB's continuing failure to address violence by security forces in March and November CS assessments.
7. No CSS Mitigation Hierarchy to avoid impacts: for example: Land Acquisition and Eviction
8. Landgrabbing: lack of compensation at replacement value prior to eviction.
9. Manufacturing fake equivalence by dividing up ADB policy requirements into small pieces and trying to find small "equivalent" phrases despite an overall context of lack of equivalence.
10. Lack of SPS compliance – creating new weak measures of equivalency: "Broad Alignment" instead of SPS Required "Equivalence". Example: Lack of Equivalence with ADB Resettlement Objectives
11. Faked Acceptability "ratings" - Where "Moderate" is code for "Weak / Unacceptable"
12. Financial Intermediaries – ADB finds Indonesian EIA law does not apply to Financial Intermediaries.

We, the undersigned organizations, demand:

- 1) The ADB's March 2017 CSS assessment and November 2017 PLN assessment are riddled with errors and false conclusions, unrelated to the ADB's own field studies. These errors have been documented in detail in civil society in submissions made to the ADB. Despite the ADB's own evidence to the contrary (see enclosed Appendices), the ADB's March 2017 assessment falsely concluded that Indonesia's energy sector was a suitable candidate for use of CSS instead of ADB safeguards. The ADB's own data demonstrate that the Energy Sector projects by PLN engage in routine high-impact violations of ADB's fundamental safeguard requirements and have a lengthy track record of harm. Given the clear

proof of lack of equivalence with ADB Safeguard requirements and clearly documented poor track record of implementation of resettlement and environment protections, **we call for a rejection of the use of Country Systems in place of ADB Safeguards in Indonesia, including in the energy sector for PLN projects.** The use of CSS in Indonesia would represent a clear violation of ADB SPS requirements for the use of CSS and would lead to an ADB-funded increase in forced evictions, violence, harm to women, the vulnerable, those without title to land, and the environment.

- 2) The ADB's flawed and error-filled March 2017 CSS Assessment and November 2017 CSS Energy Sector Assessment must be **completely redrafted**, correcting the numerous errors, ensuring that "conclusions" reflect the field data gathered by the ADB **which documents the routine violation of the majority of the ADB's core resettlement requirements**, and taking into consideration the detailed public comments already submitted to the ADB.
- 3) The ADB must release, in their entirety, all of the desk and field studies that form the basis of the analysis of the energy sector/PLN. The assessment claims that there are 18 of these desk and field studies.
- 4) Document, in matrix form, **all public comments received and the manner by which the public comments have been incorporated into (1) the March 2017 Draft CSS assessment, (2) the November 2017 Draft CSS PLN assessment and (3) any new ADB draft CSS assessments.** Significant comments were submitted to the ADB but there has been no record made public of utilization of these comments.
- 5) Carry out **meaningful public consultation** with full information disclosure. Both draft assessments (overall CSS and Energy Sector) featured "conclusions" which are the opposite of what the field data demonstrate. Both drafts fail to meet ADB safeguard requirements and were developed in violation of disclosure and consultation requirements. As a result there has been no meaningful consultation on fully disclosed and properly translated assessments, available in a manner understandable to the population which will be impacted. Meaningful public consultation and submission of comments should not be timed to occur during a major holiday, must be announced far in advance to the public (including on the ADB website with the announcement of all dates and locations sent, in addition, to all who have previously commented on ADB projects instead of the current process of merely using selective emails sent to a hand-picked list of invitees. Meaningful consultation must include full public disclosure of all portions of any revised drafts, including all studies upon which "conclusions" are based, along with a matrix documenting all public comments to date and the manner by which each comment has been utilization in any new draft.
- 6) Provide **a minimum of 120 days for public comment on any drafts, given the significant impacts of the utilization of country systems in place of ADB safeguard requirements.**

For more details, please read the following attachments which are united with this letter:

1. Objection and Rejection of Civil Society Organizations on Public Consultation and Results of Environmental Protection and Resettlement System Studies in the Energy Sector
2. Appendix 1: Comparison Between Country Safeguard Systems (CSS) of Indonesia & ADB Safeguard Policy Statement (SPS) - Environmental Safeguards
3. Appendix 2: Comparison Between Country Safeguard Systems (CSS) Of Indonesia And ADB Safeguard Policy Statement (SPS) - Involuntary Resettlement Safeguards
4. Appendix 3: Letter to ADB and Comparative Assessment of Environmental and Social Safeguards in Indonesia's Country System and Multilateral Development Banks: An Assessment of the Evaluation of the Indonesian Country System by Asian Development Bank Consultants, 2017

Thus we submit this letter. Thank you for your attention.

Jakarta, January 14, 2018

Best regards,

1. The Indonesian Legal Resource Center / ILRC, Jakarta
2. WALHI National Executive
3. WALHI West Java
4. WALHI South Sulawesi
5. Institute for Policy Research and Advocacy (ELSAM)
6. DebtWATCH Indonesia
7. PUSAKA Foundation
8. TUK Indonesia
9. Ulu Foundation

On behalf of the undersigned organizations:

1. The Indonesian Legal Resource Center (ILRC)

2. The Ecological Justice
3. Eksekutif Nasional WALHI
4. WALHI Jawa Barat
5. WALHI Sulawesi Selatan
6. Lembaga Studi dan Advokasi Masyarakat (ELSAM)
7. DebtWatch
8. Yayasan PUSAKA
9. TuK Indonesia
10. Solidaritas Perempuan
11. LinkAR Borneo
12. Kesatuan Nelayan Tradisional Indonesia (KNTI)
13. Jaringan Kerja Rakyat Papua (JERAT Papua)
14. Konfederasi Pergerakan Rakyat Indonesia (KPRI)
15. Partai Rakyat Pekerja (PRP)
16. Konfederasi Serikat Nasional (KSN)
17. Yayasan CAPPK Keadilan Ekologi
18. AURIGA
19. WALHI Kalimantan Tengah
20. JPIC Kalimantan
21. PROGRESS Kalimantan Tengah
22. Serikat Petani Pasundan (SPP)
23. WALHI Jambi
24. WALHI Sumatera Barat
25. WALHI Kalimantan Barat
26. WALHI Sumatera Selatan
27. WALHI Nusa Tenggara Barat
28. Institute for National and Democracy Studies (INDIES)
29. Aliansi Gerakan Reforma Agraria (AGRA)
30. Persatuan Pergerakan Petani Indonesia (P3I)
31. LPM Equator Kalbar
32. WALHI Kalimantan Selatan
33. WALHI Papua
34. WALHI Aceh
35. WALHI Jawa Tengah
36. WALHI Sulawesi Tengah
37. Sentra Advokasi Untuk Hak Pendidikan Rakyat (Sahdar)
38. WALHI Maluku Utara
39. KRUHA
40. Trade Union Rights Center (TURC)
41. WALHI Sulawesi Tenggara
42. WALHI Bali
43. Sawit Watch
44. Pusat Kajian dan Perlindungan Anak (PKPA)
45. Rimbawan Muda Indonesia (RMI)
46. WALHI Bangka Belitung
47. WALHI Sumatera Utara
48. WALHI Bengkulu
49. WALHI Sulawesi Utara
50. 350 Indonesia

Asia-Pacific

Asia Pacific Forum on Women, Law and Development

Azerbaijan	Oil Workers' Rights Protection Organization Public Union
Azerbaijan	Ekomed, Public Union Organization
Bangladesh	Center for Participatory Research and Development-CPRD
Belgium	CNCD-11.11.11
Belgium/ Philippines	11.11.11
Cameroun	Collectif Camerounais des Organisations des Droits de l'Homme et de la Démocratie (COCODHD)
Canada	Social Justice Collective
Democratic Republic of Congo	The Observatoire d'Etudes et d'Appuie à la Responsabilité Sociale et Environnementale (OEARSE)
Denmark	International Workgroup for Indigenous Affairs
Europe	CEE Bankwatch Network
Gambia	Worldview-The Gambia
Georgia	Green Alternative
Germany	Urgewald
Ghana	Abibiman Foundation
Ghana	Greener Impact International
Global	International Rivers
Hungary	National Society of Conservationists - Friends of the Earth Hungary
India	Indigenous Perspectives
International	Rivers without Boundaries International Coalition
Japan	Friends of the Earth Japan
Japan	Japan Center for a Sustainable Environment and Society (JACSES)
Kazakhstan	Center for Introduction of New Environmentally Safe Technologies
Kenya	IP Hub Africa
Kenya	Jamaa Resource Initiatives
Kyrgyzstan	Nash Vek PF
Mongolia	Oyu Tolgoi Watch
Mongolia	Rivers without Boundaries Coalition
Mongolia	Centre for Human Rights and Development
Mongolia	People's Coalition for Food Sovereignty

Mongolia	Development Observer
Nepal	Community Empowerment and Social Justice Foundation (CEmSoJ)
Nepal	All Nepal Peasants' Federation, Balkhu, Kathmandu
Nepal	National Women Peasants Association
Nepal	Nepal Youth Peasants Organization
Nepal	Landless Farmers and Dalit Peasants Association
Nepal	Nepal Agriculture Labour Association
Nepal	National Alliance for Right to Food Networks
Nepal	National Alliance for Tax and Fiscal Justice
Nepal	South Asia Peasants Coalition, HQ, Kathmandu
Nepal	South Asia Food Sovereignty Network, HQ, Kathmandu
Netherlands	Both ENDS
Netherlands	BIC Europe
Peru	Derecho, Ambiente y Recursos Naturales
Philippines	NGO Forum on ADB
Sri Lanka	Sri Lanka Nature Group
Sri Lanka	Centre for Environmental Justice/FoE Sri Lanka
Uganda	Friends with Environment
Uganda	Buliisa Initiative for Rural Development Organisation (BIRUDO)
UK	The Corner House
UK	Forest Peoples Programme
UK	The Bretton Woods Project
USA	Friends of the Earth U.S.
USA	International Accountability Project
USA	Bank Information Center
USA	Center for International Environmental Law (CIEL)
USA	Inclusive Development International
USA	Gender Action
USA	Crude Accountability