

# CONTEXT

1. Transparency serves multiple objectives. It serves practical objectives important for the Bank to strike a balance between achieving its mission and reaching its targets for operational efficiency.

Corruption and non-compliance to safeguards have proven to bear multiple long-term risks to the Bank, its borrowers and project-affected communities. Transparency also serves public interest benefits as it can help reduce corruption; identify potential social, environmental and economic risks and benefits and help create or increase democratic space for stakeholders to participate and shape a self-determined development process. Most importantly, transparency has a legal basis. Above all, access to information held by International Financial Institutions (IFIs) is a fundamental human right. Article 19 of the United Nations Declaration of Human Rights guarantees our right “to see, receive and impart information and ideas”. This substantive provision is repeated in Article 19, par 2 of the International Covenant on Civil and Political Rights adopted in 1966 that binds state and non-state parties, including the Asian Development Bank (ADB, referred hereunto as the Bank).

2. The demands for transparency, access to information, accountability and participatory development processes are enshrined in Agenda 21, the Aarhus Convention, and the UN Declaration on the Rights of Indigenous Peoples. This is also increasingly recognized internationally through mechanisms such as Business and Human Rights of the UN which seeks to make business of corporations more accountable to the people and the environment. With specific relevance to a policy for information disclosure are the following Sustainable Development Goals targets significantly intertwined with the attainment of other development objectives such as environmental and social protection, equality, stemming of corruption and a vibrant democracy:

- \* Target 16.5 Substantially reduce corruption and bribery in all their forms
- \* Target 16.6 Develop effective, accountable and transparent institutions at all levels
- \* Target 16.7 Ensure responsive, inclusive, participatory and representative decision making at all levels

3. Additionally, there are principles adhered to by the international community and evolving State

practice and from which our critique and recommendations are based from:

- \* Principle of presumption in favor of disclosure.
  - \* Freedom of information legislation and policy development should be guided by the principle of maximum disclosure
  - \* Principle of obligation to publish. Public bodies should be under an obligation to publish key information
  - \* Principle of promotion of open government. Public bodies must actively promote open government
  - \* Principle of processes to facilitate access.
  - \* Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available
  - \* Principle of open meetings. Meetings of public bodies should be open to the public
  - \* Principle of disclosure takes precedence. Policies which are inconsistent with the principle of presumption in favor of disclosure should be amended or repealed
4. The ADB, as a public institution operating with taxpayer's resources is a holder of information. We commend the Bank for continuously recognizing the right to access and impart information and ideas as stated in its 2011 Public Communications Policy (PCP) and which also appears in the draft PCP, par. 13. Our regional inequalities and contexts, however, require the ADB to move beyond recognition of rights and make substantial steps toward protection and fulfillment of this legal obligation.
  5. RTI is still an objective in ADB with its layers of restrictions on important data and information remain inaccessible from public access and thus become impediments for accountability. The presence of unnecessary veto powers and severe weaknesses in policy execution have left projectaffected in worse conditions and key biodiversity harmed in the implementation of development projects. These have cost reputational and financial burdens to the Bank which could have significantly been avoided had information was timely and sufficiently disclosed.
  6. We, independent watchdogs of ADB policies and projects from different parts of the world and representatives of project-affected communities, submit this joint-CSO position paper based on international objectives, norms, standards and vast experiences in engaging the Bank. We thank the ADB for instituting reforms close to international standards and obligations and clear orientation for project-affected communities. Although challenges remain, it is clear that the task ahead is to uphold the best features and drop those that are prohibiting project-affected

communities to acquire information needed to protect their property, life and liberty and from participating in the development process. We are deeply alarmed, however, of the huge retreats that the Bank is about to undertake in introducing dangerous provisions in its draft Policy to recognize, protect and fulfill RTI.

## OBJECTIONS ON PROPOSED CHANGES EFFECTIVELY DILUTING MEASURES IN THE 2011 PUBLIC COMMUNICATIONS POLICY

7. We appreciate the stated intent of having flexibility in deciding over which documents are for disclosure by shifting from prescriptive policy to principles-based disclosure. We have no reason, however, to believe that it will work based on our five-year use of the 2011 PCP and receiving information through its delivery mechanisms. A shift from prescriptive to principles based policy is in the trajectory of removing disclosure obligations to the public, especially project-affected communities. Operationally, the shift opens itself to the dangers of subjectivity, low capacity and level of awareness among project staff. That the shift comes with a dangerous proposed provision for allowing amendments without public consultations is also fundamentally flawed as regressing from international best practice in oversight and accountability, global development commitments and obligations including human rights on RTI and people's participation in development.
8. Annual reports of the PCP implementation reveal that the 2011 PCP has have been improved through time to bring implementation to best practices yet gaps and inefficiencies remain. Our own experiences:
  - a) project documents are not uploaded on time and in a regular basis with documented cases when uploading was done during Board approval
  - b) Email queries are seldom responded to either due to complacency, lack of regulation, or gaps in the delivery mechanism and systems (response forms, information request system)
  - c) existing policy exceptions continue to inhibit vital information to protect project-affected communities;
  - d) translation of key policies were not sufficiently undertaken and safeguards documents are not shared in the manner understandable to project-affected communities. Utmost, publicly disclosed means available in ADB.org.
9. With low-levels of adherence to information disclosure matched with the same policy exceptions, it is difficult to expect that Bank management and staff have the capacity to evaluate the particular facts and circumstances of each project-affected community and refer to the principles to adequately provide the appropriate disclosure needs. Given that projects will continue to roll out, it is impossible to expect that the Bank's units and departments will simultaneously adjust quickly to grasp the principles to the best interest of project-affected communities. Despite the challenges we have encountered in the last five years using the 2011 PCP, we still strongly subscribe for a prescriptive information disclosure policy.
10. The same argument applies on the removal of the policy communications approach which should also be in the policy text as it binds the entire Bank and the borrower(s) to be committed to transparency and information disclosure that cannot be achieved if it is subsumed in an external relations strategy subject to changing resources and priorities.
11. Therefore, ADB should sustain the current policy structure which include a non-exclusive list of documents as minimum set for disclosure with additional proposed recommendations in the latter parts of this submission. To clarify the the timing and modality of dissemination for each document, a staff directions can be attached to the policy.
12. The global consensus on the impacts of economic strategies that fails to consider social and environmental aspects as reiterated by the SDGs reflects the key assumption in the birth of the 2009 Safeguards Policy Statement (SPS). Development projects carry risks to the communities and the environment and that information is key in avoiding harm, if not, mitigating it. Thus, a strategic, affirmative and context-specific action for project-affected communities cannot be subsumed or reduced in significance. Thus, the removal of the orientation to serve project affected communities in the draft PCP is a serious retreat in its stated commitments. A persistent accountability gap remains due to the weak policy execution of 2011 PCP for project-affected communities and policy gaps. Based on the 2016 Learning Notes of the Accountability Mechanism, "*information, consultation, and participation contributing 33% of the complaints*" points to the greater need for proactive and accessible information particularly for project-affected communities. To this end, paras 47 and 48 of 2011 PCP should be

reinstated: "To facilitate dialogue with affected people and other interested stakeholders, including women, the poor, and other vulnerable groups, information about sovereign and non sovereign projects and programs (including environmental and social issues) shall be made available to them in a manner, form, and language(s) understandable to them and in an accessible place. ADB shall work closely with the borrower or client to ensure that such information is provided and feedback on the proposed project design is sought, and that a project focal point is designated for regular contact with affected people and other interested stakeholders. This process will start early in the project preparation phase, allowing their views to be adequately considered in the project design, and continue at each stage of project or program preparation, processing, and implementation. ADB shall ensure that the project or program design allows for stakeholder feedback during implementation. ADB shall ensure that relevant information about major changes to project scope and likely impacts is also shared with affected people and other interested stakeholders.

Further supporting this outright consideration for the rights of project-affected people is par 48 in 2011 PCP:

*"ADB will assist DMC governments and private sector clients in developing a project or program communications strategy, which will be an integral part of consultation and participation by affected people and other interested stakeholders. Such a strategy would help borrowers and clients to involve affected people in the design and implementation of ADB assisted activities, and increase involvement of grassroots and civil society organizations in the development process by detailing how to engage in dialogue with affected people and broaden public access to information. This will be done by indicating in various documents, such as the consultation and participation plan or the project administration manual, (i) the types of information to be disclosed; (ii) the mechanisms for public notice, including language and timing; and (iii) the responsibility for implementing and monitoring of information disclosure and dissemination."*

13. Remove discriminatory provisions to RTI which can be used at stifling media, transparency and human rights groups, individuals and project-affected communities in seeking information that is timely, complete and understandable to communities. The only reason for denying a request for information must only be based on the already comprehensive list of restricted documents under limited exceptions of the PCP in pursuit of the principle of presumption in

favor of disclosure. We are placing strong objections to the following proposed provisions: "ADB reserves the right to refuse unreasonable or unsupported requests, blanket requests, and any request that would require ADB to create information or data that does not already exist or is not available in its records management system.", par. 26 draft PCP

*"ADB shall not be required to comply with, or respond to, repeated or unreasonable requests for information on the same subject from the same person, organization, or group if ADB has provided such information after a previous request or has given reasons why it cannot provide the information."* par. 27, draft PCP 14. Paragraphs 26 and 27 of draft PCP are unacceptable measures for sectors and individual with high data usage or have critical requirements for adequate and specific information that are required to perform their specific mandates and needs. Reasons for repeated or follow-up requests may vary: the system may not be attuned with current research needs for intervention and decision making, inadequacy of information provided by ADB, expanding or deepening data needs as a common result in any research undertaking, difficulty in navigating through ADB.org, or deliberate choice to ignore requests for information. The Bank's record management system must foremost tailor to the principle of presumption in favor of disclosure and not be an impediment to RTI. If a data or information exists but is not available in a publicly-funded record management system, then the Bank must seek to narrow down the subject or lead the requester to pertinent sources of information or adapt to fulfill a request for disclosure in a clearly stated period of time. Again, no information should be withheld from public access other than those that are already in the wide range of limited exceptions.

14. Removal of the Focal Point does not support a two-way communication with affected people whose needs for information require responses that are reliable, project-specific, policy-informed and above all, time-bound. Absence of a Focal Point will increase the waiting time for responses from different units and when received may not provide relevant and timely project information being sought for that can otherwise be gathered when there is a Focal Point. In addition to the foreseen lack of brevity and punctuality, the absence of a Focal Point will be detrimental to accessing information because it will require substantial familiarity on the different mandates of each ADB unit for CSOs and project affected communities. In such a set-up, it will also be a barrier for CSOs and project-affected communities to inform the Bank quickly of arising risks before important Board dates.

15. The draft PCP lacks commitment to feed backing, excellence in policy execution and undervalues public participation in the Bank's policy development processes. A definitive period for PCP review participated by stakeholders, particularly CSOs and project-affected communities creates an environment of trust between the Bank and its stakeholders. Any change in the PCP have a direct impact to RTI and as a legal obligation of a public institution, should be subject to meaningful consultations. The following line should be taken down in the draft PCP: "...Amendments to the policy will be made from time to time as needed.", last line, par 42, draft PCP.
16. It also follows that the list of documents for disclosure and limited exceptions should not be amended as well without public consultations. The list of documents for disclosure are simply not matters for Management alone to decide and thus should be in the policy text and not only in the operations manual or staff instructions. Therefore this line should be deleted: "This list will be updated from time to time, as necessary", 3rd par. staff instructions
17. The draft PCP must uphold the duty to consult with ADB's stakeholders, particularly project-affected communities in conducting a comprehensive review after a period of time, not exceeding five (5) years from the effective date of the policy through a public consultation. The proposed revision of amending without inquiry and debate, treads below international practice in policy consistency, transparency and confidence-building with stakeholders. A clause on amendments and review must deliberately state that the principle for amendment is toward increased disclosure in line with international human rights instruments. Not only is this compliant with legal norms, it also supports operational efficiency. Undertaking a review participated by its stakeholders especially project affected communities identifies the changing needs for information needed to reduce costly risks.
18. Project Data Sheets (PDS) is the basic document used to inform communities on potential risks, contact person, and date of decisions to allow exchange of information at the early stage of the project. The proposed reduction in updating of the PDS to at least once a year rather from twice a year is incompatible with the recommendation of the ADB IED Safeguards Operational Review for improved updating of monitoring reports. It is important that changes in the safeguards, updated safeguards documents and monitoring reports and dates of approval must be disclosed

more frequently in the age of co-financing modalities and private-sector investments. According to the latest PCP annual report, PDSs due for updating were posted on time, while 81% were updated and posted on time in September. Albeit not completely compliant, the performance does indicate it can be attained and should be pursued instead of allowing less regular updating. Thus, the minimum frequency for updating of twice a year should maintain and avoid reducing the standard.

## RECOMMENDATIONS ON RESTRICTED DOCUMENTS AND LIMITED EXCEPTIONS

19. We take note that "public interest" is used throughout the document (see paras. 16, 22, 32 and 33 in draft PCP) to restrict important documents from public access without putting it in a harms test. RTI is a human right and is also a public interest. Reduction of greenhouse gas emissions, protection of biodiversity, addressing inequality in all forms, and building transparent institutions are also legitimate public interests fully recognized and protected by the international community. Clearly, the time has come for ADB to narrow down its list of exemptions, remove questionable overrides and unnecessary vetoes and refrain from introducing additional barriers to RTI.
20. International practice sets out a three-part test for exceptions as follows: it must relate to a legitimate aim listed in the policy; disclosure must threaten to cause substantial harm to that aim; and the harm to the aim must be greater than the public interest in having the information. Instead of bestowing a blanket exception for a class of documents, ADB must formulate with sufficient precision the harm it seeks to avoid by stating the commercial interests, financial interests and /or competitive position of such party that is put at risk if a specific document is disclosed rather than identifying a class of documents. NGO Forum on ADB Submission on the Draft Public Communications Policy of the Asian Development Bank, 2016 December
21. Requested information of project-affected communities have not been pro-actively responded to in as much as the stated objective of the 2011 PCP due to existing policy exceptions that we are again seeing in the proposed PCP. In the cases for disclosure requests on the West Seti Hydroelectric Power in Nepal (2010) and Railway Rehabilitation Project in Cambodia (2011 and 2013), rules prohibiting access to



documents that when disclosed could “harm” deliberative decision making processes were repeatedly made paramount over goals in transparency, accountability, environmental protection and human rights. Paragraph 19 of the draft policy carries the same policy barriers that have been lanced against project-affected communities . This provision must be narrowed down by including a preference for disclosure in requests specific to safeguards and compliance-related cases: *“Internal information that, if disclosed, would or would be likely to compromise the integrity of ADB’s deliberative and decision-making process by inhibiting the candid exchange of ideas and communication.”*, par 19.1, draft PCP

22. Following the principle of open meetings, disclosure should be practiced most especially when it pertains to policy dialogues and therefore the paragraph below should be removed: *“Information exchanged, prepared for, or derived from the deliberative and decision making process between ADB and its members and other entities with which ADB cooperates that, if disclosed, would or would be likely to compromise the integrity of the deliberative and decision making process between and among ADB and its members and other entities with which ADB cooperates by inhibiting the candid exchange of ideas and communications, particularly with respect to policy dialogue with DMCs.”* par 19.2, draft PCP

23. Additionally, par. 19.3 of the draft PCP should be revised. Minutes of the Board Compliance Review Committee should be disclosed as the Bank are deciding on complaints tackling material and direct environmental and social harm for which the protection and mitigation of are interests of the international development community. Having claimed the privilege of immunity, disclosure on decisions is one way of demonstrating that the privilege is not abused in favor of political or business motivations.

24. Delete par. 22. First, the provision below completely negate its commitment to a disclosure policy that is consistent and trustworthy by making room to withhold information that has already been committed to be publicly accessible. Second, it is dangerous to presume that ADB as both party and holder of public information can decide for the public’s best interest matters that bear “exceptional circumstances” and “harm” that legitimates secrecy. Above all, this provision is a pass to abuse its power as a holder of information. The following provision should be removed in the draft PCP:

*“ADB also reserves the right not to disclose, under exceptional circumstances, information that it would*

*normally disclose if it determines that such disclosure would or would be likely to cause harm that outweighs the benefit of disclosure. This prerogative may be exercised only by the Board,”* par 22, draft PCP

25. While personal details are not disclosed for safety purposes, a directory of Board, directors, alternate directors, managers, paid as part of the project or policy work must have their names, emails and positions posted in ADB.org. Currently, we are bound to fill-up an online form to reach a specific staff. The online system, however, does not reveal the emails of the staff nor does it provide for a copy of the correspondence. The email system which is supposed to be a platform for two-way communication becomes a one-way flow and that which allows deliberate disregard for the information needs of project-affected communities.

For a hydropower project in Georgia CEE Bankwatch's Georgian member sent a “Preliminary Comments on the Nenskra Hydropower Plant Environmental and Social Impact Assessment consultation process” to the Bank in June 2015. The comments included a number of basic questions such as the client’s name and alternative studies. The inquiry was never acknowledged until a year after during face-to-face meetings in ADB’s AGM, Frankfurt – a platform that not all project-affected communities have means to access. The Bank must create oversight mechanisms to ensure that inquiries are responded to if we are to avoid or mitigate risks from ADB projects.

## RECOMMENDATIONS FOR AN INDEPENDENT AND UNCOMPROMISED APPEALS PANEL

26. Maintaining the system of appeals and oversight is a desirable direction but the proposed system lacks independence. The veto power given to the ADB Board to the ADB President to decide on appeals as it compromises the autonomy of the appeals panel, renamed as Appeals Information Committee (AIC). The last line in par. 21, draft PCP must be deleted. *“the AIC will consider such request but any recommendation to disclose or deny such information will require the approval of the Board, for Board records, and the President, for other documents; and their decisions shall be final.”*

Further, a provision on the temporary suspension of Board approvals requiring loan disbursements related to project with an ongoing appeal must be stated to enable appropriate decision making based on newly disclosed information to allow further

investigation and meaningful consultation. This step reduces potentially damaging project risks and moves from mere recognition toward protection of peoples right to information.

## RECOMMENDATIONS ON THE LIST OF DOCUMENTS, TIMING, AND MODALITY FOR DISCLOSURE

27. In recent years, the ADB has expressed and demonstrated its directions toward more investment for the private sector operations and engage in co-financing modalities with other IFIs. These trends are posing greater uncertainties because information is not readily available and if they are, the timing of release is shorter for private sector and are often not enough for communities to consult amongst each other. Communities are straddling with differing IFI rules when multiple financiers come to the fore. The Bank's commitment to a high standard of disclosure will help bring vital information for sound problem-solving and decision making before it comes to a case for compliance. We recommend that no distinction be made between sharing of public and private sector project documents, especially with the recent evaluation of the IED on potential weaknesses in screening FI projects. Thus, we propose that the timing and modalities for disclosure of all project documents for non sovereign projects follow take the same requirement for sovereign loans.
28. For the same reason, disclosure of co-financing agreements for project-specific agreements, framework agreements, trust fund agreements including safeguards monitoring reports between ADB and any bilateral or multilateral co-financier be posted on the ADB.org 120 days before Board approval. Disclosure should not be "subject to approval of co- financier" as proposed.
29. Based on our project monitoring, it is common that by the time initial project information is disclosed the project is already approved. This materially limits the ability of potentially affected communities and the CSOs that support them to meaningfully engage in a project, negating the ADB's commitments to meaningful consultation. Further, this practice falls short of international best practice of IFIs. or problem-solving, negotiation, and survival critically depended on which data and information were available or restricted. Yet, the review of the PCP can also be an opportunity to make improvements in the Policy. We propose that safeguards documents for all projects under category B be released 90 days before board approval. It is from our experience of severe underreporting of private sector-prepared safeguards requirements as the primordial interest are the return of investments rather than the pursuit of development objectives. The IED Safeguards Operation Review only validates this experience: "This review suggests that operations departments should pay close attention to having the category B projects peer reviewed well within their departments and perhaps outside, as some quality problems have surfaced that could lead to problems later." xviii, 2014 IED Safeguards Operational Review
30. All projects under Category A for all safeguards, whether sovereign or non-sovereign, should be available online for the entire lifetime that the project is operating and shall not be considered historical documents that will be disclosed only when requested to be consistent with the SPS objective of accounting for long-term impacts to people and the environment. Scholars, researchers, media, and development practitioners should have these documents available in undertaking impact assessments and cull important lessons in safeguards preparation, implementation and in seeking accountability.
31. Major changes in a project materially alters or fundamentally affects the scope and project outcome and thereby can also bear environmental and social risks that can be substantially different from what was initially disclosed. Project-affected communities need to be informed in a reasonable amount of time to conduct meaningful consultations. The requirement for major change reports on a project to be posted on ADB.org should have a definitive period for disclosure which we propose to be at 120 days before approval by ADB's Board of Directors. The recent lesson from the week-long city closures of ethnic minorities in Afghanistan that led political tensions among stakeholders including local governments due to the rerouting of the project through Salang, rather than Bamyán in the Turkmenistan-Uzbekistan-Tajikistan-Afghanistan-Pakistan electricity project without prior disclosure and consultation was not an error free of cost to the Bank and the borrower. Removing this PCP provision is a dilution of safeguards and poses great risks for all concerned.
32. The methodology used for equivalency and acceptability assessments must be disclosed to see how Country Safeguards Systems (CSS) are evaluated with SPS and ensure that the Bank and the borrower are using appropriate and adequate parameters for avoiding harm in the implementation of a project. Project monitoring reports must also include information on the

progress of the CSS gap filling measures when CSS have been applied in a particular sector or agency. Disclosure of such documents must be made halfway in the project cycle instead of “upon completion” and the results must be fully disclosed. This way, stakeholders can determine early on whether the borrower has been true to the loan agreement and decide whether to pursue loan disbursements before project is completed and harm is allowed to foment due to CSS that fall short of SPS Principles.

33. Consultation plan, proposed papers and approach papers related to policy and strategy reviews must be disclosed all in one webpage in the ADB.org. Stakeholders monitoring such information find it difficult to weave through the layers of the Bank’s website because they are found in separate pages aside from the lack of full disclosure of consultation-related documents. Details of consultation calendar and venue of planned consultations must be posted at least 30 days prior to the activity as in any notice for public consultations and need not be requested to the ADB.
34. Based on the experience monitoring projects of the International Accountability Project with other rights groups, it is common that by the time initial project information is disclosed the project is already approved. This materially limits the ability of potentially affected communities and the CSOs that support them to meaningfully engage in a project, negating the ADB’s commitments to meaningful consultation. Further, this practice falls short of international best practice of IFIs. In 2016, Southeast Asia, out of the 100 projects that are being monitored, 23 projects PDSs were disclosed before Board date (approval,) 61 projects PDSs disclosed after Board date, 8 projects disclosed more than 15 days later than Board date and 16 projects PDSs disclosed same day of Board date.

The same findings are also observed in projects in South Asia. Out of 54 projects in 2016, 22 projects PDSs were disclosed before Board date, 22 projects PDS disclosed after Board date, 1 project after 15 days and 10 projects PDSs disclosed same day of Board date.

35. Final Country Partnership Strategy/Interim CPS and Regional Cooperation Strategies demonstrate that ADB’s development financing is harmonized with the government’s policy and planning cycle and that of other development partners. CSOs, by international standards, are given the space to engage in the development of CPS and RCP to identify areas of potential harm, propose alternatives, and provide concrete and

in-depth sectoral analyses. This is, however, rarely observed in many Asian countries where space for civil society are restricted and when it is observed, the quality of consultations are at risk of being compromised due to many issues. As such, it is important that ADB subscribe to early disclosure of CPS and RCP including its supporting documents to facilitate discussion and consultation with project-affected communities. In addition, these documents reveal public information hence need not seek the concurrence of the member-country before disclosure.

36. For all category A and B projects, RRP should likewise include in the safeguards section, “the expected minimum frequency of ADB-led safeguards monitoring and supervision missions that will take place during project administration, with specific details documented in their respective project administration manuals” as recommended by the IED. For all FI projects, RRP should also state a summary of due diligence as to the portfolio risks and the FI’s capacity to address these needs.
37. To elaborate the need for a regular updating of PDS at least twice a year, we recommend for the following information to be consistently reflected:
  - a. Key dates -- date of initial disclosure, projected board date, last updated date. Clear and consistent information on these key dates should be moved to the top of the website/PDS.
  - b. Project Status. The status of the project should be clearly identified. As noted above, where a project is approved, the PDS should state the approval date (board date when it was approved).
  - c. Geographical location of project. The PDS should consistently indicate the location(s) (e.g. provinces, cities, etc) of a project. Currently, disclosure of this information is done for some projects and not for others. Where project location cannot be disclosed until implementation is underway (which can be the case with sub-projects), this section should then provide information about the process and timeline for determining this information. NGO Forum on ADB Submission on the
  - d. Financials. The PDS should consistently provide: (1) a list of all financiers of the project and their commitment amounts; (2) total financing for the project; and (3) a record of financial disbursements. Where there are private sector financiers, the PDS and website should also provide brief information about these financiers.

- e. Environmental and social documents. The key information indicated in the PDS includes brief description, linkage to country and regional strategy; summary of the environmental and social aspects; and status of development objectives, if applicable. This is inadequate information.
- f. Project description – As is best practice with other IFIs, the project description or summary could provide more details about the project, including information about project components, relevant timelines, etc. For instance, where involuntary resettlement is triggered, the PDS should also provide more information about resettlement impacts (for instance: estimated number of households affected), pertinent mitigation measure and timelines.
- g. Risk Category and rationale – The risk categories should continue to be provided, as in the current PDS. However, we recommend that the PDS also include a short explanation of that categorization, which would then be elaborated in disclosed environmental and social documents.
- h. Summary of Environmental and Social Aspects – While projects often contain this section, information provided in this summary is often not specific enough as to provide notice of impacts to affected communities. In many cases, this information is left blank. We suggest that this section provide a better identify environmental and social risks and impacts and briefly set out the programs (and documents) that will mitigate or avoid these risks. Such is the best practice of IFIs. As noted below, this could be broken down by safeguard policies.
- i. Opportunities for consultation with affected communities – We appreciate that the section on “Stakeholder Communication, Participation, and Consultation” is listed on the PDS. However, as is the case with the summary of environmental and social impacts, to be useful, this section must provide more concrete information about consultation -- when and where they have and will occur and with whom. Often times, this section is left blank. A better practice would be to share this information on the website and disclose it in other environmental and social documents. In addition, the PDS should provide information for local access to project documentation, as is the practice of several IFIs.
- j. Environmental and social documents – Each project page should contain and centralize all supporting project documentation. Disclosed documents should include, but are not limited to, environmental and social impact

assessments, resettlement frameworks and plans, poverty analysis, indigenous peoples plans, implementation/status reports, and loan agreement(s).

- k. Applicable safeguard standards – In line with best practice, the PDS should clearly provide the safeguards triggered by a project, along with a short description of why, according to the scoping and assessment, they were triggered. A more in-depth explanation of environmental and social impacts should be disclosed in the environmental and social documents, including the EIA.
- l. Information about project-level grievance mechanisms – Information about project level grievance mechanisms, including how to access them, should be provided on the website and in disclosed environmental and social documents.

## RECOMMENDATION ON FULL DISCLOSURE OF ALL LOANS WITH ASSOCIATIONS TO INDIGENOUS PEOPLES

- 38. Historically, projects that do not undertake meaningful free, prior and informed consent lead to costly reputational, financial losses and puts the sovereign borrower into severe political conflicts. Tensions could be avoided by increasing disclosure. First, the Bank will benefit from improved transparency in projects covering IP land which includes territories/ancestral domains as it informs stakeholders that the distribution of financial benefits from a natural resource deal are in accordance with law. Second, guarantees of land rights of indigenous peoples are recognized in ILO 169-[7], UNDHR, and UNDRIP is a legal obligation therefore it is unlawful if information related to the exploitation or expropriation of IP land, territories/ ancestral domain is being withheld under PCP. We recommend that all loan agreements that has any association with IPs land must be disclosed or all loan agreement that has a dispute associated with IPs or a conflict with IP land, territories/ancestral domain as central must be disclosed regardless if documents fall under limited exceptions.
- 39. All project documents related to safeguards under category A for Indigenous Peoples should also be disclosed 120 days before Board approval in the same manner that projects under category A for environment are shared in pursuit of international human rights obligations recognizing the rights of indigenous peoples.







## RECOMMENDATION TO RECOMMIT TO TRANSLATION OF DOCUMENTS

40. For IFIs especially with development mandates operating in a culturally diverse region with a great number of poor, illiterate, and with low internet and computer access, translated key documents such as policies, strategies, country partnership strategies, PDS, and safeguards documents must be a mandatory requirement to support meaningful consultations, communicate underreported or unidentified risks for project-affected communities. Imposing one language is discriminatory because it can exclude people from important information affecting their lives, decision making processes and access to grievance mechanisms.
41. Forum wrote to the PDU this year to note the lack of available translated key policy documents in the last few years: PCP (19 languages), Safeguard Policy Statement (13 languages), Policy on Gender and Development (3 languages). Energy Policy (6 languages), and Accountability Mechanism (12 languages). For safeguards documents, it is unlikely that one will find a translated document that can be used immediately for consultations with project-affected community. Currently, translated documents need to be requested and the translation is subject to the capacity of the Bank to release it. This method is not helpful for project-affected communities who need to organize within a time-bound project cycle. Whilst gaps exist, the bases to supply the need for timely translations remains high. We recommend to assign a prescriptive number of days for the release of translated versions particularly for safeguards documents. The following supporting paragraphs from 2011 PCP should reappear in the draft PCP: *"The borrower and/or client shall provide relevant environmental, resettlement, and indigenous peoples information, including information from the documents referred to in paras. 51–53, to affected people in a timely manner, in an accessible place, and in a form and language(s) understandable to them."* par 50, 2011 PCP Again, on par. 112, 2011 PCP: "ADB will undertake translations in accordance with its translation framework adopted in 2007. Such translations as stated in par 47, may include information that
- addresses ADB's overall business, policies, and strategic thinking, and is targeted at a wide international audience
  - is for public consultation, particularly with affected people."

## CONCLUSION

42. Our members and partners have participated in national consultations for the PCP review process in Nepal, Bangladesh and the Philippines. In those consultations, we have also heard of the concerns of CSOs and have taken guidance from those discussions as well. At the same time, we have gathered experiences and recommendations both online and offline from local, national and international CSOs in seeking for information and data from the Bank to inform project-affected communities and the Board on risks in the earliest possible time. We have also looked into Bank annual reports of PCP implementation and independent studies of the IED and CRP to derive sound proposals that the Bank can undertake.
43. Having participated thoroughly in this process, we hope that our recommendations be adopted to improve access to information and peoples decision making in development, contribute to public awareness and policy debates and enable public institutions to take due account of imminent issues to enhance the quality of development outcomes.

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