

## **Recommendations for the Asian Development Bank in Drafting Reengagement Strategy for Burma**

**October 8, 2012**

Human Rights Watch welcomes the opportunity to provide input as part of the consultation process on the Asian Development Bank's Interim Country Partnership Strategy (ICPS) for Burma, which is intended to guide engagement with Burma towards full resumption of activities from 2012-2014. We have reviewed the consultation summary of this document together with the sectoral and thematic assessments. We also attended a consultation hosted at the ADB's Washington, DC office on September 27, 2012 and provided preliminary comments. We appreciate that the ADB published various sectoral and thematic assessments ahead of drafting the ICPS and note the commitment that this illustrates to transparent, informed consultation.

As the ADB reengages in Burma, it has a rare opportunity to shape the development agenda by pressing for enhanced transparency, accountability, and respect for human rights. Experience has shown that if these reforms do not take place early in a transition, they are much more difficult to achieve later on. The ADB should ensure the right sequence, priorities, and safeguards for its programs in Burma.

Human Rights Watch notes the ADB's proposed medium term goal "to promote sustainable and inclusive economic development and job creation in support of poverty reduction." The emphases on "sustainable" and "inclusive" are key in order to achieve the poverty reduction aim. The ADB has importantly recognized that for development to be inclusive, the needs of disadvantaged and "excluded" groups, including ethnic minorities, need to be addressed. We note also that the ADB will highlight good governance and gender in the ICPS and that the importance of safeguards is referred to in the draft documents.

Fiscal transparency and accountability, and respect for human rights are essential to achieve the goal of sustainable and inclusive economic development, particularly as the country's finances and governance have been opaque for so long. It is appropriate that the ADB will highlight the current state of economic and fiscal management in Burma as a challenge to the country's development. Human Rights Watch also notes that any proposals for ADB lending in Burma—whether during the ICPS period or thereafter—will be subject to discussion and approval by the Bank's board. However, Human Rights Watch strongly urges the ADB to make it clear now, in the context of the ICPS, that the government of Burma will be eligible for lending,

on a limited basis, only when it achieves significant progress with regard to fiscal transparency and accountability, as well as giving priority to urgent social needs and making necessary reforms to enable full civil society participation and enhance social accountability. The ADB should further expressly state that lending for any project would be subject to an assessment of the risk of adverse impacts on human rights by that project and implementation of adequate measures to address such risks, as described more fully below.

Unfortunately, the ADB's draft ICPS documents do not adequately address a number of the key challenges facing Burma that are highly relevant to prospects for sustainable, inclusive growth that addresses social needs. Human Rights Watch strongly encourages the Bank to give priority to the following issues and incorporate them into its policy dialogue with the Burmese government:

- The need to ensure full civil society participation in identifying and shaping development priorities, including by addressing ongoing restrictions on the rights to freedom of association, expression, and peaceful assembly.
- The need to address ongoing human rights concerns that present challenges to Burma's development goals, in particular ongoing concerns about the role of the military in ethnic areas and rights abuses by the Burmese military against civilians, sectarian violence in Arakan State, and the ongoing armed conflict in Kachin State.
- The importance of reforming labor, land, and citizenship laws and undertaking comprehensive anti-corruption efforts to advance Burma's development goals.

## **1. Require Demonstrable Advances on Fiscal Transparency and Accountability before Lending**

The ADB should require the Burmese government to progress in the following areas before lending, while providing the necessary technical assistance to do so:

- (a) Significant advances toward implementing best practice on transparency and accountability over government finances;
- (b) An end to off-budget funding of the military, including through military conglomerates; significant progress in securing proper parliamentary oversight over the military's budget and expenditures; and more generally, the establishment of civilian accountability over military finances; and
- (c) Giving priority to urgent economic and social needs.

### ***(a) Best Practice on Transparency and Accountability over Government Finances***

The ADB should press the Burmese government to make significant advances toward implementing best practice on transparency and accountability over all government finances, including the finances of the state security forces, Myanmar Oil and Gas Enterprise (MOGE), and other state-owned enterprises before lending to the government.

In order to support this progress, the ADB should:

- (i) Support efforts for all government entities to comply with internationally recognized standards of transparency and accountability, notably including the state security forces, MOGE, and other state-owned enterprises. One key standard is contained in the IMF's Code of Good Practices on Fiscal Transparency.<sup>1</sup> The Code identifies a set of principles and practices to help governments provide a clear picture of the structure and finances of government.
- (ii) Support the full implementation of the Extractive Industries Transparency Initiative (EITI) criteria on civil society participation now, at the outset of engagement, even though these are not formally required until a later stage of EITI candidacy. The government of Burma recently expressed interest in joining EITI, but EITI membership is a multi-staged process and the initial "sign-up" requirements are quite basic. Any ADB technical assistance to help Burma prepare for EITI candidacy should focus on substantive requirements to allow for full civil society engagement. This would include addressing politically motivated restrictions and onerous requirements faced by civil society organizations in registering their associations legally and the risks entailed by working on issues of fiscal transparency and accountability.
- (iii) Support the wider application of transparency principles to include spending disclosures through open budgeting processes, given that EITI covers revenues only (from oil, gas, and mining) and not government spending.
- (iv) Support projects to build the capacity of Burma's Finance Ministry and parliament to carry out their oversight functions.
- (v) Support projects to build the capacity of civil society to scrutinize government budgets, revenue and expenditure, to provide input into budget allocations, integrate gender into budget allocations and expenditure, participate in budget planning and oversight processes, and to hold the government accountable for its spending decisions.

***(b) An End to Off-budget Funding of the Military and Progress in Securing Accountability over Military Finances Generally***

The ADB should require the government of Burma to cease off-budget funding of the military and ensure full oversight of military finances before lending to the government. To support the government of Burma in achieving this objective, the ADB should extend its current work to

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<sup>1</sup> This is also reflected in the IMF Guide on Resource Revenue Transparency and other initiatives. See International Monetary Fund (IMF), *Code of Good Practices on Fiscal Transparency*, 2007, [www.imf.org/external/np/pp/2007/eng/051507c.pdf](http://www.imf.org/external/np/pp/2007/eng/051507c.pdf) (accessed August 3, 2012); and IMF, *Guide on Resource Revenue Transparency*, 2007, [www.imf.org/external/np/pp/2007/eng/051507g.pdf](http://www.imf.org/external/np/pp/2007/eng/051507g.pdf) (accessed August 3, 2012). In 2012 the IMF began work to prepare a board paper on "Natural Resources Wealth Management." See IMF, *Consultation on IMF Natural Resources Work*, July 2012, [www.imf.org/external/np/exr/consult/2012/NR/](http://www.imf.org/external/np/exr/consult/2012/NR/) (accessed August 3, 2012). See also, for example, the principles underlying the Extractive Industries Transparency Initiative (EITI), the Natural Resource Charter, and the Global Initiative on Fiscal Transparency at: Extractive Industries Transparency Initiative (EITI), *EITI Rules: The EITI Principles and Criteria*, February 16, 2011, [http://eiti.org/files/2011-11-01\\_2011\\_EITI\\_RULES.pdf](http://eiti.org/files/2011-11-01_2011_EITI_RULES.pdf) (accessed October 5, 2012) p.10-12; The Natural Resource Charter, *The Twelve Precepts*, <http://www.naturalresourcecharter.org/precepts> (accessed August 3, 2012); and The Global Initiative for Fiscal Transparency (GIFT), *Draft High-Level Principles on Fiscal Transparency*, <http://fiscaltransparency.net/> (accessed August 3, 2012).

promote fiscal transparency and accountability in Burma's government to the security forces, which have off-budget access to funds via military conglomerates (such as the Union of Myanmar Economic Holdings (UMEH) and the Myanmar Economic Corporation (MEC)) and the military fund created by the 2011 Special Accounts Law, and likely through state-owned enterprises as well.

***(c) Give Priority to Urgent Economic and Social Needs of the Population***

The ADB should press the government of Burma to show that it is giving priority to the urgent economic and social needs of the population, including ethnic minorities, before lending to the government. To support the government in achieving this, the ADB should:

- (i) Ensure that analytical work directed at understanding economic and social needs in Burma are undertaken in a non-discriminatory manner, inclusive all of Burma's ethnic minorities.
- (ii) Support additional programs directed at understanding the economic and social needs of all persons and populations in Burma and likewise ensure that they are conducted in a non-discriminatory manner; and
- (iii) Work to ensure that the government appropriately uses its considerable financial resources, including from exports of natural gas and other natural resources, to address urgent social needs, including by supporting programs that strengthen the link between the allocation of available resources and progressive realization of economic and social rights.

**2. Ensure Civic Participation in Identifying and Shaping Development Priorities**

The ADB has increasingly emphasized the importance of civil society participation for achievement of sustainable development. Human Rights Watch appreciated the ADB's commitment in the draft ICPS summary to a highly consultative process in developing a full country partnership strategy in Burma. It is critically important that there be a continuation of the ADB's recognition of the diversity of civil society actors inside and outside Burma, and the Bank's commitment to establish and maintain effective two-way communication channels with civil society organizations and ensure that process is transparent. Below we offer further recommendations on this consultation process.

In order to achieve the important goal of an effective, transparent consultation mechanism, there needs to be an enabling environment in which people can share their opinions and research freely, without fear of repercussions. The ADB should highlight the reforms necessary to create this enabling environment in the ICPS and press the Burmese government to fully implement these reforms because of their importance for sustainable, inclusive development.

***(a) Civil Society Participation in Bank Processes***

In addition to civil society organizations in Rangoon and the capital, Naypyidaw, the ADB should engage with groups working in remote and conflict areas and with those working on Burma from Thailand and other neighboring countries. This should include all variety of

organizations, from legally registered and established groups to those who operate in the country's remote areas or have been unable to register their association due to onerous registration requirements and the political risk that can come with registration. Moreover, few residents in remote and conflict areas in Burma are able to travel to Rangoon or Naypyidaw, so ADB staff should consult civil society organizations outside of these two main cities. People in these areas often face acute humanitarian needs, lack basic legal protections, and receive little development assistance from the state.

In the past, some members of civil society groups have been imprisoned as a result of meeting or working with foreign officials, for instance in the wake of Cyclone Nargis in 2008. The arrests and incommunicado detention in June 2012 of local staff members of UN agencies and international nongovernmental organizations operating in Arakan State on undisclosed charges similarly raises serious concerns. The ADB should be sensitive to this history in developing strategies to engage with civil society. Specifically, the ADB should obtain assurances from the Burmese government that no one who engages with it would face any sort of reprisals for such engagement. The ADB also should explicitly recognize these risks and identify how it will address them in its ICPS.

To ensure active engagement with the Burmese populace, the ADB should be transparent in developing its proposals for engagement and allocate sufficient time for meaningful engagement. The Bank should make its draft proposals public, hold public consultations on draft proposals, take into account feedback before proposals are considered by the board, and publicize final proposals in advance of board consideration. The ADB should undertake to publish a full draft of the ICPS for Burma in English, Burmese, and other major languages of Burma, and open it for consultation before submitting it to the board of directors. The fact that Burma has been a closed country for so long makes it all the more necessary that the ADB be transparent.

#### ***(b) Civil Society Participation and Social Accountability in Burma***

The ADB should actively encourage the Burmese government to institute the systemic reforms necessary for open public discussion and debate to thrive in Burma, enabling citizens to hold the government accountable. This includes releasing all remaining political prisoners and repealing overbroad and vague laws that have been used against peaceful political dissent. There have been positive changes in Burma that contribute to a more open climate for public debate. However, the ADB should recognize serious ongoing restrictions on the rights to freedom of expression, assembly, and association as a challenge to development goals in its ICPS for Burma and highlight the steps needed to address these problems. A worrisome recent development is the government's decision to prosecute peaceful protesters who on September 21, 2012, organized a march for peace in Rangoon.<sup>2</sup>

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<sup>2</sup> "Burma: Peaceful Protest Organizers Charged," Human Rights Watch news release, October 1, 2012, <http://www.hrw.org/news/2012/10/01/burma-peaceful-protest-organizers-charged>.

The ADB should emphasize in its meetings with Burmese government ministries and agencies the importance of meaningful engagement with civil society organizations and networks working on a range of different issues including women’s rights. It should encourage the government to enhance access to information and subject decision-making processes to public discussion and input at all levels. Examples include community budgeting initiatives, public and meaningful consultations about proposed legal reforms, and the continued creation of independent oversight bodies when needed.

With regard to media freedoms, the recent repeal of pre-publication press censorship is an important step. However, significant restrictions remain in place, including post-publication review of published content. Guidelines issued to the media by the Ministry of Information on the same day it ended pre-publication censorship are also very troublesome. Among other things, the guidelines prohibit negative criticism of the “economic policies of the state,” general government policies, and the state itself. Other guidelines restrict reporting on economic information and corruption unless “the source is reliable” (but the guidelines do not define what is “reliable” or who determines this). Similarly, the guidelines set out that “things that damage ties with other countries shall not be mentioned.” Not surprisingly, then, journalists and editors continue to self-censor in light of the risks they could face if their reporting is seen as overly critical or transgressing the Ministry’s guidelines.

The government also continues to ban private daily newspapers. There are no independent television or radio broadcast media outlets in the country—the state owns all broadcast media with the exception of two joint venture agreements with two private entertainment outlets.

The ADB should urge the government and the Ministry of Information to introduce the necessary reforms to advance media freedom, thereby enhancing the ability of the Burmese people to hold their government accountable, and make promotion of greater openness for civil society and the media a central plank of its ICPS.

### **3. Articulate Key Human Rights Concerns as Country Development Challenges**

We note that the ADB will assess the country’s development challenges in the ICPS, including in the areas of economic and fiscal management, governance, infrastructure and connectivity, rural development, and human resource capacity. In this context, the ADB should also highlight specific human rights concerns that present challenges to Burma’s development goals. In addition to challenges highlighted elsewhere in this submission, this should include human rights concerns related to the government’s interactions with the country’s ethnic minorities, including addressing the sectarian violence in Arakan State and the ongoing armed conflict in Kachin State.

#### ***(a) Sectarian Violence in Arakan State***

In June, sectarian violence erupted between Arakan Buddhists and Rohingya Muslims (and non-Rohingya Muslims) in northwestern Arakan State. Mobs from both Arakan and Rohingya

communities stormed unsuspecting villages and neighborhoods, brutally killing residents, and destroying and burning homes, shops, and places of worship. Security forces failed to protect communities during the early days of the violence, and then participated in rights violations against the Rohingya, including killings, beatings, and rape. Security officials have also arbitrarily arrested nearly 1,000 Rohingya men and boys in violent sweeps, holding most incommunicado without access to legal representation and other due process rights. Over 100,000 Rohingya and Arakan people were displaced by the violence and now, three months on, tens of thousands remain in segregated camps. The government has not yet developed a plan to enable the Rohingya community to return to their homes and communities. There is a serious risk the Rohingya will be forced to remain in squalid camps for an unnecessarily extended period of time, and that the government authorities may attempt to permanently segregate the Rohingya from the Arakanese, in line with some statements from government ministers and other senior officials and demanded by many in the ethnic Arakanese community.

Government restrictions on humanitarian access to the Rohingya community have left many of the displaced in dire need of food, shelter, and medical care. The government continues to limit access of aid agencies in some Rohingya dominated areas, and all pre-crisis humanitarian programs are indefinitely suspended, adversely affecting hundreds of thousands. This includes lifesaving programming in HIV/AIDS treatment, health, food, and nutrition.

On July 12, Burmese President Thein Sein told the United Nations High Commissioner for Refugees (UNHCR) that the “only solution” to the sectarian strife was to expel the Rohingya to other countries or to camps overseen by the UNHCR. The government has now established a 27-member commission to look into the June violence and report to the president, but the commission does not intend to seek accountability or ascertain responsibility, according to council members. While the president acknowledged the role of ethnic Arakan, political parties, and monks in perpetuating the sectarian violence, the government has not investigated or subjected state security forces to prosecution for alleged abuses in any meaningful way.

***(b) Ethnic Armed Conflict***

The Burmese government and the Kachin Independence Organization (KIO) are currently engaged in armed conflict in northern Kachin State. The Burmese army renewed hostilities against the Kachin Independence Army (KIA) in June 2011 in a contested area surrounding a hydropower dam being built by a Chinese company, ending 17 years of ceasefire between the government and Kachin insurgents.

The Burmese army has been implicated in numerous violations of the laws of war, including attacks on Kachin villages, where they have burned homes, destroyed property, and committed looting. Soldiers have tortured civilians during interrogations and raped women.

The army has also used antipersonnel mines and conscripted forced laborers, including children, on the front lines. The KIA has also perpetrated serious abuses, including using child soldiers and deploying antipersonnel mines.<sup>3</sup>

Tens of thousands of displaced Kachin in KIO-controlled territory still lack adequate humanitarian aid due to restrictions on aid deliveries. The government has obstructed humanitarian access to KIO territory for UN agencies and international nongovernmental organizations since the fighting began, permitting only minimal and sporadic access, leaving over 50,000 internally displaced persons with inadequate aid. While local organizations have attempted to fill the gaps, their resources and capacity are limited. As a result, camps lack adequate shelter, food, and medicine.

The ADB should urge the Burmese government to end abuses against ethnic minority groups and open humanitarian space for all displaced persons in the country. The ADB should work with partners supportive of ethnic tolerance in a multi-ethnic Burma and support programs designed to promote human rights and accountability for past and present human rights abuses. Any direct support should be allocated across ethnicities in a way that is mindful of ethnic divisions and the need for an ethnically diverse civil society. The ADB should also ensure that the Burmese government grants ADB teams unhindered access to remote and conflict areas, to ensure that people in these areas are included in analytical work.

#### **4. Highlight Need for Key Reforms**

In its ICPS, the ADB should highlight the importance of labor, land, and citizenship law reforms for sustainable, inclusive development in Burma, and recognize the current state of these laws as challenges to Burma's development goals. It also should reflect the need for systematic reforms to combat corruption.

##### ***(a) Labor Reforms***

There have been encouraging developments with regard to the right to freedom of association and the elimination of forced labor in Burma. The ADB should emphasize the importance of building on these changes to ensure Burma's labor laws fully comply with international labor standards set out in the core International Labor Organization (ILO) conventions.

The Labor Organizations Law, which took effect in March 2012, created a new framework for the establishment, registration and operation of trade unions. A new Settlement of Labor Dispute Law, enacted on March 28, 2012, provides rules for collective bargaining and the resolution of industrial disputes. These laws are an important step forward, though in some

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<sup>3</sup> Human Rights Watch, *Burma – “Untold Miseries”: Wartime Abuses and Forced Displacement in Burma’s Kachin State*, March 2012, <http://www.hrw.org/reports/2012/03/20/untold-miseries>.



respects they fall short of international standards, and in practice trade unionists, especially in industrial zones, are still being fired for exercising these rights. Workers and workers' organizations should be supported in their right to organize unions, collectively bargain, and take industrial action, including by protecting the rights to peaceful assembly and to strike.

In 2012, the Villages Act and the Towns Act were amended, bringing the definition of forced labor in line with ILO Convention No. 29. A joint action plan to end the use and recruitment of child soldiers was signed in June 2012 between the government and the UN country task force on monitoring and reporting. However, forced labor continues today, with credible reports of various forms of unpaid forced labor conscripted primarily by the military in 2012, including in Arakan, Chin, Kachin, Karen, and Shan States.

The ADB should urge the Burmese authorities to fully cooperate with the ILO to immediately end the practice of forced labor and to investigate and prosecute those found to have procured and used forced labor.

#### ***(b) Land Reforms***

Land confiscations by the government of Burma and some private interests are ongoing in Burma, perpetuating patterns of human rights abuses. Consultation and compensation are frequently absent or inadequate, particularly for women and farmers, and in many cases the land seizures are arbitrary and not justified by an overriding government interest. Two land reform bills were passed by parliament in early 2012—the Farmland Law and the Vacant, Fallow and Virgin Lands Management Law. There was no meaningful public consultation, particularly on their impact on women, on either of the draft laws. Local civil society and public interest lawyers are concerned the laws do not adequately ensure security of tenure or provide adequate appeal mechanisms in cases of land seizures. As a result, land disputes continue to go unresolved throughout the country.

The ADB has recognized the importance of enhanced and secure land tenure.<sup>4</sup> We urge the ADB to encourage the Burmese government to seek assistance from international experts in amending the land laws to ensure that they meet international human rights standards and protect against involuntary resettlement. The ADB should also press the government to consult broadly with agricultural and legal experts, farmers' groups, women's groups, and other affected elements of civil society in undertaking such land reforms. Moreover, legal reforms should also be done to ensure access to justice when rights are violated so that those facing land confiscations, including female-headed households, have an effective legal means to contest such seizures.

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<sup>4</sup> See ADB, Myanmar: *Interim Country Partnership Strategy 2012-2014 (Draft Documents for Consultation)*, *Draft Sector Assessment (Summary): Agriculture and Natural Resources*, September 2012, <http://www.adb.org/documents/myanmar-interim-country-partnership-strategy-draft-for-consultation> (accessed October 5, 2012), Para. 7: "Enhanced and secure land tenure has proven in many countries to be a key to increased and stable agriculture production."

***(c) Citizenship Law Reform***

Burma's 1982 Citizenship Law effectively denies citizenship to the Muslim minority Rohingya, a population estimated at 800,000 to 1 million people in Burma, rendering them stateless and resulting in their being denied other human rights, including freedom of movement, access to freely chosen employment, right to marriage and having a family, and access to education and health services. The ADB should highlight discrimination against the Rohingya as a challenge to development in Burma in its ICPS and urge the Burmese government to amend the Citizenship Law and all other laws and policies that discriminate against the Rohingya. It should urge the Burmese government to invest in the urgent economic and social needs of the Rohingya people. The Citizenship Law also discriminates against ethnic Indians, Chinese, Gurkhas, and other populations long resident in Burma.

***(d) Discrimination and Violence Against Women***

The ADB's ICPS gender analysis highlights the importance of tackling gender-based violence, including domestic violence, and addressing key development challenges including maternal mortality. The ADB should also highlight the importance of eliminating child marriages and early pregnancies, and ensuring access to affordable and quality sexual and reproductive health care for adolescent girls and women, including for those who experience sexual violence.

The ADB's ICPS gender analysis recognizes that discrimination in access to skill-building and lower female participation in the labor force remains a concern. We urge the ADB to highlight the importance of addressing women's burden of household work as a key barrier to increased labor force participation and the importance of social assistance, including child care, to improve women's participation in the labor force. Simultaneously the ADB should highlight discrimination at the workplace and violence against women, particularly sexual harassment at the workplace, as key challenges in increasing and continuing women's labor force participation.

The ADB has highlighted the importance of anti-trafficking measures to protect women from being forced into different forms of labor, including domestic work. We urge the ADB to enhance and support Burma's assessment of its recruitment procedures for women who migrate to other countries for domestic work, and undertake comprehensive legal, policy, and programmatic reform to address key concerns including abuses of recruitment agencies and child recruitment.

***(e) Anti-Corruption Reform***

Corruption is rampant in Burma. The country is tied with Afghanistan for the second-worst ranking in the 2011 Transparency International Corruption Perception Index. Only North Korea and Somalia fared worse. The widespread and entrenched nature of corruption in Burma raises serious risks, including by fostering unequal economic opportunities that undermine the

potential for inclusive growth and, in some cases, by fueling environmental degradation that negatively impacts human rights and hinders prospects for sustainable development.

The ADB should press for meaningful anti-corruption measures to ensure that Burma's own considerable resources and any subsequent ADB assistance benefit the people of Burma and are not squandered or stolen. The ADB should take special care to avoid bolstering those who cultivated close ties to military authorities and gained privileged access to state resources. It also should urge the government to dismantle the military's vast network of businesses that it owns or controls and to fundamentally reevaluate the military's outsized share of the national budget. In addition, alongside existing and planned efforts to promote better financial management, the ADB should encourage the Burmese government to create independent oversight bodies, audit all government departments and government spending and make public these audits, make bidding and tendering for government procurement processes open and publish results, and make public contracts for natural resource extraction and sales.

## **5. Analyze Human Rights Impacts of Proposed Projects**

The history of rights abuses and corruption in Burma in relation to infrastructure projects, coupled with the country's history of economic isolation, underscores the importance of analyzing the potential impact of proposed projects on human rights and taking steps to mitigate any adverse impacts. This should be built into the ADB's existing due diligence processes, which importantly are emphasized in the draft ICPS summary document, and rigorously implemented to ensure that proposed projects in Burma go forward only after such impacts have been identified and any adverse impacts mitigated. The ADB should require:

- (a) Human rights impact assessments on any proposed projects in Burma and development of an action plan to mitigate potential adverse rights impacts, ahead of board consideration. Assessments, action plans, and any related documents should be developed in consultation with affected communities and civil society, particularly humanitarian and human rights groups, including women's rights groups, and published ahead of board consideration. The ADB should rigorously monitor and supervise implementation of the action plan. Assessments should be conducted throughout all stages of projects.
- (b) In the context of a human rights impact assessment or environmental and social impact assessments, assess potential for discrimination on any grounds. Considering the recent inter-ethnic violence in Arakan State and history of ethnic conflict and discrimination generally, this is of crucial importance for all proposed projects in Burma.<sup>5</sup> We welcome the ADB's commitment throughout the draft ICPS to gender mainstreaming and recognition that this is essential for inclusive growth in Burma.<sup>6</sup> The ADB has recognized in parts of the

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<sup>5</sup> Human Rights Watch, *Burma – 'The Government Could Have Stopped This': Sectarian Violence and Ensuing Abuses in Burma's Arakan State*, August 2012, <http://www.hrw.org/reports/2012/07/31/government-could-have-stopped>.

<sup>6</sup> See ADB, *Myanmar: Interim Country Partnership Strategy 2012-2014 (Draft Documents for Consultation)*, Draft Sector Assessment (Summary): *Agriculture and Natural Resources*, September 2012, Para. 10: "Support for gender

draft ICPS documents the potential for projects to have negative impacts on ethnic minorities.<sup>7</sup> Further, in the draft poverty analysis the ADB has recognized the issue of inequalities among socio-cultural groups.<sup>8</sup> However, the ADB does not have non-discrimination safeguards.

- (c) In the context of a human rights impact assessment or environmental and social impact assessments, assess potential labor or land rights violations. This is particularly important considering the long history of such abuses, such as forced labor, in Burma. The ADB should ensure that it does not directly or indirectly support labor or land rights abuses, or any other human rights violations, and that it promotes workers' rights in line with relevant ILO conventions.
- (d) Due diligence on government partners and any private sector partners to ensure they are not implicated in rights abuses or corruption.
- (e) Recognition that the ADB's accountability mechanism should have jurisdiction to investigate each project, including to review mitigation measures outlined in human rights impact assessments.
- (f) Rigorous application of existing safeguard policies, including beyond the immediate project area to include associated facilities, to ensure projects will not be directly or indirectly linked with rights abuses. We welcome the ADB's recognition of the importance of safeguards in parts of the draft ICPS documents.<sup>9</sup>

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mainstreaming in agriculture and rural development is an integral component of promoting inclusive growth in Myanmar. ADB will deliver gender-equitable benefits by ensuring (i) that gender analysis is integrated into any policy reform; (ii) targets for women's participation in rural infrastructure planning and maintenance bodies; (iii) targets for increasing women's access to training and inputs related [to] productivity enhancement and diversification interventions and (iv) strategies for increasing women's access to markets and financial services."

<sup>7</sup> See ADB, *Myanmar: Interim Country Partnership Strategy 2012-2014 (Draft Documents for Consultation), Draft Sector Assessment (Summary): Transport, Interim Country Partnership Strategy*, September 2012, Para. 13: Investment projects in the transport sector will be selected on the basis of their ability to, amongst other things, "not have major impacts on resettlement, environment or ethnic minorities."

<sup>8</sup> See ADB, *Myanmar: Interim Country Partnership Strategy 2012-2014 (Draft Documents for Consultation), Draft Poverty Analysis (Summary)*, September 2012, Para. 4: "[T]he higher poverty incidence in Chin, Rakhine and Shan where most ethnic groups reside suggests that income distribution is skewed against these groups and the people in the rural areas of eastern Myanmar where local conflicts have prevailed for many years."

<sup>9</sup> E.g. the ADB notes the absence of legal safeguards as a constraint in the energy sector analysis: ADB, *Myanmar: Interim Country Partnership Strategy 2012-2014 (Draft Documents for Consultation), Draft Sector Assessment (Summary)*, September 2012, Para. 12.