

# INTERNATIONAL ACCOUNTABILITYPROJECT

## Submission to The United Nations Special Rapporteur on the Right to Development

*Regional Consultation on the Practical Implementation of the Right to Development:  
Identifying and Promoting Good Practices  
December 2018*

[International Accountability Project](#) (IAP), an international human rights organization, wins policy change, boosts local advocacy efforts and supports local activists and communities to access and exchange information on development that affects them. By opening space at influential decision-making spaces, IAP seeks to advance development principles and projects that prioritize human and environmental rights. IAP is recognized for its nimble, thoughtful and inclusive work that fights for community-led expertise and experience to be the center of how development is designed, funded and implemented.

IAP seeks to advance the right to development by ensuring all people can shape decisions that affect their homes, environment and communities in the development process. IAP assists communities through the Early Warning System, among other initiatives, monitors development projects proposed by development financiers, alerts communities likely to be impacted and, partners with Civil Society Organizations (CSOs) and movements to reinforce community-led responses at early project cycle. IAP works with CSOs and community organizers to support community gather their own community-led data on their development priorities, their experience in the development process and the impacts of development as a mobilization tool and to influence the policy and practice of development.

Any development should be further strengthened to recognize and mitigate the substantial barriers in accessing information and meaningful consultation that often exist for communities, and for marginalized groups.

Throughout, the development policy should take into account that different people face different barriers and utilize different methods to access information – be they rural communities, marginalized groups, women, persons with disabilities, the poor, elders, illiterate persons, or linguistic minorities. Too often, marginalized individuals and groups do not have access to information and their views are not heard. Therefore, any approach or plan on access to information must include a differentiated analysis of the various rights-holders, and apply appropriate and specific measures to ensure their access.

Any grievance mechanisms that deal with a fundamental human right, its focus should instead be people-centered, and based on international norms and established best practice.

## CASE STUDY 1: Sri Lanka Northern Fisheries Project

In 2017, local fisherfolks received the [Early Warning System](#) information through IAP's partner about the proposed [Northern Province Sustainable Fisheries Development Project](#) (Project) to be financed by the Asian Development Bank (ADB), the first major infrastructure and livelihood project in the Northern Province of Sri Lanka since the 1983 - 2009 civil war. The communities experienced severe conflict over the past 30 years, nearly 100% of the population being internally displaced. Communities are still actively rebuilding and restoring the trust needed for long-term peace and prosperity.

According to local communities, the proposed Project is not based on local fisher communities' priorities and has been designed without meaningful consultation. The civil society organization the Sri Lanka Nature Group had been in contact with communities to discuss concerns about the project the fisheries cooperatives and federations. It found that affected communities lack materials in the local Tamil and Sinhala languages, and had very little information and understanding about the Project.

IAP and Sri Lanka Nature Group supported the communities in Mannar district, one of the project-affected areas, to conduct a community-led research process between June and September 2018. The research focused on the communities' access to information; the opportunities for accessible public participation and consultation; the perceived human rights and environmental risks associated with the project; and the degree to which the project incorporated any community-led development priorities. The research included survey results from 400 community members (342 men and 58 women) who were to be impacted by the proposed Project.

The [Public Communication Policy 2011](#) of the Asian Development Bank emphasizes proactive disclosure stating that:

*"ADB shall provide information in a timely, clear, and relevant manner. Information shall be given to affected people and other stakeholders, including women, the poor, and other vulnerable groups early enough for them to provide meaningful inputs into project design and implementation. ADB shall not selectively disclose information".*

The newly approved [Access to Information Policy](#), which will be effective in January 1, 2019 indicates:

*"ADB discloses information about its operations in a clear, timely, and appropriate manner to enhance stakeholders' ability to meaningfully engage with ADB".*

The community-led research in Mannar finds that **99%** of respondents indicated that they were not consulted during project planning and **94%** of respondents reported that they did not have the information needed to be able to provide informed opinions and ideas about the project plans. *"The project information should be provided to everyone in our local language."* stated one respondent. In addition, **98%** of respondents reported that they did not receive information about either the consultation or project complaint processes. Many research respondents suggested that the project financier and executing agencies should, *"Consult the community before commencing a project."*

Furthermore, regarding the right to participation and consultation **97%** of community-led survey respondents reported they did not have any opportunity to propose ideas for specific development projects for their community. Only **0.3%** responded that their idea was incorporated into the project plans. And **95%** of research participants indicated that their idea of development is different from their government's idea of development. *“Respect the community by planning [the project] with the community.”* stated a participant. Local communities have reported instances of intimidation and coercion from project management, government and ADB consultants in the Northern Province.

Read more:

[Fisherfolk Communities in Northern Sri Lanka Organize to Protect Livelihoods From Proposed Asian Development Bank Project](http://bit.ly/IAPNorthernSriLanka) <http://bit.ly/IAPNorthernSriLanka>

[The briefer prepared by IAP and the Sri Lanka Nature Group detailing the Project, the results of the community-led research and the communities' recommendations to the ADB and the government.](http://bit.ly/SriLankaBriefer) <http://bit.ly/SriLankaBriefer>

## Case Study 2: The Tanahu Hydropower Project in Nepal

Nepal is a country that is highly dependent on hydropower resources to meet its energy demands. Over 90% of the energy generated in the country is derived from hydropower resources. The [Tanahu Hydropower Project](#), is a 140 MW hydropower project proposed to be built in Tanahu, a mountainous area in Nepal with funding from Asian Development Bank, European Investment Bank, and Japan International Cooperation Agency.

According to local residents in Tanahu, more than 750 households will be affected by the hydropower project. Residents are concerned about the specific impacts to their traditional lands and environment. Community members belong to different indigenous groups such as Magar, Gurung, Newar and depend on the land for their livelihoods but their main concern since the beginning is the lacking project information. As one resident noted, “We don’t have any information about who exactly is funding this project. There was no public hearing.”

To address this gap in access to information, Community Empowerment, Social Justice Foundation (CEMSOJ) and Indigenous Women Legal Awareness Group (INWOLAG) with support from Asia Indigenous Peoples Pact (AIPP), Accountability Counsel, and International Accountability Project, organized a training in November, 2016 to share information about the project and understand the situation of affected communities. In December, 2016, a [memorandum](#) was submitted to the Minister of Energy in Nepal raising concerns about the project. Communities demanded copies of project documents, meaningful consultations with a policy of informed consent and inclusion in relevant committees making decisions about the project. They have also traveled to Kathmandu to submit their memorandum to the Tanahu Hydropower company and the National Human Rights Commission.

Following the community training, IAP assisted INWOLAG and project affected community representatives to design and carry out a survey administered by the community and for the

community in Tanahu. In total, over 173 people from 8 affected communities (7 village development committees and 1 municipality) shared their opinions about the project, their knowledge of the proposed plans and their engagement with decision makers on their development priorities.

First, the research found that **75%** of participants had not been consulted during the planning phase of the project. Only **2 %** said they had the information they needed to be able to provide informed opinions about the project. The research also found that participants didn't know how to get the information they needed to understand what was happening to their lands, rivers and environments. Many people wrote that they found the project information to be too difficult to understand. Importantly, 36% responded that the project is making it impossible for their livelihood or source of income to continue. **51%** of survey participants did not feel safe to express all or some of their real opinions about the project.

These findings demonstrate the failure of the project to comply with the Asian Development Bank's own Public Communications Policy which states:

*"the information about the project shall be made available to affected people in a manner, form and language understandable to them in an accessible place and such information is provided and feedback on the proposed project design is sought. 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. A project focal point should have regular contact with affected people at early phase of the project."*

This did not happen in Tanahu.

Even as community efforts seek to change how the project is being carried out, the central question of how best to serve the electricity demands of the country remains. Hydropower development may not be the most viable and sustainable path to address the country's energy needs. Experts warn that climate change could result in significantly lower accumulations of snow cover in the glaciers and the Himalayas, increasing the risk of floods from glacial lake outbursts where the volume of floodwater could overwhelm the safeguards built into dams. This would pose a major threat to hydropower development in the country.

**Read more:**

[Nepali villagers make voices heard on Tanahu hydropower project](http://bit.ly/TanahuThirdpole)

<http://bit.ly/TanahuThirdpole>

[Leadership by Local Communities in Nepal Paves the Path for Development that Respects Rights](http://bit.ly/TanahuResearch)

<http://bit.ly/TanahuResearch>

[Glacial Lakes Threaten Himalayan Dams](http://bit.ly/HimalayanDam) <http://bit.ly/HimalayanDam>

## RECOMMENDATIONS

The fulfilment of the right to development requires the recognition and reinforcement of communities' access rights to information and meaningful consultation and effective remedy, in compliance within national, regional and international human rights legal frameworks.

Development can only exist where communities harmed by development projects have access to remedy. The development model in the Asia Pacific region has fallen short of creating democratic space to shape local, national and regional development priorities, on equal footing with the development institutions and their shareholder governments. Therefore, in many of the countries in which development finance institutions invest, protection of the environment and respect for human rights has taken a backseat to the quest for economic growth. We have witnessed so-called "development" justify the displacement of indigenous communities from their ancestral lands and spiritual environments. In the name of "development," people have lost their livelihoods, affecting not only the current generation but also future ones.

We believe that development finance institutions, their shareholder governments, and their independent accountability mechanisms can and must play a critical role in safeguarding accountability, human rights, and transparency in the region. In so doing, they promote true models of sustainable development. Accordingly, we recommend that governments, development institutions, companies, and the other drivers of development to do everything within their power and authority to:

- Uphold the right of access to information in development when a project is proposed without being led by a community's development priorities, Governments, development institutions, and other project developers must provide accessible, timely project information to all people to be impacted by the project in languages and through an approach that is culturally appropriate.
- Recognize the existing local decision-making spaces and processes. There should be accessible, equitable spaces for local communities members to communicate and exchange knowledge about their priorities and inputs regarding development plans affecting them. Those processes and information are shared publicly and discussed in a timely and accessible manner before the project is approved or implemented.
- Ensure the inclusion and facilitate the meaningful participation of rural communities, marginalized groups, women, persons with disabilities, the poor, elders, illiterate persons, youth or linguistic minorities in the development process, including in the design of the project and any project-level grievance mechanisms created to address potential harms.
- Recognize and consult with the community-led development priorities. True development starts with a People's Plan - a development plan that is designed and enforced by and for local community. The People's Plan highlights the community's development priorities and recommendations lead the creation of national and regional development plans and any project proposed.

- Ensure that adequate information about project financing, including co-financed projects, is disclosed in a systematic and timely manner and in the languages of project-affected communities.
- Ensure that people harmed by development projects should have access to effective remedy. The independent accountability mechanisms of development financial institutions should have the power to suspend or end a project where there is imminent or irreparable harm and should be able to enforce action plans that truly address the environmental and human rights harms suffered by communities.
- People to be affected by development projects should be informed about and have access to robust, impartial grievance mechanisms available at all levels.
- There should be more available legal mechanisms that community can make use to hold the private sectors to comply with human rights in business and development and be accountable for human rights violations within country and transboundary.
- Need to have a stronger regional human rights mechanism in Southeast Asia. The existing ASEAN Intergovernmental Commission on Human Rights (AICHR) has no mandate and jurisdiction to receive a complaint nor investigate human rights abuses.

The human rights defender, who openly criticize development projects have paid a hefty price: the mark of being labeled “anti-development” has been accompanied by harassment, spurious legal actions, physical attacks, and even death. Similarly, civil society groups, including those who support affected communities in voicing concerns about projects, face increasing restrictions on their ability to operate.

- Denounce the current climate of violence and repression faced by human rights and environmental defenders who attempt to mobilize, access and provide information and voice their priorities and concerns about development projects.
- Safeguard the democratic space for human rights and environmental defenders and complainants. Upholding the confidentiality of complaints to the grievance mechanisms, while a critical measure to protect the safety of those who complain, is not in and of itself sufficient to address the commensurate risks faced by complainants. Development finance institutions, their stakeholder governments, and independent accountability mechanisms should implement additional measures, including adopting guidelines on how to identify, prevent and respond to threats against individuals or civil society organizations who defend human and environmental rights in connection with development financing.
- Ensure a safe space for people to meaningfully participate throughout the process. This space should be free from any form of intimidation or coercion.

- Implement prevention and protection measures of human rights and environmental defenders from any form of reprisals as part of a project's agreements and financial contracts prior to the approval of the project.
- The independent accountability mechanisms should have the power and resources to successfully fulfill their mandates of "accountability." Independent accountability mechanisms should have adequate resources to handle caseloads and conduct outreach with affected communities. In addition, the mechanisms should have the power to suspend funding in cases of imminent harm.