

Written Submission on Asian Development Bank's (ADB) September 2023 Draft Environmental and Social Framework (ESF)

Submission from Urgewald
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Safeguard review of the Asian Development Bank: The issue of involuntary resettlement (ESS5)

Updated [submission to ADB](#) by urgewald (submitted Dec. 2022, and online 23.1.2024)

Involuntary resettlement, displacement and loss of livelihood for affected communities always have been the most prominent negative effects of big infrastructure development projects and programs. It is the duty of Development Banks to avoid resettlement and where it is unavoidable to mitigate the negative effects. However, the existing Policy on Land Acquisition (ESS5, incl. Involuntary Resettlement/Displacement) and has some severe shortcomings:

- **Scope of displacements:** Up- and/or downstream effects of projects like alteration of fish population due to a dam or cumulative effects are not properly taken into account.
- **Land titles:** The current Resettlement Policy excludes people without formal land-titles from compensation for lost land use but there are seldom official land titles available.
- **Monitored Agreements:** Negotiated agreements for land acquisitions lack the cross-checking, whether the agreements actually meet the requirements of the Resettlement Policy. The agreement simply excludes the application of the policy.
- **Land Acquisition:** No improvements like AIB's ex ante rule that subjects land acquisition to AIB scrutiny before a project is approved.

If projects involve resettlement, non-compliance with the safeguards can result in severe impacts for the people who should benefit of the projects. Due diligence, consultation & disclosure and displacement are the three most common complaint issues across institutions¹. In order to prevent negative impacts in the context of resettlement, compliance in these policy areas must have highest priority and be assured before implementation starts.

- NGOs persistently have pointed out new cases of resettlements (Southasia², Mongolia³, Nepal⁴, Mekong Region⁵), that ADB's safeguards did not cover or that have been bypassed by foul play.
- The growing proportion of the private sector — namely project lending through Financial Intermediaries (FI) — leads to an even greater lack of transparency.
- At least 16% (323) of all projects triggered the resettlement policy of ADB's safeguards.
- [Our research](#) for the years 2015-20 have shown, that 46% of all projects have triggered essential displacement (without TA projects that do not fall under the safeguard policies but in many cases are laying ground to future projects).

¹ From 1614 complaints, 451 complaints refer to consultation and disclosure, 429 complaints refer to due diligence practices and 371 complaints refer to displacement (<https://accountabilityconsole.com/>). It's not uncommon for these aspects to occur in the same project.

² South Asia: <https://www.forum-adb.org/southasia>.

³ Mongolia: <https://www.forum-adb.org/post/mongoliaulanbaatar-urban-services>.

⁴ Nepal: <https://www.forum-adb.org/westseti>.

⁵ Central Mekong: <https://www.forum-adb.org/adbmasallastara>.

Kontakt

urgewald e.V.
Von-Galen-Str. 4
48336 Sassenberg

Nora Sausmikat
nora.sausmikat@urgewald.org

- The ESS review fail in delivering a coherent count of individuals, families, households, and communities affected. However, we assume that at least **1 million people within less than 5 years** are affected by resettlement in ADB funded projects throughout Asia.

Recommendations

- **FPIC:** The resettlement policy must enshrine the right of Free Prior and Informed Consent (FPIC) unambiguously as the fundamental prerequisite for any resettlement activities.
- **Risk analysis:** The newly updated Resettlement Policy should require upfront due diligence incorporating a thorough baseline assessment of possible impacts. We want to highlight here the inappropriateness of off-setting social risks and impacts and support [OHCHR recommendation](#) to ensure that this is also reflected in draft ESS 1, para. 30.
- **Compensation:** The asset measurement for compensation should happen upfront, be based on values at the time of relocation, include and entitle all affected people and be based on uniform standards. Here the ADB can learn from peer bank AIIB: improvements like AIIB's *ex ante rule* that subjects land acquisition to AIIB scrutiny before a project is approved, should be incorporated into ADB ESS5. Negotiated agreements for land acquisitions need to be cross-checked, whether the agreement meets the ESS5 policy. The agreement needs to incorporate the policy.
- **Remedy fund/ budgeting corrective actions:** We also support the requirement in ESS 1, para. 29 that environmental and social costs should be internalized within the project: "The borrower/client will ensure that the cost of addressing E&S risks and impacts through the mitigation hierarchy, are considered as part of a project's costs." We support the recommendation of OHCHR to be consistent with best practice in other MDBs, and welcome the explicit requirements for contingency funds and budgeting for corrective actions (ESS 5, paras. 30 & 36)
- The **scope of the policy** has to be extended to up- and downstream displacement effects regarding economic and physical displacement. The area of scrutiny must not be limited to the project area, but encompass the full range of affected areas and people.
- **Land titles:** The future ESS5 Policy need to include people without formal land-titles for compensation for lost land use. As has been discussed at the ADBs AGM in Tbilisi it was promised that the reviewed ESS will recognize customary land for compensation processes.
- **Categorization:** Any Project involving resettlement should be categorized as a high risk project.
- **Financial intermediaries:** All indirect lending instruments like FI or TA have to be scrutinized regarding possible displacement effects. Especially with FI financing resettlement has to be handled by the project sponsor in the same way as a direct ADB project.
- **Reporting and due diligence:** ADB needs to be much more diligent and consistent in reporting. An up-to-date 'resettlement inventory' is needed to make management and board aware of the extent of resettlement in ADB's financing. A consistent Reporting Standard should be introduced which requires counting of individuals throughout the project cycle.
- Due to the massive impact of resettlement and the poor performance of multilateral banks over the last decades, we question the benefits of projects involving resettlement. Following IFC applied regulations⁶, we recommend not to approve any projects that require the resettlement of 5,000 or more persons.
- **Resettlement during complaint processes:** Land acquisition and resettlement regulations need to go hand in hand with complaint mechanisms: While the complaints are ongoing and not solved, construction work of the project people complain upon should not get started or need to halt.

⁶ Environmental Guidance on Renewable Energy (Guidelines for IFC), "OPIC will not support the following types of projects: Projects that require resettlement of 5000 or more persons" <https://www.dfc.gov/sites/default/files/2019-08/hydro-guidance-note.pdf>