

## Re: ADB's Draft Guidance Note on Large Hydropower – Collective Civil Society Response

**Submitted to:** Asian Development Bank Energy Sector Group, c/o Priyantha Wijayatunga, Chief of Energy Sector Group, Sustainable Development and Climate Change Department, ADB

**Date:** 13 March 2023

Together, we are writing in response to the draft [Guidance Note on Large Hydropower Plants](#) disclosed by the Asian Development Bank (ADB), a document that is supposed to support staff engaged with borrowers and project proponents prior to - and post - approval of proposed assistance for large hydropower dam developments. After reviewing this draft guidance on hydropower associated with the ADB's 2021 Energy Policy, we are calling for a **thorough overhaul of the current text**.

As it stands, the Guidance Note **fails to indicate any shift towards incorporating a precautionary approach** that would prioritize avoidance of harm, **to reflect on the current or past harms** raised by ADB dam project-affected communities **or to take into account the repeated calls of civil society groups to undertake robust, comprehensive assessments of alternative options** that do not destroy the region's critical rivershed ecosystems and the livelihoods of the millions of people across the region who depend upon them. It also fails to base provisions on more stringent guidelines developed by peer MDBs – with which the ADB enters into co-financing agreements – such as the EIB. Instead, **it appears the ADB is prepared to adopt weaker standards that position it as a significant laggard in terms of respect for biodiversity, recognition of the rights of riparian communities, and of alignment with current climate science**.

Furthermore, the Guidance Note claims that the build-out of large dams would enable borrowing member countries to progress on the pathway towards Paris-alignment and away from fossil fuel dependency. Yet, most especially in light of the overwhelming financial, climate, energy and food crises with which populations across the region are confronted, as well as illegitimate debts burdening the governments of borrowing members of the ADB, these assertions significantly lack consideration of several practical realities, including that:

- significant greenhouse gas emission releases are known to occur within the first 20 years of dam operations (i.e. this large 'pulse' in emissions therefore occurs within the very same window of time we have to rapidly shift towards decarbonizing energy systems to avoid catastrophic global heating),
- the construction of dams remains inherently dependent on fossil fuels,
- the damming and consequential dewatering of vast stretches of rivers leads to irreversible losses to freshwater biodiversity,
- the land and watersheds that provide sustenance for riparian communities are consequently inundated; depriving people of the very basis of their resilience in times of crisis, and
- the development of dams and associated facilities has been consistently linked to repression and other human rights violations committed against local communities, most especially when they raise questions, grievances or withhold consent (See for example, a recent report published by the Business and Human Rights Resource Center, "[Drying up: Tracking the environmental and human rights harms caused by hydropower in the Caucasus and Central Asia](#)" and a statement submitted to the ADB in January 2023 initiated by the Asia Indigenous Peoples Pact, the International Work Group for Indigenous Affairs and Struggle Against Marginalization of Nationalities, "[Stop State brutality against the Tamang Indigenous Peoples and Locals: Stop the construction of Tamakoshi-Kathmandu 220/400 kV Transmission Line Project in Shankharapur-3, Kathmandu](#)").

ADB's Guidance Note on Large Hydropower as currently worded decisively fails to veer away from business as usual, instead following a route towards further ravaging of river ecologies as well as the dispossession of land- and river-dependent peoples, without any precautionary provisions – blatantly lacking, for example, any requirement for staff to initially assess national power generation capacity and realistic demands, before considering building out new power generation infrastructure. We urge the ADB to go back to the drawing board, undertake a much wider, inclusive consultation process – including with communities impacted by the ADB's current hydropower portfolio, and civil society groups that have been monitoring the situation at these sites for years – and develop a new draft reflecting guidance provisions crucial for staff to consider *before* moving forward with any further support for proposed hydropower project investments.

### **Lack of Clarity of Scope**

In terms of scope, we would expect the ADB to explicitly clarify the application of its guidance to (i) associated facilities of dams (including quarries, roads, cofferdams, transmission lines, etc), and (ii) dams that are associated facilities of transmission lines (e.g. the Erdeneburen dam in the case of the proposed Erdeneburen-Mayngad-Uliastai 220kV Transmission Line) directly financed by the ADB or through intermediaries.

We also note support for hydropower dams through intermediaries risks becoming increasingly common in the future under the ADB's expanding range of climate-related financing modalities and programs. As it stands, however, there are no provisions in the guidance note indicating the type of diligence required to engage with current financial intermediary borrowers that are – or may in the future – be investing in large hydropower projects, in order to ensure compliance with ADB policies and standards, nor to ensure affected communities are aware of options to seek remedy for grievances through the ADB's Accountability Mechanism or disclosure of information through ADB's established channels. Going forward, we urge the ADB to incorporate clear conditionalities into the guidance note which would *explicitly exclude* hydropower projects from consideration for support via financial intermediary facilities.

### **Overall, we are particularly alarmed that the ADB fails to:**

- Clearly state from the outset the **crucial requirement for a precautionary approach** – to do no harm – when considering the development of hydropower projects, and prioritizing avoidance in the mitigation hierarchy, or explicitly state the corollary, that where harm is committed, the ADB bears the duty to remedy harm.
- Acknowledge **best international practices as those which adhere to the [UN Guiding Principles on Business and Human Rights](#), the [UN Declaration on the Rights of Indigenous Peoples](#) and [ILO Convention 169](#), and other UN Conventions, such as the [Convention on Biological Diversity](#), integrate compliance with all [core labor standards](#), refer to other relevant UN Declarations**, including on Human Rights Defenders, and specifically follow the **comprehensive recommendations outlined in the [World Commission on Dams Final Report](#).**
- Clearly state how ADB staff will ensure that where Indigenous Peoples' lands, territories and resources – or the livelihoods of Indigenous Peoples – are affected by hydropower developments, they will first **establish whether communities have provided free, prior and informed consent** and require due diligence procedures in cases where consent is unverified or being withheld (i.e. engaging with project proponents to pause, redesign or halt the project). As mentioned above, provisions outlined in ILO C-169 and UNDRIP should be adhered to when projects are proposed in areas that would impact Indigenous Peoples' communities and livelihoods.
- Explicitly confirm that **ensuring project compliance** with environmental, social and climate-related standards must be required from the earliest stages of project

conception, and that project approval should not rely on the assumption that there will be eventual compliance with relevant standards. In this regard, the **ADB's Guidance Note as it stands does not identify that**, for example:

- From the outset, current national power generation capacity and unmet demands should be verified, and options assessments should be thorough with credible, evidence-based justifications, inclusive of a no project option.
- Thorough cumulative, basin-wide, transboundary, and strategic environmental and social assessment studies as well as human rights and reprisal risk assessments must be undertaken and disclosed in local languages as well as English before proceeding.
- The human rights and environmental track records of borrowers/clients and associated project proponents should be thoroughly assessed, with a view to specifically considering those with grievances filed against them by other MDBs or in local/national courts, as ineligible for support.
- Where dam rehabilitation/expansion is being considered, outstanding legacy issues, in coordination with other project proponents, must be identified and addressed before proceeding.
- Clearly indicate that **project footprints encompass impacts upstream, downstream, and in the riversheds/watersheds surrounding the site**, and the need to consider sector-specific economic / livelihood forms of dispossession (such as the loss of access to wild fish catch, and to other riparian food sources), as well as sector-specific cultural implications (such as the loss of sacred river-related sites and water spirits).
- Clarify that **unutilised hydropower potential in the region should not be considered by ADB staff as an accurate guide for future public or private sector investment opportunities**, as it is not equivalent to the actual reality of possible dam developments (as for example, it is detached from any cumulative, basin-wide or climate adjusted assessments, as well as practical considerations related to critical habitats, protected ecological zones, Indigenous Peoples' ancestral territories, and transboundary implications, among others).
- Provide **clear criteria for when and where the ADB will not engage in providing any technical or other consultative services for proposed projects and will refrain from considering being involved in any capacity (including greenfield hydropower projects and expanded or associated facilities)**.
  - We note, for example, EIB guidelines on hydropower dams explicitly excludes development of hydropower projects in UNESCO World Heritage Sites, and makes reference to avoiding impacts to other internationally recognized critical habitats (e.g. areas where the Inventory of Important Bird Areas applies, and where wetlands designated under the Ramsar Convention – or qualifying for such protection – are located). Similarly, **we urge the ADB to identify areas excluded for the development of hydropower projects and associated facilities**, including but not limited to (i) free-flowing rivers, (ii) spawning grounds of endemic, vulnerable and/or endangered species, (iii) critical or at-risk habitats, (iv) intact primary forests and vulnerable secondary forest areas, (v) Indigenous and Community Conserved Areas, (vi) Indigenous Peoples' Territories where free, prior and informed consent has not been obtained, (vii) Key Biodiversity Areas, areas where the Inventory of Important Bird Areas applies, and areas recognized by international conventions and agreements, including but not limited to Emerald sites, the Bonn Convention, Ramsar Convention, World Heritage Convention and Convention on Biological Diversity, as well as (viii) closed security/militarized zones or disputed territories within borrowing member states (e.g. West Papua). For a comprehensive set of exclusion zones that civil society groups have consistently called upon the ADB to respect, please refer to the [Banks and Biodiversity No Go Zone Policy](#).

- Acknowledge and **address the dismal track record of approaches to ascertaining ‘no net loss’** – and the associated practice of allocating alternative lands to set aside as ‘biodiversity offsets’ – most recently for example, at the [Nam Ngiep 1](#) site, by taking an approach which recognizes that the imposition of loss of land or water-based biodiversity requires meaningful reparative measures (**excluding consideration of offsets altogether as a valid way to remedy loss**).
- Explicitly explain **how transboundary impacts will be accounted for**, monitored and addressed accordingly, given that it implies discussions with neighboring states, and intensive engagement with downstream/upstream users, as well as clear identification of all affected communities/land areas (e.g. through the preparation of an up to date evidence-based cadastre).
- Explain how **considerations for rehabilitation of an existing hydropower project will be measured against decommissioning options**, and where information on such justifications will be disclosed in local languages as well as English.
- Include provisions to clearly show the **justification for the expansion of a project when it is considered** (in local and English languages), and to clarify the need to undertake new impact assessments as well as ensuring community consent will be sought and respected.
- Provide clear information about **when and how projects are categorized as highly complex** and sensitive, as well as the decision-making channels in place to establish independent advisory panels / panels of experts.
- Provide clear requirements to **assess and address the reprisal risk situation, and identify protocols in place when reprisals are reported**, so that urgent and decisive action can be taken in consultation with civil society organizations.
- Specify the need for **continuous monitoring of grievances**, most especially when projects entail high river fluctuations due to routine hydro-peaking.
- Incorporate the requirement for borrowers, clients and sub-clients, to **disclose the information about the ADB’s Accountability Mechanism and project specific redress mechanisms** among project-affected communities through easily accessible materials (audio-visual, written) in local, community-specific languages.
- Incorporate clear provisions highlighting the **sector-specific implications for women**, and processes for engaging with women community members to address concerns and grievances over the course of project lifecycle
- Explain clearly the types of **emergency measures borrowers must develop** to provide clear and timely warnings (SMS alerts and alarm systems) to communities around and downstream of the dam site, as well as those living in close proximity to tributary rivers, and
- Specify the need for **a detailed decommissioning plan to be developed in consultation with surrounding communities**, outlining steps that will be taken, expected timelines and financing prior to a project being approved by the ADB Board of Directors.

### **Climate-Related Realities**

In considering the **carbon footprint, lifecycle greenhouse gas emissions, and climate change** implications of large hydropower dams, we would expect the ADB to:

- Take into consideration the reality that there is a large pulse of methane emissions released within the initial 10-20 years of dam operations, which coincides with the precise limited window of time we have to minimize greenhouse gas (GHG) emissions and avoid overshooting 1.5C. **A build out of hydropower at this time would decisively contribute to undermining the recommendations of the Intergovernmental Panel on Climate Change (Assessment Report 6) and the concerted global effort to comply with provisions of the Paris Agreement.**
- Take into account the natural carbon sequestered by flowing rivers and surrounding ecosystems, as opposed to automatically categorizing the building of dams as a ‘climate mitigation’ measure.

- Assess emissions using a project lifecycle approach – rather than simply averaging GHGs over a 100 year period – by applying alternative methodologies that would more accurately account for significant sources of emissions released over time, inclusive of – but not limited to – construction, land clearing and inundation of land, the initial pulse of GHG releases in the first 20 years of project operation, and the increasing emissions from eutrophication in reservoirs as dams age, as well as decommissioning. As it stands, the proposed methodology for GHG estimations in the Guidance Note fails to consider these evidence-based nuances of emissions pulses and increases over time.
- Require emissions calculations to be all encompassing - not only from the reservoir (differentiated over time, as explained above), but also from waters released downstream (degassing at turbines), loss in GHG sequestration capacity by vegetation submerged by reservoir, construction activities and associated facilities, such as quarries, as well as the processes related to decommissioning (for example, from methane released when reservoir sediments that have accumulated behind the dam wall are exposed).
- Incorporate provisions for direct, continuous on-site monitoring of GHGs throughout the project lifecycle, with attention to the initial 20 years of dam operations (i.e. when a large pulse of methane gasses can be expected to be released), increases in surface emissions released in later years (as aging dam reservoirs typically become more eutrophic), and decommissioning processes.
- Take a precautionary approach towards installing floating solar as associated facilities on the reservoirs of large hydropower projects to avoid, for example, impacting bird and aquatic species, or exacerbating tensions related to water access for local communities.
- Document and disclose instances from across the region where ADB supported hydropower projects are being rendered idle due to drying rivers, or when severely affected by flood surges and heavy rains, along with remedial measures ADB is taking.

### Referencing Other Sectoral-Specific Guidance

As drafted, the Guidance Note provides references to documents published by the International Hydropower Association (an international organization representing the hydropower sector industry) and selected resources from the World Bank Group, but **fails to take into account key internationally accepted, sector-specific standard setting documents**, such as the [World Commission on Dams Final Report](#), and guidance developed by peer MDBs, such as the [EIB Environmental, Climate and Social Guidelines on Hydropower Developments](#), resources on cumulative impacts tailored to the hydropower sector published by the IFC, or IFC Standard 6 and the accompanying Guidance Note on Biodiversity. The Guidance Note also fails to consider seminal publications on global best practices produced by the governmental bodies of member states, such as those published by the Netherlands Environmental Assessment Commission (e.g. [“Advice on Better Decision-Making about Large Dams”](#) and [“Strategic Environmental Assessment for Sustainable Development of the Hydropower Sector”](#)), as well as highly relevant sector specific assessment tools, reports and books produced by civil society organizations, such as [“Riverscope”](#), [“Rivers for Recovery: Protecting Rivers and Rights as essential for a Green and Just Recovery”](#), and [“Dead in the Water: Global Lessons from the World Bank’s Model Hydropower Project in Laos,”](#) and relevant examples of community-issued guidelines for respecting free, prior and informed consent that are reflective of customary decision-making processes, such as the [“Free, Prior, and Informed Consent Protocol”](#). Finally there is no reference to highly relevant recent academic literature reviewing / assessing the global and regional status of key sector-related issues, such as dam safety, human rights related implications of hydropower dams, biodiversity impacts of dams, the significance of retaining fluvial connectivity and GHG emissions associated with dams.

Furthermore, we find it particularly disconcerting that the Guidance Note considers only two dams from the Mekong region and two from China as ‘representative’ of the ADB’s portfolio of investment over the past twenty years, with the only source of referenced information being ADB’s Independent Evaluation Department. For example, the description of Song Bung 4 as *successful* – despite the Guidance Note enumerating the “excessive health risks, resulting in at least 6 fatalities,” water flows “insufficient for fishing as a productive endeavor below the dam” and the fact that biodiversity conservation, natural resource management and effluent treatment “did not materially meet ADB safeguard requirements” – appears questionable at best. Meanwhile, **no references are provided to reports from the Panel of Experts/Independent Advisory Panels** established by the ADB at specific sites, for instance for Nam Theun 2 and Nam Ngiep 1, that have already a well documented trail of information raising concerns and lessons with regards to ADB’s hydropower investments.

### **On the Drafting Process of the Guidance Note**

Finally, we reiterate our position that the comment period has been too short, as well as that the process surrounding the development and call for public input on the draft Guidance Note has been marred by a lack of clarity as well as limited flow of information in relation to the drafting process, timelines and public disclosure of the actual text. Comment periods should be more extensive (e.g. a minimum of 60 days), announced by ADB’s Sustainable Development and Climate Change Department (SDCC) and the NGO & Civil Society Centre (NGOC) openly, and posted on the ADB’s online events listing. Likewise, if virtual, hybrid or in-person consultations are to be scheduled, they should be announced openly with advance notice (subsequent to the text being posted online). We also reaffirm our call for the approved version of this guidance note – along with the other Guidance Notes associated with the 2021 Energy Policy (Paris Agreement Alignment, fossil gas and waste-to-energy) – to be publicly disclosed on the ADB’s website, alongside the 2021 Energy Policy. Other MDBs have published their guidelines on financing for hydropower dams; there is no reason for the ADB to not follow suit, and provide subsequent versions when updates are made.

In conclusion, we reassert our call for the Guidance Note to be fully overhauled with a second draft that would require staff to take a precautionary approach from the get-go and that would be reflective of input collated from wider, meaningful discussions with civil society groups and communities affected by ADB’s hydropower projects.

We look forward to receiving a response and are open to discussing these issues at further length.

**Submitted by the following organizations based in Asia and beyond** (listed in alphabetical order):

Accountability Counsel, Global

Aksi! for gender, social and ecological justice, Indonesia

Asia Indigenous Peoples Pact (AIPP), Regional/Asia

Bai Indigenous Women’s Network, Philippines

Bangladesh Working Group on External Debt (BWGED), Bangladesh

Bank Information Center, USA

CEE Bankwatch Network, Czechia

Centre for Environmental Justice, Sri Lanka

Centre for Human Rights and Development, Mongolia

Center for International Environmental Law (CIEL), Global

Centre for Research and Advocacy - Manipur, India  
CLEAN (Coastal Livelihood and Environmental Action Network), Bangladesh  
Climate Watch Thailand, Thailand  
Community Legal Education Center, Cambodia  
Community Resource Centre (CRC), Thailand  
DamSense, USA  
Environmental Public Society, Armenia  
Environics Trust, India  
Freedom from Debt Coalition (FDC), Philippines  
Friends with Environment in Development, Uganda  
Friends of the Earth-Japan (FOE-Japan), Japan  
Friends of the Earth-US (FOE-US), USA  
Global Alliance for Incinerator Alternatives, Regional/Asia Pacific  
Growthwatch, India  
Indigenous Peoples Movement for Self-Determination and Liberation (IPMSDL), Global  
Indigenous Peoples Organisation Australia, Australia  
Indian Social Action Forum, India  
Indigenous Women's Legal Awareness Group (INWOLAG), Nepal  
Indus Consortium, Pakistan  
Initiative for Right View, Bangladesh  
INSPIRIT Creatives NGO, Germany  
International Accountability Project, Global/USA  
International Rivers, USA  
Jubilee Australia Research Centre, Australia  
Katribu Kalipunan ng Katutubong Mamamayan ng Pilipinas, Philippines  
KRuHA, Indonesia  
Legal Rights and Natural Resources Center - Friends of the Earth Philippines, Philippines  
Manushya Foundation, Thailand / Laos  
Mekong Watch, Japan  
Moro Christian People's Alliance, Philippines  
Nash Vek Public Foundation, Kyrgyzstan  
NGO Forum on ADB, Regional/Asia  
North-East Affected Area Development Society (NEADS), India  
Oil Workers' Rights Protection Organization Public Union, Azerbaijan  
Oyu Tolgoi Watch NGO, Mongolia  
PacificwinPacific, Australia

Pakaid, Pakistan

Pakistan Fisherfolk Forum, Pakistan

Panaghiusa Philippine Network to Uphold Indigenous Peoples Rights, Philippines

Peace Point Development Foundation (PPDF), Nigeria

Project on Organizing, Development, Education, and Research (PODER), Mexico

Recourse, Netherlands

Rivers Without Boundaries Coalition (RwB), Global

Rivers Without Boundaries (RwB) Mongolia, Mongolia

Save The World's Rivers/Save The Colorado, USA

Sandugo Movement of Moro and Indigenous Peoples for Self-Determination, Philippines

urgewald, Germany