



Public Services International
Internationale des Services Publics
Internacional de Servicios Públicos
Internationale der Öffentlichen Dienste
Internationell Facklig Organisation för Offentliga Tjänster
國際公務勞連

Rajasthan Renewable Energy Transmission Investment Programme

A study on ADB's Compliance with
Social Protection Strategy and Core Labour
Standards

Souparna Lahiri
December 2015

ABBREVIATIONS

ADB	Asian Development Bank
CLS	Core Labour Standards
COBP	Country Operational Business Plan
CPA	Country Poverty Analysis
CSP	Country Partnership Strategy
CTF	Clean Technology Fund
DMC	Developing Member Country
EA	Executing Agency
ECAFE	UN's Economic Commission for Asia and the Far East
ESCAP	Economic Social Commission for Asia and the Pacific
FAM	Facility Administration Manual
GAP	Gender Action Plan
ILO	International Labour Organisation
ILS	International Labour Standards
IPSA	Initial Poverty and Social Analysis
JNNSM	Jawaharlal Nehru National Solar Mission
MFF	Multitranche Financing Facility
OCR	Ordinary Capital Resources
PCP	Public Communication Policy
PCR	Project Completion Report
PMU	Project Management Unit
PPA	Poverty Partnership Agreement
PPTA	Project Preparatory Technical Assistance
PSI	Public Service International
RREC	Rajasthan Renewable Energy Corporation
RRETIP	Rajasthan Renewable Energy Transmission Investment Programme
RRP	Report and Recommendations of the President
RRVPNL	Rajasthan Rajya Vidyut Prasaran Nigam Ltd
RVPMC	Rajasthan Vidyut Prasaran Mazdoor Congress
SASEC	The South Asia Subregional Economic Cooperation
SPRSS	Summary Poverty Reduction and Social Strategy
SPS	Social Protection Strategy
TA	Technical Assistance

CONTENTS

India and Asian Development Bank	4
Rajasthan Renewable Energy Transmission Investment Programme: ADB's Compliance with Social Protection Strategy and Core Labour Standards	7
ADB's Social Protection Strategy and Commitment to ILO's Core Labour Standards	12
Project Preparation and Social Protection Strategy	19
Integrating Core Labour Standards in ADB's Project Cycle	22
Rajasthan Renewable Energy Transmission Investment Programme: A Compliance Analysis	26
Findings	34
Recommendations	37
Appendix	38

India and Asian Development Bank

With a paid-in capital subscription of \$486.77 million and overall capital subscription of \$9.73 billion, holding 6.5% of total shares, India is Asian Development Bank's (ADB) fourth largest shareholder. India is one of the founding members of the ADB since 1966. Since the beginning of its lending operations in India in 1986, ADB has approved 189 sovereign loans amounting to \$31.3 billion.¹

As of 31 December 2014, the portfolio included 86 ongoing sovereign loans amounting to \$11.5 billion. During the same period, cumulative disbursements to India for lending and grants financed by ordinary capital resources and other special funds amounted to \$21.28 billion.

For 54 non-sovereign private sector projects, ADB has so far disbursed an amount of \$3.8 billion.

Asian Development Bank

ADB is a multilateral development bank owned by 67 member countries, 48 from the Asia-Pacific region and 19 from other parts of the world including developed countries from western Europe and North America. ADB's main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance (TA).

The Asian Development Bank (ADB) aims for an Asia and Pacific free from poverty. It is a major source of development financing for the Asia and Pacific region. With more than \$22.93 billion in approved financing, and 2,997 employees from 60 countries, ADB - in partnership with member governments, independent specialists and other financial institutions - is focused on delivering projects that create economic and development impact.

Whether it is through investment in infrastructure, health care services, financial and public administration systems, or helping nations prepare for the impact of climate change or better manage their natural resources, ADB is committed to helping developing member countries evolve into thriving, modern economies that are well integrated with each other and the world.

According to ADB, the purpose of the Bank shall be to foster economic growth and co-operation in the region of Asia and the Far East and to contribute to the acceleration of the process of economic development of the developing member countries in the region, collectively and individually.²

1 Asian Development Bank & India, Fact Sheet

2 Agreement Establishing the Asian Development Bank, 1966

In March 1963, the UN's Economic Commission for Asia and the Far East (ECAFE), later renamed Economic Social Commission for Asia and the Pacific (ESCAP), adopted a resolution endorsing the idea of a regional development bank to facilitate Asian economic cooperation. The result was 31 countries met in Manila and signed the Charter to form ADB.

Since its institutionalization in 1966, the membership of ADB has grown from 31 to 67.

ADB's development lending

In 2014, lending volume was \$22.93 billion, with TA at \$159 million, grant-financed projects at \$405 million, equity investments at \$185 million and guarantees at \$20 million. In addition, \$9.2 billion was generated in direct value-added co-financing in the form of official loans and grants and commercial co-financing.

As of 31 December 2014, the outstanding effective loans to member countries, excluding co-financing was \$164 billion. China with 25.6% is the biggest borrower followed by India (24.3%), Indonesia (11.2%), Pakistan (8.4%), Philippines (6.8%) and Vietnam (6.4%).

ADB's current development strategy emerges out of its Long Term Strategic Framework 2008-2020. It is the paramount ADB-wide strategic framework to guide all its operations to 2020.

Strategy 2020 reaffirms both ADB's vision of an Asia and Pacific free of poverty and its mission to help developing member countries improve the living conditions and quality of life of their people.

Strategy 2020 identifies drivers of change that will be stressed in all its operations—developing the private sector, encouraging good governance, supporting gender equity, helping developing countries gain knowledge, and expanding partnerships with other development institutions the private sector, and with community-based organizations.

Strategy 2020 envisages 80% of ADB lending in five following core operational areas, identified as comparative strengths of ADB:

- Infrastructure, including transport and communications, energy, water supply and sanitation and urban development
- Environment
- Regional cooperation and integration
- Finance sector development
- Education

ADB's India strategy

ADB's development assistance for a member country is based on the Country Partnership Strategy (CSP) that the ADB develops in partnership with the country government and the private sector mainly, though, it also talks of consulting other stakeholders like the civil society and community based organizations.

ADB's India development assistance strategy is similarly drawn out of its CSP India and the Country Operational Business Plans (COBPs) where the evolving development priorities of the Indian Government are being incorporated into the overall design and delivery of ADB's India operations to ensure relevance and results.

ADB's current CPS for India (2013-2017) aims to support the government's Twelfth Five-Year Plan priorities of "faster, more inclusive, and sustainable growth." The CPS claims that in line with the government's guiding principle that multilateral development partners add value beyond tangible investments, ADB builds in innovations and best practices in project design and implementation.

India's cumulative lending, grant and technical assistance approvals so far

Sector	Loan projects	Amount (\$ million)	Percent age
Agriculture, Natural Resources and Rural Development	36	293.48	0.84
Education	9	207.28	0.60
Energy	160	10,965.13	31.56
Finance	59	4,157.03	11.96
Health	5	22.45	0.06
Industry and Trade	13	132.22	0.38
Public Sector Management	66	1,751.19	5.04
Transport	150	11,487.28	33.06
Water Supply & other Municipal Infrastructure and Services	77	3,595.11	10.35
Multisector	30	2,134.98	6.14
Total	605	34,746.14	100.00

Since its inception, ADB has approved \$3.88 billion in non sovereign financing for 54 private sector projects in India.

Transport and energy sectors dominate ADB's investment portfolio. ADB's transport sector program aims to improve connectivity and accessibility, promote safe and environmentally friendly practices, and enhance in-country and subregional trade corridors and facilities. The South Asia Subregional Economic Cooperation (SASEC) Road Connectivity Investment Program is working toward these objectives.

Energy sector initiatives continue to contribute to the strengthening of transmission and distribution networks in India. These initiatives—such as the Assam Power Sector Investment Program—aim to provide uninterrupted power supply to all, while promoting low-carbon solutions, renewable energy, and energy efficiency.

Rajasthan Renewable Energy Transmission Investment Programme and ADB's compliance with its Social Protection Strategy and ILO's Core Labour Standards

The Government of India in its Integrated Energy Policy (IEP) 2006 estimates that India needs to increase its primary energy supply by 3 to 4 times and electricity generation by 5 to 6 times to meet the lifeline per capita consumption by 2031. To meet these growing needs for energy, Government of India has decided to develop all sources of energy including renewable energy.

In 2010, India launched the Jawaharlal Nehru National Solar Mission (JNNSM) to (i) create an enabling policy framework for deployment of 20 GW of solar power by 2022, (ii) ramp up capacity of grid-connected solar power generation in a phased manner, (iii) deploy 20 million solar lighting systems for rural areas by 2022, and (iv) create favourable conditions to enhance solar manufacturing capability, particularly solar thermal for indigenous production and market leadership. Solar energy development is an important part of the government's 2008 National Action Plan for Climate Change.

Rajasthan is the largest state in India with a vast desert area with a significant potential to generate solar and wind power. The western part of the state is a renewable energy concentration zone where gigawatt scale capacity addition for solar and wind power plants are planned in the next few years.

The government of Rajasthan has developed its own framework through adoption of a solar policy in 2011 and a wind policy in 2012. These policies emphasize private and public sector investments, including partnerships, to shorten the development timeline, reduce development costs, facilitate replication and address scale up issues encountered with a stand-alone project approach. The Rajasthan Electricity Regulatory Commission has set renewable energy procurement obligations for the distribution utilities in the state and is regulating the workings of the electricity transmission and distribution companies.

For Rajasthan, the total installed renewable energy capacity of wind and solar is expected to reach 8000 MW by 2018. In Rajasthan, the state's renewable energy investment plan includes establishment of renewable energy parks, solar and wind generation projects, transmission and smart grid facilities, associated infrastructure, and community power schemes. The renewable energy park model conceives replicable private sector projects being set up at a single location to generate and sell renewable energy. Rajasthan's use of the park model is expected to accelerate investment in renewable energy generation because the government will provide the infrastructure including transmission facilities for electricity for plant construction, roads, site development, and security. It will also facilitate permits and allocate land. Development of privately owned generation projects would be financed by financial institutions such as the Indian Renewable Energy Development

Agency. The park model marks a departure from traditional approaches to developing renewable energy projects and achieves greater economies of scale.³

The state government has mandated Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL), the public sector electrical transmission licensee in Rajasthan, to transmit the power produced from wind and solar renewable energy projects in the state. In addition to private solar photovoltaic projects, the solar park in Bhadla will also host concentrated solar thermal projects. The state government's overall investment plan for renewable energy development amounts to more than \$11 billion during 2012–2018. About \$9.5 billion of this amount would be for renewable energy power generation mainly from the private sector, while more than \$1.6 billion would be invested in transmission and financed from various sources, including ADB's proposed investment program.

ADB's strategic investment

The policy framework, road map, and investment program for renewable energy in the country and the state of Rajasthan are in line with ADB's strategy for the energy sector and ADB's draft country partnership strategy for India for 2013–2017, which supports renewable energy development, expanded transmission systems, and institutional strengthening.

In May 2010, ADB announced the Asia Solar Energy Initiative to catalyze 3,000 MW in solar energy projects through public-private partnerships. ADB's operations departments have been active through PPP in this strategic space for some time. ADB's private sector operations have financed stand-alone solar power projects across India, including projects in Rajasthan. ADB support for the public sector activities has been provided mainly through financing for transmission facilities.⁴ This included support for the transmission infrastructure for solar parks in the state of Gujarat in 2010.

The project: Rajasthan Renewable Energy Transmission Investment Programme (RRETIP)

Impact and Outcome

The impact of the RRETIP as mentioned in the Report and Recommendation of the President (RRP) is accelerated development of renewable energy sources in Rajasthan and India. The outcome is given as achievement of a cleaner electricity mix and a more efficient and effective generation and transmission system in Rajasthan.

Outputs

Physical outputs include construction work related to

- i. three grid substations (400 kilovolt [kV]) and nine grid substations (220 kV) and associated facilities;
- ii. augmentation of four 400 kV grid substations;

3 Report and Recommendation of the President to the Board of Directors, Proposed Multitranche Financing Facility and Administration of Loans and Technical Assistance Grant India: Rajasthan Renewable Energy Transmission Investment Program, Project No.45224, September 2013, Manila

4 ADB. 2011. Report and Recommendation of the President to the Board of Directors: Loan for the Dahanu Solar Power Project. Manila

- iii. three 132 kV substations; and
- iv. 1852 kilometers of 400 kV, 220 kV, and 132 kV of transmission lines primarily in western Rajasthan.

Nonphysical outputs include developing institutional capacity for renewable energy parks and transmission systems.

Investment and Financing

The project is financed through ADB's Multitranche Financing Facility (MFF). The government requested an MFF of an amount up to \$498 million loan and \$2 million grant from ADB to finance the investment programme. The financing plan includes \$300 million from ADB ordinary capital resources (OCR), \$198 million loan and \$2 million grant from the ADB's Clean Technology Fund (CTF).

The MFF will be drawn in three tranches. The first tranche amounts to \$150 million—\$62 million from ADB's OCR and \$88 million from the ADB CTF. The remaining financing will be mobilized by RRPNL, including debt from lenders and equity support from the government of Rajasthan. Tranche 2 of about \$220 (table 2) million expected in 2014 and Tranche 3 is expected in 2015.

The tranche 1 investments will be for construction of the bulk power transmission system in western Rajasthan, including: two 400 kV grid substations and associated facilities in Bhadla and Ramgarh; two 220 kV substations and associated facilities at Bap and Kanasar; augmentation of two 400 kV grid substations at Akal and Bikaner; upgrade of three substations to 132 kV in Bhadla; and construction of almost 600 kilometers of 400 kV, 220 kV, and 132 kV transmission lines in Bhadla and Ramgarh.

Execution and Project Management

RRPNL, the state transmission licensee in Rajasthan, and the Energy Department of Rajasthan will be the executing agencies for the investment program. Rajasthan Renewable Energy Corporation (RREC), the state government nodal agency responsible for developing renewable energy will coordinate with the state government to provide the necessary land for power project developers.

Project implementation will be handled by RRPNL's regional office in Jodhpur, Rajasthan. Private sector investment proposals and the related bidding process will be handled by a committee of secretaries from the government, supported by RREC. Project management, preparatory work for future subprojects, and implementation support will be financed by the Rajasthan government. A dedicated Project Management Unit (PMU) has been set up at RRPNL since 2012 for design, supervision, and procurement.

Technical Assistance

The TA for Rajasthan Renewable Energy Capacity Development and Implementation Support is estimated to cost \$2,000,000, which will be financed on a grant basis by the ADB CTF. The TA will be attached to project 1 of the MFF and will provide technical support for (i) infrastructure planning for the subsequent phases of the Bhadla solar park, (ii) community development initiatives around the solar park, (iii) institutional capacity development of RRPNL and RREC, (iv) system studies for the

renewable energy integration road map, (v) identification of enterprise resource planning tools and (vi) asset accounting.⁵

Socioeconomic and poverty assessment

A socioeconomic and poverty assessment was carried out along the transmission routes and in the area of the substations identified for support under project 1, as well as in the vicinity of phase 1 of the Bhadla solar park. These areas lack basic infrastructure and other services, including access to good quality water supply, medical facilities, and electricity. Economic activity is weak and there is a lack of income-generating opportunities. ADB claims that the investment program will create economic opportunities. A gender action plan has been prepared for project 1. The loan agreement includes a commitment from the executing agencies to implement the gender action plan.

Safeguards

An environment assessment and review framework, a resettlement framework, and an indigenous peoples planning framework were prepared, outlining the environment and social safeguard principles and requirements.⁶

The loan agreements include a standard assurance related to core labor standards for contractors (including equal pay for equal types of work), and an awareness program on HIV/AIDS, and sexually transmitted diseases.

Assurances

The Indian government, the state government of Rajasthan, and RRPVNL have assured ADB that implementation of the projects under the MFF shall conform to all applicable ADB policies including those concerning anticorruption measures, safeguards, gender, procurement, consulting services, and disbursement as described in detail in the facility administration manual and loan documents.

Approval

Following the submission of the RRP, the project 1 under tranche 1 was approved in September 2013. A loan agreement for project 1 dated 12 September 2014 for ordinary operations was signed between Government of India and ADB. Another loan agreement for ADB Clean Technology Fund dated 12 September 2014 was also signed between Government of India and ADB.

Two project agreements for RETIP project 1 was signed between ADB and State of Rajasthan, RRPVNL on the same date, one of them being for the CTF.

Compliance with Social Protection Strategy (SPS) and Core Labour Standards (CLS)

Following ADB's own SPS and commitment to CLS post MoU with ILO, in all its investment and funded projects, ADB is supposed to comply with the provisions of its SPS and adhere to CLS.

Public Service International (PSI), a Global Trade Union with members worldwide engaged in public services and utilities, commissioned a brief study in August 2015

5 RRP, Rajasthan Renewable Energy Transmission Investment Program, 2013, Manila

6 Ibid RRP, 2013, Manila

to look at the compliance of ADB with its own SPS and adherence CLS in project design and implementation of the RRETIP.

The objectives of the compliance study were:

- To conduct a study on the RRETIP
- To identify the key CLS and other workers rights violations in the design of the project
- To visit the project site and work in alliance with the existing local unions while conducting the study and
- To document and analyse the key issues in the project design related to CLS and workers rights or their non-compliance.

The field work was done between August 15 and 19, 2015 where most of the project sites including Bhadla, Jaisalmer, BAP, Akal were covered including the ongoing construction sites.

The field visit was facilitated by the union leaders and members of the Rajasthan Vidyut Prasaran Mazdoor Congress (RVPMC).

During the field visit, the researcher met RRPVNL sub-station and transmission staff including junior engineers, technical helpers and security guards and also women employees.

The researcher also talked to the workers engaged in the construction sites in and around the sub-stations and transmission towers.

A set of questionnaires was also sent to the CMD RRPVNL and the team leader of the ADB project team. While the ADB project team leader did send a very late response there has been no response from the CMD of RRPVNL.

The questionnaires and the responses are appended with this report.

ADB's Social Protection Strategy and commitment to ILO's Core Labour Standards

ADB defines Social Protection as the set of policies and programs designed to reduce poverty and vulnerability by promoting efficient labor markets, diminishing people's exposure to risks, and enhancing their capacity to protect themselves against hazards and interruption/loss of income.

In October 1998, an interdepartmental working group was formed to explore options for ADB's future interventions in social protection. A framework for operations on social protection was developed in July 1999, after close consultations among departments, and was distributed and discussed with selected member country governments, NGOs, and other aid agencies. The various drafts ended in a formal submission to the 57 ADB member countries in April 2001, and a consensus was reached on 13 September 2001, when the ADB Social Protection Strategy was approved.

Social Protection is one of the four strategic objectives of the Decent Work Agenda that define the core work of the ILO. Since its creation in 1919, ILO has actively promoted policies and provided its Member States with tools and assistance aimed at improving and expanding the coverage of social protection to all groups in society and to improving working conditions and safety at work.

The ILO has set out three main objectives reflecting the three major dimensions of social protection:

1. Extending the coverage and effectiveness of social security schemes.
2. Promoting labour protection , which comprises decent conditions of work, including wages, working time and occupational safety and health, essential components of decent work.
3. Working through dedicated programmes and activities to protect such vulnerable groups as migrant workers and their families; and workers in the informal economy. Moreover, the world of work's full potential will be used to respond to the AIDS pandemic, focusing on enhancing tripartite constituents' capacity.

ADB's Social Protection Strategy

The vision of the ADB's Social Protection Strategy (SPS) is the provision of social protection to all citizens of the Asia and Pacific region through the development of sustainable, statutory programs with universal coverage to effectively assist DMCs to reduce poverty, achieve growth by enhancing productivity, and create opportunities for individual self-reliance.

[ADB's Social Protection Strategy](#) identifies common issues to be addressed in the region, but recognizes that individual countries have specific needs. Country initiatives are developed based on the

- country's needs
- available resources
- feasible institutional arrangements
- political economy of reforms

Selected social protection interventions include:

- providing adequate coverage
- targeting vulnerable groups and gender issues
- ensuring sustainability and good governance
- having an integrated approach

Social Protection Strategy as devised by ADB, has five basic components:

- labour market policies and programmes designed to generate employment, improve working conditions and promote the efficient operation of labour markets
- social insurance programmes to cushion the risks associated with unemployment, ill health, disability, work-related injury and old age
- social assistance and welfare service programmes for the most vulnerable groups with no other means of adequate support, including single mothers, the homeless, or physically or mentally challenged people
- micro and area-based schemes to address vulnerability at the community level, including micro-insurance, agricultural insurance, social funds and programmes to manage natural disasters
- child protection to ensure the healthy and productive development of children.⁷

SPS and labour

⁷ www.adb.org/Documents/Policies/Social_Protection/default.asp

Accordingly, the labor market improvements to enhance social protection include the following.

- (i) Labor market assessments analysing demographic trends, labor absorbing sectors, unemployment, migration flows, and the size and causes of the rise of informal sector can help identify a country's needs and development options.
- (ii) Active labor market programs facilitate (a) direct employment generation (promoting small and medium enterprises, public works); (b) labor exchanges or employment services (job brokerage, counseling) linking supply with demand for labor; and (c) skills development programs (training and retraining of labor).
- (iii) Passive labor market policies include (a) unemployment insurance, (b) income support, and (c) an appropriate legislative framework that strikes a balance between economic efficiency and labor protection.

Core labour standards in SPS

An appropriate legislative framework points at provisions on minimum age, maximum hours and overtime, labor contracts, industrial relations, special protection appropriate for new mothers, and anti-discrimination provisions to protect women and minorities. Internationally recognized labor standards, when ratified, are also part of the legislative framework of a DMC.

- (iv) Appropriate steps should be taken to ensure that procurement of goods and services, contractors, subcontractors, and consultants, comply with the country's labor legislation (e.g., minimum wages, safe working conditions, social security contributions, etc.) as well as with the Core Labor Standards.

The existing ADB social impact assessments, mandated by Management and the Board since 1991 (Operations Manual OM 47 [New OM C3]: *Incorporation of Social Dimensions into Bank Operations*) continues to ensure that vulnerable groups are not negatively affected by an ADB intervention. Specific social protection issues include the following:

- (i) vulnerable groups that maybe negatively affected by an ADB intervention must be adequately compensated and mitigation measures put in place to avoid creating further poverty (e.g., in case of public or private sector restructuring, workers, particularly low-income workers, should not be unfairly disadvantaged, regardless of race, skills, gender, age, or religious and political beliefs) ; mitigation measures should always aim to adequately balance social objectives and economic sustainability;
- (ii) (a) in the design and formulation of its loans, ADB will comply with the internationally recognized core labor standards; (b) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and

services, contractors, subcontractors and consultants will comply with the country's labor legislation and Core Labor Standards;

(iii) As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with.

Core Labour Standards

Labor standards are rules that govern how people are treated in a working environment. They come in a variety of forms and originate at the local, national, and international levels. It can be as simple as ensuring that basic rules of good sense and good governance have been taken into account.

Labor standards cover a very wide variety of subjects, mainly concerning basic human rights at work, respect for safety and health, and ensuring that people are paid for their work. They also extend to questions of good governance, such as labor inspection and basic labor administration. In an economic context, they are important for raising productivity and competitiveness over the long term.

At the national level, labor standards are usually set by laws and regulations. Some can also be found in collective agreements. Normally, these bind only the contracting parties—trade unions and employers—but once accepted in some countries, they acquire the force of law for the entire country or economic sector.

At the international level, labor standards are found in international conventions and recommendations. International labor standards (ILS) are important for two reasons. First, they represent the international consensus on minimum best practices, whether on human rights generally or more precisely on labor matters. Second—and more immediately important in many cases—when they have been ratified by member countries they constitute binding legal obligations in national and international law, and may even be incorporated in national law.

These are a set of four internationally recognized basic rights and principles at work:

- (i) freedom of association and the effective recognition of the right to collective bargaining,
- (ii) elimination of all forms of forced or compulsory labor,
- (iii) effective abolition of child labor, and
- (iv) elimination of discrimination in respect of employment and occupation.

While there are many types of labor standards, the four listed above have achieved consensus internationally as the “core” labor standards. International support for these standards reflects an understanding that they are applicable to all countries. They do not establish a particular level of working conditions, wages, or health and safety standards to be applied internationally. They are not intended to alter the comparative advantage of any country. These basic rights have been repeatedly

articulated in international human rights instruments and declarations, such as the Universal Declaration of Human Rights in 1948 and the Convention on the Rights of the Child, 1989. Their most prominent recent expression is in the Declaration of the 1995 Copenhagen Summit on Social Development.

The ILO further substantiated the CLS in 1998 by the Declaration on the Fundamental Principles and Rights at Work, which calls upon its member countries to comply with the four principles, regardless of whether they have ratified the relevant conventions. It also identified a role for international organizations, such as the World Bank and ADB, in promoting respect for CLS.

ADB and ILO partnership on CLS

As an institutional arrangement, the labor trade unions should have an official interlocutor at ADB and the NGO Centre responsible for compliance with country specific labour legislations and the core labour standards. To facilitate such interventions strategic partnerships were formalized through MoUs between ADB and ILO.

Since 1999, interaction between ADB and the ILO has intensified in four main areas: strategic consultations in preparing ADB's Social Protection Strategy; regional technical assistance on improving the role of labor standards in selected developing member countries; training on emerging issues in social protection and social safety nets; and project technical assistance and lending activities. ADB's Board of Directors endorsed the development of the ADB-ILO MOU on 13 September 2001, date of the approval of the ADB Social Protection Strategy.

To further strengthen this cooperation a Memorandum of Understanding (MOU) was signed by Myoung-Ho Shin, ADB Vice-President (Operations 1) and Yasuyuki Nodera, Regional Director, ILO Asia-Pacific Region on the eve of ADB's 35th Annual Meeting of Board of Governors in Shanghai, China on May 09, 2002.

The International Labour Organization's (ILO's) commitment towards achieving decent work for all is consistent with and supports ADB's goal of poverty reduction in the region. Recognizing a common ground, ADB and the ILO have identified areas for cooperation, collaboration and coordination to improve their contribution to the achievement of these goals.

Core Labour Standards in ADB Operations

ADB's country strategy and program (CSP) provides the overall strategic framework to guide ADB's operations in a country over a 5-year period. The conduct of a country poverty analysis, thematic assessment—environment, gender, private sector, governance—and sector roadmaps constitute essential elements of CSP

preparation, and they are important tools for assessing the importance of labor issues and CLS in country programming.⁸

CLS can be addressed through issues related to governance, foreign direct investment or in sectoral issues. Addressing CLS in CSP should depend on the strategic focus of CSP, and as part of country poverty and social analysis in the context of human development or labor market reform.

A labour market assessment includes among other things an analysis of ILS/CLS in the DMC. Given that all ADB interventions need to be designed in accordance with CLS, the summary assessment should indicate the country's compliance/noncompliance with labor standards, including CLS. The enforcement related issues should also be studied during the assessment.

Ideally, information collection should involve collaboration and consultation with relevant international, national, and local organizations and institutions, such as the ministry responsible for labor; national statistics office; national trade unions and employers' organizations; international trade unions and employers' organizations; labor research institutes, often in national universities; regional representation of the ILO; and other civil society organizations concerned with labor issues (women's organizations, child protection organizations, trade associations, etc.).⁹

Often a full labor market assessment might be too resource-intensive and, therefore in most countries, utilizing existing ILO country studies should be considered and explored, and only in exceptional cases where labor market issues are of particular importance, an ADB assessment may be considered. Even if it has not been possible to carry out a full labor market assessment, the analysis should at least signal the existence of any major labor problem, which should be addressed as a priority issue through ADB.¹⁰

The following table provides information on the generic processes and analyses required at the various stages of the ADB operational cycle for considering or integrating core labor standard concerns into ADB operations. The table gives further advice on different activities during project design and implementation with regard to CLS.

⁸ Core Labour Standards Handbook, Manila, 2006, ADB and ILO

⁹ Ibid

¹⁰ See also the Economic and Research Department's publication on labor markets: Felipe, J., R. Hasan (eds.). 2006. *Labor Markets in Asia: Issues and Perspectives*. London: Palgrave Macmillan for the Asian Development Bank

Core Labor Standards in ADB Operational Cycle

Operational Cycle	Issues related to Core labor Standards
Country Strategy and Program	<ul style="list-style-type: none"> • Risk and vulnerability profile • A summary of labor market assessment
Pre-project Design (PPTAs)	<ul style="list-style-type: none"> • Identification of bonded labor, child labor, or gender and other inequalities in employment • Identification of special consultants in the PPTA team (labor, gender, etc) • Identification of the situation concerning freedom of association
Project Design	<ul style="list-style-type: none"> • Designing necessary interventions to adhere to CLS • Participation of stakeholders concerning the future implementation of CLS clauses • Formulation of appropriate assurances/covenants for inclusion in loan documents • Scrutinizing draft bidding documents
Project Implementation	<ul style="list-style-type: none"> • Consultations with implementing agencies on CLS • Drafting model clauses for bidding documents • Compliance with national legislation concerning CLS and ILS • Monitoring and evaluating of CLS
PPTAs	<ul style="list-style-type: none"> • Country poverty analysis • Country strategy and program
IPSA	<ul style="list-style-type: none"> • Concept papers • PPTA fact finding missions • Initial poverty and social assessment • Technical assistance report
RRP	<ul style="list-style-type: none"> • Selection of consultants • Inception report • Mid-term report • Final report • Draft RRP with SPRSS • Loan negotiations
SPRSS	<ul style="list-style-type: none"> • Government, executing and implementing agencies, beneficiaries • Contractors, suppliers, consultants • Review missions, progress reports • Mid-term review • Project Completion Report • Project Performance Evaluation Report

PPTA= Project Preparatory Technical Assistance, IPSA= Initial Poverty and Social Assessment, RRP= Report and Recommendation of the President, SPRSS- Summary Poverty Reduction and Social Strategy

Project preparation and Social Protection Strategy

ADB funded Project preparation starts with the loan preparation phase which has two distinct components – pre-design and design phases. A poverty and social analysis (PSA) is used during each phase of loan preparation. The purpose of poverty and social analysis during loan preparation is to identify opportunities and constraints for poor groups to benefit from project activities, to establish a participatory process, and to prepare design measures for achieving poverty reduction and social development outcomes during implementation.

Pre-project design phase consists of four elements: concept paper, PPTA fact finding mission, initial poverty and social assessment (IPSA) and technical assistance report (TA).

The loan pre-design phase provides the opportunity to assess a range of proactive measures that may be incorporated into project preparation to reduce poverty and address social development. There are three main groups of options to consider: extending opportunities to the poor, empowering the poor, and reducing the vulnerability of the poor.

The preparation of the concept paper triggers four tasks relating to social and poverty issues:

- (i) Draft an *initial poverty and social analysis* on the likely scope of the interventions needed to meet the agreed social development and poverty goals, and to revalidate the poverty reduction justification anticipated in the original concept paper.
- (ii) Commence initial *stakeholder analysis* and *participatory planning*.
- (iii) Determine the *team composition* and staffing inputs required to address poverty and social development issues during project preparation.
- iv) Prepare terms of reference for the *project TA fact-finding* mission.

A TA fact-finding mission is undertaken during the predesign phase of project preparation to validate the expectations outlined in the concept paper, and to collect more detailed information necessary to ensure poverty reduction is an integral part of the project design. The conclusions of the TA fact-finding mission are reported in the project preparatory technical assistance (PPTA) paper or project preparatory note (PPN).

A key element of this loan preparation stage is the conduct of the IPSA. The IPSA presents the opportunity to flag poverty and social issues that need to be addressed in greater depth during the IPSA. The IPSA also identifies possibilities for participatory approaches to loan design and implementation.

An IPSA is mandatory for all projects and should be conducted as soon as possible in the project cycle, thus forming a key element of the work undertaken during the TA fact-finding stage.

An initial poverty and social assessment (IPSA)

- flags poverty and social issues to be included in terms of reference for the design phase;

- confirms that the project has been identified as a national priority in the country poverty analysis (CPA) and poverty partnership agreement (PPA);
- briefly summarizes the contributions of the sector to reduce poverty in the developing member country;
- flags types of people who may be beneficially and adversely affected by the loan;
- scopes the broad characteristics of various subgroups;
- identifies possible institutions to be involved in the loan and briefly assesses their capacities; and
- identifies key dimensions (such as involuntary resettlement, indigenous peoples, and gender and development) that may need to be addressed during subsequent processing.

The IPSA should be undertaken as early as possible in the project cycle and preferably at the time of technical assistance fact-finding for a project preparatory technical assistance.¹¹

The IPSA of the TA fact-finding mission is reported using a *Summary IPSA Report Form*. This summary report confirms the links established between the choice of sector or project and the identified priorities of the country poverty analysis and poverty partnership agreement (PPA). It also incorporates the results of the poverty analysis and identifies potential issues requiring further analysis. The project team decides, on the basis of IPSA results, on the scale and scope for further detailed poverty and social analysis to be conducted during the design phase. In doing this, the main objectives will be to support poverty reduction, foster participation, promote social development, and avoid or mitigate any negative impacts.

Where lack of time or data prevents completion of some elements of the IPSA during TA factfinding, it will be a priority for the project preparation team to complete in time for review during the design phase inception mission. This might include preparation of a draft participation strategy.

An IPSA should undertake poverty analysis to link and validate the concept of the project, cover issues related to labour, participation and consultation, gender, governance and institution, and risks and vulnerabilities.

IPSA: Criteria for Assessing the Significance of Various Social Issues

Participation: i. Project success depends on intense and/or sustained involvement of citizens [whether in design process (e.g., affordability assessment), in implementation or operation and maintenance].
ii. The project may face risk of delay, protest, or obstruction because stakeholders feel excluded from the decision-making process (e.g., large infrastructure, restructuring, and tariff reform projects).

Gender: i. Specific measures are needed to provide for differential gender requirements.

11 Handbook on Poverty and Social Analysis, Section III, Poverty and Social Analysis in Project Preparation, ADB, Manila, 2002, Pg 2

- ii. Women may be disadvantaged by the project because of economic, political, or socio-legal discrimination.
- iii. Potential for increasing the direct poverty reduction impact is of particular relevance to women and/or women may face specific barriers to access.

Resettlement: i. Requires construction or rehabilitation work;
 ii. Is expected to require land acquisition; and/or
 iii. Is expected to engender loss of assets, resources, or income.

Indigenous peoples: i. Will be located in, or pass through, areas of significant indigenous peoples' settlement and/or use.
 ii. Proposes to specifically target indigenous peoples in one or more of its main activities; or is anticipated to have significant negative effects on indigenous peoples.

Labour: i. Workers may lose their employment as a result of public or private sector restructuring.
 ii. The project may develop labor market policies or investments.
 iii. The project, including ADB-financed procurement of good and services, is not in compliance with the national labour legislation (e.g. minimum wage, safe working conditions, social security contributions, etc.) and any of the International Core Labor Standards – i.e. the project is at risk of including/employing (i) forced labor, (ii) child labor, (iii) having discrimination at the workplace, or (iv) impedes workers to associate and to collectively bargain

Affordability: i. There is a danger that the access to goods and services of poor or otherwise vulnerable groups will be worse off as a result of the project because of pricing of such goods and services.
 ii. Unless addressed, the benefits of the project's reforms will flow primarily to non-poor consumers and un-serviced poor groups will remain excluded from the service.

Other risks/vulnerabilities: i. Vulnerable groups may be negatively affected by an ADB intervention; in this case, temporary safety nets may need to be developed.
 ii. There exists a danger that the access to goods and services of poor or otherwise vulnerable groups will be worse off as a result of (i) real loss of entitlements and (ii) loss of livelihood or employment.

Design phase and Summary Poverty Reduction and Social Strategy (SPRSS)

The Design phase includes the draft RRP of the Project which is submitted by the ADB President to the Board for approval. The RRP should include the Summary Poverty Reduction and Social Strategy (SPRRS) as a core appendix. The SPRSS will demonstrate the steps taken to address the issues identified in the original IPSA report, and will summarize the poverty reduction measures or plans included in the project design.¹²

The SPRSS will include:

- A brief poverty analysis

12 Ibid 8

- A matrix highlighting the *key social issues*, accompanied by a brief narrative assessment of how the project design has addressed the issues; and
- A narrative summary of any proposed *social action plan or mitigation measures*.

The proposed social action or mitigation measures should include:

- resettlement plan
- gender plan
- participation strategy
- labor retrenchment plan
- indigenous peoples development plan
- mitigation plan.

Integrating Core Labour Standards in the ADB Project Cycle

The Foreword of the “Core Labour Standards Handbook” published by ADB in Manila in October 2006, and signed by Bindu N Lohani, Director General, Regional and Sustainable Development Department, ADB and Lee Swepston, Senior Adviser on Human Rights Standards and Fundamental Principles and Rights at Work Sector, ILO, Geneva, states:

“ADB adopted a commitment to core labor standards (CLS) as part of its Social Protection Strategy in 2001. Since then, ADB ensures that the CLS are duly considered in the design and implementation of its investment projects.”

ADB has to “Ensure that all projects in all sectors comply with CLS and, if they fail to do so, ensure that adequate preventive and/or mitigation measures are included in the project design.”¹³

The CLS Handbook has clearly prescribed different activities during project design and implementation with regard to CLS.

Operationalising CLS in the pre-design PPTA phase should include:

- Identification of bonded labor, child labor, or gender and other inequalities in employment
- Identification of the need for special consultants in the PPTA team (labor, gender, etc.)
- Identification of the situation concerning freedom of association

The design phase involves selection of consultants, preparation of inception and mid-term reports, then final report and the draft RRP with SPRRS followed by loan negotiations.

In terms of operational aspects, the design phase will require:

- Designing necessary interventions to adhere to CLS
- Participation with stakeholders concerning the future implementation of CLS clauses
- Formulation of appropriate assurances/covenants for inclusion in loan documents
- Scrutinizing draft bidding documents (in construction projects).

Being an integral part of CLS, IPSA should identify the following issues:

- Infrastructure development and civil works contracts – where issues related to child labour, forced labour and equal wages for men and women are relevant, particularly for road projects, rural and urban development projects and power sector development projects.
- Public sector reform where labour policies and laws may be updated or revised.

13 Core Labour Standards Handbook, Manila, ADB, 2006

- Formal or conventional contracting of labour.
- Enterprise restructuring and privatization projects usually trigger several labor issues. Here redeployment may involve issues related to CLS.

Compliance with CLS in design

Whether the following have been considered in the project design.

1. There are intended employment creation aspects of the project;
2. Workers contracted under the project may be at risk of gender, race, or age discrimination;
3. The project location may have a high incidence of child labor or bonded labor, and the project contractors may be at risk of using them; and
4. The project area maybe in a high risk area for trafficking of women and children.

Conformity in Design with National Labour Laws

The project design phase should seek the following information.

1. Check national labor laws in the sector affecting the workers involved in the project. Does the country have legislation or regulations directly on the subject concerned?
2. Check the consistency between the existing law and practice, and the relevant CLS. If law and practice are not in conformity with the CLS, the latter should be the point of reference for ADB action.
3. If there is no applicable national labor law, the CLS should be the point of reference.

During the implementation of the PPTA, when conducting feasibility studies and design of the project, CLS issues should be assessed as part of the detailed poverty and social assessment, and reported in the summary poverty reduction and social strategy (SPRSS).¹⁴

If CLS concerns could create a violation in the project, the loan agreements should include covenants to address them. The CLS concerns could be explained also in the report and recommendation of the President (RRP) (Chapter VI, Assurances) and a covenant related to the mitigation of labour law risks incorporated.

Project Implementation and CLS Compliance

During project implementation phase, the operational activities for adhering to CLS include:

- Consultations with implementing agencies on CLS
- Drafting model clauses for bidding documents
- Compliance with national legislation concerning CLS and ILS
- Monitoring and evaluating of CLS

¹⁴ Ibid 12

"In projects that are designed to promote or to take account of CLS, it will be necessary to ensure that the standards are respected in the implementation of the project, both during bidding process and during implementation of the project. There will also be situations in which well-designed projects may encounter CLS problems during implementation by executing agencies, contractors, and subcontractors who violate these standards. Measures will have to be put into place to ensure that standards are taken into account in the letting of contracts for project implementation, which will involve information, training, and awareness raising among other factors. ADB review missions should ensure that projects are complying with CLS and with the terms of the contracts in this respect."¹⁵

Inclusion of CLS in Bidding Documents

Invitations to bid should include a specific reference to ILS/CLS. They should include language indicating that the executing agency should ensure that all work done under the project (for example, by contractors or others providing goods or services) complies with applicable labor legislation, ensuring in particular that the core elements of the CLS are complied with. The bidding document should also indicate that compliance with such provisions would be monitored during the project's implementation.

Taking account of project site practices

Typical project site practice for physical and civil works should consider:

1. Whether the employers and contractors are keeping records and what do they include.
2. If the records that are being kept include the questions that need to be answered to monitor the application of labor standards (age and sex of employees, wages paid, accidents and illnesses, etc.).
3. Contractors' attitude towards unions or other forms of workers organizations.
4. Any presence of worker/employer/contractor consultation mechanism.
5. Whether contractors regularly provide basic safety clothing and equipment.

It is critical for successful implementation of the project that the technical staff supervising the contract clearly understand the need to implement CLS, and also the possible costs for the project.¹⁶

Developing a consultation process

Several parties have a role to play in the implementing of ILS/CLS in the project. Accordingly, it is important to:

1. plan and budget for a series of stakeholder workshops to address implementation issues;
2. plan and budget for training and briefing sessions for specific groups, e.g., trade unions, women's organizations, and organizations working for the protection of child workers etc;

15 Ibid 12

16 Ibid 12

3. provide for separate training for employers and those supervising the implementation of the contract (e.g., engineers on construction projects); and
4. provide for discussion and awareness-raising sessions on required ILS/CLS issues.

This process should also include addressing stakeholders' concerns and a list of possible stakeholders to be consulted including the trade unions, and Ministries and departments of labour.

Capacity Building of Stakeholders to Implement CLS

Capacity building in labour standards is important for the sustainability of the project. It is important that labor standards briefings are included in all pre-bid meetings and ADB business opportunities seminars. Materials for capacity building and briefings should include relationship of CLS with local and national laws, where CLS should be addressed in the conditions of contract and associated specifications and ways to monitor implementation of CLS on site.

Monitoring Activities for Compliance with CLS

One of the main reasons that CLS are not implemented is the absence of monitoring. National inspection services and other mechanisms are under-funded and under-resourced, and monitoring of labor law is sometimes considered to be an unjustified expense.¹⁷

Monitoring systems should be agreed on in advance and put in place before the physical work starts. This means, among other things, that a decision should be made on who will be responsible for monitoring and the form of reporting. In ADB projects, the executing agency is usually responsible for monitoring. Sometimes, 'if the project is a complicated one, or draws a lot of public interest, like large power/resettlement projects, an independent monitoring team/agency could be hired.'¹⁸

Project Completion and Post Evaluation

On the completion of implementation, a project completion report (PCR) is prepared as a factual record of problems encountered and how they were overcome; any adjustments in project scope and implementation arrangements; the degree to which appraisal targets were achieved; and the performance of various actors, including contractors, suppliers, consultants, executing agency, the government, and ADB. At this stage, the focus should also be on labor issues and how the CLS were implemented.

Post-evaluation is undertaken after significant project benefits start to flow. Because Project Performance Evaluation Reports (PPERs) are prepared a few years after the end of the project implementation (around 25% of the projects are targeted for evaluation), it gives a good opportunity to evaluate also the impact of CLS on project activities.

17 Ibid 12

18 Ibid 12

Rajasthan Renewable Energy Transmission Investment Programme A Compliance Analysis

Initial Poverty and Social Analysis (IPSA)

During pre-design phase the the most important tool according to ADB OM C3 (approved in 2007) for poverty and social analysis is IPSA which is mandatory for all ADB funded/assisted projects.

The OM C3, under its operational procedures (OP), clearly states:

An initial poverty and social analysis (IPSA) is required for all loan and grant-based investment projects and programs to identify social issues...For preparation of sovereign projects, the IPSA should be undertaken before or during loan fact-finding. The IPSA is a core appendix to the project concept paper. For nonsovereign projects and for sovereign projects where no PPTA is undertaken, the IPSA should be conducted as part of due diligence. The IPSA must be posted on ADB's website, upon its completion, in accordance with ADB's Public Communications Policy.¹⁹

Though the IPSA for this sovereign project has been prepared, as there is no information available on the loan fact finding mission and the dates when the fact finding took place or the IPSA was prepared, it is not possible to check whether the IPSA was prepared before or during the loan fact finding.

Under Section C Poverty Analysis, the IPSA states that 'social and gender analysis will be carried out by social development/safeguard specialist. Funds for social and gender analysis will be made available through the project PPTA'.

The said PPTA - Rajasthan Renewable Energy Capacity Development and Implementation Support - is expected to be implemented over 28 months from December 2013 to March 2016. The executing agency (EA) will be the Energy Department, Government of Rajasthan and the Rajasthan Rajya Vidyut Prasaran Nigam Limited.

The TA consists of consultants working along with the project management unit (PMU) that has been set up for the MFF for the following key activities

- a. Studies for state smart grid roadmap;
- b. Solar park master-plan development;
- c. Institutional support for RRPVNL and RREC including financial management support; and
- d. Renewable energy policy for community interventions and pilot solar water pumping projects.

19 OM Section C3/OP issued on 25 April 2007 and reissued on 6 December 2010

The terms of reference for consulting services include recruitment of an international social development expert to support RREC and RRPVNL to develop social safeguard guidelines for renewable energy projects and resettlement and indigenous people plans for transmission lines. The expert would also help support RRPVNL develop capacity to monitor and report social development impacts.

It is evident, therefore, that the IPSA left the social and gender analysis to be developed during PPTA. The initial timeline of the PPTA closure being March 2016, the expected social and gender analysis will be available long after the RRP of the project is approved by the ADB Board, the loan agreement is signed, the pre-design and design phases are completed and the sub-project 1 under tranche 1 is under implementation. The social and gender analysis was, thus, not available even during the design phase.

Under the social development issues (II) of the IPSA, section B on Consultation and Participation indicates that the stakeholders are being identified as only:

- i. peoples living in the direct area of influence of the project and its associated facilities.
- ii. Public and private sector shareholders and Government of Rajasthan and Government of India.

Workers and employees employed in the project and their representative unions are not identified as stakeholders for consultation and participation in the project related matters.

Although the participation of the stakeholders was envisaged for information and consultation on the project design, the IPSA clearly states that no consultation and participation plan is required during project design and implementation.

ADB's response to union's initial communication

On 11th August 2012, Shri M D Joshi, the General Secretary of the Rajasthan Vidyut Prasaran Mazdoor Congress (RVMC), wrote an email to Shri L George, the team leader of the RRETIP, stating that the RVPNL authority did not discuss anything about the ADB funded upcoming loan project with their registered union. The email was replied to on 8th November 2012 in which Shri L George stated:

"This loan from ADB to RRVPNL has not been approved at this stage and the timing will depend on receipt of required state and central government clearances.

I would request you to discuss with Mr. LN Nimawat, SE, RRVPNL who is the Project Management Unit head appointed by RRVPNL for further details on the project proposed for ADB financing."²⁰

The RRETIP IPSA, however, flags employment opportunities and core labour standards, and HIV/AIDS under Social Safeguard Issues and Other Social Risks (III).

ADB's response to Union's second letter

In a second letter to L George, the team leader of the project, dated 28th July 2015, Shri M D Joshi, as the General Secretary of the union reiterated that:

20 Please see Appendix 2

"we the members of the recognized union in Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL), the Rajasthan Vidyut Prasaran Mazdoor Congress (RVPMC) is still not aware of the details of the project including how the aims and objectives and the output of the project will ensure creating job opportunities for the locals while protecting their rights and interests.

The safeguards as designed in this programme does not target the workers who will work on the projects, their rights and the core labour standards (CLS).

The project design has also deprived the workers to be represented in the project's participation and consultation process where no union has been accepted as stakeholder to participate in consultations."

The letter further demanded that:

1. Immediate steps should be taken to incorporate adequate measures to safeguard the rights of the workers to decent work and respect of national labour laws, including adherence to CLS in the project design;
2. Take appropriate measures to mitigate violation of labour laws and CLS during the implementation phase (including joint monitoring and review along with the unions) and incorporate those as part of the project implementation arrangement; and
3. ADB and the management of the RRVPNL should immediately consult our Union as a legitimate stakeholder of the Project and convey to us the mitigating measures taken as above.

This letter was responded to on November 6, 2015 where Shri V Rao Karbar, the team leader (energy) from the ADB Resident Mission in India generally provided very broad and standard reply. The letter said that 'The PMU -supported by safeguard review consultants- will consult with all relevant stakeholders during the monitoring of the project to understand and address concerns raised. ADB will continue to work with the executing agencies to ensure that various provisions of contract agreement related to labor practices are followed during the project implementation. During the periodic loan review missions, the ADB mission members will consult with RRVPNL and the Government of Rajasthan, Project Director and relevant PMU staff on project implementation and adherence to the loan covenants, (including on social, safeguards, social development and gender-related aspects of loan implementation).

On the issue of core labour standards, the letter stated:

"On the issue of good labor and social protection practices in ADB-supported projects, due diligence was conducted on broader social development and social safeguard aspects in consultation and interaction with the executing agencies (EAs) in Rajasthan.

As part of due diligence, a Summary Poverty Reduction and Social Strategy (SPRSS) was prepared after consultations with relevant stakeholders including Rajasthan Vidyut Prasaran Nigam Limited (RRVPNL), RREC and various departments of the Government of Rajasthan. This SPRSS is based on an assessment of possible impacts from a project that would include construction of sub-stations and transmission lines in Rajasthan to be built by contractors selected through an international competitive bidding process by RRVPNL. The SPRSS identifies risks including human trafficking,

spread of sexually transmitted infections (incl. HIV) and forced labor in Section VC of the document.

Also, the loan agreement signed between ADB and the Government of India specifies the requirements and stipulates the following in Schedule 5 Para 13.

"The EA (i.e. Rajasthan Rajasthani Vidyut Prasaran Nigam Limited and the Energy Department, Government of Rajasthan) shall ensure that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions." Such contracts will also include clauses for termination in case of any breach of the stated provisions of the contract. The loan agreement stipulates compliance with local labor laws by the EA and the contractors."²¹

Summary Poverty Reduction and Social Strategy (SPRSS)

The Design phase includes the draft RRP of the Project which is submitted by the ADB President to the Board for approval. The RRP should include the Summary Poverty Reduction and Social Strategy (SPRSS) as a core appendix. The SPRSS will demonstrate the steps taken to address the issues identified in the original IPSA report, and will summarize the poverty reduction measures or plans included in the project design.²²

On the issue of Participation and Empowering the Poor (II), two observations in the SPRSS are worth mentioning:

- Consultations with the civil society organizations to seek their perceptions on the project were held and will continue to be held throughout the project cycle.
- Civil society organizations could participate in the grievance redress mechanism and provide suggestions on the implementation of the project.

Beyond these, there is no plan of action on the consultation, participation and collaboration with trade unions as stakeholders on the adherence to CLS during the implementation of the project.

Where as the FAM clearly states that "The EA shall ensure that the Project is undertaken in conformity with the Gender Action Plan and the Consultation and Participation Plan as agreed between ADB, the Borrower, the EA as listed in the FAM."²³

21 Please see Appendix 3

22 Ibid 8

23 Facility Administration Manual, August 2013, Rajasthan Renewable Energy Transmission Investment Program, ADB

Under Addressing Other Social Risks (V), on the issue of risks in the labour market, boxes related to unemployment and underemployment have been checked while the box related to core labour standards has been left unchecked. Additionally, the SPRSS says that there will be job opportunities for skilled and unskilled labourers during the construction period.

There is no reason given in the SPRSS why the issue of core labour standards has been dropped and no further action was planned when the IPSA had flagged off the issue of CLS. It further indicates that while conducting feasibility studies and design of the project and detailed poverty and social assessment, CLS was not found relevant to be reported in the summary poverty reduction and social strategy (SPRSS).

The absence of CLS in the SPRSS which is the core document appended to the RRP, also raises important questions as to whether incidence of child labour, forced labour, discrimination in payment in the project area, and right to freedom of association and collective bargaining, as enshrined within the CLS and enforcement of labour laws were really looked at. It is also required to check whether the existing national labour laws are in conformity with the CLS and related ILO Conventions.

Integration of CLS in loan agreement, bidding documents and civil contract agreements

A set of seven questions on the issue related to core labour standards in project design and implementation and the inclusion of the unions as stakeholders in the consultation and participation process was emailed to L George, the team leader by the researcher on 27 September 2015. The reply sent on 12 October 2015 is a general one, carefully avoiding any mention of unions being considered as stakeholders and citing SPRSS flagging HIV/AIDS and sexually transmitted diseases, incidence of forced labour and the loan agreement ensuring '*that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions.*'²⁴

In earlier projects also the general refrain of the ADB project teams has been that all safeguard clauses related to labour, especially in the context of civil works contracts, is being clearly spelt out in the loan agreement. Responses of ADB project team to the queries of both the union and the researcher in this case indicate the same.

However, in Appendix 1 of the Facility Administration Manual (FAM) for RRETIP, August 2013 (pg 32) under Tranche 1 Project Specific Gender Inclusive Measures, the given activities and targets include:

- Construct separate toilets for men and women at project sites.
- Introduce and implement occupational health and safety measures separately for working men and women.

24 Please see Appendix 4

- Support RRPVNL to establish a child care facility to look after children of working mothers at construction sites (Target: 100% working mothers).
- Sensitization workshops held for contractors on gender responsive targets and core labor standards, including equal pay for work of equal value.
- Bidding documents contain provisions for core labor standards (Target: 100%).

Schedule 5, para 13 of the loan agreement for Rajasthan Renewable Energy Transmission Investment Programme – Project 1, dated 12 September 2014, signed between ADB and the India, does have the sentences quoted in the ADB response as above. But, the para carefully avoid mentioning of CLS which according to the ILO Declaration encompasses all the core issues of child labour, equal pay equal work, forced labour and also right to freedom of association and collective bargaining. Here when CLS Is not mentioned in para 13, it explicitly avoids the issues of forced labour and the freedom of association and protection of the right to organize and collective bargaining.

The same clause was also inserted in the loan agreement for the Bihar Power Sector Improvement projects sans the CLS. The clear objective to avoid mentioning CLS is, perhaps, at the instance of the Indian Government, which is yet to ratify the ILO Conventions 87 and 98 related to freedom of association and protection of the right to organize and collective bargaining and India does not have a legislation protecting the trade unions right to organize and collective bargaining.

Article 19(1)© of the Constitution of India guarantees to all its citizens the right to form associations and unions. The issue of right to form trade unions and right to organize is somewhat protected by the Trade Union Act and the Industrial Disputes Act but the right to collective bargaining has no legislative support. In absence of such a legislation, the Supreme Court of India has come out with guidelines to protect a trade union's right to collective bargaining through recognition of a trade union by the employer through secret ballot of the workers employed.

For the last eight years the authorities in RPVPNL has not conducted any elections to this effect to provide recognition to any of the existing unions the right to collective bargaining. The unions have gone to the court but the court's directions have not been implemented by the RRPVNL which is a serious violation of the core labour standards (CLS).

The Core Labour Standards Handbook, a joint publication of the ADB and ILO as a follow up of their joint Memorandum of Understanding signed in 2002, in the context of the conformity of the project design to national labour laws, states:

The project design phase should seek the following information.

1. Check national labor laws in the sector affecting the workers involved in the project. Does the country have legislation or regulations directly on the subject concerned?

2. Check the consistency between the existing law and practice, and the relevant CLS. If law and practice are not in conformity with the CLS, the latter should be the point of reference for ADB action.
3. If there is no applicable national labor law, the CLS should be the point of reference.

During the implementation of the PPTA, when conducting feasibility studies and design of the project, CLS issues should be assessed as part of the detailed poverty and social assessment, and reported in the summary poverty reduction and social strategy (SPRSS).

If CLS concerns could create a violation in the project, the loan agreements should include covenants to address them. The CLS concerns could be explained also in the report and recommendation of the President (RRP) (Chapter VI, Assurances) and a covenant related to the mitigation of labour law risks incorporated.

The absence of CLS concerns in the SPRSS and in the loan agreement is, therefore, a violation of the ADB policies on social safeguard.

ADB's response to the union's letter also refers to labour safeguard covenants being included in the bidding documents and the agreement between the EA and the civil works contractor. But, both these documents are not publicly available, being considered business information and not liable to public disclosure under ADB's Public Communication Policy (PCP). Therefore, there is no way that we can verify whether such safeguards are indeed being included in the above documents.

Violation of CLS and status of wage paid, safety and health, welfare and other working conditions

In all the construction sites visited in Bap, Bari Seed, Bhadla, Akal and Jaisalmer where upgradation of sub-stations to 220 volt and 440 volt is underway, none of the worksites have toilet facilities and bathroom for the workers, no separate toilet facilities even for the employees and workmen and women of RRVPNL. This is in contrary to the gender specific measures to be adopted as per Appendix 1 of the Facility Administration Manual (pg 32).

None of the worksites have child care centres/facilities for children of working mothers. In Jaisalmer construction site, infants and children were seen moving around in the construction site amidst dust and sand being prone to respiratory diseases and vulnerable to accidents.

In Bari Seed, Bhadla and Jaisalmer construction sites, no proper temporary housing facility was provided to the workers. If permitted, workers sleep inside the substation premise itself, or as seen in Bhadla, sleep outside in the open and cook their food also in the open. Some workers have made makeshift shelters with stones, bricks, wood planks etc put together to at least have a roof to take shelter. In Jaisalmer, workers have made temporary shelters with cloth and wooden planks which are not more than 3 to 4 feet in height and they have to crawl in to enter. Their entire family live in those shelters.

In none of the construction sites workers were seen with or using any safety gear – no shoes/boots, helmets, masks etc. They have not been provided with any safety gear.

In general, the wages paid are not below minimum wages stipulated by the state government of Rajasthan. Certain category of skilled workers like those laying cable, digging trenches and constructing tunnels for cable laying are paid well, up to an extent of Rs.900 per day. But, that is all that they get. Provident fund facility is not provided and they are not paid for any sickness. If they are on leave or take leave, they are not paid.

But, in case of helpers engaged in the construction site, usually husband and wife teams where wives help out their husbands, they are paid in pairs (jori in local language); which means the total wage paid is for the pair of husband and wife and the amount varies from Rs 450 to Rs.550 per day. This system is unheard of and illegal. It also is in violation of the equal pay for equal work (a component of CLS), and the gender action plan for the project prepared by the ADB.

It is also a fact that most of the workers – unskilled or skilled – are not paid their total wages per month. They are given advance when they are recruited and an amount is deducted when they are paid their wages in lieu of the advance paid. This indicates an arrangement leading to forced labour (a component of CLS).

Campaigns for awareness on HIV/AIDS, and sexually transmitted diseases have not been organized in and around the construction sites or the substations. None of the workers and employees reported attending any of the awareness generation campaigns/workshops.

Working condition of the RRVPNL workers/employees in substations

Except BAP, none of the substations where upgradation is going on, have any rest rooms or living quarters for the employees who constitute technical helpers, junior engineers and assistant engineers. The employees work, eat and sleep in the substation premises. They cannot bring in their families for lack of living quarters, lack of educational and healthcare facilities. In most cases schools and hospitals/dispensaries are far away – 15 to 20 kms from the construction site/substations.

In Bhadla, one can see two tents being erected as living quarters for two of their senior most employees.

This has also resulted in women employees losing out on their postings, or being forced to work out from nearest town offices of RRVPNL in Phalodi and Jaisalmer. The conditions are not conducive for women employees, with no separate toilet facilities, living quarters or security to work in night shifts. This condition is proving out to be discriminatory for women employees and may further hamper their recruitment in the future. One woman engineer posted in Bari Seed is working out from the Phalodi office, one woman engineer posted in Bhadla has not joined so far, one women engaged with the Akal substation has joined her posting since she has been provided a room in the nearby guest house but cannot work in night shifts for

lack of security. Another woman engineer posted in Jaisalmer substation is working out of the Jaisalmer town office of the RRPVNL.

None of the substations and construction sites has supply of clean and safe drinking water. Either the workers and employees have to arrange/procure drinking water on their own or as in most cases the contractors or the solar generation companies are sending bottles of mineral water to the substations.

The Bari Seed substation has no supply of water even. The workers and employees were seen using the stagnant rain water for washing their clothes and bathing resulting in skin diseases.

The workers and employees of Bari Seed and Bhadla substation have complained of malaria, chickengunia and dysentery. They are also afraid of snakebites as many snakes are seen moving around in the substation premises.

Safety and health conditions

Occupational health and safety requirements are very poor in the construction sites and in the substations. The technical helpers complained that they have been directly posted to work in the substation and the high tension lines without any training and capacity building.

None of the substations have adequate hand gloves, and if there is one is not supplied from the store of the RRPVNL. The employees do not even have earthing rod, proper footwear and non-skid chequered plates.

The technical helpers are using bamboo planks instead of earthing rods and seen working with their chappals/sandals on!

FINDINGS

1. Though IPSA and SPRSS have been prepared for RRETIP, there is no information or document available on poverty and social analysis. The social and gender analysis for the project has been referred to the PPTA and budgeted under the PPTA whose report is yet to be published as the PPTA is supposed to be completed by March 2016, a period when the tranche 1 will be under implementation. Therefore, both the IPSA and SPRSS are incomplete social and gender analysis will be available not during the pre-design or design phases but much after that. This is a possible violation of the ADB's OM C3.
2. While the IPSA includes CLS under labour issue, the SPRSS which is the core document of the RRP, excludes flagging off CLS without providing any reason. Exclusion of CLS in the SPRSS even without performing social and gender analysis is a violation of OM C3.
3. It seems that there is no coherence between important documents such as IPSA, SPRSS, and FAM. FAM mentions inclusion of CLS in implementation phase such as in bidding documents but SPRSS excludes CLS leading to question the process of due diligence undertaken by the ADB.
4. Similarly, according to the FAM the EA shall ensure that the project is undertaken in conformity with the consultation and participation plan as agreed between the ADB, borrower and the EA, but according to the SPRSS there is no consultation and participation plan.
5. The issue of not considering the unions as stakeholders in ADB's consultation and participation strategy for RRETIP and avoiding the issue of the inclusion of the unions as stakeholders in their responses to letters and queries by one of the unions (Rajasthan Vidyut Prasaran Mazdoor Congress) and the researcher indicate violation of ADB's Social Protection Strategy.
6. According to the Social Protection Strategy, ADB is committed to adhere to CLS. Where as in the case of RRETIP, the SPRSS and the loan agreement do not mention CLS and covers only the issues of not using child labour and equal pay equal work, only two components of CLS. Such omissions of CLS and core components of CLS is not only a violation of ADB's own Social Protection Strategy but undermines the MoU signed between ILO and ADB and the follow up undertaken as committed in the MoU. Especially, the joint publication called "Core Labour Standards Handbook" and ADB's own publication "Handbook on Poverty and Social Analysis".
7. In the construction sites there are no separate toilets for women workers and no child care centres have been developed which are a violation of ADB's FAM and Gender Action Plan (GAP) for RRETIP.

8. Incidence of forced labour in the working condition of workers employed by the civil works contractors and wages being paid in pairs – to both husband and wife together – indicate violation of CLS and India's national labour laws and also discriminatory against women workers.
9. Both RRVPNL and its contractors have violated India's national labour laws by not ensuring livable and decent living quarters for the workers in the construction sites and ensuring the safety of their children.
10. A total absence of safety measures, not providing safety gears and non-implementation of occupational health issues are a serious violation of the FAM and loan agreement of the RRETIP.
11. According to the workers engaged in the construction sites and employees and union members of RRVPNL, no awareness generation and campaign programme has been undertaken on the issues of HIV/AIDS and sexually transmitted diseases as per the loan agreement and FAM of the project.
12. While preparing IPSA and SPRSS due diligence was not done on the issue of freedom of association and right to collective bargaining existing in the RRVPNL, the EA of the RRETIP. The RRVPNL authorities have consistently failed to facilitate union elections for recognizing right to collective bargaining for the workers and employees engaged in RRVPNL. This is a grave violation of the CLS which has been completely overlooked by the ADB team.
13. The working and living conditions in the existing substations being upgraded and those which are already upgraded under the RRETIP have been completely overlooked by the ADB. According to the ADB response to the query by the researcher, the ADB project team leader has mentioned about the monitoring report being submitted by the EA which should take care of the issues concerned including adherence to CLS in project implementation but that report is yet to be published or made available for public disclosure.
14. The issues that arise related to working and living conditions of the employees of RRVPNL engaged in the substations include:
 - i. No rest rooms or living quarters for employees;
 - ii. No separate toilet and other relevant facilities existing for women employees;
 - iii. No supply of clean and safe drinking water;
 - iv. No supply of water in general in at least two substations;
 - v. Non implementation of occupational health and safety issues – absence of safety gear like boots, gloves, helmets, earthing rod and chequered plates;
 - vi. No training facility for technical helpers engaged in substations nad working on high tension lines; and

- vii. Unhealthy conditions existing in substation premises including incidence of stagnant water causing diseases and snakes moving around.

These are serious violations of India's national laws and also that of the loan agreement for the RRETIP.

- 15. The working and living conditions existing for women employees is discriminatory, preventing them from joining their postings in most of the substations, pose safety and security problems for working women and jeopardizing their long term recruitment and employment prospects in the RRPVNL. This is a serious violation and oversight, and also poor due diligence on the part of a multilateral institution like the ADB.
- 16. Since bidding documents and the agreement between the EA and the civil contractor are considered as business information and therefore exempted from public disclosure, it is not possible to verify whether these documents do carry the clauses on CLS and labour laws as stated in the loan agreement, IPSA, SPRSS and the FAM unless they can be accessed privately.

RECOMMENDATIONS

1. PSI needs to immediately take up the issue of non recognition of trade unions as stakeholders at the project level with the ADB management and concerned departments. A campaign along with other global unions could be thought of.
2. There has to be a serious engagement with the ADB management on the issue of understanding the status and merit of ADB's Social Protection Strategy, ADB's MoU with the ILO and that of the publications on CLS and Poverty and Social Analysis vis a vis ADB's project design and implementation and adherence to CLS and other relevant labour issues.
3. The unions operating in the power sector and public enterprises where ADB funded projects are implemented should be made aware and their capacities enhanced on the issues of CLS and its implementation in the ADB funded projects with emphasis on ADB's compliance and due diligence.
4. That there are serious violations of ADB's own commitments related to CLS, labour laws and the unions are undermined must be brought in to the notice of the European and US representatives on the Board of the ADB.
5. Violation of loan agreement, FAM of the project and that of ADB's own OM C3 should be taken up with the ADB management and the concerned departments including the strategy of filing a complaint under ADB's Accountability Mechanism (AM).
6. In the case of taking a decision on filing a complaint with the AM, the concerned unions should be made aware of the AM and processes involved including the possible expectations that can be derived from the process.
7. Since bidding documents and agreements between the EA and the civil contractor is not available for public disclosure and therefore, it is difficult to verify if CLS and labour clauses are indeed inserted in those documents, an appeal can be filed with the Public Disclosure Advisory Committee (PDAC) according to the Public Communications Policy, 2011 (PCP) of the ADB.

APPENDIX I

Excerpts from OM Section C3/OP, issued on 6 December 2010

INCORPORATION OF SOCIAL DIMENSIONS INTO ADB OPERATIONS

A. Incorporating Social Dimensions at Different Levels of ADB Operations

1. Social dimensions such as participation, gender and development, social safeguards, and management of social risks should be examined from ADB's strategic (regional, subregional, national, and subnational), sector, program, and project operations. Specific situations and priorities of a developing member country (DMC) will determine the approach to incorporating these social dimensions into ADB operations. Social dimensions will be integrated into the process of, and into the documents produced in, the country partnership strategy (CPS), project design, implementation, and monitoring and evaluation phases. Social analyses should explain the contributions of project interventions to sector impacts and the Millennium Development Goal (MDG) results at the country level and ADB's inclusive growth agenda.

...

C. Social Dimensions at the Project Level

5. The process of identifying likely social dimensions, including potential beneficiaries and people likely to be adversely affected by an ADB-supported project⁴ will start during project identification and will continue with increasing refinement during project preparation and implementation.

1. Social Dimensions in Project Conceptualization

6. An initial poverty and social analysis (IPSA) is required for all loan and grant-based investment projects and programs⁵ to identify social issues. The IPSA should (i) identify expected poverty and social impacts of the intervention as a contribution to results at the sector and country levels; (ii) identify key social issues (such as participation, gender, involuntary resettlement, indigenous peoples, labor, affordability, and other risks and/or vulnerabilities) that need to be addressed during implementation of the project preparatory technical assistance (PPTA) and the ensuing project; (iii) identify plans and terms of reference to assist in project preparation; and (iv) identify and allocate resources for conducting social analysis during the feasibility study or due diligence (para. 7).

7. For preparation of sovereign projects, the IPSA should be undertaken before or during loan fact-finding. The IPSA is a core appendix to the project concept paper. For nonsovereign projects⁶ and for sovereign projects where no PPTA is undertaken, the IPSA should be conducted as part of due diligence. The IPSA must be posted on ADB's website, upon its completion, in accordance with ADB's Public Communications Policy (see footnote 5).

2. Social Dimensions in Project Design

8. Based on the issues identified and process initiated during the IPSA, a social analysis should be carried out during project design to examine opportunities, constraints, and likely social impacts of the project, and to identify and formulate design measures and implementation arrangements to maximize the social benefits and avoid or minimize the social risks of the project in a participatory manner. The social analysis should be organized and sequenced so as to (i) address the key

issues identified in the IPSA; (ii) provide relevant social development inputs to the technical, economic, and other analyses; (iii) formulate and incorporate measures in the project design, including social and gender action plans; and (iv) provide baseline data for monitoring social impacts of the project. Social impacts shall also be assessed in relation to their contribution to inclusive growth and the MDGs. Where significant negative impacts are likely, a separate mitigation plan such as a resettlement plan, indigenous peoples development plan, or labor retrenchment plan should be prepared in consultation with and participation of stakeholders, particularly with those who will be affected.

9. The results of the social analysis, including specific plans such as a gender action plan, resettlement plan, indigenous peoples development plan, or other measures to address social issues should be summarized in the summary poverty reduction and social strategy (SPRSS). The SPRSS is linked to the report and recommendation of the President (RRP) for sovereign and nonsovereign projects (see footnote 4). The provisions of the social analysis and resulting plans should be reflected fully in the project administration manual (PAM) for sovereign projects.

10. Policy-based loans and grants—because of their size and systemic impact on the country—require a deeper analysis of potential social impacts. For policy-based interventions, a social and poverty impact assessment is carried out to identify key transmission channels through which the proposed policy reforms could affect poor and vulnerable groups. This impact assessment is summarized and is highlighted in the SPRSS.

11. For multitranche financing facilities (MFFs), the SPRSS will be prepared before approval of the MFF. It will set out the broad magnitude of the scope and criteria for carrying out further poverty and social analysis and developing more specific plans or measures in future. The SPRSS will be updated for the second and subsequent tranches, and revisions incorporated into the periodic financing request submitted to the Management.

12. For sector loans, social dimensions will be addressed in the sector analysis, and social indicators and benchmarks will be developed as part of the sector performance. This assessment is summarized and is highlighted in the SPRSS. For subprojects prepared during PPTA stage SPRSS have to be prepared as a linked document to the RRP. For subprojects prepared after the loan was approved, the SPRSS will be prepared by the executing agency in accordance with the agreed social criteria. ADB will review these subprojects on a selective basis to ensure compliance with the agreed upon criteria.

APPENDIX II

ADB's Response to the Initial Email Communication from Rajasthan Vidyut Prasaran Mazdoor Congress

From: <lgeorge@adb.org>
 Date: Nov 8, 2012 8:29 AM
 Subject: Re: ADB Project
 To: "MANDAL DUTT JOSHI" <mdutt.jodhpur@gmail.com>
 Cc: "se" <se_p&p@rvpn.co.in>

Dear Mr. Joshi,
 Thank you for your email.

The South Asia Energy Division of ADB is in discussions with RRVPNL and Government of Rajasthan on a proposed loan to RRVPNL to finance development of transmission lines and renewable energy control equipment for the evacuation of renewable energy (solar and wind) in Western Rajasthan under the Rajasthan Renewable Energy Transmission Investment Program. This would support the implementation of the Jawaharlal Nehru National Solar Mission in Rajasthan and the overall achievement of national target of 20,000 MW of solar power by 2022.

This loan from ADB to RRVPNL has not been approved at this stage and the timing will depend on receipt of required state and central government clearances.

I would request you to discuss with Mr. LN Nimawat, SE, RRVPNL who is the Project Management Unit head appointed by RRVPNL for further details on the project proposed for ADB financing. For further information on the financing, please feel free to email me.

Regards
 Len

Len V. George
 Energy Specialist
 Energy Division, South Asia Department
 Asian Development Bank
 Tel: (632) 632-6633
 Email: lgeorge@adb.org
www.adb.org

From: "MANDAL DUTT JOSHI" <mdutt.jodhpur@gmail.com>
 To: <lgeorge@adb.org>
 Cc: <mdutt.jodhpur@gmail.com>

Date: 11/08/2012 01:33 AM
Subject: ADB Project

Respected sir,

In the Rajasthan ADB give (sic) the loan to RRPVNL for Solar Energy.

In RRPVNL our Labour Union is registered in labour dept. Rajasthan and RVPNL authority did not discussed (sic) with labour union in this matter.

Our Union is Rajasthan Vidyut Prasaran Mazdoor Congress INTUC Rajasthan.

M.D.Joshi

Gen.Sec.

09460276495

APPENDIX III

ADB's Response to Union's Second Letter

From: <ADB_IRTS@adb.org>

Date: Nov 6, 2015 12:01 PM

Subject: Response (#2015-3311.00) - 45224-003 (India)

To: <mdutt.jodhpur@gmail.com>

Cc: <disclosure@adb.org>, <navillaluz@adb.org>, <rgatchalian@adb.org>, <rkdeol@adb.org>

Dear Mr. Joshi,

Please see the attachment for detailed response to your queries/concerns forwarded to ADB vide your letter dated 28 July 2015
with regards,

V RAO KARBAR, Team Leader (Energy)

INRM, ADB

Dear Mr Joshi:

Thank you very much for reaching out to ADB.

Our response to the concerns raised in your letter dated 28 July 2015 is provided below.

We would like to summarize your broad queries/concerns regarding the implementation of the Rajasthan Renewable Energy Transmission Investment Program as follows.

1. Creation of job opportunities for locals
 2. Protection of rights of workers under the loan agreement
 3. Commitments on civil works contracts for contractors
 4. Consultation with stakeholders including the union
- 1. Creation of job opportunities for locals -**
The Rajasthan Renewable Energy Transmission Investment Program (RRETIP) supports the Government of Rajasthan's plans for transmission evacuation from solar and wind projects in parks to be developed under the guidelines of the Rajasthan Renewable Energy Corporation (RREC), Government of Rajasthan and the Ministry of New and Renewable Energy, Government of India.

Under the capacity building technical assistance grant associated with the RRETIP, support is being provided to RREC for the drafting of a community policy to support local communities in the vicinity of such renewable energy parks. RREC will setup and operate a Community Development Fund that could be used to provide support through livelihood training programs, electrification in remote areas and educational and healthcare opportunities. Under the Program, a mapping of skills (for e.g. animal husbandry and weaving opportunities) in the local community around Bhadla as well as partnerships with local self-help groups is being designed and taken forward to support creation of income generating opportunities for the locals.

2. Protection of rights of workers under the loan agreement –

On the issue of good labor and social protection practices in ADB-supported projects, due diligence was conducted on broader social development and social safeguard aspects in consultation and interaction with the executing agencies (EAs) in Rajasthan.

As part of due diligence, a Summary Poverty Reduction and Social Strategy (SPRSS) was prepared after consultations with relevant stakeholders including Rajasthan VidyutPrasaran Nigam Limited (RRVPNL), RREC and various departments of the Government of Rajasthan. This SPRSS is based on an assessment of possible impacts from a project that would include construction of sub-stations and transmission lines in Rajasthan to be built by contractors selected through an international competitive bidding process by RRVPNL. The SPRSS identifies risks including human trafficking, spread of sexually transmitted infections (incl. HIV) and forced labor in Section VC of the document.

Also, the loan agreement signed between ADB and the Government of India specifies the requirements and stipulates the following in Schedule 5 Para 13

“The EA (i.e. Rajasthan VidyutPrasaran Nigam Limited and the Energy Department, Government of Rajasthan) shall ensure that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions.” Such contracts will also include clauses for termination in case of any breach of the stated provisions of the contract. The loan agreement stipulates compliance with local labor laws by the EA and the contractors.

3. Commitments on civil work contracts for contractors-

As indicated in the above section, the key risks identified during due diligence included human trafficking, forced labor and the spread of sexually transmitted infections (incl. HIV). Measures to address these risks are part of the contractual documentation signed between RRVPNL and the contractors. Provisions in the civil work contract documents include but are not limited to

- Basis for determination of rate of wages and conditions of labor, working hours, accommodation and welfare facilities
- Compliance required with all relevant labor laws including laws relating to the employment, health, safety, welfare, immigration and emigration
- Prohibition of forced or compulsory labor
- Contractors not to make employment decisions based on personal characteristics unrelated to job requirements and the employment relationship to be based on equal opportunity and fair treatment.
- Contractors not to discriminate on employment relationship including recruitment, hiring, compensation, working conditions and terms of employment, retirement and discipline
- Contractors to provide equal wages and benefits to men and women for work of equal value or type.

We would like to add here that representatives of the Energy Department, Government of Rajasthan and RRVPNL have participated in a range of ADB-supported capacity building program including on safeguard procedures since 2013.

4. Consultation with stakeholders including the union -

The PMU -supported by safeguard review consultants- will consult with all relevant stakeholders during the monitoring of the project to understand and address concerns raised.

ADB will continue to work with the executing agencies to ensure that various provisions of contract agreement related to labor practices are followed during the project implementation. During the periodic loan review missions, the ADB mission members will consult with RRVPNL and the Government of Rajasthan, Project Director and relevant PMU staff on project implementation and adherence to the loan covenants, (including on social, safeguards, social development and gender-related aspects of loan implementation).

To

L George

Energy Specialist, SARD

Asian Development Bank, Manila, Philippines

Dear Mr. L George:

This is with reference to Project Number: 45224, Proposed Multitranche Financing Facility and Administration of Loans and Technical Assistance Grant India: Rajasthan Renewable Energy Transmission Investment Program.

The above Project was approved by the ADB Board in September 2013 and the Loan agreement for tranche 1 of the Program was signed on 12 September 2014 between the Joint Secretary, Department of Economic Affairs, Government of India and the Country Director, ADB.

We are happy to note that the project report states that the growth of renewable energy in Rajasthan will directly and indirectly contribute to poverty reduction by creating temporary and permanent jobs and enhancing energy security. (Report and Recommendations of the President, ADB, pg 8) and that the investment program will create economic opportunities and ensure economic development.

But, we the members of the registered union by labour dept. Of Rajasthan govt. in Rajasthan Rajya Vidyut Prasaran Nigam Limited (RRVPNL), the Rajasthan Vidyut Prasaran Mazdoor Congress (INTUC) is still not aware of the details of the project including how the aims and objectives and the output of the project will ensure creating job opportunities for the locals while protecting their rights and interests.

The safeguards as designed in this programme does not target the workers who will work on the projects, their rights and the core labour standards (CLS).

The project design has also deprived the workers to be represented in the project's participation and consultation process where no union has been accepted as stakeholder to participate in consultations.

We understand that the goal of an Asia and Pacific region free of poverty clearly defines the mission of the Asian Development Bank (ADB). The ADB and the International Labour Organisation (ILO) while working together on ways to reach this goal have signed a memorandum of understanding in 2002 that identifies area of core labour standards (CLS) in which the two organizations can cooperate, collaborate, and coordinate activities at the regional, national, and enterprise levels.

We also understand that since the approval of ADB's Social Protection Strategy on 13 September 2001, CLS have become an integral part of ADB's development

mission. ADB's Social Protection Strategy and its Action Plan commit ADB to comply with the CLS, and guide ADB operations to good labor and social protection practices.

The CLS Handbook, jointly published by ILO and ADB in 2006 clearly states that 'the inclusion of labor standards consideration should be strengthened in the planning, design, and implementation of all ADB activities, as approved by ADB in its Social Protection Strategy. Respect for labor standards should be addressed as an issue in itself, and as a matter of ADB's corporate social responsibility.'

The handbook further points out that to strengthen project implementation, violations of labor standards in the implementation of ADB-funded activities, or failure by contractors and subcontractors to observe the standards they are required to implement, should be prevented... A proposed option is to request social audits from its contractors or reports from relevant labor stakeholders (e.g., labor unions).

The following excerpt from the Social Protection Strategy highlights ADB's commitment:

- (i) in the design and formulation of its loans, ADB will comply with the internationally recognized CLS;
- (ii) take all necessary and appropriate steps to ensure that for ADB financed procurement of goods and services, contractors, subcontractors and consultants will comply with the country's labor legislation (e.g., minimum wages, safe working conditions, and social security contributions, etc.) as well as with the CLS; and

As part of its regular loan reviews, ADB will monitor that (i) and (ii) are complied with."

The "risks in the labour market" component in the Summary Poverty Reduction and Social Strategy (SPRSS), a core appendix of the RRP, has flagged off only unemployment and under employment and completely avoided core labour standards (CLS). We are also concerned that it does not contain a commitment to 'ensure that civil works contracts under the Project will follow all applicable labor laws of the Borrower and the State and adhere to CLS'.

Accordingly, the tranche 1 loan agreement, under Schedule 5, has failed to include the paragraph as a standard ADB procedure stating clearly that the contractors and sub-contractors are required to sign an agreement to abide by national labour laws, international standards and the CLS and breach of any may lead to termination of contract.

ADB's Social Protection Strategy requires that 'Measures should be taken to ensure that the design of all ADB projects conforms to CLS and to correct situations where such measures have not been implemented'.

We are, therefore concerned, that the Project design and implementation arrangement have violated ADB's Social Protection Strategy and the underlying principles enshrined in the MoU signed by ADB and ILO and demand that:

1. Immediate steps should be taken to incorporate adequate measures to safeguard the rights of the workers to decent work and respect of national labour laws, including adherence to CLS in the project *design*;
2. Take appropriate measures to mitigate violation of labour laws and CLS during the implementation phase (including joint monitoring and review along with the unions) and incorporate those as part of the project implementation arrangement; and
3. ADB and the management of the RRPVNL should immediately consult our Union as a legitimate stakeholder of the Project and convey to us the mitigating measures taken as above.

We request you to give utmost priority to this letter and take urgent and time bound steps as above before moving forward with further implementation of the project.

Yours sincerely
 (MANDAL DUTT JOSHI)
 GENERAL SECRETARY
 RAJASTHAN VIDYUT PRASARAN MAZDOOR CONGRESS (INTUC)

APPENDIX IV

ADB's Response to Queries sent by the Researcher

1. Was there any communication from the ADB team or a capacity building programme as per the TA where the RVPN authority is told about the adherence to core labour standards as part of the Social Protection Strategy of the ADB for the civil and other construction/erection contracts?

The Executing Agencies(EA) for the first tranche loan are the Energy Department, Government of Rajasthan and the Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPN). Representatives of the EAs have participated in a range of ADB-supported capacity building programs from 2013 -including on safeguard procedures.

A capacity building technical assistance (TA) grant TA associated with the ADB loan is ongoing and a consulting firm has been recruited to support, among other activities, on capacity building for a broad range of project-related social and gender-related issues.

During loan processing, due diligence was conducted on broader social development and social safeguard aspects in consultation and interaction

with the EAs. Key risks identified included human trafficking, forced labor and the spread of sexually transmitted infections (incl. HIV).

Several measures have been identified to address risks and are part of the contractual documentation between RVPN and the contractors. These include but are not limited to

- *Basis for determination of rate of wages and conditions of labor, working hours, accommodation and welfare facilities*
- *Compliance required with all relevant labor laws including laws relating to the employment, health, safety, welfare, immigration and emigration*
- *Prohibition of forced or compulsory labor*
- *Contractors not to make employment decisions based on personal characteristics unrelated to job requirements and the employment relationship to be based on equal opportunity and fair treatment.*
- *Contractors not to discriminate on employment relationship including recruitment, hiring, compensation, working conditions and terms of employment, retirement and discipline*
- *Contractors to provide equal wages and benefits to men and women for work of equal value or type*

Compliance with the above will be monitored during project implementation.

2. Were any of the unions/trade unions existing in RVPN consulted by the project team as stakeholder as part of the C&P plan?

The Summary Poverty Reduction and Social Strategy (SPRSS) was prepared after consultations with relevant stakeholders including RVPN, Rajasthan Renewable Energy Corporation (RREC) and various departments of the Government of Rajasthan and is based on an assessment of possible impacts from a project that would include construction of sub-stations and transmission lines in Rajasthan. It may be noted that the sub-stations and transmission lines are to be built by contractors selected through an international competitive bidding process by RVPN.

3. Was their specific input on the inclusion of core labour standards while designing the project/programme and implementation mechanism?

Please refer responses to 1 and 2.

4. The IPSA of the programme flags off CLS but, CLS as such is not included in the Schedule 5 of the Loan Agreement for Tranche 1 of the investment programme in the para for the civil contracts and completely excluded from SPRSS. Why is that and is there any explanation for that?

Based on due diligence during processing, the SPRSS identifies risks including human trafficking, spread of sexually transmitted infections (incl. HIV) and forced labor in Section VC.

The loan agreement signed between ADB and the Government of India specifies therequirements and stipulates the following in Schedule 5 Para 13

"The EA(i.e. Rajasthan RajyaVidyutPrasaran Nigam Limited and the Energy Department, Government of Rajasthan) shall ensure that civil works contracts under the Project follow all applicable labor laws of the Borrower and the State and that these further include provisions to the effect that contractors; (i) carry out HIV/AIDS awareness programs for labor and disseminate information at worksites on risks of sexually transmitted diseases and HIV/AIDS as part of health and safety measures for those employed during construction; and (ii) follow and implement all statutory provisions on labor (including not employing or using children as labor, equal pay for equal work), health, safety, welfare, sanitation, and working conditions."

5. Does the monitoring reports of the investment programme include status of implementation of CLS and its adherence?

The first turnkey contracts for transmission lines and sub-stations were awarded in 2015. A draft monitoring report has been submitted by the Project Management Unit (PMU) in Q3 2015 (July-September) and is under review before being finalized.

During the periodic loan review missions, the Mission Leader and team willconsult with the EA, Project Director and relevant PMU staff on project implementation and adherence to the loan assurances and covenants including on social safeguards, social development and gender related aspects of loan implementation.

6. Can you provide me with any related document to support that the programme design and implementation programme include CLS?

The monitoring report from the EA will be available and uploaded on the ADB website after reviews are completed.

7. I have been provided by one of the unions present in RVPN with a copy of the letter addressed to you specifying their concerns related to absence of implementation of CLS in the programme. Has there been a response from your end to this letter which I also attach with my email.

The first tranche of the ADB loan funds investments in transmission lines and sub-stations where the actual construction of the lines and substations is

expected to be undertaken by independent contractors selected through international competitive bidding.

A letter was received by the PMU in August 2015 and forwarded to ADB. The PMU -supported by safeguard review consultants- will consult with all relevant stakeholders during the monitoring of the project to understand and address valid concerns raised.

Len V George
Energy Specialist
Energy Division
South Asia Department
Asian Development Bank

APPENDIX V

Queries sent to the Chairman and Managing Director, RRVPNL by the Researcher

(No response was received on the above queries)

Addressed to Shri Sanjay Malhotra, IAS

1. Are you aware that ADB has a Social Protection Strategy under which it is committed to adhere to country labour laws and standard and Core Labour Standards in its funded projects/programmes?
2. Has there been any communication from ADB on adherence to its Social Protection Strategy and implementation of Core Labour Standards in the design and implementation of the above programme?
3. Are the bidding documents for awarding contracts being prepared accordingly?
4. Is there a clause in the agreement between the RVPN Ltd and the Contractor of civil works and erection of sub-station and transmission lines which emphasise on adherence to national labour laws and standards and the core labour standards? If yes, can you send me a copy of that page(s) only of the agreement?
5. The RVPN Ltd is supposed to send periodic review report to the ADB. Does this review report include information on the adherence to national labour laws and core labour standards?
6. The project documents indicate that there have been consultations with the stakeholders? Does this list of stakeholders include workers and their unions? Have any union been invited to these consultations?
7. Has there been any complaint filed on violation of labour laws in this project?
8. How does RVPN Ltd monitor occupational health and safety status in its sub-stations and transmission line work?
9. The project was approved in September 2013 and loan agreement was signed for tranche 1 on September 2014. Was work of any part of the project – sub-stations or transmission lines started or completed before the approval of the project and/or signing of the tranche 1 loan agreement?
10. Is this correct that RVPN Ltd is running at a loss of Rs.85,000 crores or what is the correct financial status?
11. Is RVPN Ltd investing in the development of the solar park in Bhadla?