

Displaced in name of development

Urgent questions about the ADB's
safeguard policy reform

Pieter Jansen, Both ENDS

June 2024

CONTENTS

Summary	2
1 Introduction: safeguard policies don't prevent large-scale development-induced displacement	3
2 Governance frameworks instead of safeguards policies: the great unknown	3
3 ADB reform of corporate lending strategies negatively impacts safeguard reforms	4
4 ADB's intended policy changes: country safeguard systems and adaptive management	4
5 Two examples from Indonesia: Jawa One and PLN	5
6 Conclusions	6
Sources	7

SUMMARY

International financial institutions (IFIs) such as the Asian Development Bank (ADB), which fund large-scale infrastructure projects for development purposes, all used to have safeguard policies in place. These safeguards are designed to prevent and mitigate adverse impacts of projects on people and the environment, key among which is avoiding forced evictions. However, in the previous decades millions of people have been forced from their land and homes as a consequence of IFI investments, despite these safeguards policies.

For decades, the World Bank and regional development banks such as the ADB have promoted a state centered, developmental approach. Safeguard policies were instrumental to this approach, in which clear rules and regulations shaped the playing field of markets. More recently, however, IFIs have started to favor market-based financing. Associated with this shift, is the trend among IFIs to replace safeguard policies with environmental and social 'frameworks' that better suit the 'risk-based approach' of investors and fund managers. While safeguards are detailed and mandatory rule-based directives, frameworks are principle-based. Frameworks provide guidance to IFI clients about due diligence, implementation and monitoring of environmental and social impact. But the principles and benchmarks that frameworks promote can be interpreted in a flexible way.

The Asian Development Bank is currently reviewing its safeguard policies, which had been in force since 2010, and intending to replace them with a Social and Environmental Framework. In this policy brief, we present three considerations that we believe should urgently be taken on board in the ADB safeguard review process. Firstly, the ADB should proceed with great caution in relying on country safeguard systems (CSS), that is, in permitting clients to use their own regulations for assessing the environmental and social impact of projects, and for resettling and/or compensating affected communities. The risks involved in this approach are evident given that recognition

of the power imbalances *within* countries, which often cause communities' rights to be subverted, was an important factor in the development of IFI safeguard policies in the first place. We present two examples from Indonesia that illustrate why the use of CSSs is extremely worrying.

Secondly, the ADB should be very cautious about embracing 'adaptive management' and instead ensure that upfront safeguard requirements, which must be satisfied before project approval, are maintained. Once the funds have been granted, any leverage to assure that projects meet the social and environmental safeguard requirements is lost. Finally, the ADB needs to obtain independent evidence that a similar process of safeguard reform that was implemented by the World Bank in 2018, has indeed improved, rather than weakened, environmental and social results on the ground for the people and communities that are the intended beneficiaries of development projects. As yet, no such evidence has been documented.

1 INTRODUCTION: SAFEGUARD POLICIES DON'T PREVENT LARGE-SCALE DEVELOPMENT-INDUCED DISPLACEMENT

Over the past four decades, millions of people – as well as other unique living beings - have been forcibly displaced as a direct result of infrastructure projects that are financed with development funds, mostly by international financial institutions (IFIs). While infrastructure projects, such as bridges, railroads, power stations, ports and mines, are meant to benefit economic and social development in poor countries, the displacement these projects cause have serious adverse consequences for people, communities and their natural environment. Firstly, the infrastructure corridors (industrial parks, factory sites, waterways, roads and rail tracks) often cause environmental damage and disrupt already threatened ecosystems; they traverse the permanent and migratory routes of animals and cut plants and animals off from the food web. Secondly, infrastructure projects that cause human displacement deteriorate people's access to and control over the natural resources that they depend on for their living. It often occurs that project-affected persons are resettled to places that are remote from these natural resources. When access to employment is limited and no alternative economic opportunities are provided, resettlement very often leads to impoverishment. The stress and trauma that people experience as a result of forced displacement are also a significant concern, impacting people's resources to rebuild their lives and communities.

According to the Internal Displacement Monitoring Centre (IDMC), internal displacement reached an all-time high by the end of 2023, when 75.9 million people were internally displaced across the world, of whom 68.3 million were displaced by conflict and violence and 7.7 million by disasters. The millions of people who have been displaced as a result of development-related infrastructure projects over the past decades have never been accounted for in the annual IDMC reports.

One would think that displacement caused by development projects would not need to reach such high numbers, after all, unlike the impact of natural disasters, the impact of development projects can be anticipated and planned for. Indeed, IFIs such as the World Bank and the Asian Development Bank all used to have safeguard policies in place that are designed to prevent and mitigate adverse impacts of the projects that they finance on people and the environment. A key element is these policies, at least on paper, is preventing involuntary or forced resettlement. Where resettlement cannot be avoided, the safeguard policies require the IFIs to prepare resettlement plans that minimize and mitigate the negative impact caused by displacement.

In reality, however, infrastructure projects continue to cause massive forced resettlement. It appears that the displacement and the consequent impoverishment of communities as well as the destruction of ecological systems are too often accepted as the unavoidable 'collateral damage' of infrastructural development projects. A 2014 World Bank report indicated that an estimated 15 million people annually were displaced in the period 2001-2010 as a direct result of development projects. A 2006 ADB evaluation study on involuntary resettlement safeguards mentions that at least 1.77 million people were

anticipated to be affected by displacement between 1994 and 2005.

More recent data about development-induced displacement caused by IFI-funded projects are not available. Nevertheless, there are strong indications that the incidence of development-induced displacement worldwide is on the rise. We therefore urge the ADB to put in all required effort to establish the actual number of people displaced as a result of ADB-financed projects during 2009 – 2024. This is the time-period that its safeguard policy, including the involuntary resettlement policy, was operational. The ADB would do well to evaluate the effectiveness of the safeguard policy's implementation, in order to take on board the lessons learned in the ongoing design of its new Environmental and Social Framework.

2 GOVERNANCE FRAMEWORKS INSTEAD OF SAFEGUARDS POLICIES: THE GREAT UNKNOWN

The Asian Development Bank is currently reviewing its 2009 safeguard policies, including its mitigation measurements for involuntary resettlement, with the intention to replace these policies with an Environmental and Social Framework. Replacing safeguard policies with 'frameworks' is an approach that the World Bank Group has promulgated since 2017. According to political scientists like Michael Power, 'governance frameworks' equal a 'managerial instrument'. In the case of IFIs, weighty political decisions that impact society, such as indeed decisions related to large-scale resettlement, are being reduced to a technical managerial question under the guise of governance: does the bank or the client of the bank meet the minimum social and environmental benchmarks for large-scale displacement to be justified? With governance, it is all about indicators, targets, procedures and auditing. However, we strongly believe that the impact of large-scale involuntary displacement on people and the environment is so deep, that this topic deserves a political discussion between citizens and the government about which type of development is desired, and which consequences are deemed acceptable.

Furthermore, we agree with pundits like Vinod Thomas, who served as head of the ADB and World Bank evaluation departments, who strongly suggests that the ADB obtains independent evidence that the 2018 replacement of the World Bank safeguard policies by a governance framework has indeed improved environmental and social results on the ground. The World Bank has not released any evidence as yet that this policy reform has improved, and not weakened, the environmental and social results of the infrastructure projects it has funded since 2018.

3 ADB REFORM OF CORPORATE LENDING STRATEGIES NEGATIVELY IMPACTS SAFEGUARD REFORMS

Recent reviews of safeguard policies are part and parcel of a broader ongoing IFI reform and reorganization process. A recurring pattern in the IFI reforms of the past twenty years is that they aim at making lending more cost-effective, with fewer rules in place. Already in 2013, the World Bank in its corporate strategy outlined the institutional changes needed to make lending more cost-effective. A leaked management paper in 2014 discussed the relationship between the Bank's corporate strategy and its safeguards framework, stating that "many staff avoid safeguards work, because career progression depends on delivering projects to the Board."

The current ADB's safeguard policies came into effect in the aftermath of the financial crisis of 2008. In the years previously, the ADB had lost ground to other financial market players, among others Chinese state wealth funds and state listed banks, because it had become relatively expensive. The financial crisis in 2008 provided some renewed legitimacy to the bank. Prominent world economists hoped that, in response to the crisis, the Asian region would take a lead in boosting the world economy through a rigorous investment program in emerging mid-income home markets. The ADB decided to increase its capital base with 20%.

By 2024, the ADB, like other development banks, has become increasingly dependent on the capital of financial markets. It feels compelled to catalyze and mobilize financial resources for development from other market players. The Strategy 2030: Achieving a Prosperous, Inclusive, Resilient and Sustainable Asia and the Pacific, adopted in 2018, indicates that the Bank wants to increase its overall lending and investment in infrastructure. Simultaneously, the Bank intends to relax its own lending rules, concerned that these are too tedious and will scare away borrowers. The Strategy states that the ADB will "increase its operational efficiency and reduce the time for preparing and administering loans, grants, and Technical Assistance without compromising quality and integrity." The ADB will further **"seek to increase the use of country systems in its public sector operations to help reduce delays in project implementation, cut transaction costs, improve country ownership, and strengthen developing members countries' institutions and systems"**.

We and many other NGOs and CSOs consider it highly worrying that decisions the ADB is taking first and foremost with a view to enhancing corporate efficiency, have the effect of closing the space for evidence-based decisions on the reform of safeguard policies. Even worse, the urgency to improve lending efficiency might even preclude a necessary thorough review of the effect of these social and environmental safeguards in the past fifteen years.

4 ADB'S INTENDED POLICY CHANGES: COUNTRY SAFEGUARD SYSTEMS AND ADAPTIVE MANAGEMENT

IFI safeguard policies are designed to guarantee certain standards of environmental, social and gender protection in the design and implementation of development projects. This is especially relevant when such protections are not provided in the borrower country's national law or in the corporate frameworks of companies involved in project implementation.

Together with many CSOs worldwide, we are therefore highly alarmed that a key aspect of the safeguard policy reform that the ADB is currently undertaking, is to delegate safeguard responsibilities to borrower countries. For projects that the ADB does not consider highly complex or sensitive, it intends to start working through country safeguards systems (CSS). This inevitably means that, in order to fully align itself with such country systems, the ADB will have to relax its existing policies and procedures. Or in other words, the new 'frameworks' to be adopted by ADB, and those of other IFIs for that matter, increasingly rely on the environmental and social standards of borrowing governments and corporations rather than on international human rights standards.

The aforementioned ADB evaluation report stated that a rigorous application of the safeguards concerning involuntary resettlement could not always be negotiated with the borrower countries. Indeed, in the view of some borrower governments, the IFI safeguards on involuntary resettlement forced them to take mitigation and compensation measures for project-affected communities that went beyond what they would normally provide in similar situations. In certain cases, when government compensation for displaced people was not up to the mark, the ADB provided additional funds for covering the cost of housing in resettlement sites for people without land titles. The affected persons were aware that they would have not received this additional compensation if the ADB had not been involved. While the ADB measures were sometimes considered to have a positive demonstration value, on the downside borrower governments mention that it triggers criticism about the use of double standards for foreign-funded projects, or even a weakening respect for government policy.

Overall, the ADB safeguard policy states very clearly that where involuntary resettlement is unavoidable project-affected persons should be at least as well off as they would have been in absence of the project. This is to be achieved, among others, by stressing "land for land compensation" as well as a requirement that city dwellers, squatters and land users with no titles are also compensated for the loss of material assets. However, even if the ADB's requirement for compensating land and physical structure owners for losses at replacement cost or market value may be enshrined in law in borrower countries, the valuation systems to determine these are at odds with those that ADB promotes. This illustrates a wider problem when it comes to using country systems, that is, the lack of clear standards and sound procedures for assessing the equivalence between ADB's own safeguard policies or frameworks and the national laws and regulations of borrower countries.

A second key change in the current safeguard policy reform process suggested by the ADB is referred to as *adaptive*

management. This means that environmental and social risks no longer have to be identified early on in a project, but will be addressed as they emerge during project implementation. This expands the time period within which issues, such as involuntary resettlement, become negotiable between lender and borrower. It means that costs and well as impacts will not be fully known at the appraisal stage of a project and that the Board of banks will be asked to approve financing without this knowledge. Chances are high that in such an adaptive approach due diligence is compromised – both the accurate identification of people who are likely to be affected by the project and their independent consultation. Additionally, this approach further place sole reliance on self-monitoring and self-reporting, and open the door to softening requirements during implementation. Local communities will inevitably bear the brunt of the negative impacts of this proposed new approach.

5 TWO EXAMPLES FROM INDONESIA: JAWA ONE AND PLN

The two cases from Indonesia presented below illustrate the damaging impacts that infrastructural development projects often have on communities despite the safeguards policies that are in place. There are two main reasons why this is the case: first, a poor implementation and monitoring of the safeguard policies, and second, a growing reliance on borrower countries and implementing corporations for this policy implementation.

The Jawa One case

The ADB financed the development and construction of Jawa One, a gas-fired power plant built in the coastal region of Citaram, on Central Java. It was first funded in 2018. The ADB accepted the client's use of Indonesian criteria for assessing the significance of impacts, which were drawn from Indonesian national legislation and standards.

An assessment of the alignment between this legislation and the ADB safeguards, concluded that Indonesia's legislation was only partially acceptable. However, it did make reference to the ADB safeguard policies (and the IFC performance standards and Equator principles) to show that "at a strategic level" [...] the project would align with the expectations of the safeguards policies".

The Indonesian government considered the development of the Jawa One power plant to be of national importance. National law therefore allowed private property to be expropriated for public use. An investigation conducted by community based and civil society organizations revealed that hundreds of fishermen, who lost access to fishing grounds due to the construction works, were not properly consulted (due diligence) and have so far been excluded from the compensation process. In addition, people with only user rights to land were excluded from any consultation or negotiation for compensation or resettlement. Those whose land and houses were expropriated were not sufficiently compensated for their losses. Lastly, the CSO investigations showed that state security actors had tried to influence, or even coerce, certain decisions during public project consultations meant to ensure inclusive stakeholder engagement.

The case of Jawa One illustrates what happens often: valuable measures and provisions in the written country safeguard policies get distorted by poor implementation. The fact that no proper due diligence took place and that affected persons were insufficiently compensated was also a direct result of using Indonesia's country safeguard system. CSOs have challenged the ADB to come up with a correction plan for all the flaws in the safeguard implementation. A lot of time and energy is now spent on correcting the mismanagement of the resettlement program associated with Jawa One. The delegating of due diligence responsibility from ADB to the Indonesian government through use of the country safeguard system, has resulted in seven ongoing re-assessments of critical environmental and social impacts.

The PLN case

This second example concerns the collaboration between the ADB and the Perusahaan Listrik Negara (PLN) parastatal energy company. It illustrates the growing reliance by IFIs on the weak regulations of countries, parastatals or corporations when it comes to due diligence and project implementation.

The ADB has provided substantial support to the Indonesian energy sector for many years, including finance for the construction of PLN power plants and other energy infrastructure. PLN safeguard policies apply to the entire energy sector in Indonesia. As the ADB intended to work through the country safeguards system of Indonesia, proof was required, as per the ADB's own regulation, of equivalence between the Indonesian CSS and the ADB's Safeguard Policy Statement (SPS), as well as proof that "the borrower has the acceptable implementation practice, track record, and capacity" to implement the CSS. This assessment revealed various lacks in equivalence between Indonesia's legal systems and the ADB's safeguard policies.

In response, the Indonesian government suggested to use the PLN corporate policy for the energy sector as the country safeguard system for all ADB-financed projects in Indonesia. In other words, it suggested that PLN land acquisition and environmental and social impact assessment policies should serve as substitute for government regulations, and be implemented by multiple agencies and ministries, including the National Land Agency, the Ministry of Environment and Forestry, as well as provincial and local governments.

NGOs and CSOs immediately sounded the alarm bell about this proposal, emphasizing the PLN's bad track record in terms of corruption, non-compliance with ADB safeguards, and human rights abuses (e.g. intimidation of environmental activists), and stressing that the PLN corporate policy would make for a very weak legal instrument. In October 2019, the ADB conducted its own assessment of the PLN CSS, and concluded that there was a lack of equivalence between the PLN CSS and every single Involuntary Resettlement requirement of the ADB's SPS (see box below). Helped by the pushback from CSOs, the ADB eventually decided to not replace the ADB safeguards by the PLN corporate policies.

Lack of equivalence between PLN CSS and the ADB SPS

The ADB identified more than ten gaps between its own SPS Policy Principles and the PLN CSS. A selection of these gaps, focused on issues that affect people without land titles, is listed below.

Policy Principle 1. Screening to identify past, present, and future involuntary resettlement impacts and risks.

The PLN CSS feasibility study for land acquisition does not explicitly require screening for involuntary resettlement. The depth of screening for socioeconomic impacts for a feasibility study is not stipulated in the PLN CSS and therefore does not include gender analysis specifically related to resettlement impacts and risks.

The PLN CSS furthermore lacks requirements to screen for the presence of informal users prior to formalizing a collaboration agreement to use conservation forest land or entering into an agreement to exchange forest land. Given that the majority of Indonesia's citizens do not own land certificates, the exclusion of those without land titles from safeguard protections under Indonesia's national legal system represents an extraordinary problem leading to a full lack of equivalence with ADB SPS requirements.

Policy Principle 2. Pay particular attention to the needs of vulnerable groups and ensure their participation in consultations, support the social and cultural institutions of displaced persons and their host populations, and implement a social preparation phase when involuntary resettlement impacts and risks are highly complex and sensitive.

The PLN CSS stipulates that public consultation must involve entitled parties and affected communities, which are defined as communities directly contiguous to the location of the land to be acquired. The PLN CSS lacks a requirement to identify some groups as vulnerable, e.g., the landless and those without legal titles to land. The PLN CSS lacks a requirement that consultations be undertaken in an atmosphere free of

intimidation or coercion. The PLN CSS lacks requirements for public participation in implementing and monitoring involuntary resettlement.

Policy Principle 4. Provide physically and economically displaced persons with assistance including comparable access to employment and production opportunities, and integrate resettled persons economically and socially into their host communities and extend project benefits to host communities.

Indonesian law and regulations lack provisions requiring comparable access to employment and production activities, integration of resettled persons into their host communities, or extension of project benefits to host communities when land is acquired for development in the public interest.

A PLN board of directors decree on acquisition of less than 5 ha of land, requires persons whose land is acquired to relinquish rights and hand over titles, but lacks a requirement that PLN must provide secure titles to relocation land. The PLN decree lacks a requirement for transitional support and development assistance.

Policy Principle 7. Ensure displaced persons without titles or any recognizable legal rights to land are eligible for resettlement assistance and compensation for loss of non-land assets.

Indonesian law and presidential regulations exclude informal/untitled land users if they are unable to produce required paperwork. The PLN CSS lacks explicit requirements to screen for and register involuntary resettlement impacts generally or in particular for unrecognized customary, non-titled, and informal occupiers and users of land involved. The Presidential regulation on accelerating development of electricity infrastructure, gives ministers, heads of organizations and local government undefined authority to do what is necessary to remove obstacles to acquiring land for electricity infrastructure.

6 CONCLUSIONS

The safeguard policies that international financial institutions have had in place for several decades were designed to guarantee certain standards of environmental, social and gender protection in projects, even when these protections are not provided in national law or corporate frameworks. However, despite such policies in place, many projects have had seriously damaging impacts on communities, often linked to development-induced displacement and involuntary resettlement.

Current trends in safeguard policy reform that many IFIs are engaged in, give even more reason for worry about the impacts of IFI-funded large-scale infrastructure development projects on communities and their environment. The main reason for this worry is the growing reliance on borrowers/clients for the

implementation of safeguards. IFIs seem to want to put more trust in their borrowers, delegating the responsibility for due diligence and thus reducing their own accountability.

The Asian Development Bank is taking a similar route. As part of its current safeguard policy reform process, the ADB intends to delegate safeguard responsibilities to its borrowers, as well as promote adaptive management, in an attempt to increase the efficiency of lending. This is worrying because the current ADB safeguards, certainly on paper, include better provisions for protecting the rights of project-affected persons than the country safeguard systems of the Bank's borrowers and clients.

We foresee that the ADB's ambition to increasingly use country safeguard systems is doomed to have adverse effects. An 2020 evaluation by the ADB evaluation department concluded that the ADB's mandatory assessments that are meant to prove equivalence between the CSSs and ADB's Safeguard Policy Statement, have not worked. This is because such process requires the ADB to be equipped with experts that are familiar with the legal, technical, environmental, social, political, and

economic dynamics of many different borrower countries. This requires the allocation of massive time and budget beyond, if not out of, the financial resources of the project itself. Evaluations of the use of country system pilots by the World Bank have already shown that leaving safeguard assessments to clients does not automatically result in more efficiency and cost-effectiveness. Instead, hiring consultants to fill certain gaps in a country's capacity appears to result in higher costs for both borrowers and banks.

We suggest that an independent equivalence assessment demands the insights and opinions of different experts, including human rights and environmental organizations. Independent observers should assess the track record of borrowers in terms of their capacity for, and experience with implementing rigorous social and environmental safeguards. This said, it is questionable whether some borrowers have the political will to improve their track record in this regard. What is clear, is that upholding the rule of law is extremely challenging in countries with weak judicial institutions and legal frameworks, especially when it concerns government-supported infrastructural projects. The fact that host governments increasingly protect investments through state security forces, deserves the urgent attention of IFIs and the international community as a whole.

For all these reasons, we urge the ADB to give the issue of country safeguard systems and equivalence assessment priority attention during its current process of safeguard reform. Given the evidence that IFI safeguard policies have not been able to prevent the development-induced displacement of millions of people, it would be foolish to assume that the country safeguard systems of authoritarian governments, or the corporate policies of companies that first and foremost serve the interests of asset and/or equity holders, could improve the situation of women, men and children whose lives are deeply affected by large-scale projects in name of development.

DEFINITIONS

Development-induced displacement (DID) is a form of internal displacement where individuals or groups are involuntarily moved from their homes or residences to make room for development projects. Displacement, in this context, occurs when the implementation of development projects involves the acquisition of land or results in unbearable living conditions that force people to flee their homes.

Country safeguard systems (CSS) are composed of the policies, practices, legal frameworks and institutions that a country puts in place to avoid, minimize or mitigate potentially adverse environmental and social impacts of development activities.

SOURCES

- The Audit Society: Rituals of Verification, Michael Power, Oxford University, August 1999.
- Special Evaluation Study on involuntary resettlement safeguards, ADB, September 2006
- Routine and dissonant culture, Ted Downing and Carmen Garcia Downing, 2009
- Involuntary Resettlement Portfolio Review Phase II: Resettlement Implementation, Social Development Department, World Bank, 2014
- Policy briefing on the World Bank Safeguards Review, Both ENDS, September 2015
- Draft Environmental and Social Impact Assessment Report (ESIA) – Part 1, INO: Jawa-1 LNG to Power Project, March 2018
- Challenging the Prevailing Paradigm of Displacement and Resettlement, Edited by Michael M. Cernea, Julie K. Maldonado, 11 June 2018
- Indonesia: Perusahaan Listrik Negara (PLN) Agency-Level Use of Country Safeguard Systems: Equivalence Assessment of Involuntary Resettlement Safeguards", ADB, October 2019
- Effectiveness of the 2009 Safeguard Policy Statement, Evaluation Document, IED, 15 May 2020
- Safeguards at ADB – a presentation of Vinod Thomas, The Hague, March 2021
- Briefing on ADB-funded Jawa 1 Gas to Power Project's Unintended Consequences, Koalisi Pemantau Pembangunan Infrastruktur Indonesia, September 2023.
- ADB SPS Review: Delegating the due diligence responsibilities to the client/borrower, a presentation of Just Finance International, 13 March, 2024
- Global Report on Internal Displacement (GRID), Internal Displacement Monitoring Centre (IDMC) and Norwegian Refugee Council (NRC), 2024

¹ Leaked memos by Vice Presidents about the first draft ESF, May 2014; seen by author.

² The text in this box draws on "Indonesia: Perusahaan Listrik Negara (PLN) Agency-Level Use of Country Safeguard Systems: Equivalence Assessment of Involuntary Resettlement Safeguards", October 2019, pages 4 – 8.

COLOPHON

Author: Pieter Jansen, Both ENDS
Text reviewer: Nick Middeldorp (Both ENDS),
Wawa Wang (Just Finance International),
Meiki Paendong (Koalisi Pemantau Pembangunan Infrastruktur Indonesia).
Editing: Ellen Lammers
Design: Abel Derks (Original design: Margo Vlamings)



Both ENDS

Nobelstraat 4

3512 EN Utrecht

The Netherlands

www.bothends.org
